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BALLY TECHNOLOGIES, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BALLY TECHNOLOGIES, INC., a Nevada Corporation,

Plaintiff,

v.

BUSINESS INTELLIGENCE SYSTEMS SOLUTIONS, INC., a California corporation,

Defendant.

Civil Action No. 2:10-cv-440-PMP-RJJ
STIPULATED PROTECTIVE ORDER

1 WHEREAS Plaintiff Bally Technologies, Inc. (“Bally”) and Defendant Business
2 Intelligence Systems Solutions, Inc. (“BIS2”) are parties to the above referenced patent
3 infringement case (hereinafter, the "Litigation");

4 WHEREAS, discovery in this Litigation may involve the disclosure of certain
5 documents, things and information in the possession, custody or control of a party or a non-
6 party that constitute or contain trade secrets or other confidential research, development,
7 manufacture, regulatory, financial, marketing or other competitive information within the
8 meaning of Rule 26(c) of the Federal Rules of Civil Procedure; and

9 WHEREAS, good cause exists for entry of this Order, *see* Fed. R Civ. P. 26(c), *Pansy*
10 *v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994); and

11 WHEREAS, this Protective Order provides reasonable restrictions on the disclosure of
12 such sensitive materials of a confidential nature; and

13 WHEREAS, all parties agree to the terms of this Protective Order to protect their
14 confidential documents and information;

15 THEREFORE, in view of the foregoing and because the parties hereto, by and through
16 their respective counsel, have stipulated to the entry of the following Protective Order
17 pursuant to Fed. R. Civ. P. 26(c), and the Court having determined good cause exists for entry
18 of this Order,

19 IT IS HEREBY STIPULATED, AGREED, ORDERED BY THE COURT, as follows:

20 1. **Scope of Protective Order.**

21 This Order shall apply to all information, documents, things, responses to discovery,
22 and testimony produced or within the scope of discovery in this Litigation, including, without
23 limitation, all documents or things produced in response to requests for the production of
24 documents and things or subpoenas, answers to interrogatories, responses to requests for
25 admission, testimony adduced at depositions and upon written questions, all other discovery
26 taken pursuant to the Federal Rules of Civil Procedure, and any other information furnished,
27 directly or indirectly, by or on behalf of any party to this Litigation or any non-party. The

1 party or non-party producing such information is referred to both in the singular and in the
2 plural hereafter as the "Producing Party," and the party receiving such information is referred
3 to hereafter as the "Receiving Party."

4 2. **Definitions.**

5 The terms "CONFIDENTIAL INFORMATION" and "HIGHLY CONFIDENTIAL
6 INFORMATION" as used herein, are defined as follows:

7 A. "CONFIDENTIAL INFORMATION" means any form of trade secret or other
8 confidential research, development, or commercial information within the
9 meaning of Fed. R. Civ. P. 26(c). The designation of "CONFIDENTIAL
10 INFORMATION" by a Producing Party constitutes its representation that it
11 reasonably and in good faith believes that the designated material constitutes or
12 contains information in one or more of the foregoing categories within the
13 meaning of Fed. R. Civ. P. 26(c). Further, CONFIDENTIAL
14 INFORMATION includes: (a) all copies, extracts, and complete or partial
15 summaries prepared from CONFIDENTIAL INFORMATION and (b) portions
16 of briefs, memoranda, or any other writings filed with the Court and exhibits
17 thereto that contain, summarize, or reflect the content of any such
18 CONFIDENTIAL INFORMATION.

19 B. "HIGHLY CONFIDENTIAL INFORMATION" means CONFIDENTIAL
20 INFORMATION that, in addition to meeting the requirements of paragraph A,
21 is of such a sensitive nature that it supports a reasonable and good faith belief
22 that granting access to such information to an employee or officer of a
23 competitor will place the Producing Party at a competitive disadvantage.

24 Further, HIGHLY CONFIDENTIAL INFORMATION includes: (a) all copies,
25 extracts, and complete or partial summaries prepared from HIGHLY CONFIDENTIAL
26 INFORMATION and (b) portions of briefs, memoranda, or any other writings filed with the
27

1 Court and exhibits thereto that contain, summarize, or reflect the content of any such
2 HIGHLY CONFIDENTIAL INFORMATION.

