

purpose, and shall only be disclosed under the conditions described in this Stipulated Protective Order. Protected Information or any information derived therefrom may not be used by either Party or its counsel in any other litigation or in any civil, administrative or regulatory proceeding or investigation, or for purposes of advising any other client. When the Action has been terminated, recipients of Protected Information must comply with the provisions of paragraph 10 below.

2. DEFINITIONS

2.1 Action: Case No. 2:10-CV-1017 pending in the United States District Court for the Southern District of Ohio, Eastern Division.

2.2 Party and Parties: Plaintiffs SkyRiver Technologies, LLC and Innovative Interfaces, Inc. and Defendant OCLC Online Computer Library Center, Inc. are each a Party and collectively the Parties to this Action, including all of their officers, directors, employees, consultants, retained experts, and outside counsel, including their support staff.

2.3 Discovery Material: all information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that is produced or generated in disclosures or responses to discovery in this Action.

2.4 Confidential Material: Discovery Materials that qualify for protection under Rule 26(c), Fed.R.Civ.P.

2.5 Confidential – Outside Counsel Only: commercially sensitive Confidential Material, the disclosure of which to another Party or non-party would create a substantial risk of commercial harm that could not be avoided by less restrictive means.

2.6 Receiving Party: a Party that receives Discovery Material from a Producing Party.

2.7 Producing Party: a Party or non-party that produces Discovery Material in this Action.

2.8 Designating Party: a Party or non-party that designates Discovery Material as “Confidential” or “Confidential – Outside Counsel Only.”

2.9 Protected Information: Discovery Material that is designated as “Confidential,” or “Confidential - Outside Counsel Only.”

2.10 Outside Counsel: attorneys who are not employees of a Party, but who have been retained to represent or advise a Party in this Action.

2.11 House Counsel: attorneys who are employees of a Party.

2.12 Counsel: Outside Counsel and House Counsel.

2.13 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its Counsel to serve as a testifying expert witness or as a consultant in connection with this Action.

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

3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Information, but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or Counsel to or in court or in other settings that might reveal Protected Information. For purposes of this Stipulated Protective Order, information designated as CONFIDENTIAL shall mean all Protected Information produced for or disclosed to a Receiving Party that a Producing

Party reasonably considers to constitute confidential technical, sales, marketing, financial, or other commercially sensitive information, whether embodied in physical objects, documents, or the factual knowledge of persons, or any other form, or any portion thereof. The CONFIDENTIAL – OUTSIDE COUNSEL ONLY designation is reserved for Protected Information that constitutes proprietary marketing, financial, sales, web traffic, research and development, technical data/information, or commercially sensitive competitive information, including, without limitation, information obtained from a nonparty pursuant to a current Nondisclosure Agreement (“NDA”), information relating to future products not yet commercially released and strategic plans, the disclosure of which are likely to cause harm to the competitive position of the Producing Party.

Nothing herein shall, however, restrict a Receiving Party from making working copies, abstracts, digests and analyses of CONFIDENTIAL and CONFIDENTIAL – OUTSIDE COUNSEL ONLY information for use in connection with this litigation and such working copies, abstracts, digests and analyses shall be deemed Protected Information under the terms of this Protective Order. Further, nothing herein shall restrict a Receiving Party from converting or translating CONFIDENTIAL and CONFIDENTIAL OUTSIDE COUNSEL ONLY information into machine readable form for incorporation into a data retrieval system used in connection with this Action, provided that access to that Protected Information, in whatever form stored or reproduced, shall be limited to qualified recipients. A nonparty may use this Protective Order as follows: (a) A nonparty producing information or material voluntarily or pursuant to a subpoena or a court order may designate such material or information as Protected Information pursuant to the terms of this Protective Order. (b) A nonparty’s use of this Protective Order to protect its Protected Information does not entitle that nonparty access to the Protected Information

produced by any Party in this case.

4. DURATION

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

5. DESIGNATING PROTECTED INFORMATION

5.1 Designation in Conformity with this Order.

(a) For information in hard-copy documentary form or in Electronically Stored Information (“ESI”) form (apart from transcripts of depositions or other pretrial or trial proceedings), the Producing Party shall affix the legend “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” at the top of each page that contains Protected Information. If only a portion or portions of the material on a page qualifies for protection, the Producing Party must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted. A Party or non-party that makes original hard-copy documents or materials available for inspection need not designate them for protection until after the Receiving Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL – OUTSIDE COUNSEL ONLY.” After the Receiving Party has identified the documents it wants copied and produced, the Producing Party should determine which documents, or portions thereof, qualify for protection under this Order.

