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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

20 GN RESOUND A/S, a corporation,  
 21 Plaintiff,  
 22 v.  
 23 CALLPOD, INC., a corporation,  
 24 Defendant.

Case No.: 11-4673 SBA

**STIPULATED PROTECTIVE ORDER**

1       **1.       PURPOSES AND LIMITATIONS**

2               Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all  
7 disclosures or responses to discovery and that the protection it affords from public disclosure and  
8 use extends only to the limited information or items that are entitled to confidential treatment under  
9 the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,  
10 that this Stipulated Protective Order does not entitle them to file confidential information under  
11 seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and  
12 the standards that will be applied when a party seeks permission from the court to file material  
13 under seal.

14       **2.       DEFINITIONS**

15               2.1       Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17               2.2       “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
19 Civil Procedure 26(c).

20               2.3       Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
21 as their support staff).

22               2.4       Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24               2.5       Designating Party: a Party or Non-Party that designates information or items that it  
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1           2.6     Disclosure or Discovery Material: all items or information, regardless of the medium  
2 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
3 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
4 discovery in this matter.

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

10          2.8     "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party  
12 or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
13 restrictive means.

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

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

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

22          2.12    Party: any party to this action, including all of its officers, directors, employees,  
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

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

26          2.14    Professional Vendors: persons or entities that provide litigation support services  
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
28 storing, or retrieving data in any form or medium) and their employees and subcontractors.

1           2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
2 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3           2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
4 Producing Party.

5 **3. SCOPE**

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

18 **4. DURATION**

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

25 **5. DESIGNATING PROTECTED MATERIAL**

26           Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
27 Party that designates information or items for protection under this Order must take care to limit any  
28 such designation to specific material that qualifies under the appropriate standards. To the extent it

1 is practical to do so, the Designating Party must designate for protection only those parts of  
2 material, documents, items, or oral or written communications that qualify – so that other portions  
3 of the material, documents, items, or communications for which protection is not warranted are not  
4 swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
6 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
7 encumber or retard the case development process or to impose unnecessary expenses and burdens  
8 on other parties) expose the Designating Party to sanctions. If it comes to a Designating Party’s  
9 attention that information or items that it designated for protection do not qualify for protection at  
10 all or do not qualify for the level of protection initially asserted, that Designating Party must  
11 promptly notify all other parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
13 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
14 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
15 designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

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

24 A Party or Non-Party that makes original documents or materials available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated which material  
26 it would like copied and produced. During the inspection and before the designation, all of the  
27 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
28 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,  
2 qualify for protection under this Order. Then, before producing the specified documents, the  
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.  
5 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
6 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
7 margins) and must specify, for each portion, the level of protection being asserted.

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

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

27 Transcripts containing Protected Material shall have an obvious legend on the title page that  
28 the transcript contains Protected Material, and the title page shall be followed by a list of all pages

1 (including line numbers as appropriate) that have been designated as Protected Material and the  
2 level of protection being asserted by the Designating Party. The Designating Party shall inform the  
3 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-  
4 day period for designation shall be treated during that period as if it had been designated “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After  
6 the expiration of that period, the transcript shall be treated only as actually designated.

7 (c) for information produced in some form other than documentary and for any other  
8 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
9 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information  
11 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
12 portion(s) and specify the level of protection being asserted.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
14 designate qualified information or items does not, standing alone, waive the Designating Party’s  
15 right to secure protection under this Order for such material. Upon timely correction of a  
16 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
17 in accordance with the provisions of this Order.

## 18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
20 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
22 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
24 original designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
26 by providing written notice of each designation it is challenging and describing the basis for each  
27 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
28 recite that the challenge to confidentiality is being made in accordance with this specific paragraph

1 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
2 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
3 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
4 Party must explain the basis for its belief that the confidentiality designation was not proper and  
5 must give the Designating Party an opportunity to review the designated material, to reconsider the  
6 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
7 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
8 has engaged in this meet and confer process first or establishes that the Designating Party is  
9 unwilling to participate in the meet and confer process in a timely manner.

10           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
12 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)  
13 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
14 meet and confer process will not resolve their dispute, whichever is earlier.<sup>1</sup> Each such motion must  
15 be accompanied by a competent declaration affirming that the movant has complied with the meet  
16 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
17 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
18 shall automatically waive the confidentiality designation for each challenged designation. In  
19 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
20 time if there is good cause for doing so, including a challenge to the designation of a deposition  
21 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
22 accompanied by a competent declaration affirming that the movant has complied with the meet and  
23 confer requirements imposed by the preceding paragraph.

