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APPLE INC.

18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 Advanced Voice Recognition Systems,
21 Inc.,

22 Plaintiff,

23 v.

24 Apple Inc.,

25 Defendant.

Case No. 18-02083-PHX-DGC

**JOINT MOTION FOR ENTRY OF
PROTECTIVE ORDER**

1 Plaintiff Advanced Voice Recognition Systems, Inc., (“AVRS”) and Defendant
2 Apple Inc. (“Apple”), in accordance with the Court’s order during the Joint Status
3 Conference on January 11, 2019 (Dkt. No. 54), hereby stipulate to the entry of a protective
4 order to govern the discovery and use of confidential information in this action.
5 Disclosure and discovery activity in this action may involve production of confidential,
6 proprietary, and/or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting or defending this litigation
8 would be warranted. The parties agree that good cause exists for such information to be
9 protected from unnecessary disclosure.

10 The proposed protective order addresses the requirements of LRCiv 5.6, expressly
11 states that it does not automatically permit a party to file any document under seal, and
12 incorporates the requirements for filing under seal set forth in *Kamakana v. City and*
13 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). (See ¶ 15 of the proposed protective
14 order.)

15 The Parties have agreed to the terms and conditions of the Protective Order,
16 attached as Exhibit A, and hereby request entry of a Protective Order in this case.

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1 Dated: February 12, 2019

OSBORN MALEDON, P.A.

2
3 By s/ Eric M. Fraser

4 Eric M. Fraser
5 2929 N. Central Avenue, Suite 2100
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16 *Of Counsel*

17 Dated: February 12, 2019

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18 By s/ Kenneth P. Kula

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22 *Attorneys for Plaintiff*

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2019, I electronically transmitted the attached document(s) to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the parties who are CM/ECF registrants.

s/ Kenneth P. Kula
Kenneth P. Kula

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Advanced Voice Recognition Systems,
Inc.,

Plaintiff,

v.

Apple Inc.,

Defendant.

Case No. 18-02083-PHX-DGC

**[PROPOSED] PROTECTIVE
ORDER**

Upon stipulation of the parties, Plaintiff Advanced Voice Recognition Systems, Inc. (“AVRS”) and Defendant Apple Inc. (“Apple”), and good cause appearing,

IT IS ORDERED pursuant to Fed. R. Civ. P. 26(c) that the following procedures shall apply to documents, testimony, and information containing or reflecting confidential, proprietary, trade secret, or commercially sensitive information:

1. PURPOSES AND LIMITATIONS

(a) Protected Material designated under the terms of this Protective Order shall be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for any other purpose whatsoever.

(b) The Parties acknowledge that this Order does not confer blanket protections

1 on all disclosures during discovery, or in the course of making initial or supplemental
2 disclosures under Rule 26(a). Designations under this Order shall be made with care and
3 shall not be made absent a good-faith belief that the designated material satisfies the criteria
4 set forth below. If it comes to a Producing Party’s attention that designated material does
5 not qualify for protection at all, or does not qualify for the level of protection initially
6 asserted, the Producing Party must promptly notify all other Parties that it is withdrawing
7 or changing the designation.

8 **2. DEFINITIONS**

9 (a) “Discovery Material” means all items or information, including from any
10 non-party, regardless of the medium or manner generated, stored, or maintained (including,
11 among other things, testimony, transcripts, or tangible things) that are produced, disclosed,
12 or generated in connection with discovery, the Mandatory Initial Discovery Pilot Project,
13 or Rule 26(a) disclosures in this case.

14 (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings as
15 counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is
16 reasonably necessary to disclose the information for this litigation.

17 (c) “Patent-in-Suit” means U.S. Patent No. 7,558,730, and any other patent
18 asserted in this action, as well as any related patents, patent applications, provisional patent
19 applications, continuations, or divisionals.

20 (d) “Party” means any party to this case, including all of its officers, directors,
21 employees, consultants, retained experts, and outside counsel and their support staffs.

22 (e) “Producing Party” means any Party or non-party that discloses or produces
23 any Discovery Material in this case.

24 (f) “Protected Material” means any Discovery Material that is designated as
25 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
26 “HIGHLY CONFIDENTIAL – SOURCE CODE,” as provided for in this Order. Protected
27 Material shall not include: (i) advertising materials that have been actually published or
28

1 publicly disseminated; and (ii) materials that show on their face they have been
2 disseminated to the public.

3 (g) “Receiving Party” means any Party who receives Discovery Material from a
4 Producing Party.

5 (h) “Source Code” means computer code, scripts, assembly, binaries, object
6 code, and any other human readable computer instructions, data structures, and data
7 definitions expressed in a form suitable for input to an assembler, compiler, translator, or
8 other data-processing module in native format. The Parties agree that the definition of
9 “source code” identified in this paragraph is for purposes of this case only. The Parties do
10 not anticipate that certain other categories of protected materials such as Hardware
11 Description Language (HDL), Register Transfer Level (RTL), Computer Aided Design
12 (CAD), and other files that describe the hardware design of any component will be at issue
13 in this case, but if such materials become at issue the Parties will meet and confer regarding
14 any necessary protections.

15 **3. COMPUTATION OF TIME**

16 The computation of any period of time prescribed or allowed by this Order shall
17 be governed by the provisions for computing time set forth in Federal Rules of Civil
18 Procedure 6.

19 **4. SCOPE**

20 (a) The protections conferred by this Order cover not only Discovery Material
21 governed by this Order as addressed herein, but also any information copied or extracted
22 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
23 testimony, conversations, or presentations by Parties or their counsel in court or in other
24 settings that might reveal Protected Material.

25 (b) Nothing in this Protective Order shall prevent or restrict a Producing Party’s
26 own disclosure or use of its own Protected Material for any purpose, and nothing in this
27 Order shall preclude any Producing Party from showing its Protected Material to an
28 individual who prepared the Protected Material.

1 (c) Nothing in this Order shall be construed to prejudice any Party's right to use
2 any Protected Material in court or in any court filing with the consent of the Producing
3 Party or by order of the Court.

4 (d) This Order is without prejudice to the right of any Party to seek further or
5 additional protection of any Discovery Material or to modify this Order in any way,
6 including, without limitation, an order that certain matter not be produced at all.

