

1 Michael J. Malecek (State Bar No. 171034)
Email address: michael.malecek@kayescholar.com
2 Kenneth Maikish (State Bar No. 267265)
Email address: kenneth.maikish@kayescholar.com
3 KAYE SCHOLER LLP
Two Palo Alto Square, Suite 400
4 3000 El Camino Real
Palo Alto, California 94306
5 Telephone: (650) 319-4500
Facsimile: (650) 319-4700
6

7 Attorneys for Defendant
GOOGLE INC.
8
9

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

12	ICONFIND, INC.,)	Case No. 2:11-CV-00319 GEB JFM
13)	
14	Plaintiff,)	AGREED TO PROTECTIVE ORDER
15)	
16	v.)	
17)	
18	GOOGLE INC.,)	
19)	
20	Defendant.)	
21)	
22)	
23)	
24)	
25)	
26)	
27)	
28)	

1 In order to expedite the flow of discovery materials, facilitate the prompt resolution of
2 disputes over confidentiality of discovery materials, adequately protect information the parties are
3 entitled to keep confidential, ensure that only materials the parties are entitled to keep confidential
4 are subject to such treatment, and ensure that the parties are permitted reasonably necessary uses
5 of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it
6 is hereby ORDERED THAT:

7 **I. INFORMATION SUBJECT TO THIS ORDER**

8 Discovery materials produced in this case may be labeled as one of three
9 categories: CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and
10 RESTRICTED CONFIDENTIAL - SOURCE CODE, as set forth in Items A through C
11 below. All three of the identified categories of information shall be identified collectively in this
12 Order by the title "Protected Information."

13 **A. Information Designated as Confidential Information**

14 1. For purposes of this Order, "CONFIDENTIAL INFORMATION" shall
15 mean all information or material produced for or disclosed in connection with this action to a
16 receiving party that a producing party, including any party to this action and any non-party
17 producing information or material voluntarily or pursuant to a subpoena or a court order in
18 connection with this action, considers to comprise confidential technical, sales, marketing,
19 financial, or other commercially sensitive information, whether embodied in physical objects,
20 documents, or the factual knowledge of persons, and which has been so designated by the
21 producing party. Any CONFIDENTIAL INFORMATION obtained by any party from any
22 person pursuant to discovery in this litigation may be used only for purposes of this litigation.

23 2. Any document or tangible thing containing or including any
24 CONFIDENTIAL INFORMATION may be designated as such by the producing party by
25 marking it "CONFIDENTIAL" prior to or at the time copies are furnished to the receiving party.

26 3. All CONFIDENTIAL INFORMATION not reduced to documentary,
27 tangible or physical form or which cannot be conveniently designated as set forth in paragraph 2,
28

1 shall be designated by the producing party by informing the receiving party of the designation in
2 writing.

3 4. Any documents (including physical objects) made available for inspection
4 by counsel for the receiving party prior to producing copies of selected items shall initially be
5 considered, as a whole, to constitute CONFIDENTIAL INFORMATION (unless otherwise
6 designated at the time of inspection) and shall be subject to this Order. Thereafter, the producing
7 party shall have a reasonable time to review and designate the appropriate documents as
8 CONFIDENTIAL INFORMATION (or otherwise as appropriate) prior to furnishing copies to the
9 receiving party.

10 5. The following information is not CONFIDENTIAL INFORMATION:

11 a. Any information that is or, after its disclosure to a receiving party,
12 becomes part of the public domain as a result of publication not involving a violation of this
13 Order or other obligation to maintain the confidentiality of such information;

14 b. Any information that the receiving party can show was already
15 publicly known prior to the disclosure; and,

16 c. Any information that the receiving party can show by written
17 records was received by it from a source who obtained the information lawfully and under no
18 obligation of confidentiality to the producing party.

19 6. Documents designated CONFIDENTIAL and information contained
20 therein shall be available only to:

21 a. Outside litigation counsel of record and supporting personnel
22 employed in the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals,
23 legal translators, legal secretaries, legal clerks and shorthand reporters;

24 b. Technical advisers and their necessary support personnel, subject to
25 the provisions of paragraphs 3A-3F herein, and who have signed the form attached hereto as
26 Attachment A; the term "technical adviser" shall mean independent outside expert witnesses or
27

consultants (i.e., not employees of a party) with whom counsel may deem it necessary to consult and who are in compliance with Section III below;

c. Up to two in-house counsel, who are members of at least one state bar in good standing, with responsibility for managing this litigation;

d. The Court, its personnel and stenographic reporters (under seal or with other suitable precautions determined by the Court); and,

e. Independent legal translators retained to translate in connection with this action; independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action; graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; non-technical jury or trial consulting services including mock jurors (provided, however, that such non-technical jury or trial consulting services, including mock jurors, have signed the form attached hereto as Attachment A, and a signed copy has been provided to the producing party).

