

# EXHIBIT 1

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**WIRELESS RECOGNITION** )  
**TECHNOLOGIES LLC,** )  
 )  
*Plaintiff,* )  
 )  
**v.** )  
 )  
**A9.COM, INC.,** )  
**AMAZON.COM, INC.,** )  
**GOOGLE, INC.,** )  
**NOKIA, INC.** )  
**and** )  
**RICOH INNOVATIONS, INC.** )  
 )  
*Defendants.* )

**C.A. No. 2:10-cv-00364-TJW-CE**

**JURY TRIAL DEMANDED**

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

This protective order (“Protective Order”) is issued to expedite the flow of discovery materials, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonable necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c) and any other applicable rule of this Court. Unless modified or terminated pursuant to the terms contained in this Protective Order, this Protective Order shall remain in effect through the conclusion of the above-captioned case.

In support of this Stipulated Protective Order, the Court finds that:

- a. Documents or information containing confidential research, development, proprietary and competitively sensitive business or commercial information or trade secrets

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(“Confidential Information”) that bear significantly on the parties’ claims or defenses are likely to be disclosed or produced during the course of discovery in the above-captioned cases;

b. The parties to these litigations assert that public dissemination and disclosure of Confidential Information could injure or damage the party disclosing or producing the Confidential Information and could place that party at a competitive disadvantage; and

c. To protect the respective interests of the parties and to facilitate the progress of disclosure and discovery in these cases, the following Stipulated Protective Order should issue.

### **IT IS THEREFORE ORDERED THAT:**

1. Designation of Certain Discovery Material. Documents, excerpts, summaries, pleadings, reports, declarations, affidavits, testimony, transcripts, physical objects, or other discovery material containing “Confidential” or “CONFIDENTIAL” Information (as defined in paragraph 2) disclosed, produced, or otherwise provided by any party in this litigation, and any non-party (“third party”) from whom discovery is sought in connection with these actions, are referred to as “Protected Documents.” Except as otherwise indicated below, all information, documents, or other discovery material designated by the producing party as CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) or HIGHLY CONFIDENTIAL – SOURCE CODE and which are disclosed, produced, or otherwise provided to the attorneys for the other parties to these litigation matters are Protected Documents and are entitled to confidential treatment as described below.

2. Protected Documents shall not include: (a) published or publicly disseminated advertising materials; (b) materials that have been published to the general public; (c) documents that have been submitted to any governmental entity without request for confidential treatment or

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that otherwise do not qualify for confidential treatment under applicable governmental laws or regulations; (d) any information that the receiving party can show by written records was already known to it prior to the disclosure, provided that it was either (i) received from the producing party and was not received under an obligation of confidentiality to the producing party, or (ii) received from a source who obtained the information lawfully and under no obligation of confidentiality to the producing party; (e) any information that the receiving party can show by written records was received by it after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the producing party; (f) any information that the receiving party can show was independently developed by it after the time of disclosure by personnel who did not have access to the producing party's Confidential information.

a. A party may designate as CONFIDENTIAL those materials which that producing party in good faith believes constitute Confidential Information that is used by it in, or pertaining to, its business, which information is not generally known and which that party would normally not reveal to third parties or, if disclosed, would require such third parties to maintain in confidence. Protected Documents shall qualify for the CONFIDENTIAL designation if such Protected Documents comprise information that: (i) has not been made public; (ii) includes trade secret or other confidential research, development, or commercial information the disclosure of which the disclosing party reasonably believes could cause harm to the business operations of the disclosing party or provide improper business or commercial advantage to others; (iii) is protected by a right to privacy under federal or state law or any other applicable privilege or right related to

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confidentiality or privacy; and (iv) has not been marked or otherwise designated CONFIDENTIAL — OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c).

b. Any highly confidential information may be designated as HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c). Protected Documents shall qualify for the HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) designation if such Protected Documents satisfy the definition of paragraph 2.a hereinabove, and further comprise: (i) non-public technical information, including schematic diagrams, manufacturing and engineering drawings, engineering notebooks, specifications, research notes and materials, technical reference materials, and other non-public technical descriptions and/or depictions of the relevant technology; (ii) non-public damage-related information (e.g., the number of products sold, total dollar value of sales products, and profit margins); (iii) non-public financial information; (iv) customer lists; (v) business and/or marketing plans; (vi) price lists and/or pricing information; (vii) license or settlement agreements; and (viii) information obtained from a nonparty pursuant to a current confidentiality or other type of non-disclosure agreement (“NDA”).

c. Protected Documents designated CONFIDENTIAL should be so identified at the time of service of such Protected Documents by including on each page, or on the front page of each document, the legend “**CONFIDENTIAL.**” Protected Documents designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations set forth in this paragraph 2.c) should be so identified at the time of service of such Protected Documents by including on each page, or on the front page of each

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document, any of legends “**HIGHLY CONFIDENTIAL,**” “**OUTSIDE COUNSEL ONLY,**” or “**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.**”

d. Any documents (including physical objects) made available for inspection prior to the production of copies of items selected by the requesting party shall initially be considered, as a whole, designated CONFIDENTIAL (unless otherwise designated at the time of inspection) and shall be subject to this Order. Thereafter, the producing party shall have a reasonable time to review and designate any requested documents as CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL SOURCE CODE prior to furnishing copies to the receiving party.