7 **5. DURATION**

8 Even after the termination of this case, the confidentiality obligations imposed by
9 this Order shall remain in effect until a Producing Party agrees otherwise in writing or a
10 court order otherwise directs.

11 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 (a) Basic Principles. All Protected Material shall be used solely for this case or
13 any related appellate or administrative proceeding involving the Parties, and not for any
14 other purpose whatsoever, including without limitation any other litigation, patent
15 prosecution or acquisition, patent reexamination or reissue proceedings, or any business or
16 competitive purpose or function. Protected Material shall not be distributed, disclosed or
17 made available to anyone except as expressly provided in this Order.

18 (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,
19 any person on behalf of the Plaintiff who receives one or more items designated "HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL–
21 SOURCE CODE" by Defendant shall not be involved, directly or indirectly, in any of the
22 following activities: (i) advising on, consulting on, preparing, prosecuting, drafting, editing,
23 or amending of claims, or otherwise affecting the scope of claims in patents or patent
24 applications relating to the functionality, operation, and design of speech recognition and
25 transcription (generally or as described in any Patent-in-Suit), before any foreign or
26 domestic agency, including the United States Patent and Trademark Office; and (ii) the
27 acquisition of patents (including patent applications), or the rights to any such patents or
28 patent applications with the right to sublicense, relating to the functionality, operation, and

1 design of speech recognition and transcription. These prohibitions are not intended to and
2 shall not preclude counsel from being involved in the construction or interpretation of claim
3 term meaning during the course of the above captioned litigation. These prohibitions shall
4 begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
5 “HIGHLY CONFIDENTIAL – SOURCE CODE” materials are first received by the
6 affected individual, and shall end two (2) years after the final resolution of this action,
7 including all appeals.

8 (c) Secure Storage, No Export. Protected Material must be stored and
9 maintained by a Receiving Party at a location in the United States and in a secure manner
10 that ensures that access is limited to the persons authorized under this Order. To ensure
11 compliance with applicable United States Export Administration Regulations, Protected
12 Material may not be exported or otherwise reviewed outside the United States.

13 (d) Legal Advice Based on Protected Material. Nothing in this Protective Order
14 shall be construed to prevent counsel from advising their clients with respect to this case
15 based in whole or in part upon Protected Materials, provided counsel does not disclose the
16 Protected Material itself except as provided in this Order.

17 (e) Limitations. Nothing in this Order shall restrict in any way a Producing
18 Party’s use or disclosure of its own Protected Material. Nothing in this Order shall restrict
19 in any way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or
20 has become publicly known through no fault of the Receiving Party; (ii) that is lawfully
21 acquired by or known to the Receiving Party independent of the Producing Party;
22 (iii) previously produced, disclosed or provided by the Producing Party to the Receiving
23 Party or a non-party without an obligation of confidentiality and not by inadvertence or
24 mistake; (iv) with the consent of the Producing Party; or (v) pursuant to order of the Court.

25 **7. DESIGNATING PROTECTED MATERIAL**

26 (a) Available Designations. Any Producing Party may designate Discovery
27 Material with any of the following designations, provided that it meets the requirements for
28 such designations as provided for herein: “CONFIDENTIAL,” “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
2 SOURCE CODE.”

3 (b) Written Discovery and Documents and Tangible Things. Written discovery,
4 documents (which include “electronically stored information,” as that phrase is used in
5 Federal Rule of Procedure 34), and tangible things that meet the requirements for the
6 confidentiality designations listed in Paragraph 7(a) may be so designated by placing the
7 appropriate designation on every page of the written material prior to production. For
8 digital files being produced, the Producing Party may mark each viewable page or image
9 with the appropriate designation, and mark the medium, container, or communication in
10 which the digital files were contained. In the event that original documents are produced
11 for inspection, the original documents shall be presumed “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” during the inspection and re-designated, as appropriate
13 during the copying process.

14 (c) Native Files. Where electronic files and documents are produced in native
15 electronic format, such electronic files and documents shall be designated for protection
16 under this Order by appending to the file names or designators information indicating
17 whether the file contains “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,”
19 material, or shall use any other reasonable method for so designating Protected Materials
20 produced in electronic format. When electronic files or documents are printed for use at
21 deposition, in a court proceeding, or for provision in printed form to an expert or consultant
22 pre-approved pursuant to Paragraph 12, the party printing the electronic files or documents
23 shall affix a legend to the printed document corresponding to the designation of the
24 Designating Party and including the production number and designation associated with
25 the native file. No one shall seek to use in this litigation a .tiff, .pdf or other image format
26 version of a document produced in native file format that contains altered information or is
27 otherwise inaccurate. In the event that the Producing Party becomes aware of the use of an
28 altered or inaccurate version of such a document, the Producing Party shall timely notify

1 the Receiving Party and the objectionable image shall be replaced with an unaltered image
2 with the consent of the Producing Party.

3 (d) Depositions and Testimony. Parties or testifying persons or entities may
4 designate depositions and other testimony with the appropriate designation by indicating
5 on the record at the time the testimony is given or by sending written notice of how portions
6 of the transcript of the testimony is designated within thirty (30) days of receipt of the
7 transcript of the testimony (the “Designation Time Period”). If no indication on the record
8 is made, all information disclosed during a deposition shall be deemed “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the Designation Time Period.
10 Any Party that wishes to disclose the transcript, or information contained therein, not
11 designated confidential pursuant to this Protective Order prior to the expiration of the
12 Designation Time Period may provide written notice of its intent to treat the transcript as
13 non-confidential, after which time, any Party that wants to maintain any portion of the
14 transcript as confidential must designate the confidential portions within fourteen (14) days,
15 or else the transcript may be treated as non-confidential. Any Protected Material that is
16 used in the taking of a deposition shall remain subject to the provisions of this Protective
17 Order, along with the transcript pages of the deposition testimony dealing with such
18 Protected Material. In such cases the court reporter shall be informed of this Protective
19 Order and shall be required to operate in a manner consistent with this Protective Order. In
20 the event the deposition is videotaped, the original and all copies of the videotape shall be
21 marked by the video technician to indicate that the contents of the videotape are subject to
22 this Protective Order, substantially along the lines of “This videotape contains
23 confidential testimony used in this case and is not to be viewed or the contents thereof
24 to be displayed or revealed except pursuant to the terms of the operative Protective
25 Order in this matter or pursuant to written stipulation of the parties.” Counsel for any
26 Producing Party shall have the right to exclude from oral depositions, any person who
27 is not authorized by this Protective Order to receive or access Protected Material based
28 on the designation of such Protected Material other than the deponent, deponent’s

1 counsel, the reporter and videographer (if any). Such right of exclusion shall be
2 applicable only during periods of examination or testimony regarding such Protected
3 Material.

