

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

STC.UNM,

Plaintiff,

v.

INTEL CORPORATION,

Defendant

Civil No. 1:10-cv-01077-RB-WDS

**STIPULATED PROTECTIVE ORDER**

The Court finds that this action may involve trade secrets and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution or defense of this action is warranted. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Federal Rule of Civil Procedure 26(c), and for good cause shown,

IT IS HEREBY ORDERED THAT:

**DEFINITIONS**

- A. “Party”: any party to this action, including all of its officers, directors, employees, consultants, retained experts and consultants, and outside counsel (and their support staff).
- B. “Material”: all information, documents, items and things produced, served or otherwise provided in this action (whether paper, electronic, tangible or otherwise) by the parties or by non-parties.
- C. “Producing Party”: a Party or non-party that produces Material in this action.
- D. “Receiving Party”: a Party that receives Material from a Producing Party.
- E. “Designating Party”: a Party or non-party that designates Material as “CONFIDENTIAL” or “OUTSIDE COUNSEL RESTRICTED.”
- F. “CONFIDENTIAL” Material: Material the Designating Party believes in good faith

is not generally known to others, and that the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy, or (iii) believes in good faith to constitute or to contain confidential research, development, or commercial information. CONFIDENTIAL Material shall include all Material referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing, and shall be designated as such in the manner described in Section 2.

G. “OUTSIDE COUNSEL RESTRICTED” Material. Material the Designating Party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and which the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy, or (iii) believes in good faith constitutes proprietary financial, technical or commercially sensitive competitive information that the Producing Party maintains as highly confidential in its business. OUTSIDE COUNSEL RESTRICTED Material shall include all Material referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing, and shall be designated as such in the manner described in Section 2. Material designated as “OUTSIDE COUNSEL RESTRICTED” is automatically subject to the PROSECUTION BAR in Section 10.

H. “Designated Material”: Material that is designated “CONFIDENTIAL” or “OUTSIDE COUNSEL RESTRICTED.”

I. “Outside Counsel”: attorneys (including litigation and clerical support staff) who are not employees, directors, or officers of a Party or a Party’s parents, affiliates, or subsidiaries but who are counsel of record for a Party.

J. “Outside Consultant”: a person with specialized knowledge or experience in a matter pertinent to the action who has been retained by a Party or its Outside Counsel to serve as an expert witness or as a consultant in this action and who is not: (i) a current or anticipated employee of a Party or of a Party’s competitor, or (ii) a consultant involved in product and/or process design or development for a Party or for a Party’s competitor.

K. “Professional Vendors”: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing or processing data) and their employees and subcontractors. This definition includes a professional jury or trial consultant retained in connection with this action and mock jurors retained by such a consultant to assist them in their work. Professional Vendors do not include consultants who fall within the definition of Outside Consultant.

L. “Involved In The Prosecution Of Patents Or Patent Applications”: participation in any way on behalf of a patent owner/patent applicant or other person or entity having ownership, license or other financial interest in the patent or in the patent or reissue application, in: (i) reexamination proceedings (except reexamination proceedings of U.S. Patent No. 6,042,998 brought by an entity other than STC.UNM, UNM, or any other stakeholder in any interest in U.S. Patent No. 6,042,998) or (ii) drafting, reviewing, approving or prosecuting any portion (e.g., any claim, any figure, or any specification language) of a patent application (including, but not limited to, provisional, non-provisional, original, continuation, continuation-in-part, divisional, reissue, and/or continued prosecution applications) or any portion of any amendment, response, reply, or other paper submitted to the United States Patent and Trademark Office (including the United States Board of Patent Appeals and Interferences) or any foreign agency responsible for examining or issuing patents. With regard to a reexamination of the ‘998 patent, participation in the reexamination process shall be limited to instances in which STC did not initiate the reexamination process.

### TERMS AND CONDITIONS

#### 1. General Limitations on Disclosure and Use of Designated Material

Designated Material and the substance and content thereof, including any copies, notes, memoranda, summaries, excerpts, compilations, or other similar documents relating thereto, shall be used by a Receiving Party solely for the purpose of this litigation and not for any other purpose, including, without limitation, any business or commercial purpose, or dissemination to the media or public. Any person in possession of Designated Material shall exercise reasonably appropriate care with regard to storage, custody, or use of such Material in order to ensure that the confidential nature of the Material is maintained. If Designated Material is disclosed or comes into the possession of any person other than in the manner authorized by this Protective Order, any Party having knowledge of the disclosure must immediately inform the Producing Party (and, if not the same person or entity, the Designating Party) of all pertinent facts relating to such disclosure and shall make reasonable efforts to retrieve such Material and to prevent further disclosure.

