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5 Attorneys for Plaintiffs
 6 Sigma Six Technologies, Inc. and
 Sigma Six Consulting, LLC.

7
 8 UNITED STATES DISTRICT COURT
 9
 10 NORTHERN DISTRICT OF CALIFORNIA
 11
 12 San Jose Division

13 SIGMA SIX TECHNOLOGIES, INC., a
 New York corporation and SIGMA SIX
 14 CONSULTING, LLC, a New York limited
 15 liability company,

16 Plaintiff,
 17 v.

18 NAGARRO, INC., a New Jersey
 corporation, T-SYSTEMS
 19 INTERNATIONAL GmbH, a German
 20 business entity, and DOES 1-100.,
 21 Defendants.

Case No.: CV 08 5633 PVT

STIPULATED PROTECTIVE ORDER

22
 23 **1. PURPOSES AND LIMITATIONS**

24 Disclosure and discovery activity in this action are likely to involve production
 25 of confidential, proprietary, or private information for which special protection from
 26 public disclosure and from use for any purpose other than prosecuting this litigation
 27 would be warranted. Accordingly, the parties hereby stipulate to and petition the court
 28 to enter the following Stipulated protective order. The parties acknowledge that this
 Order does not confer blanket protections on all disclosures or responses to discovery

1 and that the protection it affords extends only to the limited information or items that
2 are entitled under the applicable legal principles to treatment as confidential. The
3 parties further acknowledge, as set forth in Section 10, below, that this Stipulated
4 Protective Order creates no entitlement to file confidential information under seal; Civil
5 Local Rule 79-5 sets forth the procedures that must be followed and reflects the
6 standards that will be applied when a party seeks permission from the court to file
7 material under seal.

8 **2. DEFINITIONS**

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, outside counsel (and their support staff), and
11 each Party's insurance carrier (s) that are defending the claims in this action.

12 2.2 Disclosure or Discovery Material: all items or information,
13 regardless of the medium or manner generated, stored, or maintained (including,
14 among other things, testimony, transcripts, or tangible things) that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 2.3 "Confidential" Information or Items: information (regardless of
17 how generated, stored or maintained) or tangible things that qualify for protection
18 under standards developed under F.R.Civ.P. 26(c).

19 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or
20 Items: extremely sensitive "Confidential Information or Items" whose disclosure to
21 another Party or nonparty would create a substantial risk of serious injury that could
22 not be avoided by less restrictive means.

23 2.5 Receiving Party: a Party that receives Disclosure or Discovery
24 Material from a Producing Party.

25 2.6 Producing Party: a Party or non-party that produces Disclosure or
26 Discovery Material in this action.

1 2.7. Designating Party: a Party or non-party that designates information
2 or items that it produces in disclosures or in responses to discovery as “Confidential” or
3 “Highly Confidential – Attorneys’ Eyes Only.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is
5 designated as
6 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

7 2.9 Outside Counsel: attorneys who are not employees of a Party but
8 who are retained to represent or advise a Party in this action.

9 2.10 House Counsel: attorneys who are employees of a Party or
10 employed with a Party’s parent, subsidiary or affiliate.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel
12 (as well as their support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a
14 matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
16 expert witness or as a consultant in this action and who is not a past or a current
17 employee of a Party and who, at the time of retention, Counsel does not have reason to
18 believe is or will become an employee of a Party. This definition includes a professional
19 jury or trial consultant retained in connection with this litigation.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
22 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
23 their employees and subcontractors.

24 **3. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also any information copied or extracted therefrom, as
27 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
28

1 conversations, or presentations by parties or counsel to or in court or in other settings
2 that might reveal Protected Material.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
6 in writing or a court order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for
9 Protection. Each Party or non-party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. A Designating Party must take care to
12 designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify – so that other portions of the material,
14 documents, items, or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, routinized or over-designations are prohibited.
17 Designations that are shown to be clearly unjustified, or that have been made for an
18 improper purpose (e.g., to unnecessarily encumber or retard the case development
19 process, or to impose unnecessary expenses and burdens on other parties), expose the
20 Designating Party to sanctions. If it comes to a Party's or a non-party's attention that
21 information or items that it designated for protection do not qualify for protection at all,
22 or do not qualify for the level of protection initially asserted, that Party or non-party
23 must promptly notify all other parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided
25 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
26 stipulated or ordered, material that qualifies for protection under this Order must be
27 clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings), that the Producing Party affix the
3 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
4 ONLY" at the top of 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
6 must clearly identify the protected portion(s) (e.g., by making appropriate markings in
7 the margins) and must specify, for each portion, the level of protection being asserted
8 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
9 ONLY").

