

1 LAURENCE F. PULGRAM (CSB No. 115163)  
 lpulgram@fenwick.com  
 2 JENNIFER LLOYD KELLY (CSB No. 193416)  
 jkelly@fenwick.com  
 3 FENWICK & WEST LLP  
 555 California Street, 12th Floor  
 4 San Francisco, CA 94104  
 Telephone: 415.875.2300  
 5 Facsimile: 415.281.1350

FRANCIS TORRENCE (CSB No. 154653)  
 francis.torrence@wilsonelser.com  
 RALPH ROBINSON (CSB No. 51436)  
 ralph.robinson@wilsonelser.com  
 WILSON ELSER MOSKOWITZ,  
 EDELMAN & DICKER, LLP  
 525 Market Street, 17th Floor  
 San Francisco, CA 94105  
 Telephone: 415.433.0990  
 Facsimile: 415.434.1370

6 Attorneys for Plaintiff  
 KING.COM LIMITED, a Malta Corporation

Attorneys for Defendants  
 6 WAVES LLC, SIX WAVES INC.

8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 KING.COM LIMITED, a Malta Corporation,

Case No. 3:13-cv-03977-MMC

13 Plaintiff,

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

14 v.

15 6 WAVES LLC, a Delaware Limited Liability  
 16 Company, SIX WAVES INC., a British Virgin  
 Islands Company, and DOES 1-5,

Judge: Hon. Maxine M. Chesney

17 Defendants.  
 18

19  
 20 1. PURPOSES AND LIMITATIONS

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

FENWICK & WEST LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO

1 parties further acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective Order does  
2 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
3 that must be followed and the standards that will be applied when a party seeks permission from the court  
4 to file material under seal.

5 2. DEFINITIONS

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
7 items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
9 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil  
10 Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
12 their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
14 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

16 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
17 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
18 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in  
19 this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
21 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
22 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3)  
23 at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

24 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
25 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party (excluding  
26 House Counsel) or Non-Party would create a substantial risk of serious harm that could not be avoided by  
27 less restrictive means.

28

1           2.8     “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely  
2 sensitive “Confidential Information or Items” representing computer code and associated comments and  
3 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in  
4 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or  
5 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive  
6 means.

7           2.9     House Counsel: attorneys who are employees of a party to this action. House Counsel  
8 does not include Outside Counsel of Record or any other outside counsel.

9           2.10    Non-Party: any natural person, partnership, corporation, association, or other legal entity  
10 not named as a Party to this action.

11          2.11    Outside Counsel of Record: attorneys who are not employees of a party to this action but  
12 are retained to represent or advise a party to this action and have appeared in this action on behalf of that  
13 party or are affiliated with a law firm which has appeared on behalf of that party.

14          2.12    Party: any party to this action, including all of its officers, directors, employees,  
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16          2.13    Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
17 this action.

18          2.14    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
19 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
20 retrieving data in any form or medium) and their employees and subcontractors.

21          2.15    Protected Material: any Disclosure or Discovery Material that is designated as  
22 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” or as  
23 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

24          2.16    Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
25 Party.

26     3.     SCOPE

27           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
28 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,

1 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
2 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
3 conferred by this Stipulation and Order do not cover the following information: (a) any information that is  
4 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain  
5 after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order,  
6 including becoming part of the public record through trial or otherwise; and (b) any information known to  
7 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
8 source who obtained the information lawfully and under no obligation of confidentiality to the Designating  
9 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

10 4. DURATION

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

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
19 Party that designates information or items for protection under this Order must take care to limit any such  
20 designation to specific material that qualifies under the appropriate standards. To the extent it is practical  
21 to do so, the Designating Party must designate for protection only those parts of material, documents,  
22 items, or oral or written communications that qualify – so that other portions of the material, documents,  
23 items, or communications for which protection is not warranted are not swept unjustifiably within the  
24 ambit of this Order.

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

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

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,  
6 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery  
7 Material that qualifies for protection under this Order must be clearly so designated before the material is  
8 disclosed or produced.

9 Designation in conformity with this Order requires:

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

17 A Party or Non-Party that makes original documents or materials available for inspection need not  
18 designate them for protection until after the inspecting Party has indicated which material it would like  
19 copied and produced. During the inspection and before the designation, all of the material made available  
20 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the  
21 inspecting Party has identified the documents it wants copied and produced, the Producing Party must  
22 determine which documents, or portions thereof, qualify for protection under this Order. Then, before  
23 producing the specified documents, the Producing Party must affix the appropriate legend  
24 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
25 CONFIDENTIAL – SOURCE CODE) to each page that contains Protected Material. If only a portion or  
26 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify  
27 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
28 portion, the level of protection being asserted.

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

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

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

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

1 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE". If only a portion or  
2 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
3 identify the protected portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
5 qualified information or items does not, standing alone, waive the Designating Party's right to secure  
6 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party  
7 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this  
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
11 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation  
12 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
13 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality  
14 designation by electing not to mount a challenge promptly after the original designation is disclosed.

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

1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
2 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and  
3 in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or  
4 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,  
5 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the  
6 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure  
7 by the Designating Party to make such a motion including the required declaration within 21 days (or 14  
8 days, if applicable) shall automatically waive the confidentiality designation for each challenged  
9 designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation  
10 at any time if there is good cause for doing so, including a challenge to the designation of a deposition  
11 transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by  
12 a competent declaration affirming that the movant has complied with the meet and confer requirements  
13 imposed by the preceding paragraph.

