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Attorneys for Defendant
 REALTIME DATA LLC

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

17 Riverbed Technology, Inc.)

18 Plaintiff,)

19 vs.)

20 Realtime Data LLC d/b/a IXO,)

21 Defendant.)
 22)
 23)

Case Number: C 3:17-cv-3182-EMC

STIPULATED PROTECTIVE ORDER

24 Upon the stipulation of the parties, the Court ORDERS as follows:

25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
 27 confidential, proprietary, or private information for which special protection from public
 28 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

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

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

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

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
17 well as their support staff).

18 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

20 2.5 Designating Party: a Party or Non-Party that designates information or items that
21 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
23 CODE”.

24 2.6 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other things,
26 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
27 responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
3 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
5 or of a Party's competitor.

6 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
9 less restrictive means.

10 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
11 extremely sensitive "Confidential Information or Items" representing computer code and
12 associated comments and revision histories, formulas, engineering specifications, or schematics
13 that define or otherwise describe in detail the algorithms or structure of software or hardware
14 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
15 serious harm that could not be avoided by less restrictive means.

16 2.10 House Counsel: attorneys who are employees of a party to this action. House
17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
19 entity not named as a Party to this action.

20 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
21 action but are retained to represent or advise a party to this action and have appeared in this
22 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
23 that party.

24 2.13 Party: any party to this action, including all of its officers, directors, employees,
25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
27 Material in this action.
28

1 2.15 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
7 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected Material
12 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
13 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
14 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the following
16 information: (a) any information that is in the public domain at the time of disclosure to a
17 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
18 a result of publication not involving a violation of this Order, including becoming part of the
19 public record through trial or otherwise; and (b) any information known to the Receiving Party
20 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
21 obtained the information lawfully and under no obligation of confidentiality to the Designating
22 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

23 4. DURATION

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

1 action, including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
26 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
28

1 protected material.

2 A Party or Non-Party that makes original documents or materials available for inspection
3 need not designate them for protection until after the inspecting Party has indicated which
4 material it would like copied and produced. During the inspection and before the designation, all
5 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or portions thereof,
8 qualify for protection under this Order. Then, before producing the specified documents, the
9 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
11 CODE) to each page that contains Protected Material.

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

25
26 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
27 or other proceeding to include Protected Material so that the other parties can ensure that only
28 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
2 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

13 (c) for information produced in some form other than documentary and for
14 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
15 the container or containers in which the information or item is stored the legend
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
17 “HIGHLY CONFIDENTIAL – SOURCE CODE”.

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the Designating Party’s
20 right to secure protection under this Order for such material. Upon timely correction of a
21 designation, the Receiving Party must make reasonable efforts to assure that the material is
22 treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
25 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
27 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
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1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
4 process by providing written notice of each designation it is challenging and describing the basis
5 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
6 notice must recite that the challenge to confidentiality is being made in accordance with this
7 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
8 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
9 forms of communication are not sufficient) within 14 days of the date of service of notice. In
10 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
11 designation was not proper and must give the Designating Party an opportunity to review the
12 designated material, to reconsider the circumstances, and, if no change in designation is offered,
13 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
14 stage of the challenge process only if it has engaged in this meet and confer process first or
15 establishes that the Designating Party is unwilling to participate in the meet and confer process in
16 a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
18 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
19 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
20 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
21 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
22 accompanied by a competent declaration affirming that the movant has complied with the meet
23 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
24 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
25 shall automatically waive the confidentiality designation for each challenged designation. In
26 addition, the Challenging Party may file a motion challenging a confidentiality designation at
27 any time if there is good cause for doing so, including a challenge to the designation of a
28 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must

1 be accompanied by a competent declaration affirming that the movant has complied with the
2 meet and confer requirements imposed by the preceding paragraph.

