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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 SYMANTEC CORPORATION,
 18 Plaintiff-Counterclaim Defendant,
 19 vs.
 20 ACRONIS, INC. and ACRONIS
 21 INTERNATIONAL GMBH
 22 Defendants-Counterclaimants.
 23 AND RELATED COUNTERCLAIMS.

Case No. 3:11-cv-05310 EMC (consolidated
 for all purposes with Case No. CV12-01062
 PSG)

**AMENDED STIPULATED
 PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION AND/OR TRADE
 SECRETS; ~~PROPOSED~~ ORDER**

25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
 27 confidential, proprietary, or private information for which special protection from public
 28

1 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
2 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
3 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
4 all disclosures or responses to discovery and that the protection it affords from public disclosure
5 and use extends only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles. The parties further acknowledge, as set forth in Section
7 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential
8 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that
9 must be followed and the standards that will be applied when a party seeks permission from the
10 court to file material under seal.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
15 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
16 of Civil Procedure 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
18 well as their support staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or items that it
20 produces in disclosures or in responses to discovery as “CONFIDENTIAL”, “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE
22 CODE”.

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other things,
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
26 responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
28 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as

1 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
2 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
3 of a Party's competitor.

4 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
5 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
6 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
7 less restrictive means.

8 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
9 sensitive "Confidential Information or Items" representing computer code and associated
10 comments and revision histories, formulas, engineering specifications, or schematics that define or
11 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
12 of which to another Party or Non-Party would create a substantial risk of serious harm that could
13 not be avoided by less restrictive means.

14 2.9 House Counsel: attorneys who are employees of a party to this action. House
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
17 entity not named as a Party to this action.

18 2.11 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 2.12 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 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.14 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 2.15 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 2.16 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 However, the protections conferred by this Stipulation and Order do not cover the following
12 information: (a) any information that is in the public domain at the time of disclosure to a
13 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
14 result of publication not involving a violation of this Order, including becoming part of the public
15 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
16 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
17 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
18 use of Protected Material at trial shall be governed by a separate agreement or order.

19 4. DURATION

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

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. To
5 the extent it is practical to do so, the Designating Party must designate for protection only those
6 parts of material, documents, items, or oral or written communications that qualify – so that other
7 portions of the material, documents, items, or communications for which protection is not
8 warranted are not swept unjustifiably within the ambit of this Order.

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

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

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
18 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
19 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
20 designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

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

1 A Party or Non-Party that makes original documents or materials available for inspection
2 need not designate them for protection until after the inspecting Party has indicated which material
3 it would like copied and produced. During the inspection and before the designation, all of the
4 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions thereof,
7 qualify for protection under this Order. Then, before producing the specified documents, the
8 Producing Party must affix the appropriate legend (“CONFIDENTIAL”, “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE
10 CODE]) to each page that contains Protected Material. If only a portion or portions of the material
11 on a page qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
13 portion, the level of protection being asserted.

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

27 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
28 other proceeding to include Protected Material so that the other parties can ensure that only

1 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A) are present at those proceedings. The use of a document as an Exhibit at a deposition
3 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
4 – ATTORNEYS’ EYES ONLY.”

5 Transcripts containing Protected Material shall have an obvious legend on the title page
6 that the transcript contains Protected Material, and the title page shall be followed by a list of all
7 pages (including line numbers as appropriate) that have been designated as Protected Material and
8 the level of protection being asserted by the Designating Party. The Designating Party shall inform
9 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
10 21-day period for designation shall be treated during that period as if it had been designated
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
12 agreed. After the expiration of that period, the transcript shall be treated only as actually
13 designated.

14 (b) for information produced in some form other than documentary and for any
15 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
16 container or containers in which the information or item is stored the legend “CONFIDENTIAL”,
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL –
18 SOURCE CODE”. If only a portion or portions of the information or item warrant protection, the
19 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
20 level of protection being asserted.