B. Information Designated Confidential Outside Counsel Only

1. The CONFIDENTIAL OUTSIDE COUNSEL ONLY designation is reserved for CONFIDENTIAL INFORMATION that constitutes (a) marketing, financial, sales, web traffic, research and development, or technical, data or information; (b) commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement (“NDA”); (c) information or data relating to future products not yet commercially released and/or strategic plans; and, (d) commercial agreements, settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the producing party. Documents marked CONFIDENTIAL OUTSIDE ATTORNEYS’ EYES ONLY, HIGHLY CONFIDENTIAL or RESTRICTED CONFIDENTIAL shall be treated as if designated CONFIDENTIAL OUTSIDE COUNSEL ONLY. In determining whether information should be

1 designated as CONFIDENTIAL OUTSIDE COUNSEL ONLY, each party agrees to use such
2 designation only in good faith.

3 2. Documents designated CONFIDENTIAL OUTSIDE COUNSEL ONLY
4 and information contained therein shall be available only to the persons or entities listed in
5 paragraphs 1.A.6.a, b, d and e subject to any terms set forth or incorporated therein and not any
6 person or entity listed in paragraph 1.A.6.c.

7 **C. Information Designated Restricted Confidential - Source Code**

8 1. The RESTRICTED CONFIDENTIAL - SOURCE CODE designation is
9 reserved for CONFIDENTIAL INFORMATION that contains or substantively relates to a party's
10 "Source Code," which shall mean documents containing or substantively relating to confidential,
11 proprietary and/or trade secret source code or technical design documentation. The following
12 conditions shall govern the production, review and use of source code or design documentation
13 information.

14 2. All such Source Code, and any other Protected Information designated as
15 "RESTRICTED CONFIDENTIAL —SOURCE CODE," shall be subject to the following
16 provisions:

17 a. Source Code, to the extent any producing party agrees to provide
18 any such information, shall ONLY be made available for inspection, not produced except as
19 provided for below, and shall be made available in electronic format at one of the following
20 locations chosen at the sole discretion of the producing party: (1) the offices of the producing
21 party's primary outside counsel of record in this action; (2) a single, third-party site located
22 within any judicial district in which the Source Code is stored in the ordinary course of business
23 (e.g., an escrow company); or (3) a location mutually agreed upon by the receiving and producing
24 parties. Any location under (1), (2) or (3) above shall be in the continental United States. Source
25 Code will be loaded on a single, non-networked computer that is password protected and
26 maintained in a secure, locked area. Use or possession of any input/output device (e.g., USB
27

1 memory stick, cameras or any camera-enabled device, CDs, floppy disk, portable hard drive,
2 laptop, etc.) is prohibited while accessing the computer containing the Source Code. All persons
3 entering the locked room containing the Source Code must agree to submit to reasonable security
4 measures to insure they are not carrying any prohibited items before they will be given access to
5 the locked room. The computer containing Source Code will be made available for inspection
6 during regular business hours, upon reasonable notice to the producing party, which shall not be
7 less than 3 business days in advance of the requested inspection.

8 b. The receiving party's outside counsel and/or experts may request
9 that commercially available licensed software tools for viewing and searching Source Code be
10 installed on the secured computer. The receiving party must provide the producing party with
11 the CD or DVD containing such software tool(s) at least four business days in advance of the
12 inspection.

13 c. The receiving party's outside counsel and/or expert shall be entitled
14 to take notes relating to the Source Code but may not copy any portion of the Source Code into
15 the notes. No copies of all or any portion of the Source Code may leave the room in which the
16 Source Code is inspected except as otherwise provided herein. Further, no other written or
17 electronic record of the Source Code is permitted except as otherwise provided herein.