3 3. **Non-Parties Under The Protective Order.**

4 This Protective Order shall apply to any information provided by a non-party in
5 discovery in the Litigation. With respect to such information provided and so designated by a
6 non-party, such non-party has the same rights and obligations under this Protective Order as
7 held by the Parties to the Litigation, and the Parties will treat such information in accordance
8 with this Protective Order.

9 4. **Marking Documents and Things.**

10 Each page of a document and each thing that constitutes or contains CONFIDENTIAL
11 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall be labeled or marked
12 respectively with the legend "CONFIDENTIAL INFORMATION" or "HIGHLY
13 CONFIDENTIAL INFORMATION—ATTORNEYS EYES ONLY" when the document or
14 thing is produced to the Receiving Party. To the extent practical, the "CONFIDENTIAL
15 INFORMATION" or "HIGHLY CONFIDENTIAL INFORMATION—ATTORNEYS EYES
16 ONLY" legend shall be placed near the production number. Anything that cannot be so
17 labeled or marked on its face shall be labeled or marked by placing the appropriate legend on
18 a container or package in which it is produced or on a tag attached thereto. Material produced
19 without any such legend shall not be subject to the protections afforded such information
20 under this Protective Order unless otherwise agreed by the Parties, ordered by the Court, or
21 designated in accordance with paragraph 8 of this Protective Order. Inspection of
22 CONFIDENTIAL OR HIGHLY CONFIDENTIAL materials shall be conducted only by
23 persons eligible under paragraphs 11 and 12 below. Such persons shall initially treat all
24 materials disclosed during any inspection as containing HIGHLY CONFIDENTIAL
25 INFORMATION. If the inspected materials are produced, such materials shall be thereafter
26 treated by the Receiving Party in accordance with the confidentiality designation made at the
27 time of their production.

1 5. **Marking Interrogatories, Requests for Admissions, and Deposition Testimony on**
2 **Written Questions.**

3 Each page of any response to interrogatories, response to requests for admissions, and
4 deposition testimony upon written questions that constitutes or contains CONFIDENTIAL
5 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall be labeled or marked
6 respectively with the legend "CONFIDENTIAL INFORMATION" or "HIGHLY
7 CONFIDENTIAL INFORMATION—ATTORNEYS EYES ONLY" when the response or
8 testimony is served upon the Receiving Party. Such responses or testimony served without
9 any such legend shall not be subject to the protections afforded such information under this
10 Protective Order unless otherwise agreed by the Parties, ordered by the Court, or designated
11 in accordance with paragraph 8 of this Protective Order.

12 6. **Marking Deposition Testimony.**

13 Any portion of a deposition may be designated CONFIDENTIAL INFORMATION or
14 HIGHLY CONFIDENTIAL INFORMATION during the deposition itself. Regardless of
15 whether such a designation is made during the deposition, all testimony adduced at
16 depositions and any transcripts thereof will be presumptively treated as HIGHLY
17 CONFIDENTIAL INFORMATION for a grace period beginning from the date of the
18 deposition until twenty (20) days after a complete copy of the transcript has been provided to
19 the deponent or the deponent's counsel. Within this twenty-day grace period, any party may
20 designate any additional portion of any deposition transcript as CONFIDENTIAL
21 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by specifying in writing
22 to counsel the portion of the transcript believed to constitute or contain CONFIDENTIAL
23 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by page and line number.
24 If no such designation is made during a deposition or the twenty-day grace period, the
25 transcript from such deposition shall not be subject to the protections afforded such
26 information under this Protective Order unless otherwise agreed by the Parties, ordered by the
27 Court, or designated in accordance with paragraph 8 of this Protective Order.

