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 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 LONGITUDE LICENSING LTD., and
 LONGITUDE FLASH MEMORY
 18 SYSTEMS S.A.R.L.,

19 Plaintiffs,

20 v.

21 APPLE INC.,

22 Defendant.

CASE NO. 3:14-cv-4275 EDL

**STIPULATED PROTECTIVE ORDER
 REGARDING THE DISCLOSURE AND
 USE OF DISCOVERY MATERIALS**

23
 24 Plaintiffs Longitude Licensing Ltd. and Longitude Flash Memory Systems S.A.R.L.
 25 (“Plaintiffs”) and Defendant Apple Inc. (“Defendant”) (collectively “the Parties”) anticipate that
 26 documents, testimony, or information containing or reflecting confidential, proprietary, trade
 27 secret, and/or commercially sensitive information are likely to be disclosed or produced during
 28 the course of discovery, initial disclosures, and supplemental disclosures in this case and request

1 that the Court enter this Order setting forth the conditions for treating, obtaining, and using such
2 information. Accordingly, the parties jointly stipulate to the following protective order, and
3 request that the Court enter it.

4 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause
5 for the following Agreed Protective Order Regarding the Disclosure and Use of Discovery
6 Materials (“Order” or “Protective Order”).

7 **1. PURPOSES AND LIMITATIONS**

8 (a) Protected Material designated under the terms of this Protective Order shall
9 be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for
10 any other purpose whatsoever.

11 (b) The Parties acknowledge that this Order does not confer blanket
12 protections on all disclosures during discovery, or in the course of making initial or supplemental
13 disclosures under Rule 26(a). Designations under this Order shall be made with care and shall not
14 be made absent a good faith belief that the designated material satisfies the criteria set forth
15 below. If it comes to a Producing Party’s attention that designated material does not qualify for
16 protection at all, or does not qualify for the level of protection initially asserted, the Producing
17 Party must promptly notify all other Parties that it is withdrawing or changing the designation.

18 (c) The terms agreed hereto do not limit the Parties from requesting that other
19 provisions or procedures should apply to Protected Materials during trial.

20 **2. DEFINITIONS**

21 (a) “Discovery Material” means all items or information, including from any
22 non party, regardless of the medium or manner generated, stored, or maintained (including,
23 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or
24 generated in connection with discovery or Rule 26(a) disclosures in this case.

25 (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings
26 as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is
27 reasonably necessary to disclose the information for this litigation.

28

1 (c) "Patents-in-suit" means U.S. Patent Nos. 6,763,424, 7,970,987, 8,316,177,
2 6,968,421, 7,657,702, 7,818,490, 7,012,835, 7,224,607, 8,050,095, 6,510,488, 7,181,611,
3 6,831,865 and 7,120,729, and any other patent asserted in this action, as well as any related
4 patents, patent applications, provisional patent applications, continuations, and/or divisionals.

5 (d) "Party" means any party to this case, including all of its officers, directors,
6 employees, consultants, retained experts, and outside counsel and their support staffs.

7 (e) "Producing Party" means any Party or non-party that discloses or produces
8 any Discovery Material in this case.

9 (f) "Protected Material" means any Discovery Material that is designated as
10 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
11 "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE," as
12 provided for in this Order. Protected Material shall not include: (i) advertising materials that have
13 been actually published or publicly disseminated; and (ii) materials that show on their face they
14 have been disseminated to the public.

15 (g) "Receiving Party" means any Party who receives Discovery Material from
16 a Producing Party.

17 (h) "Source Code" means computer code, scripts, assembly, object code,
18 source code listings and descriptions of source code, object code listings and descriptions of
19 object code, source code comments and Hardware Description Language (HDL) or Register
20 Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip.

21 **3. COMPUTATION OF TIME**

22 The computation of any period of time prescribed or allowed by this Order shall be
23 governed by the provisions for computing time set forth in Federal Rules of Civil Procedure 6.

24 **4. SCOPE**

25 (a) The protections conferred by this Order cover not only Discovery Material
26 governed by this Order as addressed herein, but also any information copied or extracted
27 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
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1 conversations, or presentations by Parties or their counsel in court or in other settings that might
2 reveal Protected Material.

3 (b) Nothing in this Protective Order shall prevent or restrict a Producing
4 Party's own disclosure or use of its own Protected Material for any purpose, and nothing in this
5 Order shall preclude any Producing Party from showing its Protected Material to an individual
6 who prepared the Protected Material.

7 (c) Nothing in this Order shall be construed to prejudice any Party's right to
8 use any Protected Material in court or in any court filing with the consent of the Producing Party
9 or by order of the Court.

10 (d) This Order is without prejudice to the right of any Party to seek further or
11 additional protection of any Discovery Material or to modify this Order in any way, including,
12 without limitation, an order that certain matter not be produced at all.

13 **5. DURATION**

14 Even after the termination of this case, the confidentiality obligations imposed by this
15 Order shall remain in effect until a Producing Party agrees otherwise in writing or a court order
16 otherwise directs.

17 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 (a) Basic Principles. All Protected Material shall be used solely for this case or
19 any related appellate proceeding, and not for any other purpose whatsoever, including without
20 limitation any other litigation, patent prosecution or acquisition, patent reexamination or reissue
21 proceedings, or any business or competitive purpose or function. Protected Material shall not be
22 distributed, disclosed or made available to anyone except as expressly provided in this Order.