18 d. No person shall copy, e-mail, transmit, upload, download, print,
19 photograph or otherwise duplicate any portion of the designated Source Code, except as the
20 receiving party may request a reasonable number of pages of Source Code to be printed by the
21 producing party, but only if and to the extent necessary for use in this action. In no event may the
22 receiving party print more than 25 consecutive pages, or an aggregate total of more than 500
23 pages, of Source Code during the duration of the case without prior written approval by the
24 producing party. Within 5 business days or such additional time as necessary due to volume
25 requested, the producing party will provide the requested material on watermarked or colored
26 paper bearing Bates numbers and the legend "RESTRICTED CONFIDENTIAL - SOURCE
27

1 CODE” unless objected to as discussed below. The printed pages shall constitute part of the
2 Source Code produced by the producing party in this action. At the inspecting parties request, up
3 to two additional sets (or subsets) of printed Source Code may be requested and provided by the
4 producing party in a timely fashion.

5 e. If the producing party objects that the printed portions are not
6 reasonably necessary to any case preparation activity, the producing party shall make such
7 objection known to the receiving party within five business days. If after meeting and conferring
8 the producing party and the receiving party cannot resolve the objection (where such meet-and-
9 confer need not take place in person), the producing party shall be entitled, but not required, to
10 seek a Court resolution of whether the printed Source Code in question is reasonably necessary to
11 any case preparation activity. Contested Source Code print outs need not be produced to the
12 requesting party until the matter is resolved by the Court.

13 f. Any printed pages of Source Code, and any other documents or
14 things reflecting Source Code that have been designated by the producing party as
15 “RESTRICTED CONFIDENTIAL - SOURCE CODE” may not be copied, digitally imaged or
16 otherwise duplicated, except in limited excerpts necessary to attach as exhibits to depositions,
17 expert reports, or court filings as discussed below.

18 g. Any paper copies designated “RESTRICTED CONFIDENTIAL -
19 SOURCE CODE” shall be stored or viewed only at (i) the offices of outside counsel for the
20 receiving party, (ii) the offices of outside experts or consultants who have been approved to
21 access Source Code; (iii) the site where any deposition is taken (iv) the Court; or (v) any
22 intermediate location necessary to transport the information to a hearing, trial or deposition. Any
23 such paper copies shall be maintained at all times in secure location under the direct control of
24 counsel responsible for maintaining the security and confidentiality of the designated materials.

25 h. A list of names of persons who will view the Source Code will be
26 provided to the producing party in conjunction with any written (including email) notice
27

1 requesting inspection. The receiving party shall maintain a daily log of the names of persons who
2 enter the locked room to view the Source Code and when they enter and depart. The producing
3 party shall be entitled to have a person observe all entrances and exits from the Source Code
4 viewing room, and to a copy of the log.

5 i. Unless otherwise agreed in advance by the parties in writing,
6 following each inspection, the receiving party's outside counsel and/or experts shall remove all
7 notes, documents, and all other materials from the room that may contain work product and/or
8 attorney-client privileged information. The producing party shall not be responsible for any items
9 left in the room following each inspection session.

10 j. The receiving party will not copy, remove, or otherwise transfer
11 any portion of the Source Code from the Source Code Computer including, without limitation,
12 copying, removing, or transferring any portion of the Source Code onto any other computers or
13 peripheral equipment. The receiving party will not transmit any portion of the Source Code in
14 any way from the location of the Source Code inspection.

15 k. Only the following individuals shall have access to "RESTRICTED
16 CONFIDENTIAL - SOURCE CODE" materials, absent the express written consent of the
17 Producing Party or further court order:

18 (1) Outside counsel of record for the parties to this action,
19 including any attorneys, paralegals, technology specialists and clerical employees of their
20 respective law firms;

21 (2) Up to three (3) outside experts or consultants per party, pre-
22 approved in accordance with Paragraphs 3A-3F and specifically identified as eligible to access
23 Source Code;

24 (3) The Court, its technical advisor (if one is appointed), the
25 jury, court personnel, and court reporters or videographers recording testimony or other
26 proceedings in this action. Court reporters and/or videographers shall not retain or be given
27

1 copies of any portions of the Source Code. If used during a deposition, the deposition record will
2 identify the exhibit by its production numbers;

3 (4) While testifying at deposition or trial in this action only: (i)
4 any current or former officer, director or employee of the producing party or original source of
5 the information; (ii) any person designated by the producing party to provide testimony pursuant
6 to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and/or (iii) any person who authored,
7 previously received (other than in connection with this litigation), or was directly involved in
8 creating, modifying, or editing the Source Code, as evident from its face or reasonably certain in
9 view of other testimony or evidence. Persons authorized to view Source Code pursuant to this
10 sub-paragraph shall not retain or be given copies of the Source Code except while so testifying.