1 **7. Limitations on Attendance at Depositions.**

2 Counsel for a Producing Party may request that all persons other than the witness, the
3 court reporter, those individuals specified in paragraphs 11 and 12, and counsel for the
4 witness (if a non-party witness) leave the deposition room during any portion of a deposition
5 that inquires about or discloses subject matter that such counsel deems CONFIDENTIAL
6 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION. If such individuals fail
7 to comply with such a request, the requesting counsel for the Producing Party may seek relief
8 from the appropriate Court, and, pending resolution of that request, instruct or request the
9 witness not to answer questions relating to, or to limit disclosure of, the CONFIDENTIAL
10 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION at issue.

11 **8. Inadvertent Production of CONFIDENTIAL INFORMATION or HIGHLY**
12 **CONFIDENTIAL INFORMATION.**

13 If a Producing Party inadvertently or mistakenly produces any CONFIDENTIAL
14 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION without labeling,
15 marking, or designating it as provided in this Protective Order, the Producing Party may,
16 within ten (10) business days after learning of the inadvertent or mistaken production, give
17 written notice to the Receiving Party that the material at issue is or contains
18 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION and
19 should be treated as such in accordance with this Protective Order. In such instance, the
20 Producing Party shall also provide copies of the material at issue properly marked as required
21 under this Protective Order. Upon receipt of such notice and properly marked material, the
22 Receiving Party shall treat such information consistent with the re-designation. Disclosure of
23 such information to persons not authorized to receive CONFIDENTIAL INFORMATION or
24 HIGHLY CONFIDENTIAL INFORMATION prior to receipt of such notice shall not be
25 deemed a violation of this Protective Order.

26 Should any CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
27 INFORMATION be disclosed, through inadvertence or otherwise, by the receiving party to

1 any person or party not authorized under this Protective Order, then the receiving party shall
2 (a) use its best efforts to obtain the return of any such material or information and to bind such
3 person to the terms of this Protective Order, (b) within three (3) business days of the
4 discovery of such disclosure, inform such person of all provisions of this Protective Order and
5 request such person to sign the Undertaking in the form attached hereto as Exhibit A, and (c)
6 within five (5) business days of the discovery of such disclosure, provide written notice to the
7 producing party of the unauthorized disclosure, including the identity of the unauthorized
8 recipient and the confidential information disclosed.

9 9. **Inadvertent Production of Privileged or Work Product Information.**

10 The inadvertent production during discovery of any document or other information
11 subject to the attorney-client privilege, work product immunity, or other privilege shall be
12 without prejudice to any claim that such material is privileged or protected from discovery.
13 Upon receiving a written request to do so from the Producing Party, the Receiving Party shall
14 immediately return to the Producing Party any documents or tangible items that the Producing
15 Party represents are covered by a claim of attorney-client privilege or work product immunity
16 and were inadvertently or mistakenly produced. The Receiving Party also shall destroy any
17 extra copies or summaries of, or notes relating to, any such inadvertently or mistakenly
18 produced information. The Receiving Party may move the Court for an Order compelling the
19 production of such information, but such a motion does not relieve the Receiving Party of
20 complying with the immediately preceding two sentences of this Order. The Producing Party
21 shall retain copies of all returned documents and tangible things, and if such a motion is filed
22 by the Receiving Party, shall upon request provide copies to the Court of the documents,
23 things, or information that are the subject of the motion. The party claiming privilege or work
24 product protection shall have the burden of proving that such privilege or work product
25 protection exists. Notwithstanding the above, recognizing the need for the parties to prepare
26 their cases based on the discovery that is produced, if any information, document, or tangible
27 thing is used or referenced in a court hearing, deposition, motion, expert report, or pretrial

1 order, or is otherwise used openly in the case, any claim of inadvertent production must be
2 made within ten (10) business days after such use.

3 10. **Disclosure and Use of Designated Materials.**

4 Subject to the limitations and restrictions of this Protective Order and any further order
5 of the Court, material designated CONFIDENTIAL INFORMATION or HIGHLY
6 CONFIDENTIAL INFORMATION as described in this Protective Order may be used in
7 testimony at trial, offered into evidence at trial and/or other hearings, and used to prepare for
8 and conduct discovery, to prepare for trial, and to support or oppose any motion in the
9 Litigation. Such material shall remain confidential at trial, and during any appeals to the
10 Litigation, except to the extent made public in open court, and may not be used for any
11 purpose or in any manner other than as permitted by this Protective Order or by further order
12 of the Court.