4 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

5 (a) A Producing Party may designate Discovery Material as
6 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, or commercially
7 sensitive information.

8 (b) Unless otherwise ordered by the Court, Discovery Material designated as
9 “CONFIDENTIAL” may be disclosed only to the following:

10 (i) The Receiving Party’s Outside Counsel, such counsel’s immediate
11 paralegals and staff, and any copying or clerical litigation support services working
12 at the direction of such counsel, paralegals, and staff;

13 (ii) Not more than three (3) representatives of the Receiving Party who
14 are officers or employees of the Receiving Party, who may be, but need not be, in-
15 house counsel for the Receiving Party, as well as their immediate paralegals and
16 staff, to whom disclosure is reasonably necessary for this case, provided that:

17 (a) each such person has agreed to be bound by the provisions of the Protective
18 Order by signing a copy of Exhibit A; and (b) no unresolved objections to such
19 disclosure exist after proper notice has been given to all Parties as set forth in
20 Paragraph 12 below;

21 (iii) Any outside expert or consultant retained by the Receiving Party to
22 assist in this action, provided that disclosure is only to the extent necessary to
23 perform such work; and provided that: (a) such expert or consultant has agreed to
24 be bound by the provisions of the Protective Order by signing a copy of Exhibit
25 A; (b) such expert or consultant is not a current officer, director, or employee of a
26 Party or of a competitor of a Party, nor anticipated at the time of retention to become
27 an officer, director or employee of a Party or of a competitor of a Party; (c) such
28 expert or consultant accesses the materials in the United States only, and does not

1 transport them to or access them from any foreign jurisdiction; and (d) no unresolved
2 objections to such disclosure exist after proper notice has been given to all Parties
3 as set forth in Paragraph 12 below;

4 (iv) Court reporters, stenographers and videographers retained to record
5 testimony taken in this action;

6 (v) The Court, jury, and court personnel;

7 (vi) Graphics, translation, design, or trial consulting personnel, having
8 first agreed to be bound by the provisions of the Protective Order by signing a copy
9 of Exhibit A;

10 (vii) Mock jurors who have signed an undertaking or agreement agreeing
11 not to publicly disclose Protected Material and to keep any information concerning
12 Protected Material confidential;

13 (viii) Any mediator who is assigned to hear this matter, and his or her staff,
14 subject to their agreement to maintain confidentiality to the same degree as required
15 by this Protective Order; and

16 (ix) Any other person with the prior written consent of the Producing
17 Party.

18 **9. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL**
19 **– ATTORNEYS’ EYES ONLY”**

20 (a) A Producing Party may designate Discovery Material as “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information
22 that is extremely confidential or sensitive in nature and the Producing Party reasonably
23 believes that the disclosure of such Discovery Material is likely to cause economic harm or
24 significant competitive disadvantage to the Producing Party. The Parties agree that the
25 following information, if non-public, shall be presumed to merit the “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing
27 information, financial data, sales information, sales or marketing forecasts or plans,
28 business plans, sales or marketing strategy, product development information, engineering

1 documents, testing documents, employee information, and other non-public information of
2 similar competitive and business sensitivity.

3 (b) Unless otherwise ordered by the Court, Discovery Material designated as
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

5 (i) The Receiving Party’s Outside Counsel, provided that such Outside
6 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v.*
7 *United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
8 competitor of a Party, and such Outside Counsel’s immediate paralegals and staff,
9 and any copying or clerical litigation support services working at the direction of
10 such counsel, paralegals, and staff;

11 (ii) With respect to Discovery Material produced by the Plaintiff, not
12 more than three (3) in-house counsel of the Receiving Party, as well as their
13 immediate paralegals and staff to whom disclosure is reasonably necessary for this
14 case, provided that: (a) each such person has agreed to be bound by the provisions
15 of the Protective Order by signing a copy of Exhibit A; and (b) no unresolved
16 objections to such disclosure exist after proper notice has been given to all
17 Parties as set forth in Paragraph 12 below;

18 (iii) Any outside expert or consultant retained by the Receiving Party to
19 assist in this action, provided that disclosure is only to the extent necessary to
20 perform such work; and provided that: (a) such expert or consultant has agreed to
21 be bound by the provisions of the Protective Order by signing a copy of Exhibit A;
22 (b) such expert or consultant is not a current officer, director, or employee of a Party
23 or of a competitor of a Party, nor anticipated at the time of retention to become an
24 officer, director, or employee of a Party or of a competitor of a Party; (c) such expert
25 or consultant is not involved in competitive decision-making, as defined by *U.S.*
26 *Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party
27 or a competitor of a Party; (d) such expert or consultant accesses the materials in the
28 United States only, and does not transport them to or access them from any

1 foreign jurisdiction; and (e) no unresolved objections to such disclosure exist after
2 proper notice has been given to all Parties as set forth in Paragraph 12 below;

3 (iv) Court reporters, stenographers and videographers retained to record
4 testimony taken in this action;

5 (v) The Court, jury, and court personnel;

6 (vi) Graphics, translation, design, or trial consulting personnel, having
7 first agreed to be bound by the provisions of the Protective Order by signing a copy
8 of Exhibit A;

9 (vii) Any mediator who is assigned to hear this matter, and his or her staff,
10 subject to their agreement to maintain confidentiality to the same degree as required
11 by this Protective Order; and

12 (viii) Any other person with the prior written consent of the Producing
13 Party.

14 **10. DISCOVERY MATERIAL DESIGNATED AS “HIGHLY CONFIDENTIAL**
15 **– SOURCE CODE”**

16 (a) To the extent production of Source Code becomes necessary to the
17 prosecution or defense of the case, a Producing Party may designate Source Code as
18 “HIGHLY CONFIDENTIAL – SOURCE CODE” if it comprises or includes confidential,
19 proprietary, and/or trade secret Source Code.