#### 2. Procedure for Designating Materials

(a) Documents and Other Tangible Materials. The designation of Material in the form of documents, discovery responses, or other tangible materials (other than depositions or other pre-trial testimony) shall be made by the Designating Party by conspicuously affixing (physically or electronically) the legend “CONFIDENTIAL” or “OUTSIDE COUNSEL RESTRICTED” on each page containing information to which the designation applies (or in the case of computer medium on the medium label and/or cover). To the extent practical, the legend shall be placed near the Bates number identifying the Material. If a document has more than one designation, the more restrictive or higher designation applies.

(b) Nontangible Materials. All Designated Materials that are not reduced to documentary,

tangible, or physical form or that cannot be conveniently designated in the manner set forth in Section 2(a) above shall be designated by the Designating Party by informing the Receiving Party in writing.

(c) Deposition Testimony and Transcripts. Any Party may designate as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED Material that is disclosed at a deposition by indicating on the record at the deposition that the testimony is CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED and is subject to the provisions of this Protective Order. Any Party may also designate Material as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED by notifying the court reporter and all of the parties, in writing within thirty (30) days after receipt of the final deposition transcript, of the specific pages and lines of the transcript that should be treated thereafter as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED. Each Party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his/her possession, custody, or control. All deposition transcripts shall be treated as OUTSIDE COUNSEL RESTRICTED for at least a period of thirty (30) days after receipt of the final transcript.

(d) Nonparty Designations. Non-parties who produce Material in this action may avail themselves of the provisions of this Protective Order, and such Material produced by non-parties shall be treated by the parties in conformance with this Protective Order. A non-party's use of this Protective Order for production of its Material does not entitle that non-party to have access to Material produced by any Party in this action.

### 3. Inadvertent Production

(a) Inadvertent Failures to Properly Designate. If a Party or nonparty inadvertently produces Material without labeling or otherwise designating it in accordance with the provisions of this Protective Order, the Party or nonparty may give written notice to the Receiving Party that the Material produced is designated CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED and should be treated as such in accordance with the provisions of this Protective Order. The Receiving Party must treat such Material according to its most recent designation of CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED from the date such notice is received. If, before receiving such notice, the Receiving Party disclosed such Material to recipients who are not qualified to receive it under the most recent designation, the Receiving Party must immediately inform the Designating Party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to assure that the Material is treated in accordance with the provisions of this Protective Order, including retrieving any copies that may have been disclosed to unqualified recipients.

(b) No Waiver of Privilege. The production or inspection of Material that a Producing Party claims was inadvertent and should not have been produced or disclosed because of the attorney-client privilege, the work product immunity or any other applicable privilege or immunity from discovery shall not be deemed to be a waiver of any such privilege or immunity to which the Producing Party would have been entitled had the Material not

inadvertently been produced or disclosed. Upon request by the Producing Party, the Receiving Party shall immediately return all copies of such inadvertently produced Material.

#### 4. Material Not Covered By This Protective Order

No Material shall be deemed CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED if:

- (a) it is in the public domain at the time of disclosure;
- (b) it becomes part of the public domain as a result of publication not involving a violation of this Protective Order;
- (c) the Receiving Party can show it was in the Receiving Party's rightful and lawful possession at the time of disclosure;
- (d) the Receiving Party lawfully received it from a nonparty without restriction as to disclosure, provided such nonparty has the right to make the disclosure to the Receiving Party; or
- (e) the Receiving Party can show it was independently developed by the Receiving Party after the time of disclosure by personnel who did not have access to the Producing Party's Designated Material.

#### 5. Challenges to Designations

(a) Written Notice. The Designating Party shall use reasonable care when designating Material as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED. Nothing in this Protective Order shall prevent a Receiving Party from contending that any Material has been improperly designated. If the Receiving Party disagrees with the designation of any Material, the Receiving Party may challenge such designation by providing the Designating Party with written notice of such challenge and by identifying the Material as specifically as possible. The challenge should be made as soon as is practicable following production, and unreasonable delay may be considered a waiver of the challenge if the circumstances so warrant. If the parties do not resolve the dispute within fourteen (14) days of the Designating Party receiving written notice of the challenge, the Receiving Party may file a motion with the Court challenging the designation as invalid as set forth below.