10 A Party or non-party that makes original documents or materials
11 available for inspection need not designate them for protection until after the inspecting
12 Party has indicated which material it would like copied and produced. During the
13 inspection and before the designation, all of the material made available for inspection
14 shall be deemed "CONFIDENTIAL," except the Producing Party can designate a subset
15 of the materials as "HIGHLY CONFIDENTIAL –ATTORNEYS' EYES ONLY" if it has
16 good cause to do so. After the inspecting Party has identified the documents it wants
17 copied and produced, the Producing Party must determine which documents, or
18 portions thereof, qualify for protection under this Order, then, before producing the
19 specified documents, the Producing Party must affix the appropriate legend
20 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") on
21 each page that contains Protected Material. If only a portion or portions of the material
22 on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must
24 specify, for each portion, the level of protection being asserted (either
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

26 (b) for testimony given in deposition or in other pretrial or trial
27 proceedings, that the Party or non-party offering or sponsoring the testimony identify
28 on the record, before the close of the deposition, hearing, or other proceeding, all

1 protected testimony, and further specify any portions of the testimony that qualify as
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to
3 identify separately each portion of testimony that is entitled to protection, and when it
4 appears that substantial portions of the testimony may qualify for protection, the Party
5 or non-party that sponsors, offers, or gives the testimony may invoke on the record
6 (before the deposition or proceeding is concluded) a right to have up to 20 days to
7 identify the specific portions of the testimony as to which protection is sought and to
8 specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony
10 that are appropriately designated for protection within the 20 days shall be covered by
11 the provisions of this Stipulated Protective Order.

12 Transcript pages containing Protected Material must be separately bound by the
13 court reporter, who must affix to the top of each such page the legend
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
15 instructed by the Party or nonparty offering or sponsoring the witness or presenting the
16 testimony.

17 (c) for information produced in some form other than
18 documentary, and for any other tangible items, that the Producing Party affix in a
19 prominent place on the exterior of the container or containers in which the information
20 or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential
24 – Attorneys’ Eyes Only.”

25 5.3 Inadvertent Failures to Designate. If timely corrected, an
26 inadvertent failure to designate qualified information or items as “Confidential” or
27 “Highly Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the
28 Designating Party’s right to secure protection under this Order for such material. If

1 material is appropriately designated as “Confidential” or “Highly Confidential –
2 Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on
3 timely notification of the designation, must make reasonable efforts to assure that the
4 material is treated in accordance with the provisions of this Order.

5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
7 Party’s confidentiality designation is necessary to avoid foreseeable substantial
8 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
9 the litigation, a Party does not waive its right to challenge a confidentiality designation
10 by electing not to mount a challenge promptly after the original designation is
11 disclosed.

12 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
13 Designating Party’s confidentiality designation must do so in good faith and must begin
14 the process by conferring directly (in voice to voice dialogue; other forms of
15 communication are not sufficient) with counsel for the Designating Party. In conferring,
16 the challenging Party must explain the basis for its belief that the confidentiality
17 designation was not proper and must give the Designating Party an opportunity to
18 review the designated material, to reconsider the circumstances, and, if no change in
19 designation is offered, to explain the basis for the chosen designation. A challenging
20 Party may proceed to the next stage of the challenge process only if it has engaged in
21 this meet and confer process first.

22 6.3 Judicial Intervention. A Party that elects to press a challenge to a
23 confidentiality designation after considering the justification offered by the Designating
24 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with
25 Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth
26 in detail the basis for the challenge. Each such motion must be accompanied by a
27 competent declaration that affirms that the movant has complied with the meet and
28 confer requirements imposed in the preceding paragraph and that sets forth with

1 specificity the justification for the confidentiality designation that was given by the
2 Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Until the court rules on the challenge, all parties shall continue to
5 afford the material in question the level of protection to which it is entitled under the
6 Producing Party's designation.