20 (b) Nothing in this Order shall be construed as a representation or admission that
21 Source Code is properly discoverable in this action, or to obligate any Party to produce any
22 Source Code.

23 (c) Unless otherwise ordered by the Court, Discovery Material designated as
24 “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the provisions set
25 forth in Paragraph 11 below, and may be disclosed, subject to Paragraph 11 below, solely
26 to:

27 (i) The Receiving Party’s Outside Counsel, provided that such Outside
28 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v.*

1 *United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a
2 competitor of a Party, and such Outside Counsel’s immediate paralegals and staff,
3 and any copying or clerical litigation support services working at the direction of
4 such counsel, paralegals, and staff;

5 (ii) Any outside expert or consultant retained by the Receiving Party to
6 assist in this action, provided that disclosure is only to the extent necessary to
7 perform such work; and provided that: (a) such expert or consultant has agreed to
8 be bound by the provisions of the Protective Order by signing a copy of Exhibit A;
9 (b) such expert or consultant is not a current officer, director, or employee of a Party
10 or of a competitor of a Party, nor anticipated at the time of retention to become an
11 officer, director or employee of a Party or of a competitor of a Party; (c) such expert
12 or consultant is not involved in competitive decision-making, as defined by *U.S.*
13 *Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party
14 or a competitor of a Party; (d) such expert or consultant accesses the materials in the
15 United States only, and does not transport them to or access them from any
16 foreign jurisdiction; and (e) no unresolved objections to such disclosure exist after
17 proper notice has been given to all Parties as set forth in Paragraph 12 below;

18 (iii) Court reporters, stenographers and videographers retained to record
19 testimony taken in this action;

20 (iv) The Court, jury, and court personnel;

21 (v) Any mediator who is assigned to hear this matter, and his or her staff,
22 subject to their agreement to maintain confidentiality to the same degree as required
23 by this Protective Order; and

24 (vi) Any other person with the prior written consent of the Producing
25 Party.

26 **11. DISCLOSURE AND REVIEW OF SOURCE CODE**

27 (a) Any Source Code that is produced by Plaintiff shall be made available for
28 inspection in electronic format at the Mesa, Arizona office of its outside counsel,

1 SCHMEISER, OLSEN & WATTS LLP, or any other location mutually agreed by the
2 Parties. Any Source Code that is produced by Apple Inc. will be made available for
3 inspection at the San Francisco, California office of its outside counsel, MORRISON &
4 FOERSTER LLP, or any other location mutually agreed by the Parties. Source Code will
5 be made available for inspection between the hours of 8 a.m. and 6 p.m. on business days
6 (i.e., weekdays that are not Federal holidays), although the Parties will be reasonable in
7 accommodating reasonable requests to conduct inspections at other times.

8 (b) Prior to the first inspection of any requested Source Code, the Receiving
9 Party shall provide thirty (30) days' notice of the Source Code that it wishes to inspect. The
10 Receiving Party shall provide seven (7) days' notice prior to any additional inspections.

11 (c) Source Code that is designated "HIGHLY CONFIDENTIAL – SOURCE
12 CODE" shall be produced for inspection and review subject to the following
13 provisions, unless otherwise agreed by the Producing Party:

14 (i) All Source Code shall be made available by the Producing Party to
15 the Receiving Party's outside counsel or experts in a secure room on a secured
16 computer with a monitor and mouse, but otherwise without Internet access or
17 network access to other computers and on which all access ports have been disabled,
18 as necessary and appropriate to prevent and protect against any unauthorized
19 copying, transmission, removal or other transfer of any Source Code outside or away
20 from the computer on which the Source Code is provided for inspection (the "Source
21 Code Computer" in the "Source Code Review Room"). The Producing Party shall
22 supply an additional monitor for connection to the Source Code Computer to
23 facilitate review of the Source Code.

24 (ii) The Producing Party shall provide the Receiving Party with
25 information explaining how to operate the Source Code Computer in order to access
26 the produced Source Code;

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1 (iii) The Producing Party will produce Source Code on the Source Code
2 Computer as described above in the format in which it is maintained in the ordinary
3 course of the Producing Party's business;

4 (iv) The Producing Party shall install tools that are sufficient for viewing
5 and searching the code produced, on the platform produced, if such tools exist and
6 are presently used in the ordinary course of the Producing Party's business. The
7 Receiving Party's outside counsel or experts may request that commercially
8 available software tools for viewing and searching Source Code be installed on the
9 secured computer, provided, however, that (a) the Receiving Party possesses an
10 appropriate license to such software tools; (b) the Producing Party approves such
11 software tools; and (c) such other software tools are reasonably necessary for the
12 Receiving Party to perform its review of the Source Code consistent with all of the
13 protections herein. The Receiving Party must provide the Producing Party with the
14 CD or DVD containing such licensed software tool(s) at least fourteen (14) days in
15 advance of the date upon which the Receiving Party wishes to have the additional
16 software tools available for use on the Source Code Computer.

17 (v) No recordable media or recordable devices, including without
18 limitation sound recorders, computers, cellular telephones, peripheral equipment,
19 cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code
20 Review Room.

21 (vi) The Receiving Party's outside counsel or experts shall be entitled to
22 take notes relating to the Source Code but may not copy the Source Code into the
23 notes and may not take such notes electronically on the Source Code Computer
24 itself. In addition to the Source Code Computer, the Producing Party shall make
25 available a Notetaking Computer for purposes of enabling the Receiving Party to
26 take notes relating to the Source Code. The Producing Party shall make available a
27 laser printer with commercially reasonable printing speeds for on-site printing of
28 only notes taken on the Notetaking Computer. No other computer or printer is

1 permitted in the Source Code Review Room.

2 (vii) The Producing Party may visually monitor the activities of the
3 Receiving Party's representatives during any Source Code review, but only to
4 ensure that no unauthorized electronic records of the Source Code are being created
5 or transmitted in any way.