(b) Meet and Confer. A Party that elects to challenge a designation must do so in good faith and, in addition to the written notice, must confer directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the Material challenged and to reconsider the circumstances, and if no change in designation is

offered, to explain the basis for the chosen designation. A challenging Party may file a motion challenging the designation only if it has engaged in this meet and confer dialogue first. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with these meet and confer requirements and that sets forth with specificity the justification for the designation that was given by the Designating Party in the meet and confer dialogue.

(c) Judicial Intervention. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the Material in question the level of protection to which it entitled under the Designating Party's designation.

6. Inspection of Materials

Material made available for inspection by Outside Counsel for the Receiving Party shall initially be considered to be OUTSIDE COUNSEL RESTRICTED and subject to this Protective Order even though no formal designation has yet been made. Thereafter, the Producing Party shall have a reasonable time to review and designate the inspected Material as CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED prior to furnishing copies to the Receiving Party.

7. Access to CONFIDENTIAL Material

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, CONFIDENTIAL Material shall not be disclosed, directly or indirectly, to anyone except the following (and those identified in Section 17 below regarding use of Designated Material at depositions):

- (a) The Court and its personnel.
- (b) Outside Counsel for each Party whose functions require access to CONFIDENTIAL Material.
- (c) Outside Consultants, subject to the provisions and limitations set forth in Section 14 herein.
- (d) Employees, officers, and directors of a Receiving Party who have responsibility for maintaining, defending, or evaluating this litigation (and supporting personnel). No CONFIDENTIAL Material shall be disclosed to a Party employee, officer, or director until the individual has signed the Confidentiality Agreement attached hereto as Exhibit A, thereby declaring that he or she has read and understands this Protective Order and agrees to be bound by its provisions. Such written agreement shall be retained by counsel for the Receiving Party and must be disclosed to the Producing Party within seven (7) days after execution.

8. Access to OUTSIDE COUNSEL RESTRICTED Material

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, OUTSIDE COUNSEL RESTRICTED Material shall not be disclosed, directly or indirectly, to anyone except the following (and those identified in Section 17 below regarding use of Designated Material at depositions):

- (a) The Court and its personnel.
- (b) Outside Counsel for each Party whose functions require access to OUTSIDE COUNSEL RESTRICTED Material.
- (c) Outside Consultants, subject to the provisions and limitations set forth in Section 14 herein.

9. Additional Restrictions on Access to Code, Materials Concerning Intel's Semiconductor Fabrication Processes, or Schematics

Access to (i) RTL, iHDL, or similarly sensitive code, (ii) materials concerning Intel's semiconductor fabrication processes, (iii) GDS Data materials, or (iv) schematics shall be provided under the OUTSIDE COUNSEL RESTRICTED designation only and shall be subject to the Prosecution Bar of Section 10 and to the following additional restrictions:

(a) Intel shall produce copies of process flow documents at the secure location mentioned in the below paragraph (b) in paper and electronic word searchable format. At the request of the Receiving Party, the Producing Party must provide a single paper copy of reasonable portions of the materials at the time of inspection by the Receiving Party, which Outside Counsel for the Receiving Party may take when completing an inspection. The paper copy must be kept in a secured location at the offices of the Receiving Party's Outside Counsel at all times. No additional copies of such materials may be made except as provided in Sections 9(c) and 9(d) and must be made by STC's Outside Counsel at its office. The electronic version may not be sent to a third-party vendor for copying.

(b) The materials identified in the first paragraph of Section 9 above shall be provided on a stand-alone computer (i.e., not connected to a network or the Internet) in a secure location at the offices of the Producing Party's counsel in Dallas, Texas or Chicago, Illinois. The Producing Party shall provide access to this stand-alone computer during regular business hours on reasonable notice. In limited circumstances, access to the stand-alone computers will also be provided on a Saturday and Sunday as long as actual notice is provided to the Producing Party not later than one week before the weekend for which access is requested. Access on weekends shall be limited to one weekend. In limited circumstances, access from the close of business through 10:00 PM local time on weekdays shall be provided so long as actual notice of such need is provided to the Producing Party not later than one week before access is requested. Access on weekday evenings shall be limited to two separate days.

