

Lawrence G. Townsend SBN 88184
 L/O LAWRENCE G. TOWNSEND
 455 Market Street, Suite 1910
 San Francisco, California 94105
 Tel. 415.882.3200
 Fax 415.882.3232
 Email: ltownsend@owe.com

Attorneys for Plaintiff and Counter-Defendant
 AUTOOPT NETWORKS, INC

Chris Kao, SBN 227086
 ckao@kaollp.com
 Andrew Hamill SBN 251156
 ahamill@kaollp.com
 Whitney Miner, SBN 290825
 wminer@kaollp.com
 KAO LLP
 One Post Street, Suite 1000
 San Francisco, CA 94104
 Tel. 415.539.0996
 Fax. 866.267.0243

Robert E. Camors, Jr. SBN 121204
 bobcamors@camorslaw.com
 LAW OFFICES OF BOB CAMORS
 50 West San Fernando Street
 Suite 1424
 San Jose, CA 95113
 Tel. 408.573-5744
 Fax 408.573-5743

Attorneys for Defendant and Counter-Plaintiff
 Gnanenthiran Jayanthan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUTOOPT NETWORKS, INC., a California
 corporation,

Plaintiff,

vs.

VIJAY KARANI, an individual; MOBILE
 TERRACE, INC., a California corporation;
 GNANENTHIRAN JAYANTHAN, an individual,

Defendants.

AND RELATED CROSS-ACTION

Case No. 4:17-cv-04714-HSG

**STIPULATED PROTECTIVE
 ORDER**
**(Modifying Patent Local Rule 2-2
 Interim Model Protective Order For
 Non-Patent Software Case)**

1
2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure and from use for
5 any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket
6 protections on all disclosures or responses to discovery and the protection it affords from public disclosure
7 and use extends only to the limited information or items that are entitled to confidential treatment under
8 the applicable legal principles. As set forth in Section 14.4 below, this Protective Order does not entitle the
9 Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
10 must be followed and the standards that will be applied when a party seeks permission from the court to
11 file material under seal.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
14 items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
16 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
17 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

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

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

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

5 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
6 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-
7 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

8 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
9 sensitive "Confidential Information or Items" representing computer code and associated comments and
10 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
11 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
12 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
13 means.

14 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel
15 does not include Outside Counsel of Record or any other outside counsel.

16 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
17 not named as a Party to this action.

18 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
19 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
20 party or are affiliated with a law firm which has appeared on behalf of that party.

21 2.13 Party: any party to this action, including all of its officers, directors, employees,
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
24 this action.

25 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
26 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
27 retrieving data in any form or medium) and their employees and subcontractors.

28 2.16 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
2 CONFIDENTIAL – SOURCE CODE.”

3 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
4 Party.

5 3. SCOPE

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

17 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
26 Party that designates information or items for protection under this Order must take care to limit any such
27 designation to specific material that qualifies under the appropriate standards. To the extent it is practical
28 to do so, the Designating Party must designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify – so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept unjustifiably within the
3 ambit of this Order.

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

8 If it comes to a Designating Party's attention that information or items that it designated for
9 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,
10 that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken
11 designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
13 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
14 Material that qualifies for protection under this Order must be clearly so designated before the material is
15 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 legend
19 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY
20 CONFIDENTIAL – SOURCE CODE" to each page that contains protected material. If only a portion or
21 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify
22 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
23 portion, the level of protection being asserted.

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

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

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

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

25 Transcripts containing Protected Material shall have an obvious legend on the title page that the
26 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
27 line numbers as appropriate) that have been designated as Protected Material and the level of protection
28 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these

1 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
2 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript
4 shall be treated only as actually designated.

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

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
12 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
13 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
14 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
15 Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation
19 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
20 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
21 designation by electing not to mount a challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
23 providing written notice of each designation it is challenging and describing the basis for each challenge.
24 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
25 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
26 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
27 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14
28 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its

1 belief that the confidentiality designation was not proper and must give the Designating Party an
2 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
3 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
4 the next stage of the challenge process only if it has engaged in this meet and confer process first or
5 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
6 manner.