13 Material designated CONFIDENTIAL INFORMATION or HIGHLY
14 CONFIDENTIAL INFORMATION, and all information derived therefrom, shall be used
15 only by persons permitted access to such information under this Protective Order, shall not be
16 disclosed by the Receiving Party to any party or person not entitled under this Protective
17 Order to have access to such material, and shall not be used by the Receiving Party for any
18 purpose other than in connection with this Litigation, and expressly prohibiting, without
19 limitation, use for any research, development, manufacture, patent prosecution, financial,
20 commercial, marketing, regulatory, business, or other competitive purpose. Absent consent of
21 the Producing Party and/or further order of this Court, all persons receiving information
22 designated CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
23 INFORMATION are expressly prohibited from using or disclosing such information in
24 connection with any practice before or communication with (including, but not limited to,
25 patent applications, citizens petitions, and other filings) the United States Patent and
26 Trademark Office.

1 11. **Access to CONFIDENTIAL INFORMATION.**

2 CONFIDENTIAL INFORMATION as described in this Protective Order may be
3 disclosed to:

- 4 A. Litigation counsel of record for the Parties and their data entry, information
5 processing, computer support, litigation support, translating, stenographic,
6 clerical, and paralegal employees or agents whose duties and responsibilities
7 require access to material designated CONFIDENTIAL INFORMATION;
8 Subject to the provisions described later in this paragraph, two (2) in-house
9 attorneys or other officer who is an attorney, and his stenographic and clerical
10 employees whose duties and responsibilities require access to material
11 designated CONFIDENTIAL INFORMATION; provided: such person has
12 completed a Confidentiality Agreement in the form of Exhibit A (attached
13 hereto);
- 14 B. Subject to the provisions described later in this paragraph, outside consultants
15 or experts regarding any issue in this Litigation who are not current employees
16 of any of the Parties to this Litigation or any divisions, subsidiaries, parents, or
17 affiliates of any of the Parties to this litigation, whose advice and consultation
18 are being or will be used in connection with this Litigation, including their
19 stenographic and clerical personnel, provided each such person has completed
20 a Confidentiality Agreement in the form of Exhibit A.
- 21 C. Courts before which these actions are pending and their authorized staff, court
22 reporters, and the jury;
- 23 D. Any interpreter or translation service, and any typist or transcriber used
24 thereby; and
- 25 E. A party's outside copying, exhibit preparation, and computerized litigation
26 support and information management services.
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1 CONFIDENTIAL INFORMATION shall not be disclosed to any of the persons
2 described in subparagraph (B) for a period of ten (10) days after serving the Producing Party
3 with such Undertaking and a curriculum vitae or resume (including employment history and
4 list of publications) for any outside consultant or expert under subparagraph (B). Service of
5 the Undertaking shall be made by facsimile or electronic mail with a confirmation copy by
6 mail. The parties may agree in writing to shorten the waiting period for disclosure of
7 confidential information. Counsel for the Producing Party may within ten (10) business days
8 after service of the Undertaking serve an objection if a reasonable basis for such objection
9 exists. CONFIDENTIAL INFORMATION will not be disclosed to the person as to whom
10 objection was served, absent agreement by the Producing Party who served the objection. If
11 no such agreement is reached within ten (10) days after service of the objection, counsel for
12 the Producing Party who served the objection may move the Court for an order denying
13 disclosure of any CONFIDENTIAL INFORMATION to the person as to whom the objection
14 was served. If the Producing Party files such a motion, CONFIDENTIAL INFORMATION
15 shall not be disclosed to the person as to whom the objection was served until the Court orders
16 or agreement is reached that such disclosure may be made. Failure to file such a motion shall
17 operate as a waiver of such objection.

