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 INTELCOM, INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO BRANCH

16 INTEL CORPORATION, a Delaware
 17 corporation,
 18 Plaintiff,
 19 vs.
 20 INTELCOM, INC. a Delaware corporation,
 21 Defendant.

Case No. C-08-02334 SI

STIPULATED PROTECTIVE ORDER

22
 23 1. **PURPOSES AND LIMITATIONS**

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

1 discovery and that the protection it affords extends only to the limited information or items that are
2 entitled under the applicable legal principles to treatment as confidential. The parties further
3 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
4 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
5 that must be followed and reflects the standards that will be applied when a party seeks permission
6 from the court to file material under seal.

7 2. **DEFINITIONS**

8 2.1. Party: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and outside counsel (and their support staff).

10 2.2. Disclosure or Discovery Material: all items or information, regardless of the
11 medium or manner generated, stored, or maintained (including, among other things, testimony,
12 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
13 in this matter.

14 2.3. “Confidential” Information or Items: information (regardless of how generated,
15 stored or maintained) or tangible things that qualify for protection under standards developed under
16 F.R.Civ.P. 26(c).

17 2.4. “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
18 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
19 create a substantial risk of serious injury that could not be avoided by less restrictive means.

20 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a
21 Producing Party.

22 2.6. Producing Party: a Party or non-party that produces Disclosure or Discovery
23 Material in this action.

24 2.7. Designating Party: a Party or non-party that designates information or items
25 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential
26 — Attorneys’ Eyes Only.”

27 2.8. Protected Material: any Disclosure or Discovery Material that is designated as
28 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

1 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
2 retained to represent or advise a Party in this action.

3 2.10. House Counsel: attorneys who are employees of a Party.

4 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as
5 their support staffs).

6 2.12. Expert: a person with specialized knowledge or experience in a matter pertinent
7 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
8 consultant in this action and who is not a past or a current employee of a Party or of a competitor of a
9 Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
10 competitor of a Party. This definition includes a professional jury or trial consultant retained in
11 connection with this litigation.

12 2.13. Professional Vendors: persons or entities that provide litigation support services
13 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
14 retrieving data in any form or medium; etc.) and their employees and subcontractors.

15 3. **SCOPE**

16 The protections conferred by this Stipulation and Order cover not only Protected Material (as
17 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
18 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
19 counsel to or in court or in other settings that might reveal Protected Material.

20 4. **DURATION**

21 Even after the termination of this litigation, the confidentiality obligations imposed by this
22 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
23 otherwise directs.

24 5. **DESIGNATING PROTECTED MATERIAL**

25 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each
26 Party or non-party that designates information or items for protection under this Order must take care
27 to limit any such designation to specific material that qualifies under the appropriate standards. A
28 Designating Party must take care to designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify – so that other portions of the material,
2 documents, items, or communications for which protection is not warranted are not swept unjustifiably
3 within the ambit of this Order.

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

8 If it comes to a Party's or a non-party's attention that information or items that it designated for
9 protection do not qualify for protection at all, or do not qualify for the level of protection initially
10 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
11 mistaken designation.

12 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order
13 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
14 that qualifies for protection under this Order must be clearly so designated before the material is
15 disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of
18 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of
20 each page that contains protected material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
22 making appropriate markings in the margins) and must specify, for each portion, the level of protection
23 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
24 ONLY").

25 A Party or non-party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has indicated which
27 material it would like copied and produced. During the inspection and before the designation, all of
28 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
2 copied and produced, the Producing Party must determine which documents, or portions thereof,
3 qualify for protection under this Order, then, before producing the specified documents, the Producing
4 Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
5 ATTORNEYS' EYES ONLY") at the top of each page that contains Protected Material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing Party also must
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
8 must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
11 that the Party or non-party offering or sponsoring the testimony identify on the record, before the close
12 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
13 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
14 ONLY." When it is impractical to identify separately each portion of testimony that is entitled to
15 protection, and when it appears that substantial portions of the testimony may qualify for protection,
16 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before
17 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions
18 of the testimony as to which protection is sought and to specify the level of protection being asserted
19 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those
20 portions of the testimony that are appropriately designated for protection within the 20 days shall be
21 covered by the provisions of this Stipulated Protective Order.

22 Transcript pages containing Protected Material must be separately bound by the
23 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty
25 offering or sponsoring the witness or presenting the testimony.

26 (c) for information produced in some form other than documentary, and for
27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
28 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or
2 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
3 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
4 Eyes Only.”

5 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
7 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
8 Order for such material. If material is appropriately designated as “Confidential” or “Highly
9 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on
10 timely notification of the designation, must make reasonable efforts to assure that the material is
11 treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
16 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating
19 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
20 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
21 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
22 confidentiality designation was not proper and must give the Designating Party an opportunity to
23 review the designated material, to reconsider the circumstances, and, if no change in designation is
24 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
25 stage of the challenge process only if it has engaged in this meet and confer process first.