6 (viii) No copies of all or any portion of the Source Code may leave the
7 room in which the Source Code is inspected except as otherwise provided herein.
8 Further, no other written or electronic record of the Source Code is permitted except
9 as otherwise provided herein. The Receiving Party may request printing of limited
10 portions of the Source Code only when necessary to prepare court filings or
11 pleadings or other papers (including a testifying expert's expert report). Any printed
12 portion that consists of more than thirty (30) pages of a continuous block of Source
13 Code shall be presumed to be excessive, and the burden shall be on the Receiving
14 Party to demonstrate the need for such a printed copy. The Receiving Party may
15 request for printing out no more than three hundred (300) pages total. If necessary,
16 the Receiving Party may request to print additional pages in excess of the 300 pages
17 of total source code or continuous blocks that exceed 30 pages, which request the
18 Producing Party will not unreasonably deny. The Producing Party shall Bates
19 number, copy, and label "HIGHLY CONFIDENTIAL- SOURCE CODE" any
20 pages requested to be printed by the Receiving Party. Within five (5) business days,
21 the Producing Party shall either (i) provide one copy set of such pages to the
22 Receiving Party or (ii) inform the Requesting Party in writing that it objects that the
23 printed portions are excessive and/or not done for a permitted purpose and provide
24 the basis for its objection. If, after meeting and conferring, the Producing Party and
25 the Receiving Party cannot resolve the objection, the Receiving Party shall be
26 entitled to seek a Court resolution of whether the printed Source Code in question is
27 narrowly tailored and was printed for a permitted purpose. The parties agree to
28 expedited briefing on this issue with the Response to the Motion due within five (5)

1 days and any Reply due within one (1) day of the Response. The burden shall be on
2 the Receiving Party to demonstrate that such printed portions are no more than is
3 reasonably necessary for a permitted purpose and not merely printed for the
4 purposes of review and analysis elsewhere. The printed pages shall constitute part
5 of the Source Code produced by the Producing Party in this action.

6 (ix) All persons who will review a Producing Party's Source Code on
7 behalf of a Receiving Party, including members of a Receiving Party's outside law
8 firm, shall be identified in writing to the Producing Party at least five (5) days in
9 advance of the first time that such person reviews such Source Code. Such
10 identification shall be in addition to any other disclosure required under this Order.

11 (x) The Receiving Party shall maintain a log of all custodian(s) or
12 location(s) where the paper copies of the Source Code are stored when the paper
13 copies are not in use. Upon reasonable request by the Producing Party, the
14 Receiving Party shall provide a copy of this log to the Producing Party so long as
15 such request is not unreasonably made or otherwise for the purpose of harassment.

16 (xi) Unless otherwise agreed in advance by the Parties in writing,
17 following each day on which inspection is done under this Order, the Receiving
18 Party's outside counsel and/or experts shall remove all notes, documents, and all
19 other materials from the Source Code Review Room. The Producing Party shall not
20 be responsible for any items left in the room following each inspection session, and
21 the Receiving Party shall have no expectation of confidentiality for any items left
22 in the room following each inspection session without a prior agreement to that
23 effect. Proper identification of all authorized persons shall be provided prior to any
24 access to the secure room or the computer containing Source Code. Proper
25 identification requires showing, at a minimum, a photo identification card
26 sanctioned by the government of any State of the United States, by the government
27 of the United States, or by the nation state of the authorized person's current
28 citizenship. Access to the secure room or the Source Code Computer may be denied,

1 at the discretion of the supplier, to any individual who fails to provide proper
2 identification.

3 (xii) Other than as provided herein, the Receiving Party will not copy,
4 remove, or otherwise transfer any Source Code from the Source Code Computer
5 including, without limitation, copying, removing, or transferring the Source Code
6 onto any recordable media or recordable device. The Receiving Party will not
7 transmit a copy of any Source Code in any way from the Producing Party's facilities
8 or the offices of its outside counsel of record.

9 (xiii) The Receiving Party's outside counsel of record may make no more
10 than three (3) additional paper copies of any portions of the Source Code received
11 from a Producing Party pursuant to Paragraph (viii), not including copies attached
12 to court filings, excerpts used in infringement contentions, excerpts used in expert
13 reports, or used at depositions, and shall maintain a log of all paper copies of the
14 Source Code. The Receiving Party shall maintain a log of all reviewers and/or
15 recipients of all paper copies of the Source Code. Upon reasonable request by the
16 Producing Party, the Receiving Party shall provide a copy of this log to the
17 Producing Party so long as such request is not unreasonably made or otherwise for
18 the purpose of harassment.

19 (xiv) The Receiving Party's outside counsel of record and any person
20 receiving a copy of any Source Code shall maintain and store any paper copies of
21 the Source Code at their offices in a manner that prevents duplication of or
22 unauthorized access to the Source Code, including, without limitation, storing the
23 Source Code in a locked room or cabinet at all times when it is not in use. No more
24 than a total of ten (10) individuals identified by the Receiving party shall have access
25 to the printed portions of Source Code (except insofar as such code appears in any
26 court filing, infringement contention, or expert report). The receiving Party may
27 also temporarily keep the printouts or photocopies in a secured location under lock
28 and key at: (i) the Court for any proceedings(s) relating to the Source Code Material,

1 for the dates associated with the proceeding(s); (ii) the sites where any deposition(s)
2 relating to the Source Code Material are taken, for the dates associated with the
3 deposition(s); and (iii) any secure intermediate location reasonably necessary to
4 transport the printouts or photocopies to and from the locations described in this sub-
5 paragraph.

6 (xv) For depositions, the Receiving Party shall not bring copies of any
7 printed Source Code, except as provided in this paragraph. Rather, at least four (4)
8 days before the date of the deposition, the Receiving Party shall notify the Producing
9 Party that the Receiving Party intends to use Source Code as an exhibit at the
10 deposition, in which case the Producing Party shall bring the entire printed Source
11 Code Production, i.e., all Source Code that the Producing Party has previously
12 printed pursuant to subsection viii) above, to the deposition. The Receiving Party's
13 outside counsel is entitled to bring to the deposition one work copy of the exhibit,
14 which shall be kept in outside counsel's possession at all times. Notwithstanding the
15 foregoing, Apple may decide in its sole discretion that a deposition involving Source
16 Code occur at the office of the Receiving Party's outside counsel or the office of
17 Apple's outside counsel. In that situation, Apple shall notify the Receiving Party not
18 later than five (5) calendar days after service of notice of the deposition, but in no
19 event more than four (4) days before the noticed deposition, that it is invoking this
20 provision and at which office the deposition will occur. Apple will then be
21 responsible for reasonable travel and lodging expenses incurred by the deponent in
22 traveling to the deposition location. This section shall not be construed as a travel
23 restriction in any other circumstance. Copies of Source Code that are marked as
24 deposition exhibits shall not be provided to the Court Reporter or attached to
25 deposition transcripts; rather, the deposition will identify the omitted exhibit by its
26 production numbers. The Parties shall meet and confer to determine whether there
27 is a need for the court reporter transcribing the deposition to retain any deposition
28 exhibit containing such materials overnight for the sole purpose of ensuring the

1 accuracy of the deposition transcript.