(b) For testimony given in deposition or in other pretrial proceedings, the Party or non-party offering or sponsoring the testimony shall identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and related exhibits,

and further specify any portions of the testimony and exhibits that qualify as “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 30 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Transcript pages containing Protected Information must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” as instructed by the Designating Party. In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Stipulated Protective Order, substantially as set forth below:

This videotape contains confidential testimony subject to the Stipulated Protective Order entered in *SkyRiver Technology Solutions LLC et al. OCLC Online Computer Library Center, Inc.*, Case No. 2:10-cv-1017, by the United States District Court for the Southern District of Ohio, and is not to be viewed or the contents thereof to be displayed or revealed except in accordance with such Stipulated Protective Order, by further order of the Court, or pursuant to written stipulation of the Parties.

(c) Inadvertent Failures to Designate. An inadvertent failure to designate Protected Information as “Confidential” or “Confidential – Outside Counsel Only” does not waive the Designating Party’s right to secure protection under this Stipulated Protective Order. In the event of any unintentional or inadvertent disclosure of Protected Information other than in a manner authorized by this Stipulated Protective Order, the Producing Party shall immediately notify the Receiving Party of all of the pertinent facts, and make every effort to further prevent

unauthorized disclosure including, retrieving all copies of the undesignated Protected Information from the Receiving Party, and securing their agreement not to further disseminate the undesignated Protected Information in any form. The Producing Party may also designate the material as Protected Information and attach the appropriate confidentiality legend. Compliance with the foregoing shall not prevent the Producing Party from seeking further relief from the Court.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of this Action, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. Even though the Parties shall use reasonable care when designating documents or information as Protected Information, nothing in this Stipulated Protective Order shall prevent a Receiving Party from contending that Discovery Material designated as Protected Information has been improperly designated. A Receiving Party may at any time request that the Producing Party to cancel or modify the Protected Information designation with respect to any document or information contained therein.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly with counsel for the Designating Party. In conferring, the challenging Party shall explain the basis for its belief that the confidentiality designation was not proper and shall give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen

designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation may file and serve a motion under Civil Local Rule 7.1-7.4, as modified by this Stipulated Protective Order. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Said motion shall be filed with Magistrate Judge Kemp within five court days following completion of the meet and confer process, and any opposition shall be filed with Magistrate Judge Kemp within five court days of service of the motion. The moving and opposition pleadings shall not exceed 10 pages, respectively. 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 is entitled under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED INFORMATION

7.1 Basic Principles. A Receiving Party may use Protected Information only for the purpose of prosecuting, defending, or attempting to settle this litigation. Such Protected Information may be disclosed only to the categories of persons and under the conditions described in this Stipulated Protective Order. Protected Information must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 10, below (FINAL DISPOSITION).

7.2 Disclosure of "CONFIDENTIAL MATERIAL." Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party shall only disclose

CONFIDENTIAL MATERIAL to the following individuals or entities who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A):

(a) the Receiving Party’s Outside Counsel, as well as employees of said Counsel;

(b) the present or former officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for purposes of this Action;

(c) Experts of the Receiving Party to whom disclosure is reasonably necessary for purposes of this Action;

(d) the Court and its personnel;

(e) court reporters, their staffs, and Professional Vendors to whom disclosure is reasonably necessary for purposes of this Action;

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

7.3 Disclosure of “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” Material.

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party shall only disclose CONFIDENTIAL – OUTSIDE COUNSEL ONLY MATERIAL to the following individuals and entities who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A):

(a) the Receiving Party’s Outside Counsel, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for purposes of this Action;

(b) Experts to whom disclosure is reasonably necessary for purposes of this Action and as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and Professional Vendors to whom disclosure is reasonably necessary for purposes of this Action; and

(e) the author of the document or the original source of the information.