18 Any vendor described in paragraph 11(E) who is accessing CONFIDENTIAL
19 INFORMATION on behalf of a party shall return to the party's counsel all copies of such
20 documents as soon as the information has been encoded and loaded into the computer, copied,
21 prepared or otherwise processed by the vendor. Any vendor providing a party with ongoing
22 access to CONFIDENTIAL INFORMATION shall provide limited and secure access to the
23 information (such as information stored on a computer) and the vendor will take steps to
24 provide access (e.g., through access codes or passwords) only to people who are entitled to
25 access it under this Protective Order (including people retained or employed by the vendor
26 entitled to such access).

1 12. **Access to HIGHLY CONFIDENTIAL INFORMATION.**

2 HIGHLY CONFIDENTIAL INFORMATION is fully subject to the requirements and
3 limitations set forth in paragraph 11 regarding the disclosure of CONFIDENTIAL
4 INFORMATION, but shall be disclosed by the Receiving Party only to the individuals falling
5 within subparagraphs (A), (B), (C), (D) and (E) of paragraph 11, excluding in-house counsel,
6 parties to the Litigation, or any employees of the parties to the Litigation. Prior to disclosure
7 of HIGHLY CONFIDENTIAL INFORMATION to any of the persons described in
8 subparagraph (B), counsel for the Receiving Party shall comply with the requirements of
9 paragraph 11 for providing such person access to CONFIDENTIAL INFORMATION.

10 13. **Access to Source Code**

11 With respect to any source code that is designated HIGHLY CONFIDENTIAL
12 INFORMATION, the following restrictions shall apply:

13 A. The source code shall be produced in text file format (or another format agreed
14 to by the Receiving Party) on a CD, DVD, or other readily computer-accessible media (the
15 “Source Code Media”);

16 B. The Receiving Party may not make any copies of the Source Code Media;

17 C. The Receiving Party may use the Source Code Media to install the source code
18 on a single, password-protected, non-networked computer at the offices of the Receiving
19 Party’s litigation counsel of record;

20 D. The Receiving Party may use the Source Code Media to install the source code
21 on a single, password-protected, non-networked computer at the offices of one individual
22 falling within subparagraph (B) of paragraph 11; and

23 E. Except when it is being used for the purposes of installing the source code on
24 computers as allowed by subparagraphs C and D, above, the Receiving Party shall maintain
25 the Source Code Media in a secure location at the offices of its litigation counsel of record.

26 14. **Disclosure to Other Individuals.**

1 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION
2 may be disclosed also to persons not identified in paragraphs 11 and 12 as follows:

- 3 A. CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
4 INFORMATION may be disclosed to persons not identified in paragraphs 11
5 and 12 as agreed by the Producing Party;
- 6 B. Any Receiving Party may move the Court for an Order that a person not
7 identified in paragraph 11 be given access to information designated
8 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
9 INFORMATION or that a person not identified in paragraph 12 be given
10 access to information designated HIGHLY CONFIDENTIAL
11 INFORMATION. If the motion is granted, such person may have access to the
12 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
13 INFORMATION after first signing an Undertaking substantially in the form of
14 Exhibit A attached hereto;
- 15 C. CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
16 INFORMATION may be disclosed to and/or used to examine, at deposition, at
17 trial, or at any other court hearing: (i) an individual who prepared, received,
18 reviewed, or had knowledge of the CONFIDENTIAL INFORMATION or
19 HIGHLY CONFIDENTIAL INFORMATION as demonstrated by the
20 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
21 INFORMATION itself or foundation testimony and (ii) a currently employed
22 employee, officer or director of a Producing Party but only the
23 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
24 INFORMATION of the Producing Party; and
- 25 D. A party may disclose or use in any manner or for any purpose any information
26 or documents from that party's own files that the party itself has designated
27 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL

1 INFORMATION.

2 15. **Request for Production in Another Action.**

3 If any Receiving Party (a) is subpoenaed or served with a demand in an action not
4 subject to this Protective Order, or (b) is served with any legal process by one not a party to
5 this Litigation, seeking any material designated CONFIDENTIAL INFORMATION or
6 HIGHLY CONFIDENTIAL INFORMATION by the Producing Party, such Receiving Party
7 shall object to its production to the extent permitted by law and shall give prompt written
8 notice to the Producing Party. Should the person seeking access to the material designated
9 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by the
10 Producing Party take action against such Receiving Party or anyone else covered by this
11 Protective Order to enforce such a subpoena, demand, or other legal process, such Receiving
12 Party shall allow the Producing Party to respond in the manner such party sees fit, including
13 by setting forth the existence of this Protective Order.