3. Challenge to Designation/No Obligation to Challenge. At any time after the delivery of Protected Documents, counsel for the party or parties receiving the Protected Documents may challenge the confidential designation of one or more Protected Documents by providing written notice thereof to counsel for the party disclosing or producing the Protected Documents. If, after conferring, the parties cannot reach agreement concerning the matter within ten (10) business days after the receipt of the notice, then the party requesting the de-designation of particular items may file and serve a motion for a further order of this Court directing that the designation shall be so removed. On any such motion, the burden of proof shall lie with the producing party to establish that the information is, in fact, properly designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) or HIGHLY CONFIDENTIAL – SOURCE CODE information. No party shall be obligated to challenge the propriety of any designation, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

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4. Access to Protected Documents. All Protected Documents are entitled to confidential treatment pursuant to the terms of this Protective Order until and unless the parties formally agree in writing to the contrary or a contrary determination is made by the Court as to whether a Protected Document is entitled to confidential treatment. Protected Documents and any information contained therein shall not be used or shown, disseminated, or in any way communicated to anyone for any purpose whatsoever, except for use in the above-captioned cases.

5. Subject to the limitations set forth in this Protective Order, Protected Documents and any information contained therein shall be disclosed only to the following persons (“Qualified Persons”):

- a. Outside counsel of record in the above-captioned cases;
- b. Employees of such counsel (excluding experts and investigators) and outside vendors, including e-discovery, graphics, animation, translation, and jury consultant vendors but not including mock jurors, assigned to and necessary to assist such counsel in the preparation and trial of these actions, provided such outside vendors agree to maintain the confidentiality of documents pursuant to this Protective Order by signing the Agreement attached hereto as Exhibit A;
- c. The Court (including clerks, other Court personnel, and jury members);
- d. Independent experts or consultants (including non-testifying experts or consultants) that are disclosed and qualified pursuant to the terms of paragraph 25 below;
- e. Only with respect to Protected Documents designated “CONFIDENTIAL”, for each party, two (2) in-house counsel or in-house personnel of an in-house legal department whose daily responsibilities focus on legal issues and who are

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not involved in product development or competitive decision making, provided that such in-house counsel or in-house personnel have responsibility for managing this litigation and sign the Agreement attached hereto as Exhibit A, subject to the remaining terms of this section;

f. Any court reporter (other than Court personnel referenced in paragraph 5.c above) or videographer present in his or her official capacity at any hearing, deposition, or other proceeding in this action, provided that such court reporter or videographer agree to maintain the confidentiality of documents pursuant to this Protective Order by signing the Agreement attached hereto as Exhibit A;

g. Any person who is identified as an author or recipient, including receipt by copy, of any document, information therein or tangible medium. Such persons shall be considered “Qualified Persons” solely with respect to the specific document, information therein, or tangible medium; and

h. Witnesses for the party producing the document, who have access in the course of their employment to the document, and who are being examined on the subject of the document. Parties reserve the right to object and move for protective order to prevent the disclosure of document(s) to a witness, should such disclosure violate a corporate policy precluding the witness from gaining access to the document(s).

Except that, paragraph 5.e above shall not apply to Protected Documents designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) or HIGHLY CONFIDENTIAL – SOURCE CODE. [Notwithstanding the foregoing, Protected Documents designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) that consists of financial information relating to the Accused



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Instrumentalities and not technical information, may be accessed by and disclosed to the individuals listed in paragraph 5.e., provided that such individuals are counsel being members of at least one state bar in good standing.]<sup>1</sup> In addition, any Protected Documents designated by a Defendant shall not be provided by the Plaintiff to any other Defendant or Defendants' counsel absent explicit agreement from the Defendant designating such information. Counsel for a party may give advice and opinions to his or her client regarding this case based on his or her evaluation of documents and information designated CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) received by the party — provided that such rendering of advice and opinions shall not directly reveal the content of such Protected Documents and any information contained therein except by prior written agreement with counsel for the producing party. Protected Documents and any information contained therein shall be used solely for the purposes of above-captioned case and any appeal(s) of this action.