7.4 Disclosure of PROTECTED INFORMATION During Deposition.

Except as may be otherwise ordered by the Court, any person may be examined as a witness at depositions and may testify concerning all Protected Information of which such person has prior knowledge. Without in any way limiting the generality of the foregoing:

- (i) A present director, officer, agent, and/or employee of a Producing Party may be examined and may testify concerning all Protected Information which has been produced by that Party and which identifies on its face the present director, officer, and/or employee as an author or recipient or concerns a topic about which said director, officer, and/or employee has been identified or designated to testify;
- (ii) A former director, officer, agent, and/or employee of a Producing Party may be interviewed, examined and may testify concerning all Protected Information of which he or she has prior knowledge, including any Protected Information that refers to matters of which the witness has personal knowledge, which has been produced by that Party and which pertains to the period or periods of his or her employment;
- (iii) Non-party witnesses may be examined or testify concerning Protected Information of a Producing Party which appears on its face or from other documents or testimony to have been received from or communicated to the witness.

Any person other than the witness, his or her attorney(s), or any person qualified to receive Protected Information under this Stipulated Protective Order shall be excluded from that portion of the examination concerning such information, unless the Producing Party consents to persons other than qualified recipients being present at the examination. If the witness is represented by an attorney who is not qualified under this Protective Order to receive such information, then prior to the examination, the Producing Party shall request that the attorney provide a signed “Agreement To Be Bound by Protective Order” (Exhibit A). In the event that such attorney declines to sign Exhibit A, the examination that concerns Protected Information shall be continued while the Parties jointly seek a protective order from the Court prohibiting the attorney from disclosing Protected Information.

7.5 Procedures for Approving Disclosure of “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” Materials to Experts.

(a) Unless otherwise ordered by the Court or agreed in writing by the Designating Party, a Receiving Party that seeks to disclose to an Expert any Protected Information that has been designated “CONFIDENTIAL – OUTSIDE COUNSEL ONLY” must first make a written request to the Designating Party that (1) identifies the Protected Information that the Receiving Party seeks permission to disclose to the Expert, including the reason for such disclosure, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, and (4) identifies the Expert’s current employer(s).

(b) A Receiving Party may disclose the subject Protected Information to the identified Expert unless, within ten court days of delivering the written request and all required

information, the Receiving Party receives a written objection from the Designating Party. Any such objection must specifically detail the grounds for the objection.

(c) A Receiving Party that receives a timely written objection must meet and confer with the Designating Party to try to resolve the matter by agreement. If no agreement is reached, the Receiving Party seeking to make the disclosure may file a motion as provided in Civil Local Rule 7.1-7.4, as modified by Section 6.3 above. Any such motion must describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any additional means that might be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration in which the movant describes the Parties' efforts to resolve the matter by agreement. In any such proceeding the Designating Party shall bear the burden of proving that the risk of harm outweighs the Receiving Party's need to disclose the Protected Information to its Expert.

(d) Testifying experts shall not be subject to discovery on any draft of their reports in this case and such draft reports, notes or outlines for draft reports are also exempt from production and discovery.

8. PROTECTED INFORMATION SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If, at any time, Discovery Materials containing Protected Information are called for by any document request, subpoena, compulsory process, investigatory demands, or other request by any court, arbitral, administrative, regulatory or legislative body, or in any other litigation, the Receiving Party shall immediately give written notice thereof to the Producing Party and shall provide such party with an opportunity to object to the production of such documents. Written notice must be given no later than ten (10) calendar days prior to any compliance with the

subpoena. If a Producing Party does not take steps to prevent disclosure of such documents within ten (10) calendar days of the date written notice is given, the Receiving Party may produce such documents in response thereto.

The Receiving Party also must immediately inform the party who caused the subpoena or order to issue that some or all the material covered by the subpoena or order is the subject of this Stipulated Protective Order. In addition, the Receiving Party must promptly deliver a copy of this Stipulated Protective Order to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert all interested parties to the existence of this Stipulated Protective Order and to afford the Designating Party ample opportunity to protect its confidentiality interests in the court from which the subpoena or order issued.

9. FILING PROTECTED INFORMATION

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this Action any Protected Information. A Party that seeks to file any Protected Information under seal must comply with Civil Local Rule 79.3. Outside Counsel of record for the Parties and representatives from their respective law firms are hereby authorized to be the persons who may retrieve Protected Information filed with the Court upon termination of this Action without further order of this Court, and are the persons to whom such Protected Information may be returned by the Clerk of the Court, if they are not so retrieved. No material or copies thereof so filed shall be released except by order of the Court, to Outside Counsel of record, or as otherwise provided for hereunder. All transcripts of depositions, exhibits, answers to interrogatories, pleadings, briefs, and other documents submitted to the Court that have been designated as Protected Information, or that contain information so designated, shall be filed under seal.