11 1. The Receiving Party's outside counsel shall maintain a log of all
12 copies of the Source Code (received from a Producing Party) that are delivered by the Receiving
13 Party to any qualified person under Paragraph g above. The log shall include the names of the
14 recipients and reviewers of copies and locations where the copies are stored. Upon request by the
15 producing party, the receiving party shall provide reasonable assurances and/or descriptions of the
16 security measures employed by the receiving party and/or qualified person that receives a copy of
17 any portion of the Source Code;

18 m. Except as provided in this paragraph, the Receiving Party may not
19 create electronic images, or any other images, of the Source Code from the paper copy for use on
20 a computer (e.g., may not scan the source code to a PDF, or photograph the code). The Receiving
21 Party may create an electronic copy or image of limited excerpts of Source Code only to the
22 extent necessary in a pleading, exhibit, expert report, discovery document, deposition transcript,
23 other Court document, or any drafts of these documents ("SOURCE CODE
24 DOCUMENTS"). The receiving party shall only include such excerpts as are reasonably
25 necessary for the purposes for which such part of the Source Code is used. Images or copies of
26 Source Code shall not be included in correspondence between the parties (references to
27
28

1 production numbers shall be used instead) and shall be omitted from pleadings and other papers
2 except to the extent permitted herein. The receiving party may create an electronic image of a
3 selected portion of the Source Code only when the electronic file containing such image has been
4 encrypted using commercially reasonable encryption software including password
5 protection. The communication and/or disclosure of electronic files containing any portion of
6 Source Code shall at all times be limited to individuals who are authorized to see Source Code
7 under the provisions of this Protective Order. The receiving party shall maintain a log of all
8 electronic images and paper copies of Source Code in its possession or in the possession of its
9 retained consultants, including the names of the recipients and reviewers of any electronic or
10 paper copies and the locations where the copies are stored. Additionally, all electronic copies
11 must be labeled "RESTRICTED CONFIDENTIAL - SOURCE CODE."

12 n. To the extent portions of Source Code are quoted in a SOURCE
13 CODE DOCUMENT, either (1) the entire document will be stamped and treated as
14 RESTRICTED CONFIDENTIAL-SOURCE CODE or (2) those pages containing quoted Source
15 Code will be separately bound, and stamped and treated as RESTRICTED CONFIDENTIAL-
16 SOURCE CODE.

17 o. All copies of any portion of the Source Code in whatever form shall
18 be securely destroyed if they are no longer in use. Copies of Source Code that are marked as
19 deposition exhibits shall not be provided to the Court Reporter or attached to deposition
20 transcripts; rather, the deposition record will identify the exhibit by its production numbers.

21 p. The receiving party's outside counsel may only disclose a copy of
22 the Source Code to individuals specified in Paragraph k above (e.g., Source Code may not be
23 disclosed to in-house counsel).

24 **D. Use of Protected Information at Trial**

25 A party shall provide a minimum of two business day's notice to the producing party in
26 the event that a party intends to use any Protected Information during trial. In addition, the
27

1 parties will not oppose any request by the producing party that the courtroom should be sealed, if
2 allowed by the Court, during the presentation of any testimony relating to or involving the use of
3 any Protected Information.

4 **II. DISCLOSURE OF TECHNICAL ADVISERS**

5 A. Information designated by the producing party under any category of Protected
6 Information and such copies of this information as are reasonably necessary for maintaining,
7 defending or evaluating this litigation may be furnished and disclosed to the receiving party's
8 technical advisers and their necessary support personnel.

9 B. No disclosure of Protected Information to a technical adviser or their necessary
10 support personnel shall occur until that person has signed the form attached hereto as Attachment
11 A, and a signed copy has been provided to the producing party; and to the extent there has been
12 an objection under paragraph II.C., that objection is resolved according to the procedures set forth
13 below.