6. Protected Documents designated HIGHLY CONFIDENTIAL – SOURCE CODE shall be provided with the following further protections:

a. HIGHLY CONFIDENTIAL – SOURCE CODE includes human-readable programming language text that defines software, firmware, or electronic hardware descriptions (hereinafter referred to as “source code”). Text files containing source code shall hereinafter be referred to as “source code files.” Source code files include, but are not limited to files containing source code written in C, C++, Java, assembler, VHDL, Verilog, SQL, and similar programming languages. Source code files further include “make” files, “include” files, script files, “link” files, and other human-readable text files

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<sup>1</sup> Text bracketed and highlighted in blue is proposed by Plaintiff WRT, while text bracketed and highlighted in yellow is proposed by Defendants.

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used in the generation and/or building of software directly executed on a microprocessor, microcontroller, or digital signal processor (DSP). Source code does not include binary executable files and object code files, nor does it include tools such as compilers or linkers.<sup>2</sup>

b. Treatment of Source Code. To the extent that any party wishes to obtain access to Confidential Information designated as HIGHLY CONFIDENTIAL – SOURCE CODE, the following procedures shall apply:

i. The producing party shall make all relevant and properly requested source code available for inspection on a stand-alone, non-networked, personal computer running a reasonably current version of the Microsoft Windows operating systems (“Source Code Computer”). The Source Code Computer shall be locked down so that additional peripheral devices cannot be connected to the Source Code Computer by the Receiving Party, except that the Computer shall be connectible to a printer and a device capable of temporarily storing electronic copies (e.g., flash drive) solely for the limited purposes provided in this paragraph 6]. Should it be requested by receiving party necessary, the Source Code Computer shall may be configured by the producing party to run other mutually agreed upon operating systems, such as Linux, and software utilities, which will be provided at the receiving party’s expense, to allow counsel and experts to view, search, or analyze the source code; provided that such utilities are reasonable and non-destructive to the source code. The producing party shall

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<sup>2</sup> The parties agree that binary executable files, object code files, compilers, and linkers do not need to be produced. To the extent binary executable files and object code files are required to be produced, they shall be afforded the same protection as other “Source Code” defined in this section.

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provide the receiving party with information explaining how to start, log on to, and operate the Source Code Computer in order to access the produced source code thereon [in a user-friendly manner. If the receiving party shall be unable to operate the Source Code Computer to review the source code in a timely manner, the producing party shall provide in a timely and efficient manner the help of personnel with appropriate technical expertise to assist the receiving party].

ii. The producing party shall make the source code available electronically and in text searchable format on the Source Code Computer in a secure room at either: (1) the U.S. offices of outside counsel for the producing party; or (2) a secure facility in the U.S. selected by the producing party. The producing party need not produce source code in executable format absent further agreement of the parties or order of the Court. The parties agree to cooperate in good faith such that maintenance of and access to the producing party's source code at the foregoing locations shall not unreasonably hinder the receiving party's ability to efficiently and effectively conduct the prosecution or defense of this action.

iii. In order to verify that its source code has not later been altered, the producing party may benchmark the materials before they are provided, but shall not install any keystroke or other monitoring software on the Source Code Computer.

iv. If the producing party has additional reasonable security precautions which are not unduly burdensome on the receiving party's time and resources, the receiving party shall comply with such security precautions. If the

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parties cannot reach agreement on such additional security provisions, either party may request the Court to intervene on the matter.

v. The Source Code Computer shall be made available to a receiving party for the inspection of source code upon reasonable request from 8 am to 6 pm local time, Monday through Friday (excluding holidays), and other days and/or times, upon reasonable request until the close of discovery in this action. Access after hours shall be permitted only on three (3) business days advanced written notice absent exigent circumstances.

vi. The source code is to be treated as **HIGHLY CONFIDENTIAL—SOURCE CODE**, and the receiving party may not disclose the source code or the content of the source code to anyone who has not undertaken to abide by the Protective Order. No employee of the receiving party may access or obtain the source code. In no case shall any information designated as **HIGHLY CONFIDENTIAL – SOURCE CODE** by a Defendant be provided to any other Defendant or Defendant’s counsel by any party or counsel absent explicit agreement from the party designating the information.

vii. No more than three (3) individuals who qualify under paragraph 5.a or paragraph 5.d, above, for the receiving party, may have access to the Source Code Computer. In addition, no more than five (5) additional attorneys and/or experts who qualify under paragraph 5.a or paragraph 5.d, above, for the receiving party, may have access to printed copies of any portion of the producing party’s source code. For each day that counsel for the receiving party requests a review of the Source Code Computer, it must give at least two (2) business days

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(and at least 48 hours) notice to the counsel for the producing party that it will be sending individual(s) authorized to review the source code made available on the Source Code Computer. The receiving party shall identify all individuals who will be given access to the source code at least ten (10) business days prior to any inspection, during which time the producing party may object to providing source code access to any persons so identified, provided that access will not be unreasonably denied. If an objection to an individual is made by the producing party, it will be the burden of the requesting party to prove that individual should be authorized to inspect the producing party's source code.