26 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality
27 designation after considering the justification offered by the Designating Party may file and serve a
28 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that

1 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
2 must be accompanied by a competent declaration that affirms that the movant has complied with the
3 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity
4 the justification for the confidentiality designation that was given by the Designating Party in the meet
5 and confer dialogue.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating
7 Party. Until the court rules on the challenge, all parties shall continue to afford the material in question
8 the level of protection to which it is entitled under the Producing Party's designation.

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

10 7.1. Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a non-party in connection with this case only for
12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
13 disclosed only to the categories of persons and under the conditions described in this Order. When the
14 litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below
15 (FINAL DISPOSITION).

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

18 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
20 any information or item designated CONFIDENTIAL only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as
22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
23 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
24 hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the
27 "Agreement to Be Bound by Protective Order" (Exhibit A);

1 (c) experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound
3 by Protective Order” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom disclosure
6 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
7 Protective Order” (Exhibit A);

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

13 (g) the author of the document or the original source of the information.

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

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

22 (b) House Counsel of a Receiving Party (1) who has no involvement in
23 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, and (3)
24 who has signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

25 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
26 necessary for this litigation, and (2) who have signed the “Agreement to be Bound by Protective
27 Order” (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to whom disclosure
 2 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
 3 Protective Order” (Exhibit A); and

4 (f) the author of the document or the original source of the information.

5 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 6 **OTHER LITIGATION.**

7 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
 8 compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the
 10 Designating Party, in writing (by fax, if possible) immediately and in no event more than three court
 11 days after receiving the subpoena or order. Such notification must include a copy of the subpoena or
 12 court order.

13 The Receiving Party also must immediately inform in writing the Party who caused the
 14 subpoena or order to issue in the other litigation that some or all the material covered by the subpoena
 15 or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of
 16 this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or
 17 order to issue.

18 The purpose of imposing these duties is to alert the interested parties to the existence of this
 19 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
 20 confidentiality interests in the court from which the subpoena or order issued. The Designating Party
 21 shall bear the burdens and the expenses of seeking protection in that court of its confidential material –
 22 and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in
 23 this action to disobey a lawful directive from another court.

24 9. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
2 such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached
3 hereto as Exhibit A.

4 **10. FILING PROTECTED MATERIAL.**

5 Without written permission from the Designating Party or a court order secured after
6 appropriate notice to all interested persons, a Party may not file in the public record in this action any
7 Protected Material. A Party that seeks to file under seal any Protected Material must comply with
8 Civil Local Rule 79-5.

9 **11. FINAL DISPOSITION.**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
11 the final termination of this action, each Receiving Party must return all Protected Material to the
12 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
13 compilations, summaries or any other form of reproducing or capturing any of the Protected Material.
14 With permission in writing from the Designating Party, the Receiving Party may destroy some or all of
15 the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed,
16 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
17 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where
18 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
19 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of
20 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
21 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
22 correspondence or attorney work product, even if such materials contain Protected Material. Any such
23 archival copies that contain or constitute Protected Material remain subject to this Protective Order as
24 set forth in Section 4 (DURATION), above.

25 **12. MISCELLANEOUS**

26 **12.1. Right to Further Relief.** Nothing in this Order abridges the right of any person
27 to seek its modification by the Court in the future.
28

1 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by this
5 Protective Order.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 Dated: February 5, 2009

Respectfully submitted,

8 HOWREY LLP

9
10 By: /s/ Robert N Phillips

11 Robert N. Phillips
12 Yuka Sugar
13 Anne M. Ortel
14 Attorneys for Plaintiff
INTEL CORPORATION

15 Dated: February 5, 2009

Respectfully submitted,

16 LAW OFFICES OF ANDREW DÓSA

17
18 By: /s/ Andrew Dósa

19 Andrew Dósa
20 Attorney for Defendant
INTELCOM INC.

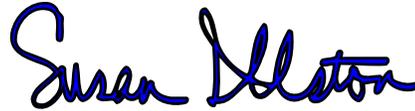
21
22 **ATTESTATION AS TO CONCURRENCE**

23 I, Robert N. Phillips, under penalty of perjury of the laws of the United States of America,
24 attest that concurrence in the filing of this document has been obtained from each of the other
25 signatories to this document.

26
27 _____
Robert N. Phillips

1 IT IS HEREBY ORDERED.

2



3 Dated: _____

Hon. Susan Illston
Judge, United States District Court

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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 on _____ [date] in the case of Intel Corporation v. Intelcom Inc. C-08-02334 SI. 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: _____
[printed name]

Signature: _____
[signature]