14 16. **Filing Under Seal.**

15 If any party files CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
16 INFORMATION (including confidential portions of documents or transcripts) or any
17 document, pleading, or brief that discloses the substance or content of CONFIDENTIAL
18 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION in connection with any
19 motion, other written submission, hearing or trial in this action, the filing party shall make
20 such filing under seal in accordance with the local rules of this Court and any other
21 procedures required by the Court; provided, however, that the burden of proving that such
22 information should be sealed shall at all times remain on the party which designated the
23 information CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
24 INFORMATION.

25 17. **Challenging Designations.**

26 The acceptance by the Receiving Party of material designated CONFIDENTIAL
27 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall not constitute an

1 admission or concession, or permit an inference that such material is, in fact, confidential.
2 Any Receiving Party may at any time request that the Producing Party cancel or modify a
3 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION
4 designation. Such request shall be made to counsel for the Producing Party in writing and
5 shall particularly identify the designated CONFIDENTIAL INFORMATION or HIGHLY
6 CONFIDENTIAL INFORMATION that the Receiving Party contends is not
7 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION and the
8 reasons supporting that contention. If the Producing Party does not agree to remove or
9 modify the CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
10 INFORMATION designation within ten (10) business days of such request, the party
11 contending that such documents or material are not properly designated may request by
12 motion that the Court change the designation or remove such material from any or all of the
13 restrictions of this Protective Order. On such a motion, the party asserting confidentiality
14 shall have the burden of proving that the material designated CONFIDENTIAL
15 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION warrants the applicable
16 protections under this Protective Order.

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18 **18. Limitations on Advice to Clients.**

19 Nothing in this Protective Order shall bar or otherwise restrict any attorney from
20 rendering advice to its client, and in the course thereof, relying upon such attorney's
21 examination of CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
22 INFORMATION; provided, however, that in rendering such advice and in otherwise
23 communicating with such client, the attorney shall not disclose any CONFIDENTIAL
24 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION to unauthorized persons.

25 **19. No Expansion of Federal Rules of Civil Procedure.**

26 Nothing in this Protective Order shall be construed (1) to affect or govern the scope of
27 discovery in this Litigation; (2) to preclude any party from moving the Court for a further

1 order or modification pursuant to Fed. R. Civ. P. 26(c) or any other provision of the Federal
2 Rules of Civil Procedure; (3) to require a party to produce any CONFIDENTIAL
3 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION that is not relevant and
4 discoverable pursuant to Fed. R. Civ. P. 26 and the surrounding case law; (4) to preclude any
5 party from moving the Court for an order compelling production or disclosure of such
6 material; or (5) to require production or disclosure of any CONFIDENTIAL INFORMATION
7 or HIGHLY CONFIDENTIAL INFORMATION deemed by counsel for the Producing Party
8 to be protected from disclosure by the attorney-client privilege or the attorney work-product
9 immunity, or other privilege or immunity, so long as the withheld materials are identified in
10 the manner required by the Federal Rules of Civil Procedure.

11 20. **Survival of Obligations under Protective Order.**

12 This Protective Order shall survive the final termination of this Litigation, including
13 all appeals, and continue to bind all persons to whom CONFIDENTIAL INFORMATION or
14 HIGHLY CONFIDENTIAL INFORMATION is disclosed hereunder to the extent such
15 material is not, or does not become, known to the public. The Court retains jurisdiction
16 subsequent to any settlement or entry of judgment to enforce the terms of this Protective
17 Order.

18 21. **Handling of CONFIDENTIAL INFORMATION AND HIGHLY**
19 **CONFIDENTIAL INFORMATION at the Conclusion of the Litigation.**

20 Upon final termination of this Litigation, including all appeals, outside counsel for
21 Receiving Party may retain one copy or sample of all material designated CONFIDENTIAL
22 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, all papers filed with the
23 Court and exhibits thereto, all trial exhibits, and any other documents, things, copies, and
24 samples that include or reflect work product of the Receiving Party's counsel. All other
25 copies and samples of material designated CONFIDENTIAL INFORMATION or HIGHLY
26 CONFIDENTIAL INFORMATION (including without limitation all deposition transcripts,
27 production documents, and any other summaries, abstracts, excerpts, indices, and descriptions

1 of such material and information derived from such material) shall be: (i) assembled and
2 returned (except for any that may be retained by the Court) to the Producing Party; or,
3 alternatively, (ii) counsel for the Receiving Party may certify in writing the destruction
4 thereof.

5 As to CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
6 INFORMATION stored in computer databases or backup tapes or disks, the Receiving Party
7 shall either delete all such information or secure it in a manner reasonably calculated to
8 prevent unauthorized access to it. As to CONFIDENTIAL INFORMATION or HIGHLY
9 CONFIDENTIAL INFORMATION stored in computer databases or backup tapes or disks,
10 located, stored, or accessible by any persons other than outside counsel for the Receiving
11 Party, the Receiving Party shall, upon demand by the Producing Party within ninety (90) days
12 of the Litigation termination, return all Source Code Media and destroy any media on which
13 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION was
14 electronically stored at any time, or otherwise take all steps necessary to irretrievably remove
15 such information from any and all such media.

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17 **22. Publicly Available Information.**

18 The restrictions and obligations set forth herein relating to material designated
19 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall
20 not apply to any information that the Producing Party agrees, or the Court rules, (a) should not
21 be designated as such; (b) is or has become public knowledge other than as a result of
22 disclosure by the Receiving Party, its employees, or agents in violation of this Protective
23 Order; or (c) has come or shall come into the Receiving Party's legitimate knowledge or
24 possession independently of the Producing Party under conditions such that its use and/or
25 public disclosure by the Receiving Party would not violate any obligation to the Producing
26 Party. The restrictions and obligations set forth herein shall not prohibit discussions of any
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1 material designated CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
2 INFORMATION with any person who already has or obtains legitimate possession thereof.

3 23. **Form of Document Production.**

4 The parties agree to the following with regard to the production of documents:

- 5 A. To the extent reasonably practicable, all documents should be produced as
6 Group IV TIFF images at 300 dpi named the same as the Bates number. Color
7 images should be provided in jpg format.
- 8 B. A standard image load file indicating document boundaries and location of
9 images should accompany the image. The load file should be in a format that
10 can be used as is or easily modified to accommodate loading into any industry
11 standard litigation support software system. The data fields in the image load
12 file should be comma delimited. The Opticon file format is recommended.
- 13 C. Where reasonable, the parties will agree which documents will be provided
14 with OCR data. When provided, OCR should be provided at a document by
15 document text file level by a third-party vendor. There should be one OCR
16 text file per document (not single page text files for each page), named the
17 same as the beginning Bates number (Document ID) of the document. The
18 OCR text file for a document should reside in the same location (file directory)
19 as the images for that document. In order to assure that the OCR produced is
20 comparable in this case, the OCR engine used will be one of the following
21 industry accepted engines: Expression 7.x - Law4.x or Law5.x; Ipro - Current
22 Version; Doculex - Current Version; Ribstone Systems - Current Version;
23 Readiris - Current Version; Abby Finereader - Current Version; Prime OCR -
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1 Current Version; Lead Tools - Current Version; Pegasus - Current Version.

2 D. Accounting and financial data kept electronically in an accounting database
3 (i.e., SAP) will also be produced in a uniquely delimited text file that can be
4 electronically manipulated and can be loaded into various programs, including
5 Microsoft Excel. Also, the parties will agree to produce the queries that were
6 run to collect the accounting and financial data that is produced.
7

8 E. Copies of electronic documents in their native format may be made available
9 on a case-by-case basis. The parties will confer in good faith regarding the
10 production of electronic documents in their native format and will seek court
11 intervention only when it becomes clear that the parties are at an impasse.
12

13 24. **Notices.**

14 Notices under this Protective Order shall be provided to the parties' respective counsel
15 by electronic mail by the close of the business day unless this provision is modified by the
16 parties in writing. The date by which a party receiving a notice shall respond, or otherwise
17 take action, shall be computed from the close of the business day that the electronic mail was
18 received in the office of counsel.

19 Notice to Bally shall be to:

20 Michael D. Rounds
21 WATSON ROUNDS
22 5371 Kietzke Lane
23 Reno, NV 89511
24 Telephone: (775) 324-4100
Facsimile: (775) 333-8171
mrounds@watsonrounds.com

25 Notice to BIS2 shall be to:

26 Michael N. Feder
27 LEWIS & ROCA LLP
28 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

1 Telephone: (702) 474-2612
2 Facsimile: (702) 216-6168
3 MFeder@LRLaw.com

4 25. **Entry Of Protective Order.**

5 Until such time as this Protective Order has been entered by the Court, the parties
6 agree that upon execution by all of the parties, it will be treated as though it has been "So
7 Ordered."
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1 **AGREED:**

2 Dated: August 13, 2010

3 For Plaintiff:

4 By: /s/ Michael D. Rounds
5 Michael D. Rounds (NBN 4734)
6 WATSON ROUNDS
7 5371 Kietzke Lane
8 Reno, NV 89511
9 Telephone: (775) 324-4100
10 Facsimile: (775) 333-8171
11 mrounds@watsonrounds.com

12 For Defendant:


13 By: /s/ Robert W. Busby
14 Michael N. Feder (NBN 7332)
15 LEWIS & ROCA LLP
16 3993 Howard Hughes Parkway
17 Suite 600
18 Las Vegas, Nevada 89169
19 Telephone: (702) 474-2612
20 Facsimile: (702) 216-6168
21 MFeder@LRLaw.com

22 Robert W. Busby (*Pro Hac Vice*)
23 MORGAN LEWIS LLP
24 1111 Pennsylvania Avenue, N.W.
25 Washington, DC 20004
26 Telephone: (202) 739-3000
27 Facsimile: (202) 739-3001
28 rbusby@morganlewis.com

Andrew J. Gray IV (*Pro Hac Vice*)
MORGAN LEWIS LLP
2 Palo Alto Square, Suite 700
Palo Alto, CA 94306
Telephone: (650) 843-4000
Facsimile: (650) 843-4001
agray@morganlewis.com

23 **SO ORDERED:**

24 This 13th day of August, 2010

25 
26 _____
27 UNITED STATES MAGISTRATE JUDGE

1 Exhibit A

2 **CONFIDENTIALITY UNDERTAKING**

3 I, _____, being duly sworn, state
4 that:

5 (a) My present residential address is:
6 _____.

7 (b) My present employer is
8 _____
9 and the address of my present employer is
10 _____.

11 (c) My present occupation or job description is
12 _____.

13 (d) I have received and carefully read the Stipulated Protective Order in the
14 above-captioned case. I certify that I understand the terms of that
15 Protective Order, recognize that I am bound by the terms of that Order,
16 and agree to comply with those terms. Further, I understand that
17 unauthorized disclosure of any Designated CONFIDENTIAL
18 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, or its
19 substance, may constitute contempt of this Court and may subject me to
20 sanctions or other remedies that may be imposed by the Court and
21 potentially liable in a civil action for damages by the disclosing party.

22 (e) I agree to submit to the jurisdiction of the United States District Court for
23 the District of Nevada for the purpose of enforcing the terms of this
24 Stipulated Protective Order, even if such enforcement proceedings occur
25 after termination of this Litigation.

26 I declare under the penalty of perjury that the foregoing is true and correct.

27 Dated: _____
28 _____