14 C. Any party desiring to disclose Protected Information to a technical advisor shall
15 also give prior written notice of such intent specifically informing all counsel of record in the
16 litigation whether such intended disclosure extends to source code. In addition, the party desiring
17 to disclose Protected Information to a technical adviser must provide the following information
18 for each technical adviser: the name, address, curriculum vitae, current employer, employment
19 history for the past ten years, a listing of cases in which the witness has testified as an expert at
20 trial or by deposition within the preceding five years, and a identification of any patents or patent
21 applications in which the technical adviser is identified as an inventor or applicant, is involved in
22 prosecuting or maintaining, or has any pecuniary interest. The producing party shall have ten
23 business days after such notice to object in writing to the disclosure. No Protected Information
24 shall be disclosed to such expert(s) or consultant(s) until after the expiration of the foregoing
25 notice period and resolution of any objection.

1 D. A party objecting to disclosure of Protected Information to a technical adviser
2 shall state with particularity the ground(s) of the objection. The objecting party's consent to the
3 disclosure of Protected Information to a technical adviser shall not be unreasonably withheld, and
4 its objection must be based on that party's good faith belief that disclosure of its Protected
5 Information to the technical adviser will result in specific business or economic harm to that
6 party.

7 E. If after consideration of the objection, the party desiring to disclose the Protected
8 Information to a technical adviser refuses to withdraw the technical adviser, that party shall
9 provide notice to the objecting party. Thereafter, the objecting party shall move the Court, within
10 ten business days of receiving such notice, for a ruling on its objection. A failure to file a motion
11 within the ten business day period, absent an agreement of the parties to the contrary or for an
12 extension of such ten business day period, shall operate as an approval of disclosure of Protected
13 Information to the technical adviser. The parties agree to cooperate in good faith to shorten the
14 time frames set forth in this paragraph if necessary to abide by any discovery or briefing
15 schedules.

16 F. The objecting party shall have the burden of showing to the Court "good cause"
17 for preventing the disclosure of its Protected Information to the technical adviser. This "good
18 cause" shall include a particularized showing that: (1) the Protected Information is confidential
19 commercial information, (2) disclosure of the Protected Information likely would result in a
20 clearly defined and serious injury to the objecting party's business, (3) the proposed technical
21 advisor is in a position to allow the Protected Information to be disclosed to or become known by
22 the objecting party's competitors, and (4) that the technical advisor's access to Protected
23 Information may create other confidentiality or legal risks in connection with other patent-related
24 activities or interests tied to the technical advisor.

25 G. A party who has not previously objected to disclosure of Protected Information to
26 a technical adviser or whose objection has been resolved with respect to previously produced
27

1 information shall not be precluded from raising an objection to a technical adviser at a later time
2 with respect to materials or information that are produced after the time for objecting to such a
3 technical adviser has expired. Any such objection shall be handled in accordance with the
4 provisions set forth above in Section II(B) through (F).

5 **III. CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

6 A. The parties shall use reasonable care when designating documents or information
7 as Protected Information. Nothing in this Order shall prevent a receiving party from contending
8 that any documents or information designated as Protected Information have been improperly
9 designated. A receiving party may at any time request that the producing party cancel or modify
10 the Protected Information designation with respect to any document or information contained
11 therein.

12 B. A party shall not be obligated to challenge the propriety of a designation of any
13 category of Protected Information at the time of production, and a failure to do so shall not
14 preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on
15 counsel for the producing party, and shall particularly identify the documents or information that
16 the receiving party contends should be differently designated. The parties shall use their best
17 efforts to resolve promptly and informally such disputes. If an agreement cannot be reached, the
18 receiving party shall request that the Court cancel or modify a designation. The burden of
19 demonstrating the confidential nature of any information shall at all times be and remain on the
20 designating party.

21 C. Until a determination by the Court, the information in issue shall be treated as
22 having been properly designated and subject to the terms of this Order.

23 **IV. LIMITATIONS ON THE USE OF PROTECTED INFORMATION**

24 A. All Protected Information shall be held in confidence by each person to whom it is
25 disclosed, shall be used only for purposes of this litigation, shall not be used for any business
26 purpose or in connection with any other legal proceeding, and shall not be disclosed to any person
27

1 who is not entitled to receive such information as herein provided. All produced Protected
2 Information shall be carefully maintained so as to preclude access by persons who are not entitled
3 to receive such information.