2 (xvi) A Receiving Party may include excerpts of Source Code in a draft or
3 final version of a pleading, exhibit, expert report, infringement contentions,
4 discovery document, deposition transcript, or other Court document, provided that
5 the document including the Source Code is appropriately marked under this Order,
6 restricted to those who are entitled to have access to such material as specified
7 herein, and, if filed with the Court, filed under seal in accordance with the Court's
8 rules, procedures and orders;

9 (xvii) Absent express written permission from the Producing Party, the
10 Receiving Party may not create electronic images, or any other images, or make
11 electronic copies, of the Source Code from any paper copy of Source Code for use
12 in any manner (including by way of example only, the Receiving Party may not scan
13 the Source Code to a PDF or photograph the code), except as provided in paragraph
14 11(c)(xv) above and as necessary to create documents which, pursuant to the Court's
15 rules, procedures and order, must be filed or served electronically. Images or copies
16 of Source Code shall not be included in correspondence between the Parties
17 (references to production numbers shall be used instead), and shall be omitted from
18 pleadings and other papers whenever possible.

19 (xviii) If a Producing Party agrees to produce an electronic copy of any
20 portion of its Source Code, or if a Receiving Party includes excerpts of Source Code
21 in any pleading, exhibit, expert report, infringement contentions, discovery
22 document, deposition transcript, or other Court document in accordance with this
23 Order, access to the Receiving Party's submission, communication, and/or
24 disclosure of electronic files or other materials containing any portion of Source
25 Code (paper or electronic) shall at all times be limited solely to individuals who are
26 expressly authorized to view Source Code under the provisions of this Order shall
27 maintain a log of all such electronic copies of any portion of Source Code in its
28 possession or in the possession of its retained consultants, including the names of

1 the reviewers and/or recipients of any such electronic copies, and the locations and
2 manner in which the electronic copies are stored. Additionally, any such electronic
3 copies must be labeled “HIGHLY CONFIDENTIAL – SOURCE CODE” as
4 provided for in this Order.

5 **12. NOTICE OF DISCLOSURE**

6 (a) Prior to disclosing any Protected Material to any person described in this
7 Order as authorized to have access to such material (referenced below as “Person”), the
8 Party seeking to disclose such information shall provide the Producing Party with written
9 notice that includes:

10 (i) The name of the Person;

11 (ii) An up-to-date curriculum vitae of the Person with respect to any
12 outside expert or consultant retained by the Receiving Party;

13 (iii) The present employer and title of the Person;

14 (iv) An identification of all of the Person’s past and current employment
15 and consulting relationships, including direct relationships and relationships through
16 entities owned or controlled by the Person, including but not limited to an
17 identification of any individual or entity with or for whom the Person is employed
18 or to whom the Person provides consulting services relating to the design,
19 development, operation, or patenting of speech recognition and transcription, or
20 relating to the acquisition of intellectual property assets relating to speech
21 recognition and transcription;

22 (v) An identification of all pending patent applications on which the
23 Person is named as an inventor, in which the Person has any ownership interest, or
24 as to which the Person has had or anticipates in the future any involvement in
25 advising on, consulting on, preparing, prosecuting, drafting, editing, amending, or
26 otherwise affecting the scope of the claims; and

27 (vi) A list of the cases in which the Person has testified at deposition or
28 trial within the last four (4) years.

1 (b) Further, the Party seeking to disclose Protected Material shall provide such
2 other information regarding the Person’s professional activities to evaluate whether good
3 cause exists to object to the disclosure of Protected Material to the outside expert or
4 consultant. During the pendency of and for a period of two (2) years after the final
5 resolution of this action, including all appeals, the Party seeking to disclose Protected
6 Material shall immediately provide written notice to the Producing Party of any change
7 with respect to the Person’s employment or consulting relationships relating to the design,
8 development, or operation of speech recognition and transcription systems, or the
9 acquisition of intellectual property assets relating to speech recognition and transcription.

10 (c) Within fourteen (14) days of receipt of the disclosure of the Person, the
11 Producing Party or Parties may object in writing to the Person for good cause. In the
12 absence of an objection at the end of the fourteen (14) day period, the Person shall be
13 deemed approved to have access to Protected Materials under this Protective Order. There
14 shall be no disclosure of Protected Material to the Person prior to expiration of this fourteen
15 (14) day period. If the Producing Party objects to disclosure to the Person within such
16 fourteen (14) day period, the Parties shall meet and confer via telephone or in person within
17 seven (7) days following the objection and attempt in good faith to resolve the dispute on
18 an informal basis. If the dispute is not resolved, the Party objecting to the disclosure will
19 have seven (7) days from the date of the meet and confer to seek relief from the Court. If
20 relief is not sought from the Court within that time, the objection shall be deemed
21 withdrawn. If relief is sought, designated materials shall not be disclosed to the Person in
22 question until the Court resolves the objection.

23 (d) For purposes of this section, “good cause” shall include an objectively
24 reasonable concern that the Person will, advertently or inadvertently, use or disclose
25 Discovery Materials in a way or ways that are inconsistent with the provisions contained in
26 this Order.

27 (e) Prior to receiving any Protected Material under this Order, the Person must
28 execute a copy of the Agreement to be Bound By Protective Order (Exhibit A hereto) and

1 serve it on all Parties.