Beginning one week prior to the beginning of trial and continuing through the end of trial, access to the materials identified in the first paragraph of Section 9 above shall be provided under the same conditions and with the same limitations and restrictions at the offices of the Atkinson, Thal & Baker law firm in Albuquerque, NM. Intel shall make its GDS Data available in a usable format and the stand-alone shall include any necessary software, including a GDS/Oasis viewer, to allow the reviewer to view and search the GDS Data. Intel shall provide STC with the name of viewing software. In the event that STC and Intel agree on (a) review tool(s) that is/are not conventionally used by Intel, STC must provide Intel with the CD or DVD containing a licensed copy of such software tool(s) at least ten (10) business days in advance of the date upon which STC wishes to have the additional software tool(s) available for use on the GDS Computer. At the request of the Receiving Party, the Producing Party must provide a single paper copy of reasonable portions of the materials at the time of inspection by the Receiving Party, which Outside Counsel for the Receiving Party may take when completing an inspection. The paper copy must be kept in a secured location at the offices of the Receiving Party's Outside Counsel at all times. No additional copies of such materials may be made except as provided in Sections 9(c) and 9(d) and must be made by STC's Outside Counsel at its office.

(c) A Receiving Party that wants to use any such materials at a deposition may, no earlier than 72 hours prior to any such deposition, make only as many copies, and only of the specific pages, as the Receiving Party intends to actually use at the deposition. At the conclusion of the deposition, the Producing Party will collect each copy of such materials, except for the copy used by the examining attorney (who shall destroy such copy within 24 hours of the completion of the subject deposition), and will retain the original of any such exhibit, which shall not be appended to the transcript of the deposition.

(d) A Receiving Party that wants to file or otherwise submit any such materials to the Court in connection with a filing may, no earlier than 48 hours prior to the relevant filing, make only as many copies, and only of the specific pages as needed, for submission to the Court and shall file any and all such copies of the materials with an application to file under seal. In the event that a Receiving Party wants to make electronic copies of such material to display demonstrative exhibits in court proceedings, the parties will meet and confer on appropriate procedures.

(e) Outside Counsel for the Receiving Party shall maintain a complete log of Bates-numbered pages of such materials printed and shall produce such log at the request of the Producing Party. For security purposes, this log must be produced to the Producing Party regardless of any other stipulation limiting expert discovery. Paper copies shall include Bates numbers and OUTSIDE COUNSEL RESTRICTED labels when printed.



## 10. Prosecution Bar

(a) Any Material designated OUTSIDE COUNSEL RESTRICTED is subject to a PROSECUTION BAR. Any person who has access to any such Material from the opposing Party under Section 8 shall not be Involved In The Prosecution Of Patents Or Patent Applications relating to lithography machines or systems (including so-called steppers and scanners) or to semiconductor patterning (including lithography, mask, and etch) from the time of receipt of such Material through and including one year following the latter of: (i) December 31, 2011 and (ii) the entry of a final, nonappealable judgment or order or the complete settlement of all claims and dismissal with prejudice against all parties in this action. In addition, any person subject to this PROSECUTION BAR shall not be Involved In The Prosecution Of Patents Or Patent Applications relating to semiconductor patterning (including lithography, mask, and etch) where the patent application was filed or claims priority from any application filed prior to one year following the entry of a final nonappealable judgment or order or the complete settlement of all claims and dismissal with prejudice against all parties in this action. Notwithstanding the forgoing, the parties agree that Stadheim and Gear, and STC's Outside Consultants, may participate in any reexamination proceeding involving U.S. Patent No. 6,042,998 that was not initiated by STC.UNM, UNM, or any other stakeholder in any interest in U.S. Patent No. 6,042,998.

(b) Intel seeks to have a longer prosecution bar apply in the event that discovery is required regarding research and development on future process technologies. The parties have advised the Court that they have been unable to reach agreement on that issue. Within seven days of the entry of this Interim Protective Order, Intel will file a motion to resolve the issue pursuant to Fed. R. Civ. P. 26(c) and D.N.M. L.Rs.-Civ.7.1 and 26.5.