4 B. Except as may be otherwise ordered by the Court, any person may be examined as
5 a witness at depositions and trial and may testify concerning all Protected Information of which
6 such person has prior knowledge. Without in any way limiting the generality of the foregoing:

7 1. A present director, officer, and/or employee of a producing party may be
8 examined and may testify concerning all Protected Information which has been produced by that
9 party and of which the witness has personal knowledge;

10 2. A former director, officer, agent and/or employee of a producing party may
11 be interviewed, examined and may testify concerning all Protected Information of which he or
12 she has personal knowledge, including any Protected Information that refers to matters of which
13 the witness has personal knowledge, which has been produced by that party and which pertains to
14 the period or periods of his or her employment; and

15 3. Non-parties may be examined or testify concerning any document
16 containing Protected Information of a producing party which appears on its face or from other
17 documents or testimony to have been received from or communicated to the non-party as a result
18 of any contact or relationship with the producing party or a representative of the producing
19 party. Any person other than the witness, his or her attorney(s), or any person qualified to receive
20 Protected Information under this Order shall be excluded from the portion of the examination
21 concerning such information, unless the producing party consents to persons other than qualified
22 recipients being present at the examination. If the witness is represented by an attorney who is
23 not qualified under this Order to receive such information, then prior to the examination, the
24 attorney must provide a signed statement, in the form of Attachment A hereto, that he or she will
25 comply with the terms of this Order and maintain the confidentiality of Protected Information
26 disclosed during the course of the examination. In the event that such attorney declines to sign
27

1 such a statement prior to the examination, the parties, by their attorneys, shall jointly seek a
2 protective order from the Court prohibiting the attorney from disclosing Protected Information.

3 4. All transcripts of depositions, exhibits, answers to interrogatories,
4 pleadings, briefs, and other documents submitted to the Court which have been designated as
5 Protected Information, or which contain information so designated, shall be filed under seal in a
6 manner prescribed by the Court for such filings.

7 5. Outside attorneys of record for the parties are hereby authorized to be the
8 persons who may retrieve confidential exhibits and/or other confidential matters filed with the
9 Court upon termination of this litigation without further order of this Court, and are the persons to
10 whom such confidential exhibits or other confidential matters may be returned by the Clerk of the
11 Court, if they are not so retrieved. No material or copies thereof so filed shall be released except
12 by order of the Court, to outside counsel of record, or as otherwise provided for
13 hereunder. Notwithstanding the foregoing and with regard to material designated as Restricted
14 Confidential - Source Code, the provisions of Paragraph 1.C. are controlling to the extent those
15 provisions differ from this paragraph.

16 6. Protected Information shall not be copied or otherwise produced by a
17 receiving party, except for transmission to qualified recipients, without the written permission of
18 the producing party, or, in the alternative, by further order of the Court. Nothing herein shall,
19 however, restrict a qualified recipient from making working copies, abstracts, digests and
20 analyses of CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information
21 for use in connection with this litigation and such working copies, abstracts, digests and analyses
22 shall be deemed Protected Information under the terms of this Order. Further, nothing herein
23 shall restrict a qualified recipient from converting or translating CONFIDENTIAL and
24 CONFIDENTIAL OUTSIDE COUNSEL ONLY information into machine readable form for
25 incorporation into a data retrieval system used in connection with this action, provided that access
26
27
28

1 to that Protected Information, in whatever form stored or reproduced, shall be limited to qualified
2 recipients.

3 7. At the request of any party, the original and all copies of any deposition
4 transcript, in whole or in part, shall be marked "CONFIDENTIAL" by the reporter. This request
5 may be made orally during the deposition or in writing within fifteen (15) days of receipt of the
6 final certified transcript. Deposition transcripts shall be treated by default as CONFIDENTIAL
7 OUTSIDE COUNSEL ONLY until the expiration of the time to make a confidentiality
8 designation. Any portions so designated shall thereafter be treated in accordance with the terms
9 of this Order.

10 C. No Protected Information may leave the territorial boundaries of the United States
11 of America. Without limitation, this prohibition extends to Protected Information (including
12 copies) in physical and electronic form. The viewing of Protected Information through electronic
13 means outside the territorial limits of the United States of America is similarly prohibited.

14 Notwithstanding this prohibition, Protected Information, exclusive of material designated
15 RESTRICTED CONFIDENTIAL - SOURCE CODE, and to the extent otherwise permitted by
16 law, may be taken outside the territorial limits of the United States if it is reasonably necessary
17 for a deposition taken in a foreign country. The restrictions contained within this paragraph may
18 be amended through the consent of the producing Party to the extent that such agreed to
19 procedures conform with applicable export control laws and regulations.