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items does not, standing alone, waive the Designating Party’s
23 right to secure protection under this Order for such material. Upon timely correction of a
24 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
25 in accordance with the provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
2 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
6 process by providing written notice of each designation it is challenging and describing the basis
7 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
8 notice must recite that the challenge to confidentiality is being made in accordance with this
9 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
10 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
11 forms of communication are not sufficient) within 14 days of the date of service of notice. In
12 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
13 designation was not proper and must give the Designating Party an opportunity to review the
14 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
15 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
16 of the challenge process only if it has engaged in this meet and confer process first or establishes
17 that the Designating Party is unwilling to participate in the meet and confer process in a timely
18 manner.

19 6.3 If the Parties cannot resolve a challenge without court intervention, the Challenging
20 Party shall file and serve a motion to challenge confidentiality under Civil Local Rule 7 (and in
21 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the
22 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
23 process will not resolve their dispute, whichever is earlier. The Challenging Party may file a
24 motion challenging a confidentiality designation at any time if there is good cause for doing so,
25 including a challenge to the designation of a deposition transcript or any portions thereof. Any
26 motion brought pursuant to this provision must be accompanied by a competent declaration
27 affirming that the movant has complied with the meet and confer requirements imposed by the
28 preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
2 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
4 sanctions. All parties shall continue to afford the material in question the level of protection to
5 which it is entitled under the Producing Party's designation until the court rules on the challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
8 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
10 the categories of persons and under the conditions described in this Order. When the litigation has
11 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a location and in
14 a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

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

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
20 information for this litigation;

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

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

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27 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store
28 any electronic Protected Material in password-protected form.

1 and Agreement to Be Bound” (Exhibit A) and their employees or staff to whom disclosure is
2 reasonably necessary for this litigation and who have signed Exhibit A;

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, and
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
6 signed Exhibit A;

7 (f) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
10 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
11 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 or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 (h) Any other person with the prior written consent of the Producing Party.

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

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
23 information for this litigation;

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

28 (c) the court and its personnel;

1 (d) 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 Exhibit A;

4 (e) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (f) Any other person with the prior written consent of the Producing Party; and

7 (g) shall not be made available to any person who was or is an employee, agent,
8 officer, director, or consultant of or to the Receiving Party, including Symantec Corporation,
9 Acronis, Inc., or Acronis International GmbH or any predecessors or successors (merged, acquired
10 or otherwise) parents, divisions, subsidiaries, associated organizations, joint ventures, and
11 affiliates thereof.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
14 or Items to Experts.

15 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
16 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
17 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
18 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written
19 request to the Designating Party that (1) identifies the general categories of “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
21 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
22 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches
23 a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
24 each person or entity for the past 5 years including the identification of the case name and number,
25 law firm, represented party/client, and the date range of the involvement: (i) for whom the Expert
26 has provided professional services, or (ii) from whom the Expert received compensation or
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1 funding; except that if a particular instance of such services or funding was subject to an non-
2 disclosure agreement or confidentiality obligation and the Expert understands he was not disclosed
3 to the opposing side in that matter, the Receiving Party under this subsection (5) will need to
4 disclose whether such services or funding were outside the field of backup and recovery
5 technology and concerned Symantec Corporation, Acronis, Inc., or Acronis International GmbH
6 or any predecessors or successors (merged, acquired or otherwise) parents, divisions, subsidiaries,
7 associated organizations, joint ventures, and affiliates thereof; (6) identifies all of the Expert's
8 patents and pending patent applications in which the Expert is an inventor, assignee, or holds a
9 financial interest; (7) identifies all source code relevant to this litigation in which the Expert holds
10 a financial interest, and (8) identifies any professional services provided by the expert or any of his
11 staff to Symantec, Acronis, Inc., or Acronis International GmbH or any predecessors or successors
12 (merged, acquired or otherwise), parents, divisions, subsidiaries, associated organizations, joint
13 ventures, and affiliates thereof