## 11. Access by Professional Vendors

Despite the access restrictions set forth in Sections 7 and 8, but otherwise subject to the requirements set forth in this Protective Order, Designated Material, and such copies as are reasonably necessary for maintaining, defending, or evaluating this litigation, may be furnished and disclosed to Professional Vendors as defined in Definition K. Before disclosing any Designated Material to any person or service described in this paragraph, Outside Counsel for the Receiving Party shall first obtain from such person or service a written Confidentiality Agreement, in the form attached hereto as Exhibit A. Such written agreement shall be retained by Outside Counsel for the Receiving Party, but need not be disclosed to the Producing Party until the conclusion of the case.

## 12. Transmittal of Designated Material

Except for materials subject to paragraph 9 (which must be kept in Outside Counsel's offices at all times), no OUTSIDE COUNSEL RESTRICTED Material shall be transmitted or transported outside of the United States, or communicated to any recipient under this agreement who is located outside of the United States, for any purpose without the express

written permission of the Producing Party. A Receiving Party shall not transmit OUTSIDE COUNSEL RESTRICTED Material or any summaries of such documents that are in electronic form (e.g., PDF, TIFF, Word, Excel files) outside of any individual outside counsel's office for a Receiving Party (e.g., in e-mail traveling on the Internet) unless the documents or summaries are encrypted using PGP<sup>®</sup> encryption with a pass phrase whose length is at least 20 characters. Transmission of such PGP-encrypted documents shall be only (a) by hand delivery, (b) by a secure transport carrier (e.g., Federal Express), or (c) by electronic means (e.g., e-mail sent directly to a qualified recipient). A Receiving Party shall not reproduce portions of OUTSIDE COUNSEL RESTRICTED Material or summaries of such material in the text of an unencrypted e-mail, but may send such information in a PGP-encrypted attachment that uses a pass phrase whose length is at least 20 characters. A Receiving Party may transmit paper copies of Designated Material and paper copies of any summaries of Designated Material between or among qualified recipients, e.g., Outside Consultants, outside any individual outside counsel's office for a Receiving Party, but this transmission shall be only by (a) hand delivery in sealed envelopes or containers, (b) a secure transport carrier (e.g., Federal Express) in sealed envelopes or containers, or (c) facsimile where, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused by any person who is not a qualified recipient.

13. Electronic Accessibility

The Receiving Party shall ensure that Designated Material is not accessible or transmitted over any electronic system or connection (e.g., the Internet, electronic mail) that does not ensure compliance with Sections 7 through 12 of this Protective Order.

14. Disclosure to Outside Consultants

(a) Confidentiality Agreement. An Outside Consultant's access to Designated Material shall be subject to the terms in this section, including the notice-and-objection provisions below, and the requirement that the Outside Consultant execute the Confidentiality Agreement attached hereto as Exhibit A. The Confidentiality Agreement shall be retained by Outside Counsel for the Party that retained the Outside Consultant, but need not be disclosed to any other Party.

(b) Written Notice. Before a Receiving Party may disclose, directly or indirectly, any Designated Material to an Outside Consultant, the Receiving Party must give written notice to the Producing Party of the following information as it relates to the Outside Consultant:

- (1) current curriculum vitae, including the full name of the individual and the city and state of his or her primary residence;
- (2) business address and title;
- (3) nature of business or profession;

- (4) any previous or current relationship (personal or professional) with any of the parties;
- (5) a listing of other actions (including case name, case number, and court/agency) in which the individual has testified (at trial, deposition or in a hearing);
- (6) the individual's current employer;
- (7) all companies for which the individual has consulted or been employed by, within the past five years, and the years of such consulting or employment and brief description of the work performed;
- (8) a listing of all papers or articles written by the individual; and
- (9) whether the individual is involved in or anticipates involvement in any aspect of prosecuting patent applications relating to the manufacture of semiconductors.

(c) Objection. A Party that makes a written notice and provides the information specified in the preceding paragraph may disclose the Designated Material to the identified Outside Consultant unless, within ten (10) business days of the written notice (plus three (3) additional business days if notice is given other than by hand delivery, email, or facsimile transmission), the Producing Party objects in writing.