20 **V. NON-PARTY USE OF THIS PROTECTIVE ORDER**

21 A. A nonparty producing information or material voluntarily or pursuant to a
22 subpoena or a court order may designate such material or information as Protected Information
23 pursuant to the terms of this Protective Order.

24 B. A nonparty's use of this Protective Order to protect its Protected Information does
25 not entitle that nonparty access to the Protected Information produced by any party in this case.
26
27
28

Nothing in this Protective Order shall require production of information that a party contends is protected from disclosure by the attorney-client privilege, the work product immunity or other privilege, doctrine, right, or immunity. If information subject to a claim of attorney-client privilege, work product immunity, or other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver or estoppel as to any such privilege, doctrine, right or immunity. Any party that inadvertently produces materials protected the attorney-client privilege, work product privilege, or other privilege, doctrine, right, or immunity may obtain the return of those materials by promptly notifying the recipient(s) and providing a privilege log for the inadvertently produced materials. The recipient(s) shall gather and return all copies of the privileged material to the producing party, except for any pages containing privileged markings by the recipient, which pages shall instead be destroyed and certified as such by the recipient to the producing party. Notwithstanding this provision, outside litigation counsel of record are not required to delete information that may reside on their respective firm's electronic back-up systems that are over-written in the normal course of business.

A. Any of the notice requirements herein may be waived, in whole or in part, but only in writing signed by the attorney-in-charge for the party against whom such waiver will be effective.

16

1 of Protected Information other than in a manner authorized by this Protective Order, including
2 any unintentional or inadvertent disclosure, counsel for the party responsible for the disclosure
3 shall immediately notify opposing counsel of all of the pertinent facts, and make every effort to
4 further prevent unauthorized disclosure including, retrieving all copies of the Protected
5 Information from the recipient(s) thereof, and securing the agreement of the recipients not to
6 further disseminate the Protected Information in any form. Compliance with the foregoing shall
7 not prevent the producing party from seeking further relief from the Court.

8 C. Within sixty days after the entry of a final non-appealable judgment or order, or
9 the complete settlement of all claims asserted against all parties in this action, each party shall, at
10 the option of the producing party, either return or destroy all physical objects and documents
11 which embody Protected Information it has received, and shall destroy in whatever form stored or
12 reproduced, all physical objects and documents, including but not limited to, correspondence,
13 memoranda, and notes, which contain or refer to any category of Protected Information. All
14 Protected Information, not embodied in physical objects and documents shall remain subject to
15 this Order. In the event that a party is dismissed before the entry of a final non-appealable
16 judgment or order, this same procedure shall apply to any Protected Information received from or
17 produced to the dismissed party. Notwithstanding this provision, outside litigation counsel of
18 record are not required to delete information that may reside on their respective firm's electronic
19 back-up systems that are over-written in the normal course of business. Notwithstanding the
20 foregoing, outside counsel shall be entitled to maintain two (2) copies of all pleadings, motions
21 and trial briefs (including all supporting and opposing papers and exhibits thereto), written
22 discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits
23 thereto), trial transcripts, and exhibits offered or introduced into evidence at any hearing or trial,
24 and their attorney work product which refers or is related to any CONFIDENTIAL and
25 CONFIDENTIAL OUTSIDE COUNSEL ONLY information for archival purposes only. If a
26
27
28

1 party opts to destroy CONFIDENTIAL or CONFIDENTIAL OUTSIDE COUNSEL ONLY
2 information, the party must provide a Certificate of Destruction to the producing party.

3 D. If at any time documents containing Protected Information are subpoenaed by any
4 court, arbitral, administrative or legislative body, or are otherwise requested in discovery, the
5 person to whom the subpoena or other request is directed shall immediately give written notice
6 thereof to every party who has produced such documents and to its counsel and shall provide each
7 such party with an opportunity to object to the production of such documents. If a producing
8 party does not take steps to prevent disclosure of such documents within ten business days of the
9 date written notice is given, the party to whom the referenced subpoena is directed may produce
10 such documents in response thereto, but shall take all reasonable measures to have such
11 documents treated in accordance with terms of this Protective Order.

12 E. Testifying experts shall not be subject to discovery of any draft of their reports in
13 this case and such draft reports, notes, outlines, or any other writings leading up to an issued
14 report(s) in this litigation are exempt from discovery. In addition, all communications between
15 counsel for a party and that party's testifying expert, and all materials generated by a testifying
16 expert with respect to that person's work, are exempt from discovery unless they relate to the
17 expert's compensation or identify facts, data or assumptions relied upon by the expert in forming
18 any opinions in this litigation and such information is not already disclosed in the expert's report.