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16 (b) A Party that makes a request and provides the information specified in the preceding
17 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
18 within 14 days of delivering the request, the Party receives a written objection from the
19 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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21 (c) A Party that receives a timely written objection must meet and confer with the
22 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
23 agreement within seven days of the written objection. If no agreement is reached, the Party
24 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
25 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking
26 permission from the court to do so. Any such motion must describe the circumstances with
27 specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary,
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1 assess the risk of harm that the disclosure would entail, and suggest any additional means that
2 could be used to reduce that risk. In addition, any such motion must be accompanied by a
3 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the
4 extent and the content of the meet and confer discussions) and setting forth the reasons advanced
5 by the Designating Party for its refusal to approve the disclosure.
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7 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
8 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
9 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

10 8. PROSECUTION BAR

11 Absent written consent from the Producing Party, any individual who receives access to
12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or any "HIGHLY
13 CONFIDENTIAL – SOURCE CODE" information shall not be involved in the prosecution of
14 patents or patent applications relating to backup and recovery software, including, without
15 limitation, the patents asserted in this action and any patent or application claiming priority to or
16 otherwise related to the patents asserted in this action, before any foreign or domestic agency,
17 including the United States Patent and Trademark Office ("the Patent Office"). For purposes of
18 this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or
19 otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, "prosecution"
20 as used in this paragraph does not include representing a party challenging a patent before a
21 domestic or foreign agency (including, but not limited to, a reissue protest, ex parte reexamination
22 or inter partes reexamination). This Prosecution Bar shall begin when access to "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
24 CODE" information is first received by the affected individual and shall end two (2) years after
25 final termination of this action.
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1 9. SOURCE CODE

2 (a) A Producing Party may designate source code as “HIGHLY
3 CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary or trade
4 secret source code.

5 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
6 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph
8 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” information may be disclosed.

10 (c) The Receiving Party shall provide five (5) business days’ notice prior to
11 commencing an inspection. The Receiving Party shall restrict its inspection to a reasonable
12 number of days, from 9:00 a.m. to 5:00 p.m., or as otherwise agreed by the parties.

13 (d) A list of names of persons who will view the source code will be provided
14 to the Producing Party in conjunction with any written (including email) notice requesting
15 inspection.

16 (e) Any source code produced in discovery shall be made available for
17 inspection in a format through which it could be reasonably reviewed and searched at an office of
18 the Producing Party’s counsel or another mutually agreed upon location. The parties agree to meet
19 and confer in good faith on a location reasonably convenient for both sides, including taking into
20 consideration the location and convenience of each other’s experts. The source code shall be
21 made available for inspection on a secured computer in a secured room without Internet access or
22 network access to other computers (“Source Code Computer”), as necessary and appropriate to
23 prevent and protect against any unauthorized copying, transmission, removal or other transfer of
24 any source code outside or away from the computer on which the source code is provided for
25 inspection. The parties agree to meet and confer if more than one Source Code Computer is
26 necessary to maximize the efficiency of the inspection. The Receiving Party shall not copy,
27 remove, or otherwise transfer any portion of the source code onto any recordable media or
28 recordable device. The Producing Party shall be entitled to have a person observe all entrances

1 and exits from the source code viewing room. The Producing Party may also visually monitor the
2 activities of the Receiving Party's representatives during any source code review, but only to
3 ensure that there is no unauthorized recording, copying, or transmission of the source code.

4 (f) The Producing Party shall install such tools or programs that are reasonably
5 necessary to review and search the code produced on the platform produced. The Receiving Party
6 may request that additional review tools and programs be added to the Source Code computer, and
7 the Providing Party may not unreasonably refuse to install such additional tools and programs. If
8 the Receiving Party wants to use other tools or programs, the Receiving Party must provide the
9 software and proof that it is licensed. The Receiving Party's outside counsel and/or expert shall be
10 entitled to take notes relating to the source code but may not copy substantial portions of the
11 source code into the notes. For purposes of this provision, fifteen or more lines of code is
12 "substantial. No copies of all or any portion of the source code may leave the room in which the
13 source code is inspected except as otherwise provided herein. Further, no other written or
14 electronic record of the source code is permitted except as otherwise provided herein.