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

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

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

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

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

25 (b) the officers, directors, and employees (including House
26 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
27 litigation;

1 (c) experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this litigation and who have signed the
3 “Agreement to Be Bound by Protective Order,” the copy of which shall remain in the
4 retaining Counsel’s possession until further order of this Court requiring its production
5 to the other Counsel. (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 “Agreement to Be Bound by Protective Order” (Exhibit A);

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

16 (g) the author of the document or the original source of the
17 information.

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

22 (a) the Receiving Party’s Outside Counsel of record in this action,
23 as well as employees of said Counsel to whom it is reasonably necessary to disclose the
24 information for this litigation, and each Party’s insurance carrier(s) that are defending
25 the claims in this action, and who have signed the “Agreement to Be Bound by
26 Protective Order” that is attached hereto as Exhibit A;

27 (b) House Counsel of a Receiving Party to whom disclosure is
28 reasonably necessary for this litigation, and who has signed the “Agreement to Be

1 Bound by Protective Order,” the copy of which shall remain in that Party’s Counsel’s
2 possession until further order of this Court requiring its production to the other
3 Counsel. (Exhibit A);

4 (c) Experts (as defined in this Order) (1) to whom disclosure is
5 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be
6 Bound by Protective Order,” the copy of which shall remain in the retaining Counsel’s
7 possession until further order of this Court requiring its production to the other
8 Counsel (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and professional vendors to whom
11 disclosure is reasonably necessary for this litigation and who have signed the
12 “Agreement to Be Bound by Protective Order” (Exhibit A); and

13 (f) the author of the document or the original source of the
14 information.

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

17 If a Receiving Party is served with a subpoena or an order issued in other
18 litigation that would compel disclosure of any information or items designated in this
19 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if
21 possible) immediately and in no event more than three court days after receiving the
22 subpoena or order. Such notification must include a copy of the subpoena or court
23 order.

24 The Receiving Party also must immediately inform in writing the Party who
25 caused the subpoena or order to issue in the other litigation that some or all the material
26 covered by the subpoena or order is the subject of this Protective Order. In addition, the
27 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
28 Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the
2 existence of this Protective Order and to afford the Designating Party in this case an
3 opportunity to try to protect its confidentiality interests in the court from which the
4 subpoena or order issued. The Designating Party shall bear the burdens and the
5 expenses of seeking protection in that court of its confidential material – and nothing in
6 these provisions should be construed as authorizing or encouraging a Receiving Party
7 in this action to disobey a lawful directive from another court.

8 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

17 **10. FILING PROTECTED MATERIAL.**

18 Without written permission from the Designating Party or a court order secured
19 after appropriate notice to all interested persons, a Party may not file in the public
20 record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5.

22 **11. FINAL DISPOSITION.**

23 Unless otherwise ordered or agreed in writing by the Producing Party, within
24 sixty days after the final termination of this action, each Receiving Party must return all
25 Protected Material to the Producing Party. As used in this subdivision, “all Protected
26 Material” includes all copies, abstracts, compilations, summaries or any other form of
27 reproducing or capturing any of the Protected Material. With permission in writing
28 from the Designating Party, the Receiving Party may destroy some or all of the

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

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of
15 any person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in this
19 Stipulated Protective Order. Similarly, no Party waives any right to object on any
20 ground to use in evidence of any of the material covered by this Protective Order.
21

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

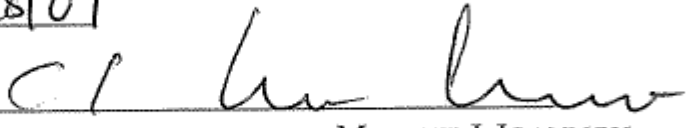
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24 DATED: 7/29/2009

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28 _____
HARMEET DHILLON
Attorney for Plaintiffs

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DATED: 7/28/09



MICHAEL J. IOANNOU
Attorney for Defendant Nagarro, Inc.

DATED: 7/29/2009

/s/ Michael Turco

MICHAEL TURCO
Attorney for Defendant T-Systems GmbH

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: July 30, 2009



HONORABLE]XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Patricia V. Trumbull
U.S. Magistrate Judge

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

14
15 Date: _____

16 City and State where sworn and signed: _____

17 Printed name: _____
18 [printed name]

19 Signature: _____
20 [signature]