19 F. No party shall be required to identify on their respective privilege log any
20 document or communication dated on or after the filing of the lawsuit, which absent this
21 provision, the party would have been obligated to so identify on said privilege log. The parties
22 shall exchange their respective privilege document logs at a time to be agreed upon by the parties
23 following the production of documents.

24 G. This Order is entered without prejudice to the right of any party to apply to the
25 Court at any time for additional protection, or to relax or rescind the restrictions of this Order,
26 when convenience or necessity requires. Furthermore, without application to this Court, any
27

1 party that is a beneficiary of the protections of this Order may enter a written agreement releasing
2 any other party hereto from one or more requirements of this Order even if the conduct subject to
3 the release would otherwise violate the terms herein.

4 H. The United States District Court for the Eastern District of California is
5 responsible for the interpretation and enforcement of this Agreed Protective Order. After
6 termination of this litigation, the provisions of this Agreed Protective Order shall continue to be
7 binding except with respect to those documents and information that become a matter of public
8 record. This Court retains and shall have continuing jurisdiction over the parties and recipients of
9 the Protected Information for enforcement of the provision of this Agreed Protective Order
10 following termination of this litigation. All disputes concerning Protected Information produced
11 under the protection of this Agreed Protective Order shall be resolved by the United States
12 District Court for the Eastern District of California.

13 I. Nothing in this Protective Order shall preclude or impede outside litigation counsel
14 of record's ability to communicate with or advise their client in connection with this litigation
15 only based on such counsel's review and evaluation of Protected Information, provided however,
16 that such communications or advice shall not disclose or reveal the substance or content of any
17 Protected Information other than as permitted under this Protective Order.

18 J. Each of the parties agrees to be bound by the terms of this Protective Order as of
19 the date counsel for such party executes this Protective Order, even if prior to entry of this order
20 by the Court.
21
22
23
24
25
26
27
28

1 Dated: _____

2 By: _____

3 [Name]

4 NIRO, HALLER & NIRO
Attorneys for IconFind, Inc.

By: _____

[Name]

KAYE SCHOLER LLP
Attorneys for Google Inc.

7 Dated: _____

8 HON. GARLAND E. BURRELL, JR.
9 UNITED STATES DISTRICT JUDGE

1 **ATTACHMENT A TO THE AGREED PROTECTIVE ORDER CONFIDENTIAL**
2 **AGREEMENT**

- 3 1. My name is _____.
- 4 2. I reside at _____.
- 5 3. My present employer is _____.
- 6 4. My present occupation or job description is _____.
- 7 5. I have read the Agreed Protective Order dated _____, 2011, and have been
8 engaged as _____ on behalf
9 of _____ in the preparation and conduct of litigation styled
Iconfind, Inc. v. Google Inc., Case No. 2:11-CV-00319 GEB JFM.
- 10 6. I am fully familiar with and agree to comply with and be bound by the provisions of said
11 Order. I understand that I am to retain all copies of any documents designated as
12 CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and/or RESTRICTED
13 CONFIDENTIAL-SOURCE CODE, or any similar designation, in a secure manner, and that all
14 copies are to remain in my personal custody until I have completed my assigned duties, whereupon
15 the copies and any writings prepared by me containing any information designated
16 CONFIDENTIAL, CONFIDENTIAL OUTSIDE COUNSEL ONLY and/or RESTRICTED
17 CONFIDENTIAL-SOURCE CODE, or any similar designation, are to be returned to counsel who
18 provided me with such material.
- 19 7. I will not divulge to persons other than those specifically authorized by said Order, and will
20 not copy or use except solely for the purpose of this action, any information obtained pursuant to
21 said Order, except as provided in said Order. I also agree to notify any stenographic or clerical
22 personnel who are required to assist me of the terms of said Order.
- 23 8. In accordance with paragraph 3C of the Agreed Protective Order (if applicable), I have
24 attached my resume, curriculum vitae or other information to this executed Confidentiality
25 Agreement sufficient to identify my current employer and employment history for the past ten
26 years, and the cases in which I have testified as an expert at trial or by deposition within the
27 preceding five years.
- 28 9. I state under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.

By: _____