(d) Judicial Intervention. If an objection is made, the parties shall meet and confer to try to resolve the dispute by agreement. If no agreement is reached within fourteen (14) days, the objecting Party may move the Court for an order that access to CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED Material be denied the designated individual, or other appropriate relief. Unless and until the Court determines otherwise, no disclosure of any such Designated Material shall be made by the Receiving Party to any Outside Consultant to whom an objection has been made.

#### 15. Exceptions to Limitations on Disclosure

Nothing herein shall prevent disclosure of Designated Material: (a) by the Producing Party to anyone else; (b) by the Receiving Party to an officer or employee of the Producing Party who is authorized by the Producing Part to have access to that Designated Material; (c) by a Party to any person, whether or not affiliated with the Producing Party at the time of disclosure, who either authored the Designated Material, in whole or in part, or who has independently received the Designated Material other than through a means constituting a breach of this Protective Order; or (d) to any person who is reasonably identified as previously having had access to the Designated Material, which identification is made by the sworn testimony of another or unambiguously appears on the face of a document, other than through a means constituting breach of this Protective Order.

16. Filing Under Seal

All transcripts, exhibits, discovery responses, pleadings, briefs, and other Material submitted to the Court that contain or disclose Designated Material shall be filed in a sealed envelope or other appropriate sealed containers on which shall be endorsed the title of this matter, an indication of the nature of the contents of such sealed envelope or other container, the words “CONFIDENTIAL—FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER,” and a statement substantially in the following form: “This envelope contains confidential information filed in this case by (name of Party) and is not to be opened nor the contents thereof displayed or revealed except by order of the Court presiding over this matter.” In addition, the first page of any Material filed under seal shall include the conspicuous legend: “CONFIDENTIAL—FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER.”

If any person fails to file protected Material under seal, the Producing Party or any Party claiming confidentiality for the Material may request that the Court place the filing under seal (in addition to seeking any remedies for breach of this Protective Order).

17. Use at Depositions

(a) Except as otherwise ordered by the Court, any deposition or trial witness may be examined and may testify concerning Designated Material of which such person has prior knowledge. Without in any way limiting the generality of the foregoing:

(1) A present director, officer, and/or employee of a Producing Party may be examined and may testify concerning Designated Material of the Producing Party to the extent that that person is authorized by the Producing Party to have access to that Designated Material.

(2) A former director, officer, and/or employee of a Producing Party may be interviewed, examined, and may testify concerning all Designated Material of which such person has prior knowledge (not involving a violation of this Protective Order), including any such Material that refers to matters of which the witness has personal knowledge, which has been produced by that Party, and which pertains to the time period or periods of such witness’s employment or service.

(3) Non-parties may be examined or testify concerning any document containing Designated Material that appears on its face or from other documents or testimony to have been received from, or communicated to, the nonparty as a result of any contact or relationship with the Producing Party. Any person other than the witness, his or her counsel, and any person qualified to receive Designated Material under this Protective Order shall be excluded from the portion of the examination concerning such Material, absent the consent of the Producing Party. If the witness is represented by an attorney who is not qualified under this Protective Order to receive Designated Material, then prior to the examination, the attorney shall provide a signed

Confidentiality Agreement, in the form attached hereto as Exhibit A, declaring that he or she will comply with the terms of this Protective Order and maintain the confidentiality of Designated Material disclosed during the course of the examination. If such attorney declines to sign such a Confidentiality Agreement before the examination, the parties, by their counsel, shall jointly seek a protective order from the Court prohibiting such attorney from disclosing such Designated Material.

(b) In addition to the restrictions set forth in this Protective Order, the following shall apply to Designated Material used at a deposition:

(1) A witness who previously had access to Designated Material, but who is not under a present nondisclosure agreement with the Producing Party that applies to the Designated Material, may be shown the Designated Material if a copy of this Protective Order is attached to any subpoena, notice, or request served on the witness for the deposition, and the witness is advised on the deposition record of the existence of the Protective Order and agrees to its requirements to keep confidential any questions, testimony, or documents that in any way relate to or constitute Designated Material.

(2) Witnesses may not retain copies of any Designated Material used or reviewed at a deposition. A witness may not take out of the deposition room any exhibit that is marked CONFIDENTIAL or OUTSIDE COUNSEL RESTRICTED. The Producing Party of any Designated Material used at a deposition may also require that the transcript and exhibits not be copied by the witness or his or her counsel and that the transcript and exhibits may only be reviewed by the witness in the offices of Outside Counsel representing a Party in this case (or another firm acting for Outside Counsel representing a Party in this case under the supervision of one of the lawyers bound by the terms of the Protective Order).