2 (f) An initial failure to object to a Person under this Paragraph 12 shall not
3 preclude the nonobjecting Party from later objecting to continued access by that Person for
4 good cause. If an objection is made, the Parties shall meet and confer via telephone or in
5 person within seven (7) days following the objection and attempt in good faith to resolve
6 the dispute informally. If the dispute is not resolved, the Party objecting to the disclosure
7 will have seven (7) days from the date of the meet and confer to seek relief from the Court.
8 The designated Person may continue to have access to information that was provided to
9 such Person prior to the date of the objection. If a later objection is made, no further
10 Protected Material shall be disclosed to the Person until the Court resolves the matter or the
11 Producing Party withdraws its objection. Notwithstanding the foregoing, if the Producing
12 Party fails to move for a protective order within seven (7) business days after the meet and
13 confer, further Protected Material may thereafter be provided to the Person.

14 **13. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

15 (a) A Party shall not be obligated to challenge the propriety of any designation
16 of Discovery Material under this Order at the time the designation is made, and a failure to
17 do so shall not preclude a subsequent challenge thereto.

18 (b) Any challenge to a designation of Discovery Material under this Order shall
19 be written, shall be served on outside counsel for the Producing Party, shall particularly
20 identify the documents or information that the Receiving Party contends should be
21 differently designated, and shall state the grounds for the objection. Thereafter, further
22 protection of such material shall be resolved in accordance with the following procedures:

23 (c) The objecting Party shall have the burden of conferring either in person, in
24 writing, or by telephone with the Producing Party claiming protection (as well as any other
25 interested party) in a good faith effort to resolve the dispute. The Producing Party shall
26 have the burden of justifying the disputed designation;

27 (d) Failing agreement, the Receiving Party may seek appropriate relief from the
28 Court by following the discovery dispute procedures set forth in the Case Management

1 Order. The Parties' entry into this Order shall not preclude or prejudice either Party from
2 arguing for or against any designation, establish any presumption that a particular
3 designation is valid, or alter the burden of proof that would otherwise apply in a dispute
4 over discovery or disclosure of information;

5 (e) Notwithstanding any challenge to a designation, the Discovery Material in
6 question shall continue to be treated as designated under this Order until one of the
7 following occurs: (a) the Party who designated the Discovery Material in question
8 withdraws such designation in writing; or (b) the Court rules that the Discovery
9 Material in question is not entitled to the designation.

10 **14. SUBPOENAS OR COURT ORDERS**

11 If at any time Protected Material is subpoenaed by any court, arbitral,
12 administrative, or legislative body, the Party to whom the subpoena or other request is
13 directed shall immediately give prompt written notice thereof to every Party who has
14 produced such Discovery Material and to its counsel and shall provide each such Party
15 with an opportunity to object to the production of the Discovery Material as precluded by
16 this Protective Order or move for a protective order regarding the production of Protected
17 Materials implicated by the subpoena.

18 **15. FILING PROTECTED MATERIAL**

19 (a) Absent written permission from the Producing Party or a court order secured
20 after appropriate notice to all interested persons, a Receiving Party may not file or disclose
21 in the public record any Protected Material.

22 (b) Any Party seeking to file any documents with the Court in this action that
23 contain, attach, or refer to Protected Material shall lodge such documents under seal
24 pursuant to the Court's rules and filing procedures, including LRCiv 5.6 and the Electronic
25 Case Filing Administrative Policies and Procedures Manual. In addition to lodging the
26 documents under seal, the Party shall also lodge a publicly-accessible version of the
27 documents, with the Protected Material redacted. The filing Party shall ensure that the
28 underlying redacted text or other information is not accessible. The techniques of

1 electronically highlighting the text with black color highlighting or changing the text color
2 to white are not sufficient.

3 (c) The conference required by LRCiv 5.6(d) shall occur no later than three (3)
4 business days before the anticipated filing date. At that conference, the Parties shall also
5 confer about appropriate redactions. If the Parties are unable to agree on what material
6 must be redacted, then the Party that wishes to file the document or refer to the Protected
7 Material must email the document and identify the Protected Material to be included to the
8 Party who designated the material “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” no later than two (2) business days before the anticipated
10 filing date in order to allow the Producing Party to identify appropriate redactions, and the
11 Party that wishes to file the document shall adopt those redactions in the publicly-accessible
12 versions of the document.

13 Any court hearing or proceeding in which Protected Material is submitted shall, in
14 the Court’s discretion, be held *in camera*.

15 (d) Nothing in this Protective Order shall be construed as automatically
16 permitting a party to file any document under seal. *See Kamakana v. City and County of*
17 *Honolulu*, 447 F.3d 1172, 1174 (9th Cir. 2006). Dispositive motions and documents
18 attached to a dispositive motion must satisfy the “compelling reasons” standard. *Id.* at
19 1179.

20 Nothing in this section shall in any way limit or detract from this Order’s
21 requirements as to Source Code.

22 **16. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

23 (a) The inadvertent production by a Party of Discovery Material subject to the
24 attorney-client privilege, work-product protection, or any other applicable privilege or
25 protection, despite the Producing Party’s reasonable efforts to prescreen such Discovery
26 Material prior to production, will not waive the applicable privilege and/or protection if a
27 request for return of such inadvertently produced Discovery Material is made promptly
28 after the Producing Party learns of its inadvertent production.

1 (b) Upon a request from any Producing Party who has inadvertently produced
2 Discovery Material that it believes is privileged and/or protected, each Receiving Party
3 shall immediately return such Protected Material or Discovery Material and all copies to
4 the Producing Party, except for any pages containing privileged markings by the Receiving
5 Party which shall instead be destroyed and certified as such by the Receiving Party to the
6 Producing Party.

7 (c) Nothing herein shall prevent the Receiving Party from preparing a record for
8 its own use containing the date, author, addresses, and topic of the inadvertently produced
9 Discovery Material and such other information as is reasonably necessary to identify the
10 Discovery Material and describe its nature to the Court in any motion to compel production
11 of the Discovery Material.

12 **17. INADVERTENT FAILURE TO DESIGNATE PROPERLY**

13 (a) The inadvertent failure by a Producing Party to designate Discovery Material
14 as Protected Material with one of the designations provided for under this Order shall not
15 waive any such designation provided that the Producing Party notifies all Receiving Parties
16 that such Discovery Material is protected under one of the categories of this Order within
17 fourteen (14) days of the Producing Party learning of the inadvertent failure to designate.
18 The Producing Party shall reproduce the Protected Material with the correct confidentiality
19 designation within seven (7) days upon its notification to the Receiving Parties. Upon
20 receiving the Protected Material with the correct confidentiality designation, the Receiving
21 Parties shall return or securely destroy, at the Producing Party's option, all Discovery
22 Material that was not designated properly.