viii. Proper identification of all authorized persons shall be provided prior to any access to the secure facility or the Source Code Computer. Proper identification is hereby defined as a photo identification card sanctioned by the government of a U.S. state, by the United States federal government, or by the nation state of the authorized person's current citizenship. Access to the secure facility or the Source Code Computer may be denied, at the discretion of the producing party, to any individual who fails to provide proper identification.

ix. The Source Code Computer shall be equipped with a functioning, high-speed printer to print copies of the source code on watermarked pre-Bates numbered paper, which shall be provided by the producing party. Counsel for the producing party will keep the originals of these printed documents, and copies shall be made for counsel for the receiving party on watermarked paper either at the time they are requested (if less than 50 pages) or within 48 hours (if more than 50 pages). Counsel for the receiving party may request up to five (5) copies of

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printed source code. [No more than 10% or 500 pages of the total source code for any software release, whichever is less, may be in printed form at any one time, and all printed source code shall be logged by the receiving party as noted in paragraph 6.b.xiv below. Additionally, the receiving party shall not print any continuous block of source code that results in more than 10 printed pages. If necessary, the receiving party may request to print additional pages in excess of the 500 pages of total source code for a software release, or continuous blocks that exceed 10 pages, which request the producing party shall not unreasonably deny. In addition to other reasonable steps to maintain the security and confidentiality of the producing party's source code, printed copies of the source code maintained by the receiving party must be kept in a secure locked area when not in use. No electronic copies of the source code shall be provided by the producing party beyond the Source Code Computer. The producing party shall maintain a Source Code access log identifying, for each and every time any Source Code is viewed, accessed, or analyzed: (1) the name of each person who accessed the Source Code; (2) the date and time of access; (3) the length of time of access; and (4) whether any hard copies of any portion of Source Code were printed.]

x. The receiving party's outside counsel of record, experts or consultants shall maintain and store any paper copies of the source code or any notes, analyses, or descriptions of source code at their offices in a manner that prevents duplication of or unauthorized access to the source code, including

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without limitation, storing the source code in a secure locked area when not in use.

xi. [Any person or entity who obtains access to the source code or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such material or any portion thereof except as may be reasonably necessary in the litigation of this action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified HIGHLY CONFIDENTIAL – SOURCE CODE and subject to all of the terms and conditions of this Order.] [No paper copies shall be made of the printed copies of any portions of the source code provided by the producing party to the requesting party other than copies attached to sealed court filings, expert reports, discovery documents, or to be appropriated used in depositions.]

xii. [Any person or entity who obtains access to the source code or the contents thereof pursuant to this Order shall not make any electronic copies of such material or any portion thereof except as may be reasonably necessary in the litigation of this action. Any such electronic copies shall be subject to all of the terms and conditions of this Order.] [Except as otherwise provided within this paragraph, the receiving party will not create electronic images of the source code from the paper copies for use on a computer (e.g., may not scan the source code to a .PDF or other image) or otherwise copy, save, and/or store the source code onto any memory device or drive. The receiving party may only create an electronic copy or image of selected portions of the source code when relevant and necessary for any pleading, exhibit, testifying expert reports, consulting expert

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written analyses and related drafts, discovery document, deposition transcript, or other Court document, provided that such source code is appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures, and orders. The receiving party may not create an electronic copy or image of selected portions of the Source Code exceeding five (5) printed pages of code in a single document unless the electronic copy has been encrypted using commercially reasonable encryption software including password protection.] The communication and/or disclosure of electronic versions of the source code shall at all times be limited to individuals who are authorized to see source code under the provision of this Protective Order. Additionally, all copies must be labeled **HIGHLY CONFIDENTIAL – SOURCE CODE**. [Notwithstanding any of the foregoing, in no event shall the receiving party scan the paper copy of the source code using optical character recognition (“OCR”) technology or otherwise seek to render text-searchable any source code. Nor shall the receiving party seek to communicate electronically any copy of source code, including through e-mail, FTP, or any other means of electronic communication.]

xiii. [No outside electronic devices, including but not limited to laptops, floppy drives, USB-connectable devices, zip drives, or other hardware shall be permitted in the secure room. Nor shall any cellular telephones, Blackberries, personal digital assistants (PDAs), cameras, voice recorders, Dictaphones, telephone jacks, or other devices be permitted inside the secure room.]