#### 18. Stipulations or Additional Relief from the Court

The parties may, by stipulation, provide for exceptions to this Protective Order. Nothing in this Protective Order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, additional protection with respect to the confidentiality of Material or relief from this Protective Order with respect to particular Designated Material.

#### 19. Return of Designated Material

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after a final, nonappealable judgment or order, or the complete settlement of all claims asserted and dismissal with prejudice against all parties in this action, each Receiving Party must return all Designated Material to the Producing Party. As used in this section “Designated Material” includes Designated Material and any derivatives therefrom, including, but not limited to, all copies, abstracts, compilations, summaries, notes, or any

other form of reproducing, referring to, or capturing any portion of the Designated Material. The Receiving Party's obligation to return Designated Material received from another Party extends to Designated Material the Receiving Party disclosed to others pursuant to this Protective Order. With written permission from the Producing Party, the Receiving Party may destroy some or all of the Designated Material instead of returning it. Whether the Designated Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Designated Material that was returned or destroyed and that affirms that neither the Receiving Party nor others to which the Receiving Party disclosed Designated Material has retained any Designated Material (or otherwise identifies any person or entity that has failed to return or destroy such Designated Material). Notwithstanding this section, counsel are entitled to retain an archival copy of all pleadings, motion papers (including all supporting and opposing papers and exhibits and declarations thereto), transcripts, legal memoranda, correspondence, briefs (including all supporting and opposing papers and exhibits and declarations thereto), written discovery requests and responses, exhibits offered or introduced into evidence at trial, or attorney work product. Any such archival copies remain subject to this Protective Order as set forth in Section 21.

#### 20. Injunctive Relief

The parties acknowledge that any breach of this Protective Order may result in immediate and irreparable injury for which there is no adequate remedy at law. If anyone violates or threatens to violate the terms of this Protective Order, the parties agree that the aggrieved Party may immediately apply to obtain injunctive relief against any such violation or threatened violation, and if the aggrieved Party does so, any respondent who is subject to the provisions of this Protective Order may not employ as a defense that the aggrieved Party possesses an adequate remedy at law.

#### 21. Survival of Order

The terms of this Protective Order shall survive the final termination of this action to the extent that any Designated Material is not or does not become known to the public (or to the extent that any Designated Material has become known to the public due to a violation of this Protective Order). This Court shall retain jurisdiction over this action for the purpose of enforcing this Protective Order. The parties agree that any order of dismissal of the Action as to any or all parties shall include specific provision that the Court retains jurisdiction to enforce the terms of this Protective Order following dismissal. Each Party hereby consents to the personal jurisdiction of the Court for that purpose.

#### 22. Treatment Prior to Entry of Order

Each Party agrees to be bound by the terms of this Protective Order as of the date it executed the Order below, even if prior to entry of the Order by the Court.

23. Protected Material Subpoenaed or Ordered Produced In Other Litigation

If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any Designated Material, the Receiving Party must so notify the Producing (and, if not the same person or entity, the Designating Party), in writing (by hand delivery, fax, or email) promptly and in no event more than ten (10) days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue that some or all the material covered by the subpoena or order is subject to this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Producing or Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its Designated Material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

SO ORDERED this 18<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
W. DANIEL SCHNEIDER  
United States Magistrate Judge

Approved:

/s/ Clifford K. Atkinson  
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**Exhibit A**

**ACKNOWLEDGMENT AND AGREEMENT  
TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, state:

1. I reside at \_\_\_\_\_.

2. My present employer is \_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_.

4. I agree to keep confidential all information and material provided to me in the matter of *STC.UNM v. Intel Corporation*, Civil No. 1:10-cv-01077-RB-WDS, and to be subject to the authority of the U.S. District Court for the District of New Mexico in the event of any violation of this agreement or dispute related to this agreement.

5. I have been informed of and/or read the Stipulated Protective Order (“Order”) dated *[DATE]*, and understand and will abide by its contents and confidentiality requirements. I will not divulge any confidential information or material to persons other than those specifically authorized by the Order. I will not use any confidential information or material in any manner not expressly allowed by the Order.

6. I state under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature