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

18 ARTIFEX SOFTWARE, INC.,
 19 Plaintiff,
 20 v.
 21 ENTWRX LTD.,
 22 Defendant.

Civil Action No. 3:14-cv-05231-MEJ

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

23 1. PURPOSES AND LIMITATIONS

24 Disclosure and discovery activity in this action are likely to involve production of
 25 confidential, proprietary, or private information for which special protection from public disclosure
 26 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
 27 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
 28

1 Order. The parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from public disclosure and
3 use extends only to the limited information or items that are entitled to confidential treatment under
4 the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4, below,
5 that this Stipulated Protective Order does not entitle them to file confidential information under
6 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
7 will be applied when a party seeks permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 “CASE CONFIDENTIAL” Information or Items: information (regardless of how it
12 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
13 of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
15 as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items that it
17 produces in disclosures or in responses to discovery as “CASE CONFIDENTIAL,” “CASE
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “CASE CONFIDENTIAL – SOURCE
19 CODE.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among other things,
22 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
23 responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
25 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
26 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
27 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
28 of a Party’s competitor.

1 2.7 “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
2 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
3 Non-Party would create a substantial risk of serious harm that could not be avoided by less
4 restrictive means.

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

12 2.9 House Counsel: attorneys who are employees of a party to this action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
17 action but are retained to represent or advise a party to this action and have appeared in this action
18 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.12 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.14 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CASE CONFIDENTIAL,” “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
28 “CASE CONFIDENTIAL – SOURCE CODE.”

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected Material
5 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
6 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a
10 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
11 result of publication not involving a violation of this Order, including becoming part of the public
12 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
14 information lawfully and under no obligation of confidentiality to the Designating Party, except
15 insofar as any such information constitutes a trade secret or other confidential and proprietary
16 information of Plaintiff which has been identified with reasonable particularity, is alleged in this
17 action to have been misused or misappropriated by Defendant, and otherwise qualifies as Protected
18 Material herein. Any use of Protected Material at trial shall be governed by a separate agreement or
19 order.

20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations imposed by this
22 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
23 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
24 defenses in this action, with or without prejudice; and (2) final judgment herein after the
25 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
26 including the time limits for filing any motions or applications for extension of time pursuant to
27 applicable law.
28

1 5. DESIGNATING PROTECTED MATERIAL

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

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

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

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
18 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
19 Disclosure or Discovery

20 Material that qualifies for protection under this Order must be clearly so designated before
21 the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (*e.g.*, paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
25 affix the legend “CASE CONFIDENTIAL,” “CASE CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY,” or “CASE CONFIDENTIAL – SOURCE CODE” to each page that contains protected
27 material. If only a portion or portions of the material on a page qualifies for protection, the
28

1 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
2 markings in the margins) and must specify, for each portion, the level of protection being asserted.

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

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

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

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

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

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

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

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

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
23 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
24 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
25 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied
26 by a competent declaration affirming that the movant has complied with the meet and confer
27 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
28 motion including the required declaration within 21 days (or 14 days, if applicable) shall

1 automatically waive the confidentiality designation for each challenged designation. In addition,
2 the Challenging Party may file a motion challenging a confidentiality designation at any time if
3 there is good cause for doing so, including a challenge to the designation of a deposition transcript
4 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
5 competent declaration affirming that the movant has complied with the meet and confer
6 requirements imposed by the preceding paragraph.

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23 7.2 Disclosure of "CASE CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
25 disclose any information or item designated "CASE CONFIDENTIAL" only to:
26

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

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

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

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

11 (d) the court and its personnel;

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

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

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

23 7.3 Disclosure of “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
24 “CASE CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by
25 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
26 information or item designated “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
27 “CASE CONFIDENTIAL – SOURCE CODE” only to:
28

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

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

9 (c) the court and its personnel;

10 (d) court reporters and their staff, professional jury or trial consultants (including
11 mock jurors), and Professional Vendors to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
13 and

14 (e) the author or recipient of a document containing the information or a custodian
15 or other person who otherwise possessed or knew the information.

16 7.4 Procedures for Approving or Objecting to Disclosure of “CASE CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” or “CASE CONFIDENTIAL – SOURCE CODE” Information or
18 Items to Experts.

19 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
20 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
21 that has been designated “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CASE
22 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a written
23 request to the Designating Party that (1) identifies the general categories of “CASE
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CASE CONFIDENTIAL – SOURCE
25 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
26 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches
27 a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
28 each person or entity from whom the Expert has received compensation or funding for work in his

1 or her areas of expertise or to whom the expert has provided professional services, including in
2 connection with a litigation, at any time during the preceding five years,² and (6) identifies (by
3 name and number of the case, filing date, and location of court) any litigation in connection with
4 which the Expert has offered expert testimony, including through a declaration, report, or
5 testimony at a deposition or trial, during the preceding five years.³

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

10 (c) A Party that receives a timely written objection must meet and confer with the
11 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
12 within seven days of the written objection. If no agreement is reached, the Party seeking to make
13 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
14 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
15 motion must describe the circumstances with specificity, set forth in detail the reasons why the
16 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
17 entail, and suggest any additional means that could be used to reduce that risk. In addition, any
18 such motion must be accompanied by a competent declaration describing the parties' efforts to
19 resolve the matter by agreement (*i.e.*, the extent and the content of the meet and confer discussions)
20 and setting forth the reasons advanced by the Designating Party for its refusal to approve the
21 disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
23 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
24 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

25
26 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
27 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
28 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination
of the litigation that could foreseeably result in an improper use of the Designating Party's "CASE CONFIDENTIAL –
ATTORNEYS' EYES ONLY" information.