24           The burden of persuasion in any such challenge proceeding shall be on the Designating  
25 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose

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27 <sup>1</sup> After two challenges by the Challenging Party that cannot be resolved by the meet and confer  
28 process, the burden shifts on the Challenging Party to move to de-designate or down-designate. The  
burden of persuasion would remain on the Designating Party.



1 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
2 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
3 to retain confidentiality as described above, all parties shall continue to afford the material in  
4 question the level of protection to which it is entitled under the Producing Party's designation until  
5 the court rules on the challenge.

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

7  
8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
9 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
10 defending, or attempting to settle the above-captioned litigation. Such Protected Material may be  
11 disclosed only to the categories of persons and under the conditions described in this Order. When  
12 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
13 below (FINAL DISPOSITION).

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

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

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of  
20 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
21 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is  
22 attached hereto as Exhibit A;

23 (b) one officer, director, or employee (including House Counsel) of the Receiving Party to  
24 whom disclosure is reasonably necessary for this litigation and who have signed the  
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
27 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement  
28 to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

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

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

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

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

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

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

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

24 (c) the court and its personnel;

25 (d) court reporters and their staff, professional jury or trial consultants, and Professional  
26 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and  
28

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

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

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

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

23 (c) A Party that receives a timely written objection must meet and confer with the  
24 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement

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

1 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
2 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
3 with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the court  
4 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
5 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
6 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In  
7 addition, any such motion must be accompanied by a competent declaration describing the parties'  
8 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
9 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
10 approve the disclosure.

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

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
15 **LITIGATION**

16 If a Party is served with a subpoena or a court order issued in other litigation that compels  
17 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must: (a) promptly notify  
19 in writing the Designating Party. Such notification shall include a copy of the subpoena or court  
20 order; (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
21 other litigation that some or all of the material covered by the subpoena or order is subject to this  
22 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and (c)  
23 cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party  
24 whose Protected Material may be affected.<sup>3</sup>

25  
26 \_\_\_\_\_  
27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 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           If the Designating Party timely seeks a protective order, the Party served with the subpoena  
2 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court  
4 from 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 that  
6 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       **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
10       **THIS LITIGATION**

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

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

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

25           (c)     If the Non-Party fails to object or seek a protective order from this court within 14  
26 days of receiving the notice and accompanying information, the Receiving Party may produce the  
27 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
28 seeks a protective order, the Receiving Party shall not produce any information in its possession or

1 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
2 the court.<sup>4</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
3 seeking protection in this court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
13 **PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
15 produced material is subject to a claim of privilege or other protection, the obligations of the  
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B), except the  
17 recipient of an inadvertent production may not “sequester” or in any way use the document(s)  
18 pending resolution of a challenge to the claim of privilege or other protection to the extent it would  
19 be otherwise allowed by Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended  
20 to modify whatever procedure may be established in an e-discovery order that provides for  
21 production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),  
22 insofar as the parties reach an agreement on the effect of disclosure of a communication or  
23 information covered by the attorney-client privilege or work product protection, the parties may  
24 incorporate their agreement in the stipulated protective order submitted to the court.

25 **12. MISCELLANEOUS**

26 \_\_\_\_\_  
27 <sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1           12.1   Right to Further Relief. Nothing in this Order abridges the right of any person to  
2 seek its modification by the court in the future.

3           12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
4 no Party waives any right it otherwise would have to object to disclosing or producing any  
5 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
6 Party waives any right to object on any ground to use in evidence of any of the material covered by  
7 this Protective Order.

8           12.3   Filing Protected Material. Without written permission from the Designating Party or  
9 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
10 public record in this action any Protected Material. A Party that seeks to file under seal any  
11 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
12 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
13 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
14 sealing order will issue only upon a request establishing that the Protected Material at issue is  
15 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
16 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d)  
17 and General Order 62 is denied by the court, then the Receiving Party may file the Protected  
18 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the  
19 court.

20           12.4   Export Control. Disclosure of Protected Material shall be subject to all applicable  
21 laws and regulations relating to the export of technical data contained in such Protected Material,  
22 including the release of such technical data to foreign persons or nationals in the United States or  
23 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
24 data, and the Receiving Party shall take measures necessary to ensure compliance.

25   **13.    FINAL DISPOSITION**

26           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
27 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
28 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,

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

13  
14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15  
16 DATED: By: /s/ Monty Agarwal  
MONTY AGARWAL  
Attorneys for Plaintiff  
GN RESOUND A/S

17  
18  
19 DATED: By: /s/ Peter Chang  
PETER H. CHANG  
Attorneys for Defendant  
CALLPOD, INC.

20  
21  
22  
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24  
25 DATED: 8/17/12

  
SAUNDRA B. ARMSTRONG  
United States District Judge



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 *GN Resound A/S v. Callpod, Inc.*, Case No.: 11-cv-4673. 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]