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

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
27 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

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

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

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

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

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

23 (b) Designated House Counsel of the Receiving Party (1) to whom disclosure
24 is reasonably necessary for this litigation, (2) who has signed the “Acknowledgment and
25 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
26 7.5(a), below, have been followed];

27 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
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1 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5(b), below,
3 have been followed;

4 (d) the court and its personnel;

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

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

10 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
11 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL
13 – SOURCE CODE” only to:

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

17 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
18 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
19 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5(b), below,
20 have been followed;

21 (c) the court and its personnel;

22 (d) court reporters and their staff to whom disclosure is reasonably necessary
23 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A); and

25 (e) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information.
27
28

1 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
3 CODE” Information or Items to Designated House Counsel or Experts.

4 (a) Unless otherwise ordered by the court or agreed to in writing by the
5 Designating Party, a Party that seeks to disclose to Designated House Counsel any information
6 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 pursuant to paragraph 7.3(b) first must make disclose to the Designating Party the full name and
8 title of the Designated House Counsel and the city and state of his or her residence.

9 (b) Unless otherwise ordered by the court or agreed to in writing by the
10 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
11 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph
13 7.3(c) or 7.4(b) first must make disclose to the Designating Party: (1) the general categories of
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
15 – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the
16 Expert, (2) the full name of the Expert and the city and state of his or her primary residence, (3) a
17 copy of the Expert’s current resume, (4) the Expert’s current employer(s), (5) a list of each
18 person or entity from whom the Expert has received compensation or funding for work in his or
19 her areas of expertise or to whom the expert has provided professional services, including in
20 connection with a litigation, at any time during the preceding five years, and (6) a list, including
21 name and number of the case, filing date, and location of court, of any litigation in connection
22 with which the Expert has offered expert testimony, including through a declaration, report, or
23 testimony at a deposition or trial, during the preceding five years.

24 (c) A Party that makes a request and provides the information specified in the
25 preceding respective paragraphs may disclose the subject Protected Material to the identified
26 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
27 receives a written objection from the Designating Party. Any such objection must set forth in
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1 detail the grounds on which it is based. A Party may not disclose any Protected Material to the
2 identified Designated House Counsel or Expert within 14 days of delivering the request, unless
3 this provision is waived in writing (including via email) by the Designating Party.

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

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

22 8. PROSECUTION BAR

23 Absent written consent from the Producing Party, any Counsel representing Realtime and
24 any individual associated with Realtime who receives access to "HIGHLY CONFIDENTIAL –
25 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
26 information shall not be involved in the prosecution of patents or patent applications relating to
27 methods and systems for data compression or relating to WAN-optimization techniques,
28 including without limitation the patents asserted in this action and any patent or application

1 claiming priority to or otherwise related to the patents asserted in this action, before any foreign
2 or domestic agency, including the United States Patent and Trademark Office (“the Patent
3 Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting,
4 amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid
5 any doubt, “prosecution” as used in this paragraph does not include representing a party before a
6 domestic or foreign agency in a reissue protest, *ex parte* reexamination, *inter partes* review,
7 covered business method review, or other post-grant proceedings, subject to the following
8 limitations: (1) Realtime retains counsel separate from, and unaffiliated with, the attorney’s firm
9 in the above captioned case as lead counsel for any such post-grant proceedings or an “Ethical
10 Wall” is created between the individual attorney(s) at a law firm acting as lead counsel for any
11 such post-grant proceeding and an individual attorney subject to this provision at the same law
12 firm; (2); the person does not reveal “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information to the lead counsel for
14 that post-grant proceeding; and (3) the person does not provide any input on drafting or
15 amending claims or any input on arguments made in connection with any new or amended
16 claims.. This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
18 information is first received by the affected individual and shall end two (2) years after final
19 termination of this action.
20

21 9. SOURCE CODE

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

25 (b) Any source code produced in discovery shall be made available for
26 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
27 business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel
28 or another mutually agreed upon location. The source code shall be made available for inspection

1 on a single, secured computer in a secured room without Internet access or network access to
2 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
3 portion of the source code onto any recordable media or recordable device. The Receiving
4 Party's Outside Counsel of Record and Experts may take notes relating to the source code but
5 may not copy the source code directly into the notes. No cell phones or other electronic devices
6 may be brought into the secured room by the Receiving Party's Outside Counsel of Record or
7 Experts; however, at the Receiving Party's request, the Producing Party will provide the
8 Receiving Party's Outside Counsel of Record or Experts one non-networked computer with
9 camera function disabled to take typewritten notes related to the source code. The Receiving
10 Party's Outside Counsel of Record or Experts may periodically copy the notes from the note-
11 taking computer to a portable media (e.g., USB stick) and remove them from the room in which
12 source code is inspected. Any notes taken pursuant to this subparagraph by the Receiving Party's
13 Outside Counsel of Record or Experts shall be treated as HIGHLY CONFIDENTIAL –
14 SOURCE CODE material from the Producing Party, but shall not be discoverable by the
15 Producing Party. No copies of all or any portion of the source code or notes relating to the source
16 code may leave the room in which the source code is inspected except as otherwise provided
17 herein. The Producing Party may visually monitor the activities of the Receiving Party's
18 representatives during any source code review, but only to ensure that there is no unauthorized
19 recording, copying, or transmission of the source code.
20

21 (c) The Receiving Party may request paper copies of limited portions of
22 source code that are reasonably necessary for the preparation of court filings, pleadings, expert
23 reports, or other papers, or for deposition or trial, but shall not request paper copies for the
24 purposes of reviewing the source code other than electronically as set forth in paragraph (b) in
25 the first instance. The Producing Party shall provide all such source code in paper form including bates
26 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may
27 challenge the amount of source code requested in hard copy form pursuant to the dispute resolution
28 procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the "Challenging

1 Party” and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

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

13 10. 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 “CONFIDENTIAL”
17 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
18 CONFIDENTIAL – SOURCE CODE” that Party must:

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

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

25 (c) cooperate with respect to all reasonable procedures sought to be pursued
26 by the Designating Party whose Protected Material may be affected.
27

28 If the Designating Party timely seeks a protective order, the Party served with the

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

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

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

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

21 1. promptly notify in writing the Requesting Party and the Non-Party
22 that some or all of the information requested is subject to a confidentiality agreement with a
23 Non-Party;

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

27 3. make the information requested available for inspection by the
28

1 Non-Party.

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

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
18 MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other protection, the
21 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
22 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
23 an e-discovery order that provides for production without prior privilege review. Pursuant to
24 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect
25 of disclosure of a communication or information covered by the attorney-client privilege or work
26 product protection, the parties may incorporate their agreement in the stipulated protective order
27 submitted to the court.
28

1 14. MISCELLANEOUS

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
7 no Party waives any right to object on any ground to use in evidence of any of the material
8 covered by this Protective Order.

9 14.3 Filing Protected Material. Without written permission from the Designating Party
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
13 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
14 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
15 request establishing that the Protected Material at issue is privileged, protectable as a trade
16 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
17 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then
18 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
19 Rule 79-5(e)(2) unless otherwise instructed by the court.

20 15. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
22 Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or entity, to
27 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
28 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the

1 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
2 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
3 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
4 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
5 reports, attorney work product, and consultant and expert work product, even if such materials
6 contain Protected Material. Any such archival copies that contain or constitute Protected
7 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
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1 **IT IS SO STIPULATED**, through Counsel of Record.

2 Dated: December 15, 2017

HAYNES AND BOONE, LLP

3 By: /s/ Matthew P. Chiarizio

4
5 Attorney for Plaintiff
6 RIVERBED TECHNOLOGIES, INC.

7 **RUSS AUGUST & KABAT**

8 By: /s/ Paul A. Kroeger

9
10 Attorney for Defendant
11 REALTIME DATA, LLC

12 **ATTESTATION:** Pursuant to Local Rule 5-1(i)(3) I hereby attest that concurrence in the filing
13 of this document has been obtained from Paul A. Kroeger.

14 By: /s/ Matthew P. Chiarizio

15
16
17 **IT IS SO ORDERED** that the foregoing Agreement is approved.

18 Dated: 12/19/17