10. PROTECTED INFORMATION AT HEARINGS AND TRIAL

The Parties shall meet and confer regarding any disputes concerning the use of Protected Information at a hearing or trial. If the Parties cannot agree on the use of such Protected Information, the dispute shall be resolved by the Court prior to the disclosure of the Protected Information. In addition, no fewer than 60 days before trial in this Action, the Parties shall meet and confer to negotiate a proposal addressing the use and treatment of Protected Information at trial. To the extent the Parties fail to agree on a proposal addressing the use of Protected Information at trial, they may submit alternative proposals to the Court for resolution.

11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) calendar days after the final termination of this Action, each Receiving Party must return all Protected Information to the Producing Party. As used in this section, “all Protected Information” includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Information. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Information instead of returning it. Whether the Protected Information 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 Protected Information that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Information. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Information. Any such archival copies that contain or constitute Protected

Information remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 This Stipulated Protective Order is entered without prejudice to the right of any Party to apply to the Court at any time for additional protection, or to relax or rescind the restrictions of this Stipulated Protective Order, when convenience or necessity requires. Furthermore, without application to this Court, any Party that is a beneficiary of the protections of this Protective Order may enter a written agreement releasing any other Party hereto from one or more requirements of this Protective Order even if the conduct subject to the release would otherwise violate the terms herein.

12.2 Nothing in this Protective Order shall limit in any manner a Party's own use of any discovery materials designated by it to be Protected Information.

12.3 The United States District Court for the Southern District of Ohio is responsible for the interpretation and enforcement of this Stipulated Protective Order. After termination of this litigation, the provisions of this Protective Order shall continue to be binding except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Information for enforcement of the provision of this Protective Order following termination of this litigation. All disputes concerning Protected Information produced under the protection of this Protective Order shall be resolved by the United States District Court for the Southern District of Ohio.

12.4 Any Party, attorney, law firm, employee, expert, or other person who receives Protected Information subject to this Stipulated Protective Order subjects himself, herself or itself to the jurisdiction of this Court for purposes of enforcement of this Stipulated Protective

Order and any appropriate remedies for the violation of this Stipulated Protective Order, including but not limited to the Court's contempt, equitable and legal remedies. Such remedies are supplementary to any other remedies the Parties may have available at law or in equity.

12.5 By agreeing to the entry of this Stipulated Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Respectfully submitted,

s/ Thomas L. Long per email authorization

Thomas L. Long (0023127), Trial Attorney
Robert M. Kincaid, Jr. (0017929), Of Counsel
BAKER HOSTETLER LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215
Telephone: (614) 228-1541
Facsimile: (614) 462-2616
Email: tlong@bakerlaw.com; rkincaid@bakerlaw.com

Arthur J. Shartsis (CA Bar 51594), Co-Counsel *PHV*
Mary Jo Shartsis (CA Bar 55194), Co-Counsel *PHV*
Robert E. Schaberg (CA Bar 81430), Co-Counsel *PHV*
Richard F. Munzinger (CA Bar 217902), Co-Counsel *PHV*
SHARTSIS FRIESE LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
Telephone: (415) 421-6500
Facsimile: (415) 421-2922
Email: mshartsis@sflaw.com, ashartsis@sflaw.com,
rschaberg@sflaw.com, rmunzinger@sflaw.com

*Counsel for Plaintiffs SkyRiver Technology Solutions, LLC
and Innovative Interfaces, Inc.*

s/ James A. Wilson per email authorization

James A. Wilson (0030704), Trial Attorney

Douglas R. Matthews (0039431)

Martha C. Brewer (0083788)

VORYS, SATER, SEYMOUR and PEASE LLP

52 East Gay Street, P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone: (614) 464-5606

Facsimile: (614) 719-5039

Email: jawilson@vorys.com, drmatthews@vorys.com,

mcbrewer@vorys.com

Counsel for Defendant OCLC Computer Library Center, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

Magistrate Judge Terence P. Kemp

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Southern District of Ohio, Eastern Division on [date] in the case of *SkyRiver Technology Solutions, LLC, et al. vs. OCLC Online Computer Library Center, Inc.* No. 2:10-CV1017, I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Southern District of Ohio for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this Action.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]