23 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,
24 any person who receives one or more items designated "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –OUTSIDE ATTORNEYS'
26 EYES ONLY – SOURCE CODE" shall not be involved, directly or indirectly, in any of the
27 following activities: (i) advising on, consulting on, preparing, prosecuting, drafting, editing,
28 and/or amending of patent applications, specifications, claims, and/or responses to office actions,

1 or otherwise affecting the scope of claims (in patents or patent applications) directed to
2 implementing a flash translation layer, wear leveling, fast startup routines or data scrubbing in a
3 flash memory system, before any foreign or domestic agency, including the United States Patent
4 and Trademark Office; and (ii) the acquisition of patents (including patent applications), or the
5 rights to any such patents or patent applications with the right to sublicense, relating to the
6 functionality, operation, and design of flash memory systems. These prohibitions are not
7 intended to and shall not preclude counsel from participating in reexamination or *inter partes*
8 review proceedings on behalf of a Party challenging the validity of any patent, and these
9 prohibitions are not intended to and shall not preclude counsel for Plaintiff from participating in
10 reexamination or *inter partes* review proceedings to discuss the scope and content of prior art
11 with prosecution counsel, however, in no event will the discussions with prosecution counsel
12 include any reference, mention, or disclosure of “CONFIDENTIAL,” “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
14 OUTSIDE ATTORNEYS’ EYES’ ONLY - SOURCE CODE” materials of a Party or Non-Party.
15 Any individual with access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
16 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”
17 will not be involved in the drafting, revising, or amending of any claims, or be involved in any
18 discussions regarding the drafting, revising, or amending of any claims, in any reexamination or
19 *inter partes* review proceeding. These prohibitions shall begin when access to “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –OUTSIDE
21 ATTORNEYS’ EYES ONLY – SOURCE CODE” materials are first received by the affected
22 individual, and shall end two (2) years after the final resolution of this action, including all
23 appeals.

24 (c) Secure Storage. Protected Material must be stored and maintained by a
25 Receiving Party at a location in the United States and in a secure manner that ensures that access
26 is limited to the persons authorized under this Order.

27 (d) Legal Advice Based on Protected Material. Nothing in this Protective
28 Order shall be construed to prevent counsel from advising their clients with respect to this case

1 based in whole or in part upon Protected Materials, provided counsel does not disclose the
2 Protected Material itself except as provided in this Order.

3 (e) Limitations. Nothing in this Order shall restrict in any way a Producing
4 Party's use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any
5 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become
6 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known
7 to the Receiving Party independent of the Producing Party; (iii) previously produced, disclosed
8 and/or provided by the Producing Party to the Receiving Party or a non-party without an
9 obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the
10 Producing Party; or (v) pursuant to order of the Court.

11 **7. DESIGNATING PROTECTED MATERIAL**

12 (a) Available Designations. Any Producing Party may designate Discovery
13 Material with any of the following designations, provided that it meets the requirements for such
14 designations as provided for herein: "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
15 ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS'
16 EYES ONLY - SOURCE CODE."

17 (b) Written Discovery and Documents and Tangible Things. Written
18 discovery, documents (which include "electronically stored information," as that phrase is used in
19 Federal Rule of Procedure 34), and tangible things that meet the requirements for the
20 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the
21 appropriate designation on every page of the written material prior to production. For digital files
22 being produced, the Producing Party may mark each viewable page or image with the appropriate
23 designation, and mark the medium, container, and/or communication in which the digital files
24 were contained. In the event that original documents are produced for inspection, the original
25 documents shall be presumed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
26 during the inspection and re-designated, as appropriate during the copying process.

27 (c) Native Files. Where electronic files and documents are produced in native
28 electronic format, such electronic files and documents shall be designated for protection under

1 this Order by appending to the file names or designators information indicating whether the file
2 contains “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
3 “HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY -- SOURCE CODE,”
4 material, or shall use any other reasonable method for so designating Protected Materials
5 produced in electronic format. When electronic files or documents are printed for use at
6 deposition, in a court proceeding, or for provision in printed form to an expert or consultant pre-
7 approved pursuant to paragraph 12(a), the party printing the electronic files or documents shall
8 affix a legend to the printed document corresponding to the designation of the Designating Party
9 and including the production number and designation associated with the native file. No one
10 shall seek to use at trial a .tiff, .pdf, or other image format version of a document produced in
11 native file format without first (1) providing a copy of the image format version to the Producing
12 Party so that the Producing Party can review the image to ensure that no information has been
13 altered and assert any objections to its use. A Party reserves the right to object to a native file
14 used in this litigation that has been converted to a .tiff, .pdf or other image format should it later
15 be determined that information on the image has been altered.

16 (d) Depositions and Testimony. Parties or testifying persons or entities may
17 designate depositions and other testimony with the appropriate designation by indicating on the
18 record at the time the testimony is given or by sending written notice of how portions of the
19 transcript of the testimony is designated within thirty (30) days of receipt of the transcript of the
20 testimony. If no indication on the record is made, all information disclosed during a deposition
21 shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time
22 within which it may be appropriately designated as provided for herein has passed. Any Party
23 that wishes to disclose the transcript, or information contained therein, may provide written notice
24 of its intent to treat the transcript as non-confidential, after which time, any Party that wants to
25 maintain any portion of the transcript as confidential must designate the confidential portions
26 within fourteen (14) days, or else the transcript may be treated as non-confidential. Any
27 Protected Material that is used in the taking of a deposition shall remain subject to the provisions
28 of this Protective Order, along with the transcript pages of the deposition testimony dealing with

1 such Protected Material. In such cases the court reporter shall be informed of this Protective
2 Order and shall be required to operate in a manner consistent with this Protective Order. In the
3 event the deposition is videotaped, the original and all copies of the videotape shall be marked by
4 the video technician to indicate that the contents of the videotape are subject to this Protective
5 Order, substantially along the lines of “This videotape contains confidential testimony used in this
6 case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to
7 the terms of the operative Protective Order in this matter or pursuant to written stipulation of the
8 parties.” Counsel for any Producing Party shall have the right to exclude from oral depositions,
9 other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person
10 who is not authorized by this Protective Order to receive or access Protected Material based on
11 the designation of such Protected Material. Such right of exclusion shall be applicable only
12 during periods of examination or testimony regarding such Protected Material.

13 (e) Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under this Order must
15 take care to limit any such designation to material that qualifies under the appropriate standards
16 so that material, documents, items, or communications for which protection is not warranted are
17 not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized
18 designations are prohibited. Designations that are shown to be clearly unjustified or that have
19 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
20 development process or to impose unnecessary expenses and burdens on other parties) expose the
21 Designating Party to such relief as the Court may impose. If it comes to a Designating Party’s
22 attention that information or items that it designated for protection do not qualify for protection at
23 all or do not qualify for the level of protection initially asserted, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the mistaken designation.

25 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

26 (a) A Producing Party may designate Discovery Material as
27 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, and/or commercially
28 sensitive information.

1 (b) Unless otherwise ordered by the Court, Discovery Material designated as
2 “CONFIDENTIAL” may be disclosed only to the following:

3 (i) The Receiving Party’s Outside Counsel, such counsel’s immediate
4 paralegals and staff, and any copying or clerical litigation support services working at the
5 direction of such counsel, paralegals, and staff;

6 (ii) Not more than three (3) representatives of the Receiving Party who
7 are officers or employees of the Receiving Party, who may be, but need not be, in-house counsel
8 for the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is
9 reasonably necessary for this case, provided that: (a) each such person has agreed to be bound
10 by the provisions of the Protective Order by signing a copy of Exhibit A; and (b) no
11 unresolved objections to such disclosure exist after proper notice has been given to all Parties
12 as set forth in Paragraph 12 below;

13 (iii) Any outside expert or consultant retained by the Receiving Party to
14 assist in this action, provided that disclosure is only to the extent necessary to perform such
15 work; and provided that: (a) such expert or consultant has agreed to be bound by the provisions
16 of the Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a
17 current officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at
18 the time of retention to become an officer, director or employee of a Party or of a competitor of a
19 Party; (c) such expert or consultant accesses the materials in the United States only, and does not
20 transport them to or access them from any foreign jurisdiction; and (d) no unresolved objections
21 to such disclosure exist after proper notice has been given to all Parties as set forth in Paragraph
22 12 below;

23 (iv) Court reporters, stenographers and videographers retained to record
24 testimony taken in this action;

25 (v) The Court, jury, and court personnel;

26 (vi) Graphics, translation, design, and/or trial consulting personnel,
27 having first agreed to be bound by the provisions of the Protective Order by signing a copy of
28 Exhibit A;

1 (vii) Mock jurors who have signed an undertaking or agreement agreeing
2 not to publicly disclose Protected Material and to keep any information concerning Protected
3 Material confidential;

4 (viii) Any mediator who is assigned to hear this matter, and his or her
5 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
6 Protective Order; and

7 (ix) Any other person with the prior written consent of the Producing
8 Party.

9
10 **9. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL**
– ATTORNEYS’ EYES ONLY”

11 (a) A Producing Party may designate Discovery Material as “HIGHLY
12 CONFIDENTIAL –ATTORNEYS’ EYES ONLY” if it contains or reflects information that is
13 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that
14 the disclosure of such Discovery Material is likely to cause economic harm or significant
15 competitive disadvantage to the Producing Party. The Parties agree that the following
16 information, if non-public, shall be presumed to merit the “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data,
18 sales information, sales or marketing forecasts or plans, business plans, sales or marketing
19 strategy, product development information, engineering documents, testing documents, employee
20 information, and other non-public information of similar competitive and business sensitivity.

21 (b) Unless otherwise ordered by the Court, Discovery Material designated as
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

23 (i) The Receiving Party’s Outside Counsel, provided that such Outside
24 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,
25 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and
26 such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation
27 support services working at the direction of such counsel, paralegals, and staff;

1 (ii) Any outside expert or consultant retained by the Receiving Party to
2 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
3 and provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
4 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
5 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
6 of retention to become an officer, director, or employee of a Party or of a competitor of a Party;
7 (c) such expert or consultant is not involved in competitive decision-making, as defined by *U.S.*
8 *Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
9 competitor of a Party; (d) such expert or consultant accesses the materials in the United States
10 only, and does not transport them to or access them from any foreign jurisdiction and (e) no
11 unresolved objections to such disclosure exist after proper notice has been given to all Parties as
12 set forth in Paragraph 12 below;

13 (iii) Court reporters, stenographers and videographers retained to record
14 testimony taken in this action;

15 (iv) The Court, jury, and court personnel;

16 (v) Graphics, translation, design, and/or trial consulting personnel,
17 having first agreed to be bound by the provisions of the Protective Order by signing a copy of
18 Exhibit A;

19 (vi) Any mediator who is assigned to hear this matter, and his or her
20 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
21 Protective Order; and

22 (vii) Any other person with the prior written consent of the Producing
23 Party.

24 **10. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL**
25 **– OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”**

26 (a) To the extent production of Source Code becomes necessary to the
27 prosecution or defense of the case, a Producing Party may designate Source Code as “HIGHLY
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1 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” if it comprises
2 or includes confidential, proprietary, and/or trade secret Source Code.

3 (b) Nothing in this Order shall be construed as a representation or admission
4 that Source Code is, or is not, properly discoverable in this action, or to obligate any Party to
5 produce any Source Code.

6 (c) Unless otherwise ordered by the Court, Discovery Material designated as
7 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”
8 shall be subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject
9 to Paragraph 11 below, solely to:

10 (i) The Receiving Party’s Outside Counsel, provided that such Outside
11 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,
12 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, and
13 such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation
14 support services working at the direction of such counsel, paralegals, and staff;

15 (ii) Any outside expert or consultant retained by the Receiving Party to
16 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
17 and provided that: (a) such expert or consultant has agreed to be bound by the provisions of the
18 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current
19 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time
20 of retention to become an officer, director or employee of a Party or of a competitor of a Party;
21 (c) such expert or consultant is not involved in competitive decision-making, as defined by *U.S.*
22 *Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
23 competitor of a Party; (d) such expert or consultant accesses the materials in the United States
24 only, and does not transport them to or access them from any foreign jurisdiction; and (e) no
25 unresolved objections to such disclosure exist after proper notice has been given to all Parties as
26 set forth in Paragraph 12 below;

27 (iii) Court reporters, stenographers and videographers retained to record
28 testimony taken in this action;

- 1 (iv) The Court, jury, and court personnel;
- 2 (v) Any mediator who is assigned to hear this matter, and his or her
- 3 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
- 4 Protective Order; and
- 5 (vi) Any other person with the prior written consent of the Producing
- 6 Party.

7 **11. DISCLOSURE AND REVIEW OF SOURCE CODE**

8 (a) Any Source Code that is produced by Apple Inc. will be made available for

9 inspection at the Silicon Valley office of its outside counsel, DLA Piper LLP (US) at 2000

10 University Avenue, East Palo Alto, California. Source Code will be made available for

11 inspection between the hours of 8 a.m. and 6 p.m. on business days (i.e., weekdays that are not

12 Federal holidays), although the Parties will be reasonable in accommodating reasonable requests

13 to conduct inspections at other times.

14 (b) Prior to the first inspection of any requested Source Code, the Receiving

15 Party shall provide fourteen (14) days notice of the Source Code that it wishes to inspect. The

16 Receiving Party shall provide forty-eight (48) business hours notice prior to any additional

17 inspections; however, the parties shall make reasonable efforts to accommodate requests on

18 shorter notice (e.g. when a reviewer onsite wishes to extend his review to the next business day).

19 This section does not change or modify any required disclosures or deadlines pursuant to the

20 Patent Local Rules of the Northern District of California.

21 (c) Source Code that is designated “HIGHLY CONFIDENTIAL – OUTSIDE

22 ATTORNEYS’ EYES ONLY - SOURCE CODE” shall be produced for inspection and review

23 subject to the following provisions, unless otherwise agreed by the Producing Party:

24 (i) All Source Code shall be made available by the Producing Party to

25 the Receiving Party’s outside counsel and/or experts in a secure room on a secured computer

26 without Internet access or network access to other computers and on which all access ports have

27 been disabled (except for one printer port), as necessary and appropriate to prevent and protect

28 against any unauthorized copying, transmission, removal or other transfer of any Source Code

1 outside or away from the computer on which the Source Code is provided for inspection (the
2 “Source Code Computer” in the “Source Code Review Room”).

3 The Producing Party shall install the following released versions of the following tools for
4 the review of Source Code: SlickEdit, Understand, Beyond Compare, Acrobat, Xcode and
5 TextWrangler. The Receiving Party must provide the Producing Party with a CD or DVD
6 containing such licensed software tools at least seven (7) business days in advance of the date
7 upon which the Receiving Party wishes to have these source code tools for use on the Source
8 Code Computer. If the Producing Party is unable to comply with the request within seven (7)
9 business days, the Producing Party shall promptly notify the Receiving Party and provide a date
10 certain as to when the source code tools will be installed on the Source Code Computer.

11 Additionally, if any documents are produced on the Source Code Computer, appropriate
12 software to review the documents shall also be installed. This list of Source Code tools is not
13 intended to be limiting, and the Reviewing Party may request that additional tools are installed on
14 the Source Code Computer, provided, however, that (a) the Receiving Party possess an
15 appropriate license to such software tools; (b) the Producing Party approves such software tools;
16 and (c) such other software tools are reasonably necessary for the Receiving Party to perform its
17 review of the Source Code consistent with all of the protections herein. Licensed copies of
18 mutually agreed upon software tools shall be installed on the Source Code Computer by the
19 Producing Party within seven (7) business days after a request is agreed to, with the same process
20 described above should the Producing Party be unable to install the requested software tools
21 within the seven (7) business days. The Producing Party shall provide the Receiving Party with
22 information explaining how to start, log on to, operate, and print from the Source Code
23 Computers.

24 (ii) Except as provided in subparagraph (iii) below, no recordable
25 media or recordable devices, including without limitation sound recorders, cellular telephones,
26 peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the
27 Source Code Review Room. The Producing Party shall provide a room within reasonable
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1 proximity to the Source Code Review Room where the Reviewing Party may keep and use such
2 devices outside the presence of the Producing Party.

3 (iii) The Receiving Party's outside counsel and/or experts shall be
4 entitled to take notes relating to the Source Code, but may not copy the Source Code into the
5 notes and may not take such notes electronically on the Source Code Computer itself or any other
6 computer. In addition to the Source Code Computer, the Producing Party shall make available
7 within the Source Code Review Room a laptop computer with no network connection or camera
8 functionality (the "Notetaking Computer") for purposes of enabling the Receiving Party's outside
9 counsel and/or experts to take notes relating to the Source Code. The Notetaking Computer shall
10 have pre-installed a commercially reasonable text editing program, Microsoft Excel or OpenOffice
11 Calc spreadsheet software, and an encryption program, such as TrueCrypt. The Receiving Party's
12 outside counsel and/or experts may use the computer for the purposes of taking notes relating to
13 the Source Code, but may not copy more than five continuous lines of the Source Code verbatim
14 into the notes without consent of the Producing Party, which consent shall not be unreasonably
15 withheld. The Reviewing Party shall, upon completion of its review, store its notes within an
16 encrypted volume, such as a TrueCrypt volume, protected by at least a 20-character password.
17 Upon completion of each review session, the Producing Party shall, upon request by the Receiving
18 Party, provide the Receiving Party with an electronic storage medium, such as a USB storage
19 device, containing the encrypted volume file with the notes taken by the Receiving Party. At the
20 start of each review session, the Producing Party also shall, upon request by the Receiving Party,
21 copy an updated encrypted volume file containing any revised notes taken by the Receiving Party,
22 from such electronic storage medium onto the Notetaking Computer, for further editing. The
23 Receiving Party shall maintain any notes removed from the Source Code Review Room in the
24 encrypted form described above at all times when storing or transmitting them. The Producing
25 Party shall not monitor or review any notes taken on the Notetaking Computer, shall not receive
26 the encryption password, and shall not interact with any note files on the computer in any way
27 except to transfer the encrypted volume files, without reviewing their contents, to and from a USB
28

1 storage medium as described above. The use of such computer shall not be asserted to be a waiver
2 of any privilege or protection.

3 (iv) The Producing Party may visually monitor the activities of the
4 Receiving Party's representatives during any Source Code Computer review, but only to ensure
5 that no unauthorized records of the Source Code are being created or transmitted in any way.

6 (v) No copies of all or any portion of the Source Code may leave the
7 room in which the Source Code Computer is inspected except as otherwise provided herein.

8 Further, no other written or electronic record of the Source Code is permitted except as otherwise
9 provided herein. The Producing Party shall make available a laser printer with commercially
10 reasonable printing speeds for on-site printing during inspection of the Source Code Computer.

11 The Receiving Party may print limited portions of the Source Code only to the extent that such
12 portions are relevant to the claims and/or defenses in the above-captioned litigation, or are

13 logically related to such relevant portions of the Source Code and shall print no more than a

14 reasonable amount of Source Code. The Receiving Party shall not print Source Code in order to
15 review blocks of Source Code elsewhere in the first instance, i.e., as an alternative to reviewing

16 that Source Code electronically on the Source Code Computer. The Receiving Party shall not,
17 without the consent of the Producing Party, print any portion that consists of more than twenty

18 (20) consecutive pages of a continuous block (that is, a single file) of Source Code and the

19 Producing Party need not provide the printouts of such blocks to the Receiving Party. Upon

20 printing any portions of Source Code, the printed pages shall be collected by the Producing Party.

21 The Producing Party shall Bates number, copy, and label "HIGHLY CONFIDENTIAL -

22 OUTSIDE ATTORNEYS' EYES ONLY -- SOURCE CODE" any pages printed by the Receiving

23 Party. If practicable, within forty-eight (48) business hours, but no later than seventy-two (72)

24 business hours, the Producing Party shall either (i) provide one copy set of such pages to the

25 Receiving Party or (ii) inform the Requesting Party that it objects that the printed portions are

26 excessive and/or not done for a permitted purpose. If, after meeting and conferring, the Producing

27 Party and the Receiving Party cannot resolve the objection, either Party shall be entitled to seek a

28 Court resolution of whether the printed Source Code in question was printed for a permitted

1 purpose. The burden shall be on the Receiving Party to show that any code printed in excess of the
2 limitations of this paragraph was printed for a permitted purpose. The printed pages shall
3 constitute part of the Source Code produced by the Producing Party in this action. A Receiving
4 Party may in good faith request for these limits to be increased. The Receiving Party may seek
5 leave of Court to increase these limits if the Receiving Party believes the Producing Party has
6 unreasonably withheld consent.

7 (vi) A list of names of persons who will view the Source Code
8 Computer will be provided to the Producing Party in conjunction with any written (including
9 email) notice prior to inspection. Such identification shall be in addition to any other disclosure
10 required under this Order. The Receiving Party shall maintain a daily log of the names of persons
11 who enter the locked room to view the Source Code Computer. The Producing Party shall be
12 entitled to a copy of the log upon one (1) day's advance notice to the Receiving Party.

13 (vii) Unless otherwise agreed in advance by the Parties in writing,
14 following each day on which Source Code Computer inspection is done under this Order, the
15 Receiving Party's outside counsel and/or experts shall remove all notes, documents, and all other
16 materials from the Source Code Review Room. The Producing Party shall not be responsible for
17 any items left in the room following each inspection session. Proper identification of all
18 authorized persons shall be provided prior to any access to the secure room or the computer
19 containing Source Code. Proper identification requires showing a photo identification card
20 sanctioned by the government of any State of the United States, by the government of the United
21 States, or by the nation state of the authorized person's current citizenship. Access to the secure
22 room or the Source Code Computer may be denied to any individual who fails to provide proper
23 identification.

24 (viii) Other than as provided above, the Receiving Party will not
25 copy, remove, or otherwise transfer any Source Code from the Source Code Computer including,
26 without limitation, copying, removing, or transferring the Source Code onto any recordable media
27 or recordable device. Other than as provided above, the Receiving Party will not transmit any
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1 Source Code in any way from the Producing Party's facilities or the offices of its outside counsel
2 of record.

3 (ix) The Receiving Party's outside counsel of record may make
4 no more than five (5) additional paper copies of any portions of the Source Code received from a
5 Producing Party pursuant to Paragraph 11(c)(v), not including copies attached to court filings or
6 used at depositions, and shall maintain a log of all paper copies of the Source Code. The log shall
7 include the names of the reviewers and/or recipients of paper copies and the locations where said
8 paper copies are stored. Upon one (1) day's advance notice to the Receiving Party by the
9 Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party.

10 (x) The Receiving Party's outside counsel of record and any
11 person receiving a copy of any Source Code shall maintain and store any paper copies of the
12 Source Code at their offices in a manner that prevents duplication of or unauthorized access to the
13 Source Code, including, without limitation, storing the Source Code in a locked room or cabinet at
14 all times when it is not in use. No more than a total of twenty-five (25) individuals identified by
15 the Receiving Party shall have access to the printed portions of Apple Source Code (except insofar
16 as such code appears in any court filing or expert report). If a Receiving Party requires more than
17 twenty-five (25) individuals to have access to the printed portions of Apple Source Code, the
18 parties shall meet and confer in good faith.

19 (xi) For depositions, the Receiving party shall not bring copies of
20 any printed Source Code. Rather, at least three (3) business days before the date of the deposition,
21 the Receiving Party shall notify the Producing Party which portions of Source Code (by
22 production number) it wishes to use at the deposition, and the Producing Party shall bring printed
23 copies of those portions to the deposition for use by the Receiving Party. Copies of Source Code
24 that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to
25 deposition transcripts; rather, the deposition record will identify the exhibit by its production
26 numbers. All paper copies of Source Code brought to the deposition shall remain with the
27 Producing Counsel's outside counsel for secure destruction in a timely manner following the
28 deposition. Additionally, at least five (5) days before the date of the deposition, the Receiving

1 Party may request to the Producing Party that the Source Code Computer be made available at the
2 deposition. The Parties shall meet and confer in good faith regarding any such requests and the
3 Receiving Party must identify the need for the Source Code Computer at the deposition. To the
4 extent the Source Code Computer is used at a deposition, portions of the Source Code discussed
5 will be identified on the record and reasonable portions of the source code can be printed and
6 marked as exhibits. The Producing Party shall retain possession of any source code printed at the
7 deposition, including any source code printed and marked as an exhibit. After the deposition, the
8 Producing Party shall provide the Receiving Party a copy of any source code printed at the
9 deposition within forty-eight (48) business hours, if practicable, but no later than seventy-two (72)
10 business hours, of the conclusion of the deposition. The Source Code Computer shall not be
11 marked as an exhibit. Any deposition requiring the use of the Source Code Computer shall take
12 place at the office of DLA Piper in Silicon Valley.

13 (xii) Except as provided in this sub-paragraph, absent express
14 written permission from the Producing Party, the Receiving Party may not create electronic
15 images, or any other images, or make electronic copies, of the Source Code from any paper copy
16 of Source Code for use in any manner (including by way of example only, the Receiving Party
17 may not scan the Source Code to a PDF or photograph the code). Images or copies of Source
18 Code shall not be included in correspondence between the Parties (references to production
19 numbers shall be used instead), and shall be omitted from pleadings and other papers whenever
20 possible. If a Party reasonably believes that it needs to submit a portion of Source Code as part of
21 a filing with the Court, the Parties shall meet and confer as to how to make such a filing while
22 protecting the confidentiality of the Source Code and such Source Code will not be filed absent
23 agreement from the Producing Party that the confidentiality protections will be adequate, which
24 agreement shall not be unreasonably withheld. If a Producing Party agrees to produce an
25 electronic copy of all or any portion of its Source Code or provide written permission to the
26 Receiving Party that an electronic or any other copy needs to be made for a Court filing, access to
27 the Receiving Party's submission, communication, and/or disclosure of electronic files or other
28 materials containing any portion of Source Code (paper or electronic) shall at all times be limited

1 solely to individuals who are expressly authorized to view Source Code under the provisions of
2 this Order. Where the Producing Party has provided the express written permission required under
3 this provision for a Receiving Party to create electronic copies of Source Code, the Receiving
4 Party shall maintain a log of all such electronic copies of any portion of Source Code in its
5 possession or in the possession of its retained consultants, including the names of the reviewers
6 and/or recipients of any such electronic copies, and the locations and manner in which the
7 electronic copies are stored. Additionally, any such electronic copies must be labeled
8 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY - SOURCE CODE” as provided for in this
9 Order. This provision shall not prohibit the use of Source Code in expert reports.

10 **12. NOTICE OF DISCLOSURE**

11 (a) Prior to disclosing any Protected Material to any person described in
12 Paragraphs 8(b)(ii), 8(b)(iii), 9(b)(ii), or 10(c)(ii) (referenced below as “Person”), the Party seeking
13 to disclose such information shall provide the Producing Party with written notice that includes: (i)
14 the name of the Person; (ii) the present employer and title of the Person; (iii) an identification of all
15 of the Person’s past and current employment and consulting relationships, including direct
16 relationships and relationships through entities owned or controlled by the Person, including but
17 not limited to an identification of any individual or entity with or for whom the person is employed
18 or to whom the person provides consulting services relating to the design development, operation,
19 or patenting of the implementing a flash translation layer, wear leveling, fast startup routines or
20 data scrubbing in a flash memory system, or relating to the acquisition of intellectual property
21 assets relating to the implementing a flash translation layer, wear leveling, fast startup routines or
22 data scrubbing in a flash memory system for the past five (5) years, except to the extent that the
23 Person is prohibited from disclosing such relationships by contract; (iv) an up-to-date curriculum
24 vitae of the Person; (v) an identification of all pending patent applications on which the Person is
25 named as an inventor, in which the Person has any ownership interest, or as to which the Person
26 has had an involvement in advising on, consulting on, preparing, prosecuting, drafting, editing,
27 amending, or otherwise affecting the scope of claims relating to implementing a flash translation
28 layer, wear leveling, fast startup routines or data scrubbing in a flash memory system, and (vi) a

1 list of the cases in which the Person has testified at deposition or trial within the last five (5) years.
2 The Party seeking to disclose Protected Material shall provide such other information regarding
3 the Person's professional activities reasonably requested by the Producing Party for it to evaluate
4 whether good cause exists to object to the disclosure of Protected Material to the outside expert or
5 consultant. During the pendency of this action, including all appeals, the Party seeking to disclose
6 Protected Material shall promptly provide written notice of any change with respect to the Person's
7 involvement in the design, development, operation or patenting of the implementing a flash
8 translation layer, wear leveling, fast startup routines or data scrubbing in a flash memory system or
9 the acquisition of intellectual property assets relating to implementing a flash translation layer,
10 wear leveling, fast startup routines or data scrubbing in a flash memory system.

11 (b) Within fourteen calendar (14) days of receipt of the disclosure of the
12 Person, the Producing Party or Parties may object in writing to the Person for good cause. In the
13 absence of an objection at the end of the fourteen calendar (14) day period, the Person shall be
14 deemed approved under this Protective Order. There shall be no disclosure of Protected Material
15 to the Person prior to expiration of this fourteen calendar (14) day period. If the Producing Party
16 objects to disclosure to the Person within such fourteen calendar (14) day period, the Parties shall
17 meet and confer via telephone or in person within seven (7) days following the objection and
18 attempt in good faith to resolve the dispute on an informal basis. If the dispute is not resolved, the
19 Party objecting to the disclosure will have seven (7) days from the date of the meet and confer to
20 seek relief from the Court. If relief is not sought from the Court within that time, the objection
21 shall be deemed withdrawn. If relief is sought, designated materials shall not be disclosed to the
22 Person in question until the Court resolves the objection.

23 (c) For purposes of this section, "good cause" shall include an objectively
24 reasonable concern that the Person will, advertently or inadvertently, use or disclose Discovery
25 Materials in a way or ways that are inconsistent with the provisions contained in this Order.

26 (d) Prior to receiving any Protected Material under this Order, the Person must
27 execute a copy of the "Agreement to Be Bound by Protective Order" (Exhibit A hereto) and serve
28 it on all Parties.

1 (e) An initial failure to object to a Person under this Paragraph 12 shall not
2 preclude the nonobjecting Party from later objecting to continued access by that Person for good
3 cause and to the extent new information comes to light that was not ascertainable earlier. If an
4 objection is made, the Parties shall meet and confer via telephone or in person within seven (7)
5 days following the objection and attempt in good faith to resolve the dispute informally. If the
6 dispute is not resolved, the Party objecting to the disclosure will have seven (7) days from the date
7 of the meet and confer to seek relief from the Court. The designated Person may continue to have
8 access to information that was provided to such Person prior to the date of the objection. If a later
9 objection is made, no further Protected Material shall be disclosed to the Person until the Court
10 resolves the matter or the Producing Party withdraws its objection. Notwithstanding the foregoing,
11 if the Producing Party fails to move for a protective order within seven (7) business days after the
12 meet and confer, further Protected Material may thereafter be provided to the Person.

13 **13. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

14 (a) A Party shall not be obligated to challenge the propriety of any designation
15 of Discovery Material under this Order at the time the designation is made, and a failure to do so
16 shall not preclude a subsequent challenge thereto.

17 (b) Any challenge to a designation of Discovery Material under this Order shall
18 be written, shall be served on outside counsel for the Producing Party, shall particularly identify
19 the documents or information that the Receiving Party contends should be differently designated,
20 and shall state the grounds for the objection. Thereafter, further protection of such material shall
21 be resolved in accordance with the following procedures:

22 (c) The objecting Party shall have the burden of conferring either in person, in
23 writing, or by telephone with the Producing Party claiming protection (as well as any other
24 interested party) in a good faith effort to resolve the dispute. The Producing Party shall have the
25 burden of justifying the disputed designation;

26 (d) Failing agreement, the Receiving Party may bring a motion to the Court for
27 a ruling that the Discovery Material in question is not entitled to the status and protection of the
28 Producing Party's designation. The Parties' entry into this Order shall not preclude or prejudice

1 either Party from arguing for or against any designation, establish any presumption that a
2 particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute
3 over discovery or disclosure of information;

4 (e) Notwithstanding any challenge to a designation, the Discovery Material in
5 question shall continue to be treated as designated under this Order until one of the following
6 occurs: (a) the Party who designated the Discovery Material in question withdraws such
7 designation in writing; or (b) the Court rules that the Discovery Material in question is not entitled
8 to the designation.

9 **14. SUBPOENAS OR COURT ORDERS**

10 If at any time Protected Material is subpoenaed by any court, arbitral, administrative, or
11 legislative body, the Party to whom the subpoena or other request is directed shall immediately
12 give prompt written notice thereof to every Party who has produced such Discovery Material and
13 to its counsel and shall provide each such Party with an opportunity to move for a protective order
14 regarding the production of Protected Materials implicated by the subpoena.

15 **15. FILING PROTECTED MATERIAL**

16 (a) Absent written permission from the Producing Party or a court Order
17 secured after appropriate notice to all interested persons, a Receiving Party may not file or disclose
18 in the public record any Protected Material.

19 (b) Any Party is authorized under Civil L.R. 79-5 to file under seal with the
20 Court any brief, document or materials that are designated as Protected Material under this Order.

21 (c) However, nothing in this section shall in any way limit or detract from this
22 Order's requirements as to Source Code.

23 **16. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

24 (a) The inadvertent production by a Party of Discovery Material subject to the
25 attorney-client privilege, work-product protection, or any other applicable privilege or protection,
26 despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to
27 production, will not waive the applicable privilege and/or protection if a request for return of such
28 inadvertently produced Discovery Material is made promptly after the Producing Party learns of its

1 inadvertent production. Pursuant to Federal Rule of Evidence 502(d) and (e), this Order
2 constitutes a court order as contemplated under Rule 502(d), which provides that “the privilege or
3 protection is not waived by disclosure connected with the litigation pending before the court—in
4 which event the disclosure is also not a waiver in any other federal or state proceeding.”

5 (b) Upon a request from any Producing Party who has inadvertently produced
6 Discovery Material that it believes is privileged and/or protected, each Receiving Party shall
7 immediately return such Protected Material or Discovery Material and all copies to the Producing
8 Party, except for any pages containing privileged markings by the Receiving Party which shall
9 instead be destroyed and certified as such by the Receiving Party to the Producing Party.

10 (d) Nothing herein shall prevent the Receiving Party from preparing a record
11 for its own use containing the date, author, addresses, and topic of the inadvertently produced
12 Discovery Material and such other information as is reasonably necessary to identify the
13 Discovery Material and describe its nature to the Court in any motion to compel production of the
14 Discovery Material.

15 **17. INADVERTENT FAILURE TO DESIGNATE PROPERLY**

16 (a) The inadvertent failure by a Producing Party to designate Discovery
17 Material as Protected Material with one of the designations provided for under this Order shall not
18 waive any such designation provided that the Producing Party notifies all Receiving Parties that
19 such Discovery Material is protected under one of the categories of this Order within fourteen (14)
20 days of the Producing Party learning of the inadvertent failure to designate. The Producing Party
21 shall reproduce the Protected Material with the correct confidentiality designation within seven (7)
22 days upon its notification to the Receiving Parties. Upon receiving the Protected Material with the
23 correct confidentiality designation, the Receiving Parties shall return or securely destroy, at the
24 Producing Party’s option, all Discovery Material that was not designated properly.

25 (b) A Receiving Party shall not be in breach of this Order for any use of such
26 Discovery Material before the Receiving Party receives such notice that such Discovery Material
27 is protected under one of the categories of this Order, unless an objectively reasonable person
28 would have realized that the Discovery Material should have been appropriately designated with a

1 confidentiality designation under this Order. Once a Receiving Party has received notification of
2 the correct confidentiality designation for the Protected Material with the correct confidentiality
3 designation, the Receiving Party shall treat such Discovery Material (subject to the exception in
4 Paragraph 17(c) below) at the appropriately designated level pursuant to the terms of this Order.

5 (c) Notwithstanding the above, a subsequent designation of
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
7 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”
8 shall apply on a going forward basis and shall not disqualify anyone who reviewed
9 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
10 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”
11 materials while the materials were not marked “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY –
13 SOURCE CODE” from engaging in the activities set forth in Paragraph 6(b).