23 (b) A Receiving Party shall not be in breach of this Order for any use of such
24 Discovery Material before the Receiving Party receives such notice that such Discovery
25 Material is protected under one of the categories of this Order, unless an objectively
26 reasonable person would have realized that the Discovery Material should have been
27 appropriately designated with a confidentiality designation under this Order. Once a
28 Receiving Party has received notification of the correct confidentiality designation for the

1 Protected Material with the correct confidentiality designation, the Receiving Party shall
2 treat such Discovery Material (subject to the exception in the following paragraph) at the
3 appropriately designated level pursuant to the terms of this Order.

4 (c) Notwithstanding the above, a subsequent designation of
5 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
6 “HIGHLY CONFIDENTIAL– SOURCE CODE” shall apply on a going forward basis and
7 shall not disqualify anyone who reviewed “CONFIDENTIAL,” “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
9 SOURCE CODE” materials while the materials were not marked “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
11 SOURCE CODE” from engaging in the activities set forth in Paragraph 6(b).

12 **18. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

13 (a) In the event of a disclosure of any Discovery Material pursuant to this Order
14 to any person or persons not authorized to receive such disclosure under this Protective
15 Order, the Party responsible for having made such disclosure, and each Party with
16 knowledge thereof, shall immediately notify counsel for the Producing Party whose
17 Discovery Material has been disclosed and provide to such counsel all known relevant
18 information concerning the nature and circumstances of the disclosure. The responsible
19 disclosing Party shall also promptly take all reasonable measures to retrieve the improperly
20 disclosed Discovery Material and to ensure that no further or greater unauthorized
21 disclosure and/or use thereof is made

22 (b) Unauthorized or inadvertent disclosure does not change the status of
23 Discovery Material or waive the right to hold the disclosed document or information as
24 Protected.

25 **19. FINAL DISPOSITION**

26 (a) Not later than ninety (90) days after the Final Disposition of this case, each
27 Party shall return all Discovery Material of a Producing Party to the respective outside
28 counsel of the Producing Party or destroy such Material, at the option of the Producing

1 Party. For purposes of this Order, “Final Disposition” occurs after an order, mandate, or
2 dismissal finally terminating the above-captioned action with prejudice, including all
3 appeals.

4 (b) All Parties that have received any such Discovery Material shall certify in
5 writing that all such materials have been returned to the respective outside counsel of the
6 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery
7 Material, outside counsel may retain one set of pleadings, correspondence and attorney and
8 consultant work product (but not document productions) for archival purposes, but must
9 return any pleadings, correspondence, and consultant work product that contain Source
10 Code.

11 **20. DISCOVERY FROM EXPERTS OR CONSULTANTS**

12 (a) Absent good cause, drafts of reports of testifying experts shall not be
13 discoverable. No discovery can be taken from any non-testifying expert except to the extent
14 that such non-testifying expert has provided information, opinions, or other materials to a
15 testifying expert relied upon by that testifying expert in forming his or her final report(s),
16 trial, and/or deposition testimony or any opinion in this case. No conversations or
17 communications between counsel and any testifying or consulting expert will be subject to
18 discovery unless the conversations or communications are relied upon by such experts in
19 formulating opinions that are presented in reports or trial or deposition testimony in this
20 case. Reports and materials exempt from discovery under this paragraph shall be treated
21 as attorney work product for the purposes of this case but do not have to be logged on a
22 privilege log.

23 (b) Nothing in the foregoing paragraph shall alter or change in any way the
24 requirements in Paragraph 11 regarding Source Code, and Paragraph 11 shall control in the
25 event of any conflict.

26 **21. MISCELLANEOUS**

27 (a) Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future. By stipulating to this Order, the

1 Parties do not waive the right to argue that certain material may require additional or
2 different confidentiality protections than those set forth herein.

3 (b) Termination of Matter and Retention of Jurisdiction. The Parties agree that
4 the terms of this Protective Order shall survive and remain in effect after the Final
5 Determination of the above-captioned matter. The Court shall retain jurisdiction after Final
6 Determination of this matter to hear and resolve any disputes arising out of this Protective
7 Order.

8 (c) Successors. This Order shall be binding upon the Parties hereto, their
9 attorneys, and their successors, executors, personal representatives, administrators, heirs,
10 legal representatives, assigns, subsidiaries, divisions, employees, agents, retained
11 consultants and experts, and any persons or organizations over which they have direct
12 control.

13 (d) Right to Assert Other Objections. By stipulating to the entry of this Protective
14 Order, no Party waives any right it otherwise would have to object to disclosing or
15 producing any information or item. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order. This
17 Order shall not constitute a waiver of the right of any Party to claim in this action or
18 otherwise that any Discovery Material, or any portion thereof, is privileged or otherwise
19 non-discoverable, or is not admissible in evidence in this action or any other proceeding.

20 (e) Burdens of Proof. Notwithstanding anything to the contrary above, nothing
21 in this Protective Order shall be construed to change the burdens of proof or legal standards
22 applicable in disputes regarding whether particular Discovery Material is confidential,
23 which level of confidentiality is appropriate, whether disclosure should be restricted, and if
24 so, what restrictions should apply.

25 (f) Modification by Court. This Order is subject to further court order based
26 upon public policy or other considerations, and the Court may modify this Order *sua sponte*
27 in the interests of justice. The United States District Court for the District of Arizona is
28 responsible for the interpretation and enforcement of this Order. All disputes concerning

1 Protected Material, however designated, produced under the protection of this Order shall
2 be resolved by the United States District Court for the District of Arizona.

3 (g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change
4 in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local
5 Rules for the United States District Court for the District of Arizona, or the Court's own
6 orders. Identification of any individual pursuant to this Protective Order does not make
7 that individual available for deposition or any other form of discovery outside of the
8 restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules for the
9 United States District Court for the District of Arizona, or the Court's own orders.

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EXHIBIT A
AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, acknowledge and declare that I have received a copy of the Stipulated Protective Order (“Order”) in *Advanced Voice Recognition Systems, Inc. v. Apple Inc.*, United States District Court, District of Arizona, Case No. 18-02083-PHX-DGC. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]