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xiv. The receiving party's counsel shall keep a log of all copies of source code in its possession or in the possession of its retained experts or consultants, including the names of each recipient of any hard copy of the source code and when it was provided to that person. [A copy of the log must be made available for inspection by the receiving party at the producing party's request. Within thirty (30) days after the issuance of a final, non-appealable decision resolving all issues in the case, the receiving party must serve upon the producing party the log and serve upon the producing party all paper copies of the producing party's source code as well as documents, pleadings, reports, and notes reflecting or referring to such source code. In addition, all persons to whom the paper copies of the source code were provided must certify in writing that all copies of the source code were returned to the counsel who provided them the information and that they will make no use of the source code or of any knowledge gained from the source code in any future endeavor.]

xv. [Any expert or consultant retained on behalf of receiving party who is to be given access to producing party's produced source code (whether in electronic form or otherwise) must agree in writing not to perform software development work directly or indirectly intended for commercial purposes relating to any functionality covered by the source code reviewed by such expert or consultant for a period of one year after any substantive involvement in the case. This shall not preclude such experts or consultants from consulting in future litigation, so long as such consulting does not involve software development work

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directly or indirectly intended for commercial purposes relating to any functionality covered by the source code reviewed by such expert or consultant.]

xvi. Access to and review of the source code shall be strictly for the purpose of investigating the claims and defenses at issue in the above-captioned cases. No person shall review or analyze any source code for purposes unrelated to these cases, nor may any person use any knowledge gained as a result of reviewing source code in these cases in any other pending or future dispute, proceeding, or litigation.

xvii. A receiving party may include excerpts of source code in a pleading, exhibit, expert report, discovery document, deposition transcript, or other Court document, provided that such source code is appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures and orders.

7. Limited Access By Certain Deposition Witnesses. Protected Documents designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE, may be disclosed to a witness not already allowed access to such information under this Protective Order only if counsel for the party designating the material as CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE agrees in writing or on the record, before disclosure, that the material may be disclosed to the witness. Notwithstanding an agreement to disclose CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the

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variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE to any witness, the witness may not copy, take notes on, retain copies of, nor take out of the deposition room any CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE used or reviewed at such deposition. The producing party may also require that the transcript and exhibits not be copied by the witness, and that no notes be made of the transcript or the exhibits. In the event of disclosure under this paragraph, only the reporter, deponent, his/her counsel, and persons to whom disclosure may be made, and who are bound by the Protective Order, may be present during the disclosure or discussion of CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE Protected Documents. Disclosure of material pursuant to this paragraph shall not constitute a waiver of the confidential status of the material so disclosed.

8. Copies. The term “copy” as used herein means any photographic, mechanical or computerized copy or reproduction of any document or thing, or any verbatim transcript, in whole or in part, of such document or thing.

9. Use of Protected Documents at Depositions, Hearings or at Trial. To the extent that Protected Documents or information contained therein are used in depositions, at hearings, or at trial, such documents or information shall remain subject to the provisions of this Protective Order, along with the transcript pages of the deposition testimony and/or trial testimony referring to the Protected Documents or information contained therein. Any deposition transcript meeting the appropriate definitions of paragraph 2 hereinabove, in whole or in part, may be designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE by an

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appropriate statement at the time such testimony is given or thereafter by notifying the other parties in writing of the portions of such testimony to be so designated within thirty (30) days from receipt of the deposition transcript. Upon such request, the reporter shall mark the original and all copies of the transcript as designated. Unless the parties otherwise agree, the entire transcript of all such depositions shall be deemed designated as HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) for thirty (30) days from receipt of the transcript. Any portions so designated shall thereafter be treated in accordance with the terms of this Protective Order. If a party chooses to designate deposition testimony later than the 30 day period, it must do so with written notice. The party receiving the written notice will treat the deposition testimony per the designation under this Protective Order. Any use of the testimony or submission of such testimony to the Court prior to the late designation need not be retracted. Nothing in this paragraph shall prevent the receiving party from objecting to the designation, following the procedures and burdens of proof otherwise set forth herein for objecting to confidentiality designations.

10. Any court reporter or transcriber who reports or transcribes testimony in this action shall agree that all Confidential Information designated as such under this Protective Order shall remain confidential and shall not be disclosed by them, except pursuant to the terms of this Protective Order.

11. Related Material. The restrictions on the use of Protected Documents established by this Protective Order shall extend to:

a. Briefs, memoranda or other writings filed with the Court and exhibits thereto that contain or reflect the content of any such Protected Documents provided that such writings are designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL –

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OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE as provided for by paragraphs 2 and 6 hereto on at least the first page of the writing; and

b. All copies, extracts and complete or partial summaries prepared from such Protected Documents.

12. Filings Under Seal. All transcripts of depositions, exhibits, answers to interrogatories, pleadings, briefs, and other documents submitted to the Court which have been designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE or which contain information so designated shall be filed under seal. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on Confidential Information, the portions of the pleading having such Confidential Information shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

13. Financial Summaries. For the mutual convenience of the parties, Defendants may generate certain financial summaries for the purpose of the above-captioned cases. To the extent Defendants produce such financial summaries in a native format (e.g., a Word, Excel, or other native file), or to the extent Plaintiff puts any such financial summary or the information from any such financial summary into a document in a native format, Plaintiff shall password protect that document on an encrypted media. All such financial summaries are to be designated

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HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c). To the extent that any such financial summaries are transmitted from or to authorized recipients outside of the receiving party’s counsel’s office, the transmission shall be by email or by hand (and encrypted if in electronic format), or by a secure transport carrier (e.g., Federal Express).