1 8. SOURCE CODE

2 (a) To the extent production of source code becomes necessary in this case, a
3 Producing Party may designate source code as “CASE CONFIDENTIAL - SOURCE CODE” if it
4 comprises or includes confidential, proprietary or trade secret source code.

5 (b) Protected Material designated as “CASE CONFIDENTIAL – SOURCE
6 CODE” shall be subject to all of the protections afforded to “CASE CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY” information and may be disclosed only to the individuals to whom
8 “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set
9 forth in Paragraphs 7.3 and 7.4.

10 (c) Any source code produced in discovery shall be made available for
11 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business
12 hours or at other mutually agreeable times, at an office of the Producing Party’s counsel or another
13 mutually agreed upon location. The source code shall be made available for inspection on a secured
14 computer in a secured room without Internet access or network access to other computers, and the
15 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
16 any recordable media or recordable device. The Producing Party may visually monitor the
17 activities of the Receiving Party’s representatives during any source code review, but only to
18 ensure that there is no unauthorized recording, copying, or transmission of the source code.⁴

19 (d) The Receiving Party may request paper copies of limited portions of source
20 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
21 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
22 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance.
23 The Producing Party shall provide all such source code in paper form including bates numbers and
24 the label “CASE CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge the
25 amount of source code requested in hard copy form pursuant to the dispute resolution procedure

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28 ⁴ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the names of any individuals inspecting the source code and dates and times of inspection, and the names of any individuals to whom paper copies of portions of source code are provided.

1 and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party”
2 and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

3 (e) The Receiving Party shall maintain a record of any individual who has
4 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
5 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
6 Receiving Party shall not create any electronic or other images of the paper copies and shall not
7 convert any of the information contained in the paper copies into any electronic format. The
8 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
9 to prepare court filings, pleadings, or other papers (including a testifying expert’s expert report),
10 (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
11 copies used during a deposition shall be retrieved by the Producing Party at the end of each day and
12 must not be given to or left with a court reporter or any other unauthorized individual.⁵

13 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
14 LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that
16 compels disclosure of any information or items designated in this action as “CASE
17 CONFIDENTIAL,” or “CASE CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “CASE
18 CONFIDENTIAL – SOURCE CODE” that Party must:

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

21 (b) promptly notify in writing the party who caused the subpoena or order to issue in
22 the other litigation that some or all of the material covered by the subpoena or order is subject to
23 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
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27 _____
28 ⁵ The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For example, it may be appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before including “CASE CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

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

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

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

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

19 (b) In the event that a Party is required, by a valid discovery request, to produce
20 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement
21 with the Non-Party not 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
23 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

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

4 3. make the information requested available for inspection by the Non-Party.

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

12 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
21 MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain inadvertently
23 produced material is subject to a claim of privilege or other protection, the obligations of the
24 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
25 is not intended to modify whatever procedure may be established in an e-discovery order that
26 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence

27 _____
28 ⁷ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
2 communication or information covered by the attorney-client privilege or work product protection,
3 the parties may incorporate their agreement in the stipulated protective order submitted to the
4 court.

5 13. MISCELLANEOUS

6 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
7 seek its modification by the court in the future.

8 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
9 no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material covered by
12 this Protective Order.

13 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
14 laws and regulations relating to the export of technical data contained in such Protected Material,
15 including the release of such technical data to foreign persons or nationals in the United States or
16 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
17 data, and the Receiving Party shall take measures necessary to ensure compliance.

18 13.4 Filing Protected Material. Without written permission from the Designating Party or
19 a court order secured after appropriate notice to all interested persons, a Party may not file in the
20 public record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
22 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
23 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
24 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
25 to protection under the law. If a Receiving Party's request to file Protected Material under seal
26 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
27 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
28 instructed by the court.

1 14. FINAL DISPOSITION

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

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18
19 DATED: June 1, 2015

/s/ Darin W. Snyder

Darin W. Snyder
O’MELVENY & MYERS LLP
Attorneys for Plaintiff

20
21
22 DATED: June 1, 2015

/s/ Michael H. Bierman

Michael H. Bierman
MCKENNA LONG & ALDRIDGE LLP
Attorneys for Defendant

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ATTESTATION

I hereby attest that the other signatory listed concurs in this filing's content and has authorized the filing.

Dated: June 1, 2015

O'MELVENY & MYERS LLP

By: /s/ Darin W. Snyder
 Darin W. Snyder

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~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 2, 2015



Honorable Maria-Elena James
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on _____ [date] in the case of
Artifex Software, Inc. v. Entwrx Ltd. (Civil Action No. 3:14-cv-05231-MEJ). 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]