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

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

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or

1 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
2 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
3 persons and under the conditions described in this Order. When the litigation has been terminated, a
4 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

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

7 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
8 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
9 item designated "CONFIDENTIAL" only to:

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

14 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
15 whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
16 and Agreement to Be Bound" (Exhibit A);

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

20 (d) the court and its personnel;

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

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

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

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

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

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

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

(d) the court and its personnel;

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

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

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –

¹ This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items
2 to Designated House Counsel or Experts.

3 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
4 a Party that seeks to disclose to Designated House Counsel any information or item that has been
5 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(b)
6 first must make a written request to the Designating Party that (1) sets forth the full name of the
7 Designated House Counsel and the city and state of his or her residence and (2) describes the Designated
8 House Counsel's current and reasonably foreseeable future primary job duties and responsibilities in
9 sufficient detail to determine if House Counsel is involved, or may become involved, in any competitive
10 decision-making.

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

25 _____
26
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
28 Expert should provide whatever information the Expert believes can be disclosed 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 (b) A Party that makes a request and provides the information specified in the preceding
2 respective paragraphs may disclose the subject Protected Material to the identified Designated House
3 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection
4 from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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

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

20 8. [Intentionally Omitted]

21 9. SOURCE CODE

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

25 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" shall
26 be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY" information, including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to
28 the individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may

1 be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

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

11 (d) The Receiving Party may request paper copies of limited portions of source code that are
12 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for
13 deposition or trial, but shall not request paper copies for the purpose of reviewing the source code other
14 than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all
15 such source code in paper form, including bates numbers and the label "HIGHLY CONFIDENTIAL –
16 SOURCE CODE." The Producing Party may challenge the amount of source code requested in hard copy
17 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
18 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for
19 purposes of dispute resolution.

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

1 unauthorized individual.

2 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
3 LITIGATION

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

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

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

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

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

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

25 (a) The terms of this Order are applicable to information produced by a Non-Party in this
26 _____

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
28 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 action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties
3 in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
4 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

21 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
23 to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must
24 immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best
25 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to
26

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

whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

14. MISCELLANEOUS

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

14.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

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

14.4 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material

1 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
2 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
3 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
4 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
5 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the
6 court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
7 Rule 79-5(e)(2) unless otherwise instructed by the court.

8 15. FINAL DISPOSITION

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

23 ///

24 ///

25 ///

26 ///

27 ///

1 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

2
3 Dated: December 7, 2017

By: L/O LAWRENCE G. TOWNSEND

4 /s/ Lawrence G. Townsend

5 Attorneys for Plaintiff and Counter-
6 Defendant Autoopt Networks, Inc.

7 Dated: December 7, 2017

By: L/O BOB CAMORS

8 /s/ Robert E. Camors, Jr.

9 Attorneys for Defendant and Counter-
10 Plaintiff Gnanenthiran Jayanthan

11
12 **ATTESTATION OF CONCURRENCE IN FILING**

13 Pursuant to Local Rule 5-1(i)(3), the filer hereby attests that concurrence in the filing of
14 this document has been obtained from each of the other signatories, which shall serve in lieu of
15 their signatures on the document.

16
17 /s/ Lawrence G. Townsend

18 Attorneys for Plaintiff and Counter-
19 Defendant Autoopt Networks, Inc.

20
21 IT IS SO ORDERED.

22 DATED: December 8, 2017



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Protective Order that was issued by the United States District Court for the Northern District of
6 California on _____ [date] in the case of _____ **[insert formal name of the case and the**
7 **number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms
8 of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Protective Order to any person or entity except in
11 strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
13 Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such
14 enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as my
17 California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]

26 S:\LGT-TENA\AutooptNetworks\Fed Copyright Action\Pleading\Interim Model Patent Protective Order Revised.doc
27
28