14           The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
15 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
16 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
17 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
18 confidentiality as described above, all parties shall continue to afford the material in question the level of  
19 protection to which it is entitled under the Producing Party’s designation until the court rules on the  
20 challenge.

21     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

22           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
23 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,  
24 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of  
25 persons and under the conditions described in this Order. When the litigation has been terminated, a  
26 Receiving Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

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

1           7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the  
2 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
3 item designated “CONFIDENTIAL” only to:

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

8           (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to  
9 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
10 and Agreement to Be Bound” (Exhibit A);

11           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably  
12 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
13 (Exhibit A);

14           (d) the court and its personnel;

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

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

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

25           7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
26 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the  
27 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
28

1 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
2 CONFIDENTIAL – SOURCE CODE” only to:

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

7 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive  
8 decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth  
10 in paragraph 7.4(a)(1), below, have been followed;

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

14 (d) the court and its personnel;

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

18 (f) the author or recipient of a document containing the information or a custodian or other person  
19 who otherwise possessed or knew the information.

20 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items  
22 to Designated House Counsel or Experts.

23 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a  
24 Party that seeks to disclose to Designated House Counsel any information or item that has been designated  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
26 SOURCE CODE” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party  
27 that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her  
28 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable future

1 primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or  
2 may become involved, in any competitive decision-making.

3 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a  
4 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been  
5 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
6 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) may make such disclosure to that  
7 Expert without disclosure of the identity of the Expert as long as the Expert is not a current officer,  
8 director, or employee of a competitor of the Receiving Party or anticipated to become one. Any disclosure  
9 to an Expert who is a current officer, director, or employee of a competitor of the Receiving Party or  
10 anticipated to become one requires that the Receiving Party first must make a written request to the  
11 Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the  
13 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and  
14 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4)  
15 identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has  
16 received compensation or funding for work in his or her areas of expertise or to whom the expert has  
17 provided professional services, including in connection with a litigation, at any time during the preceding  
18 five years, and (6) identifies (by name and number of the case, filing date, and location of court) any  
19 litigation in connection with which the Expert has offered expert testimony, including through a  
20 declaration, report, or testimony at a deposition or trial, during the preceding five years.

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

25 (c) A Party that receives a timely written objection must meet and confer with the Designating  
26 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days  
27 of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated  
28 House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with

1 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must  
2 describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated  
3 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would  
4 entail, and suggest any additional means that could be used to reduce that risk. In addition, any such  
5 motion must be accompanied by a competent declaration describing the parties' efforts to resolve the  
6 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
7 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

12 8. SOURCE CODE

13 (a) To the extent production of source code becomes necessary in this case, a Producing Party  
14 may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it comprises or includes  
15 confidential, proprietary or trade secret source code.

16 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" shall  
17 be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
18 ONLY" information and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL  
19 – ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

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

1 (d) The Receiving Party may request paper copies of limited portions of source code that are  
2 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for  
3 deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other  
4 than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all  
5 such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -  
6 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy  
7 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the  
8 Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for  
9 purposes of dispute resolution.

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

19 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
20 LITIGATION

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

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

27 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other  
28 litigation that some or all of the material covered by the subpoena or order is subject to this Protective

1 Order. Such notification shall include a copy of this Stipulated Protective Order; and

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

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

12 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
13 LITIGATION

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

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

- 22 1. promptly notify in writing the Requesting Party and the Non-Party that some or  
23 all of the information requested is subject to a confidentiality agreement with a Non-Party;
  - 24 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
25 this litigation, the relevant discovery request(s), and a reasonably specific description of the information  
26 requested; and
  - 27 3. make the information requested available for inspection by the Non-Party.
- 28

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

8 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
19 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are  
20 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

21 13. MISCELLANEOUS

22 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
23 modification by the court in the future.

24 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
25 Party waives any right it otherwise would have to object to disclosing or producing any information or  
26 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right  
27 to object on any ground to use in evidence of any of the material covered by this Protective Order.  
28

1           13.3    Filing Protected Material. Without written permission from the Designating Party or a  
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
4 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a  
5 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule  
6 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is  
7 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving  
8 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the  
9 court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local  
10 Rule 79-5(e)(2) unless otherwise instructed by the court.

11   14.    FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 7, 2014

FENWICK & WEST LLP

By: /s/ Jennifer L. Kelly  
Jennifer L. Kelly

Attorneys for Plaintiff  
KING.COM LIMITED

Dated: May 7, 2014

WILSON ELSER MOSKOWITZ, EDELMAN &  
DICKER, LLP

By: /s/ Francis Torrence  
Francis Torrence

Attorneys for Defendants  
6 WAVES LLC AND SIX WAVES INC.

**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Jennifer L. Kelly, attest that concurrence in the filing of this document has been obtained from any signatories indicated by a “conformed” signature (/s/) within this e-filed document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 9, 2014

FENWICK & WEST LLP

By: /s/ Jennifer L. Kelly  
Jennifer L. Kelly

Attorneys for Plaintiff KING.COM LIMITED

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2

3 Dated: May 12, 2014

  
The Hon. Maxine M. Chesney  
United States District Court Judge

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FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

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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 *King.com Limited v. 6 Waves LLC, Six Waves Inc., and Does 1-5*, Case No. 13-cv-03977-MMC. 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]