14 **18. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

15 (a) In the event of a disclosure of any Discovery Material pursuant to this
16 Order to any person or persons not authorized to receive such disclosure under this Protective
17 Order, the Party responsible for having made such disclosure, and each Party with knowledge
18 thereof, shall immediately notify counsel for the Producing Party whose Discovery Material has
19 been disclosed and provide to such counsel all known relevant information concerning the nature
20 and circumstances of the disclosure. The responsible disclosing Party shall also promptly take all
21 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no
22 further or greater unauthorized disclosure and/or use thereof is made

23 (b) Unauthorized or inadvertent disclosure does not change the status of
24 Discovery Material or waive the right to hold the disclosed document or information as Protected.

25 **19. FINAL DISPOSITION**

26 (a) Not later than ninety (90) days after the Final Disposition of this case, each
27 Party shall return all Discovery Material of a Producing Party to the respective outside counsel of
28 the Producing Party or destroy such Material, at the option of the Producing Party. For purposes

1 of this Order, “Final Disposition” occurs after an order, mandate, or dismissal finally terminating
2 the above-captioned action with prejudice, including all appeals.

3 (b) All Parties that have received any such Discovery Material shall certify in
4 writing that all such materials have been returned to the respective outside counsel of the
5 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,
6 outside counsel may retain one set of pleadings, correspondence and attorney and consultant work
7 product (but not document productions) for archival purposes, but must return any pleadings,
8 correspondence, and consultant work product that contain Source Code.

9 **20. DISCOVERY FROM EXPERTS OR CONSULTANTS**

10 (a) Drafts of reports of testifying experts, and reports and other written
11 materials, including drafts, of consulting experts, shall not be discoverable.

12 (b) Reports and materials exempt from discovery under the foregoing
13 Paragraph shall be treated as attorney work product for the purposes of this case and Protective
14 Order.

15 (c) Testifying experts shall not be subject to discovery with respect to any
16 draft of his or her report(s) in this case. Draft reports, notes, or outlines for draft reports
17 developed and drafted by the testifying expert and/or his or her staff are also exempt from
18 discovery.

19 (d) Discovery of materials provided to testifying experts shall be limited to
20 those materials, facts, consulting expert opinions, and other matters actually relied upon by the
21 testifying expert in forming his or her final report, trial, or deposition testimony or any opinion in
22 this case. No discovery can be taken from any non-testifying expert except to the extent that such
23 non-testifying expert has provided information, opinions, or other materials to a testifying expert
24 relied upon by that testifying expert in forming his or her final report(s), trial, and/or deposition
25 testimony or any opinion in this case.

26 (e) No conversations or communications between counsel and any testifying or
27 consulting expert will be subject to discovery unless the conversations or communications are
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1 relied upon by such experts in formulating opinions that are presented in reports or trial or
2 deposition testimony in this case.

3 (f) Materials, communications, and other information exempt from discovery
4 under the foregoing Paragraphs 20(a)–(g) shall be treated as attorney-work product for the
5 purposes of this litigation and Order.

6 (g) Nothing in Protective Order, include Paragraphs 20(a)–(g), shall alter or
7 change in any way the requirements in Paragraph 11 regarding Source Code, and Paragraph 11
8 shall control in the event of any conflict.

9 **21. MISCELLANEOUS**

10 (a) Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties
12 do not waive the right to argue that certain material may require additional or different
13 confidentiality protections than those set forth herein.

14 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that
15 the terms of this Protective Order shall survive and remain in effect after the Final Determination
16 of the above-captioned matter. The Court shall retain jurisdiction after Final Determination of
17 this matter to hear and resolve any disputes arising out of this Protective Order.

18 (c) Successors. This Order shall be binding upon the Parties hereto, their
19 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal
20 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
21 experts, and any persons or organizations over which they have direct control.

22 (d) Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
24 producing any information or item. Similarly, no Party waives any right to object on any ground
25 to use in evidence of any of the material covered by this Protective Order. This Order shall not
26 constitute a waiver of the right of any Party to claim in this action or otherwise that any
27 Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not
28 admissible in evidence in this action or any other proceeding.

1 (e) Burdens of Proof. Notwithstanding anything to the contrary above,
2 nothing in this Protective Order shall be construed to change the burdens of proof or legal
3 standards applicable in disputes regarding whether particular Discovery Material is confidential,
4 which level of confidentiality is appropriate, whether disclosure should be restricted, and if so,
5 what restrictions should apply.

6 (f) Modification by Court. This Order is subject to further court order based
7 upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the
8 interests of justice. The United States District Court for Northern District of California is
9 responsible for the interpretation and enforcement of this Order. All disputes concerning
10 Protected Material, however designated, produced under the protection of this Order shall be
11 resolved by the United States District Court for the Northern District of California.

12 (g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change
13 in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for
14 the United States District Court for Northern District of California, or the Court's own orders.
15 Identification of any individual pursuant to this Protective Order does not make that individual
16 available for deposition or any other form of discovery outside of the restrictions and procedures
17 of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for
18 Northern District of California, or the Court's own orders.

19
20 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

21
22 Dated: March 19, 2015

BUNSOW, DE MORY, SMITH & ALLISON LLP

23
24 By: /s/ Henry C. Bunsow

HENRY C. BUNSOW

JOHN D. BEYNON

Attorneys for Plaintiffs

LONGITUDE LICENSING LTD. AND

LONGITUDE FLASH MEMORY SYSTEMS

S.A.R.L.

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Dated: March 19, 2015

DLA PIPER LLP (US)

By: /s/ Christine K. Corbett

JOHN ALLCOCK
SEAN CUNNINGHAM
CHRISTINE K. CORBETT
BRENT YAMASHITA
Attorneys for Defendant
APPLE INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: March 23, 2015


THE HONORABLE ELIZABETH D. LAPORTE
UNITED STATES MAGISTRATE JUDGE

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ATTESTATION PURSUANT TO GENERAL ORDER 45

Pursuant to General Order No. 45, Section X.B., I hereby attest that I have obtained concurrence of the above noted signatories as indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: March 20, 2015

/s/ John D. Beynon
John D. Beynon

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EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Longitude Licensing Ltd., et al. v. Apple Inc.*, United States District Court, Northern District of California, San Francisco Division, Civil Action No. 3:14-cv-04275 EDL. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]