15 The Producing Party shall allow the Receiving Party to create files on the Source Code
16 Computer as necessary for the Receiving Party's analysis, for example in a separate directory on
17 the Source Code Computer to be established by the Producing Party. The Producing Party agrees
18 that it will not review, analyze, share, distribute, or use the files created by the Receiving Party
19 except as stated herein. Acronis has asserted that such files created by Acronis's representatives
20 will contain work product or other protected information. Acronis does not waive such protection
21 by leaving the files on Symantec's computer or by agreeing to have them reviewed by a third party
22 as stated herein. Without agreeing with that assertion, Symantec acknowledges that such a claim
23 has been made and agrees not to review, analyze, share, distribute, or use the files created by the
24 Receiving Party unless permitted to do so by the Court, and further agrees that Acronis has not
25 waived any protection afforded these files, including due to a neutral third party review or the files
26 location on Symantec's computer. The Producing Party has the right to have a neutral third party
27 ("Neutral Party") review the electronic note files made by the Receiving Party on the Source Code
28 Computer to ensure that the note files created by the Receiving Party are consistent with all other

1 provisions and are subject to and receive the applicable protections conferred by the Protective
2 Order. If the Producing Party elects to have a Neutral Party review the electronic note files made
3 by the Receiving Party, the Receiving Party is not permitted to take those electronic note files with
4 them at the conclusion of the inspection. The parties will immediately meet and confer about the
5 scope and content of the review that is to be conducted by the Neutral Party and on the timing and
6 procedure for making these files available to the Receiving Party.² Both parties reserve the right
7 to raise additional issues regarding the timing and procedure for making these files available to the
8 Receiving Party after the third-party review is complete. All expenses associated with the Neutral
9 Party review shall be paid for by the party requesting the review. The parties may request relief
10 from the Court pursuant to Judge Corley’s Standing Order on Discovery if they are unable to
11 agree on the timing and procedure for making these files available to the Receiving Party and the
12 parameters of the Neutral Party review.

13 (g) Subject to the other provisions of this Protective Order, the Receiving Party
14 may bring with it to the secure offices a cell phone and laptop computer. The Receiving Party is
15 permitted to take notes on the laptop computer but shall not be permitted to include any of the
16 Producing Party’s Source Code or Source Code comments in any such notes. The Receiving Party
17 may include references to the file, function, or object name and line number(s) of code, and such
18 references will not be considered Source Code or Source Code comments. Inclusion of any
19 Source Code or Source Code comments in any such notes constitutes a violation of the protective

20
21 ² At a minimum, Symantec has requested that the Neutral Party identify (1) How many pages
22 of notes are contained within electronic notes and files created by the Receiving Party, (2)
23 Excluding attorney notations, how many lines of source code in total are contained in electronic
24 notes and files created by the Receiving Party, and (3) How many segments of source code within
25 the electronic notes and files created by the Receiving Party contain 2 or more lines of code.

26 Acronis has already advised that it will agree that the neutral third party may convey to the
27 Producing Party whether or not these note files contain any portion of the produced code that is 14
28 lines or greater in length, as already required by paragraph 9(f). Acronis is prepared to meet and
confer re further details as long as no work product information is conveyed without making the
showing required by Rule 26(b)(3). Acronis also requested that a “line” of code be defined as a
line of actual code, and any lines that contain only code comments or whitespace, but not code, be
excluded from the count.

1 order. If the Receiving Party represents that the notes on the laptop comply with this provision,
2 such notes are agreed to contain work-product and not be subject to any third-party review.