14. Subpoenas or Court Orders to Compel Disclosure of Protected Documents. If a receiving party is served with a subpoena or court order that would compel disclosure of any information, documents or things designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE, the receiving party must so notify the producing party in writing (by fax or email) promptly as soon as reasonably possible and in any event, before any compliance under such subpoena or court order is requested or required. [The receiving party shall tender notice of the foregoing to counsel for the party whose CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE designated documents are being requested, whereupon producing party’s counsel shall immediately attend to all matters associated with such subpoena or court order on behalf of receiving party, and the producing party shall bear all duties and obligations relating to the matter, including without limitation indemnification of receiving party in regard thereto.] [Such notification must include a copy of the subpoena or order. The receiving party must also immediately inform in writing the party who caused the subpoena or order to issue that some or all of the documents covered by the subpoena or order is the subject of this Protective Order. In addition, the receiving party must deliver a copy of this Protective Order promptly to the party in the other action that caused

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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 party in these cases an opportunity to protect its confidentiality interests in the court from which the subpoena or order issued. The producing 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.]

15. Inadvertent Failure to Designate. Inadvertent or unintentional production of documents or information containing Confidential Information which are not designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Upon request by the producing party, the receiving party shall reasonably, at receiving party's option, either return or destroy all copies of such inadvertently produced document(s). The producing party shall have the opportunity to reproduce or designate the returned documents with any of the aforementioned designations. The return of documents or information will not operate as an admission by the receiving party that any particular CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE contains or reflects trade secrets or any other type of confidential or proprietary information. Nothing herein shall prevent the receiving party from challenging the propriety of the designation of the documents by submitting a written challenge to the Court.

16. Inadvertent Disclosure of Privileged Materials. Inspection or production of documents (including physical objects) shall not constitute a waiver of the attorney-client

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privilege or work product immunity or any other applicable privilege or immunity from discovery if, as soon as reasonably possible after the producing party becomes aware of any inadvertent or unintentional disclosure, the producing party designates any such documents as within the attorney-client privilege or work product immunity or any other applicable privilege or immunity, promptly requests return of such documents to the producing party in writing, and provides a privilege log for such inadvertently or unintentionally produced documents. Upon request by the producing party, the receiving party shall gather and return all copies of such inadvertently produced document(s), except for any pages that contain, constitute or reflect attorney work product or attorney-client privileged communications, which pages shall instead be destroyed and certified as such to the producing party. If the receiving party contests the privilege or work product designation by the producing party, the receiving party shall give the producing party written notice of the reason for the disagreement and shall retain one copy of the disputed document for use in resolving the dispute. In such case, the receiving party shall seek an Order from the Court compelling the production of the material. If no such Order is sought within thirty (30) days, then all copies of the disputed document shall be returned in accordance with this paragraph. Absent a Court Order to the contrary, the parties hereby agree and stipulate that any privilege or immunity that was originally present will remain intact once any such document is returned or confirmed as destroyed by the recipient.

17. No Effect on Federal Rules of Civil Procedure. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure or the Federal Rules of Evidence. Identification of any individual pursuant to this Protective Order does not make that individual available for deposition or any other form of discovery outside of



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the restrictions and procedures of the Federal Rules of Civil Procedure, and the Local Court Rules of the United States District Court for the Eastern District of Texas.

18. Advertising or Sale of Protected Documents Prohibited. The party or parties receiving Protected Documents shall not under any circumstances sell, offer for sale, advertise, or publicize Protected Documents or any information contained therein.

19. Termination and Disposition Upon Conclusion. The provisions of this Protective Order may not be modified, waived, or terminated except by the written stipulation of counsel or order of the Court. After termination of these litigations, 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 Documents for enforcement of the provisions of this Protective Order following termination of the above-captioned cases.

20. Each of the Parties shall retain the right to file a motion with the Court (i) to modify this Order to allow disclosure of Protected Documents to additional persons or entities if reasonably necessary to prepare and present this action and (ii) to apply for additional protection of Protected Documents.

21. Except as otherwise provided in paragraph 6.b.xiv above, within sixty (60) calendar days, after termination of this action, including any appeals, all persons and entities (including experts and consultants) who received Protected Documents shall either destroy or return all Protected Documents to the counsel for the party or parties disclosing or producing the Protected Documents. The choice of whether Protected Documents should be returned or destroyed shall be made by the receiving party. As used in this paragraph, “all Protected Documents” includes all copies, abstracts, compilations, summaries or any other form of

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reproducing or capturing of any of the Protected Documents. The receiving party shall certify the return or destruction of such Protected Documents to the producing party, upon the producing party's request. Notwithstanding this provision, Counsel of Record may retain an archival copy of all pleadings, motion papers, any documents or materials filed or used in court, exhibits offered or introduced into evidence at trial, legal memoranda, correspondence, or attorney work product, even if such materials contain Protected Documents. Counsel of Record may also retain an archival copy of deposition transcripts (including exhibits) of the current and former employees and experts of the party that each respective Counsel of Record represents, expert reports (including exhibits) produced by the experts of the party that each respective Counsel of Record represents, and discovery requests and responses (including exhibits) produced by the party that each respective Counsel of Record represents, even if such materials contain Protected Documents. Each Defendant may retain an archived copy of deposition transcripts (including exhibits) of its own current and former employees and experts, but only to the extent that such materials do not contain any Protected Documents of another Defendant. Any such archival copies that contain or constitute Protected Documents remain subject to this Protective Order as set forth in paragraph 19 above and shall be maintained in confidence by the party retaining the materials, subject to paragraph 5. Notwithstanding the foregoing, outside counsel of record receiving Protected Documents are not required to delete information that may reside on their respective firm's electronic disaster recovery systems which are overwritten in the normal course of business. However, outside counsel receiving Protected Documents agree that no Protected Documents marked CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) or HIGHLY CONFIDENTIAL – SOURCE CODE shall intentionally be retrieved from the electronic disaster recovery systems after termination of

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this action by dismissal, judgment, or settlement. In the event Protected Documents are inadvertently retrieved through use of the electronic disaster recovery systems for another purpose, such materials shall be destroyed or promptly returned.

22. Others Bound by Order. This Protective Order shall be binding upon the parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

23. Exclusion Relating to Patent Prosecution. [Counsel or parties receiving Protected Documents designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) or HIGHLY CONFIDENTIAL – SOURCE CODE from another party may not use such information to provide advice or opinions to facilitate prosecution of any patents. This prohibition is not intended to preclude counsel from participating in reexamination proceedings on behalf of a party challenging the validity of a patent. The foregoing exclusion of this paragraph 23 does not apply to individuals listed in paragraph 5.e and who may receive Protected Documents designated HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), that consists of financial information relating to the Accused Instrumentalities and not technical information, pursuant to paragraph 5.] [All discovery material exchanged among the parties in this action shall be used solely for prosecution and defense of the claims in the above-captioned cases and shall not be used for any business, commercial, competitive, personal or other purpose. Moreover, any person who obtains, receives, or otherwise learns, in whole or in part, any information designated as HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c) or HIGHLY CONFIDENTIAL – SOURCE CODE shall not be involved directly or indirectly (e.g.,

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by advising) in any of the following activities: preparing, prosecuting, drafting, editing, and/or amending of patent applications, specifications, claims, and/or responses to office actions (including reissue, reexamination, and certificates of correction) relating to the patents-in-suit, the subject matter disclosed in the patents-in-suit, and/or the products and technology accused in the above-captioned cases, before any foreign or domestic agency, including the United States Patent and Trademark Office, for a period ending three (3) years after the final resolution of these cases. This bar is not intended to preclude counsel from participating in reexamination proceedings on behalf of a party challenging the validity of a patent, where counsel will not be involved in crafting claims, but it is intended to preclude counsel from participating directly or indirectly in reexamination proceedings on behalf of a patentee.]

24. Third Parties. This Protective Order shall afford all third parties who produce any Protected Documents the same protections afforded to the parties to the above-captioned cases. Specifically, third parties shall be entitled to mark any documents CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE and shall also be able to designate any deposition testimony CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE. The parties to these actions will treat such marked information per the terms of this Protective Order. To the extent applicable, the remaining provisions of this Protective Order shall apply to third parties, including the designation HIGHLY CONFIDENTIAL – SOURCE CODE. A third party's use of this Protective Order to protect its CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE documents does not entitle that third party access to such

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documents produced by any party in the above-captioned cases. A copy of this Protective Order shall be served along with any subpoena served in connection with this action.

- a. If Protected Documents sought by a receiving party are subject to a confidentiality obligation of the producing party to a third party, the producing party shall promptly request permission from such third party to produce the requested Protected Documents and shall provide a copy of this Protective Order to the third party. If the third party does not consent to production of the requested Protected Documents, then the producing party shall promptly give notice to the receiving party of the third party's lack of consent, and the receiving party may make a motion to the Court for an order compelling production of the requested Protected Documents. A producing party is not required to produce such Protected Documents unless and until the third party provides consent or the Court issues an order compelling production of the requested Protected Documents. A producing party producing Protected Documents subject to a confidentiality obligation to a third party may designate the Protected Documents as HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE.