3 (h) The Producing Party shall produce to the Receiving Party printed copies of
4 requested files contained on the Producing Party's Source Code Computer under the following
5 terms and conditions:

6 (1) The Receiving Party may request, in total, up to 500 pages of hard
7 (non electronic) copies of those portions of source code that it, in good faith, considers
8 necessary to the preparation of its case. For good cause shown, the Receiving Party may
9 request an additional 500 pages of hard (non electronic) copies of those portions of source
10 code that it, in good faith, considers necessary to the preparation of its case.

11 Notwithstanding the foregoing, a receiving Party may not request a hard copy of more than
12 20 consecutive pages of source code absent express permission of the producing Party or
13 an order from the Court. A "page" for the purposes of this limitation will be defined as an
14 8.5 x 11" sheet of paper with 12 point font. This consecutive page limitation will not
15 preclude any Party from seeking additional consecutive pages for good reason. If any
16 dispute arises concerning the number of consecutive pages, the producing Party and
17 receiving Party shall meet and confer in good faith to attempt to resolve this dispute
18 without the Court's involvement. The Producing Party shall provide all such source code
19 in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL -
20 SOURCE CODE."

21 (2) A request for printed copies of files shall include, on a file-by-file
22 basis, the complete file path associated with each file. If additional information is required
23 to uniquely identify the requested files, then the request shall include, on a file-by-file
24 basis, such additional information;

25 (3) A party may request multiple versions or revisions of the same file,
26 but the requesting party must specify the exact dates or the exact numbers for each version
27 or versions sought. The Producing Party and the Receiving Party shall cooperate in
28 identifying the precise files which are sought;

1 (4) The Producing Party shall have three (3) business days in which to
2 object in writing as to the extent or relevance of the requested printout(s). If no such
3 objection is made, the Producing Party shall produce a copy of the printout(s) to the
4 Reviewing Party pursuant to the terms of Paragraph 7.3. If objection is made, the parties
5 shall meet and confer within three (3) business days in a good faith attempt to resolve the
6 objection. If the objection is not resolved, the Producing Party shall have five (5) business
7 days after the expiration of the meet and confer period (i.e., eight (8) business days from
8 the date of the request) in which to file a motion for relief from production of the
9 printout(s) that are the subject of the objection. The printout(s) shall be retained by the
10 Producing Party, and not produced, pending the Court's resolution of the motion.

11 (5) Any copy of a Source Code file (in electronic or paper form) shall
12 be marked and designated as "HIGHLY CONFIDENTIAL-SOURCE CODE," and the
13 Receiving Party must keep the printed copy of Source Code in a locked location to prevent
14 duplication of or unauthorized access to the source code. Any source code designated
15 "HIGHLY CONFIDENTIAL-SOURCE CODE," shall be disclosed and disseminated only
16 to the individuals identified in Paragraph 7.3. The Producing Party shall clearly identify
17 the file path of the underlying file as well as an additional information required to uniquely
18 identify the underlying file on any printed copy of a Source Code file.

19 (i) Unless otherwise agreed in advance by the parties in writing, following
20 each inspection, the Receiving Party's outside counsel and/or experts shall remove all notes,
21 documents, laptops, and all other materials from the room that may contain work product and/or
22 attorney-client privileged information. The Producing Party shall not be responsible for any items
23 left in the room following each inspection session.

24 (j) The Producing Party shall provide to the Receiving Party five copies of
25 hard (non-electronic) copies of source code. No additional copies of hard (non-electronic) copies
26 of source code or portions of source code shall be made without the agreement of the producing
27 Party, regardless of whether such source code was initially produced in hard-copy format or
28 whether such hard copies were made pursuant to the preceding sub-Paragraph. A party may

1 request additional hard copies of portions of the code only as needed for use at depositions,
2 hearings, trial, or court filings. The Receiving Party shall only include such excerpts as are
3 reasonably necessary for the purposes for which such part of the source code is used. To the
4 extent portions of source code are quoted in a Source Code Document, either (1) the entire
5 document will be stamped and treated as HIGHLY CONFIDENTIAL-SOURCE CODE or (2)
6 those pages containing quoted source code will be separately bound, and stamped and treated as
7 HIGHLY CONFIDENTIAL-SOURCE CODE.

8 (k) The Receiving Party shall maintain a log of any individual who has
9 inspected any portion of the source code in electronic or paper form. The log shall include the
10 dates and times of any access, all printed or electronic copies of the source code that are delivered
11 by the Receiving Party to any qualified person and the names of the recipients of copies and
12 locations where the copies are stored. The log shall be provided by the Receiving Party to the
13 Producing Party upon request.

14 (l) The Receiving Party shall maintain all paper copies of any printed portions
15 of the source code and all electronic files that contain source code in a manner that prevents
16 duplication of or unauthorized access to the source code, for example, in a secured, locked area.
17 The Receiving Party shall not create any electronic or other images of the paper copies and shall
18 not convert any of the information contained in the paper copies into any electronic format. All
19 paper copies shall be securely destroyed if they are no longer in use (e.g., unmarked and/or spare
20 copies at the conclusion of a deposition).

21 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
22 LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as “CONFIDENTIAL”, “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE
26 CODE” that Party must:

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

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

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by
6 the Designating Party whose Protected Material may be affected.³

7 If the Designating Party timely seeks a protective order, the Party served with the subpoena
8 or court order shall not produce any information designated in this action as “CONFIDENTIAL”,
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL –
10 SOURCE CODE” before a determination by the court from which the subpoena or order issued,
11 unless the Party has obtained the Designating Party’s permission. The Designating Party shall
12 bear the burden and expense of seeking protection in that court of its confidential material – and
13 nothing in these provisions should be construed as authorizing or encouraging a Receiving Party
14 in this action to disobey a lawful directive from another court.

15 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
16 LITIGATION

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

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26 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this
27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
28 confidentiality interests in the court from which the subpoena or order issued.

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

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

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

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

12 (c) If the Non-Party fails to object or seek a protective order from this court
13 within 14 days of receiving the notice and accompanying information, the Receiving Party may
14 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
15 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
16 possession or control that is subject to the confidentiality agreement with the Non-Party before a
17 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
18 burden and expense of seeking protection in this court of its Protected Material.

19 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective
22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
24 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
25 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
26 Agreement to Be Bound" that is attached hereto as Exhibit A.

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1 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). If
6 information is produced in discovery that is subject to a claim of privilege or of protection as trial-
7 preparation material, the party making the claim may notify any party that received the
8 information of the claim and the basis for it. After being notified, a party must promptly return,
9 sequester, or destroy the specified information and any copies it has and may not use or disclose
10 the information until the claim is resolved. The Parties may promptly present the information to
11 the court under seal for a determination of the claim. The producing party must preserve the
12 information until the claim is resolved.

13 14. MISCELLANEOUS

14 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the court in the future.

16 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
17 Order no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
19 Party waives any right to object on any ground to use in evidence of any of the material covered
20 by this Protective Order.

21 14.3 Filing Protected Material. Without written permission from the Designating Party
22 or a court order secured after appropriate notice to all interested persons, a Party may not file in
23 the public record in this action any Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
25 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
26 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
27 sealing order will issue only upon a request establishing that the Protected Material at issue is
28 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a

1 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
2 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected
3 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
4 the court.

5 15. FINAL DISPOSITION

6 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
7 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
8 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
9 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
10 the Protected Material is returned or destroyed, the Receiving Party must submit a written
11 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
12 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
13 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
14 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
15 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
16 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
17 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
18 consultant and expert work product, even if such materials contain Protected Material. Any such
19 archival copies that contain or constitute Protected Material remain subject to this Protective Order
20 as set forth in Section 4.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 DATED: August 10, 2012

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 13, 2012



Jacqueline Scott Corley
United States Magistrate Judge

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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
_____ **[insert formal name of the case and the number and
initials assigned to it by the court]**. 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.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____
[printed name]

Signature: _____
[signature]