25. Access to Protected Documents by Experts or Consultants. Before counsel for a party receiving Protected Documents may disclose any such material designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), and/or HIGHLY CONFIDENTIAL – SOURCE CODE to a proposed expert or consultant:

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a. Counsel shall provide a copy of this Protective Order to such person, who shall sign the Agreement attached hereto as Exhibit A; and

b. At least ten (10) business days before the first such disclosure, counsel for the receiving party shall notify the producing party in writing of the intent to disclose CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), and/or HIGHLY CONFIDENTIAL – SOURCE CODE discovery material to such person. The notice shall include a copy of the Agreement attached hereto as Exhibit A signed by the person and shall identify his or her title, job responsibilities and affiliation(s), if any, with the receiving party. The notice shall also include a copy of such person's most recent curriculum vitae, which shall include an identification of all such person's post-college employment relationships, and a list of other cases in which the individual has testified (at trial or deposition) within the last four years.

c. If the producing party objects to the disclosure of CONFIDENTIAL, HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY (or the variations of paragraph 2.c), or HIGHLY CONFIDENTIAL – SOURCE CODE material to such person, the producing party shall notify counsel for the receiving party in writing of the producing party's objection(s) to such disclosure within ten (10) business days of receiving notice of intent to disclose. Any objection must be made for good cause, stating with particularity the reasons for the objection. Should the receiving party disagree with the basis for the objection(s), the parties must first attempt to resolve the objection(s) informally. If the informal efforts do not resolve the dispute within ten (10) business days, the receiving party may file a motion requesting that the objection(s) be

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quashed after that ten (10) day period has passed. The producing party shall have the burden of proof by a preponderance of the evidence on the issue of the sufficiency of the objection(s). Pending a ruling by the Court upon any such objection(s), the discovery material shall not be disclosed to the person objected to by the producing party.

26. Party's Own Information. The restrictions on the use of Protected Documents established by this Protective Order are applicable only to Protected Documents received by a party from another party or from a non-party as a direct result of these cases. A party is free to do whatever it desires with its own Protected Documents.

27. Modifications in Writing. Nothing herein shall prevent disclosure beyond the terms of this Protective Order if counsel for the designating party consents in writing or on the record to such disclosure, or if the Court, after notice to all affected parties, orders such disclosure. Any particular consent given under this Protective Order with respect to confidentiality of the particular document shall not be deemed a general waiver of any other designation.

28. Violation of this Protective Order. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

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29. Notice. All notices required by this Protective Order are to be served via facsimile or email to the attorney(s) for each of the Defendants and Plaintiff listed in the signature block below for each party.

30. Privilege Unaffected. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.

31. Production Format. The parties shall produce all documents, whether deemed Protected Documents or otherwise, in the TIFF electronic format with a load file – specifically a form that preserves the page breaks between documents and otherwise allows separate documents to be identified. The parties further agree that the parties [shall] [do not need to] perform optical character recognition (OCR) on the foregoing electronically produced files prior to their production. Notwithstanding the foregoing, if by their nature, certain documents are best viewable in their native formats (e.g., financial documentation), a party may choose to produce such documents in their respective native formats and will accommodate the requesting party's requests to produce such documents in their respective native formats, so long as the burden is not cumulative or overly burdensome. Each party shall make every attempt to work in good faith in order to accommodate the technical or other feasibility requirements of the requesting party with respect to the format of produced documents, so long as such requests are reasonable, provide sufficient time, and are not duplicative, burdensome or financially unreasonable to accommodate.



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ACCEPTED AND AGREED:

/s/ Cameron H. Tousi

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*/s/ Michael E. Jones*

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ATTORNEYS FOR DEFENDANT  
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**DRAFT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**WIRELESS RECOGNITION  
TECHNOLOGIES LLC,** )  
)  
)  
*Plaintiff,* )

v. )

**C.A. No. 2:10-cv-00364-TJW-CE**

**A9.COM, INC.,** )  
**AMAZON.COM, INC.,** )  
**GOOGLE, INC.,** )  
**NOKIA, INC.** )  
**and** )  
**RICOH INNOVATIONS, INC.** )  
)  
*Defendants.* )

**JURY TRIAL DEMANDED**

**EXHIBIT A**

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

I, \_\_\_\_\_, declare that:

1. My present residential address is \_\_\_\_\_  
\_\_\_\_\_.

2. My present employer is \_\_\_\_\_ and the  
address of my present employer is \_\_\_\_\_.

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

4 I certify my understanding that the Protected Documents and information are  
being provided to me pursuant to the terms and restrictions of the Protective Order, and that I

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have been given a copy of and have read and understood my obligations under that Protective Order. I hereby agree to be bound by the terms of the Protective Order. I clearly understand that the Protected Documents and information, and my copies or notes relating thereto, may only be disclosed to or discussed with those persons permitted by the Protective Order to receive such material.

5. Upon the termination of this action or at any time requested by outside counsel for the party by whom I am retained, I will return to such counsel all materials containing Protected Documents and information, copies thereof, and notes that I have prepared relating thereto.

6. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order and waive any and all objections to jurisdiction and venue.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
[printed name]

\_\_\_\_\_  
[signature]