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Mark A. Neubauer (73728)
Email: mneubauer@cfjblaw.com
CARLTON FIELDS JORDEN BURT, LLP
2000 Avenue of the Stars, Suite 530 North Tower
Los Angeles, California 90067-4707
Telephone: (310) 843-6300
Facsimile: (310) 843-6301

Attorneys for Defendant and
Counterclaimant Xzeres Corporation

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CMI INTEGRATED
TECHNOLOGIES, INC., a California
Corporation,

Plaintiff,

vs.

XZERES CORPORATION, a Nevada
Corporation, and DOES 1 to 25,
inclusive,

Defendants.

AND RELATED CROSS-ACTION.

Case No.: 2:15-cv-00805-RGK-FFMx
Assigned to Hon. R. Gary Klausner

DISCOVERY MATTER
Magistrate Judge Frederick F. Mumm

**JOINT STIPULATION AND
[PROPOSED] PROTECTIVE
ORDER RE: DISCOVERY
MATTERS**

Complaint filed: February 4, 2015

1 IT IS HEREBY STIPULATED AND AGREED, subject to Court order, by
2 and between Plaintiff CMI Integrated Technologies, Inc. and Defendant Xzeres
3 Corporation, by and through their respective counsel, as follows:
4

5 1. A. PURPOSES AND LIMITATIONS

6 Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may
9 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
10 enter the following Stipulated Protective Order. The parties acknowledge that this
11 Order does not confer blanket protections on all disclosures or responses to
12 discovery and that the protection it affords from public disclosure and use extends
13 only to the limited information or items that are entitled to confidential treatment
14 under the applicable legal principles. The parties further acknowledge, as set forth
15 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
16 to file confidential information under seal; Pilot Program – Instructions to
17 Attorneys Procedures For Filing Under Seal Documents (found at
18 [http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5006b081b?OpenDocument)
19 [006b081b?OpenDocument](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5006b081b?OpenDocument)) sets forth the procedures that must be followed and the
20 standards that will be applied when a party seeks permission from the court to file
21 material under seal.
22

23 B. GOOD CAUSE STATEMENT

24 This action is likely to involve trade secrets, customer and pricing lists and
25 other valuable research, development, commercial, financial, technical and/or
26 proprietary information for which special protection from public disclosure and
27 from use for any purpose other than prosecution of this action is warranted. Such
28 confidential and proprietary materials and information consist of, among other

1 things, confidential business or financial information, information regarding
2 confidential business practices, or other confidential research, development, or
3 commercial information (including information implicating privacy rights of third
4 parties), information otherwise generally unavailable to the public, or which may
5 be privileged or otherwise protected from disclosure under state or federal statutes,
6 court rules, case decisions, or common law. Accordingly, to expedite the flow of
7 information, to facilitate the prompt resolution of disputes over confidentiality of
8 discovery materials, to adequately protect information the parties are entitled to
9 keep confidential, to ensure that the parties are permitted reasonable necessary uses
10 of such material in preparation for and in the conduct of trial, to address their
11 handling at the end of the litigation, and serve the ends of justice, a protective order
12 for such information is justified in this matter. It is the intent of the parties that
13 information will not be designated as confidential for tactical reasons and that
14 nothing be so designated without a good faith belief that it has been maintained in
15 a confidential, non-public manner, and there is good cause why it should not be
16 part of the public record of this case.

17
18 2. DEFINITIONS

19 2.1 Action: The above referenced, pending federal law suit].

20 2.2 Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
25 the Good Cause Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
27 their support staff).

28

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve
10 as an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association,
15 or other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a
17 party to this Action but are retained to represent or advise a party to this Action
18 and have appeared in this Action on behalf of that party or are affiliated with a law
19 firm which has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation
26 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5
6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material. Any
12 use of Protected Material at trial shall be governed by the orders of the trial judge.
13 This Order does not govern the use of Protected Material at trial.

14
15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations
17 imposed by this Order shall remain in effect until a Designating Party agrees
18 otherwise in writing or a court order otherwise directs. Final disposition shall be
19 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
20 with or without prejudice; and (2) final judgment herein after the completion and
21 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
22 including the time limits for filing any motions or applications for extension of
23 time pursuant to applicable law.

24
25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber the case development process or to
9 impose unnecessary expenses and burdens on other parties) may expose the
10 Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced. Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
23 contains protected material. If only a portion or portions of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the
25 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
26 or Non-Party that makes original documents available for inspection need not
27 designate them for protection until after the inspecting Party has indicated which
28 documents it would like copied and produced. During the inspection and before the

1 designation, all of the material made available for inspection shall be deemed
2 “CONFIDENTIAL.” After the inspecting Party has identified the documents it
3 wants copied and produced, the Producing Party must determine which documents,
4 or portions thereof, qualify for protection under this Order. Then, before producing
5 the specified documents, the Producing Party must affix the “CONFIDENTIAL
6 legend” to each page that contains Protected Material. If only a portion or portions
7 of the material on a page qualifies for protection, the Producing Party also must
8 clearly identify the protected portion(s) (e.g., by making appropriate markings in
9 the margins).

10 (b) for testimony given in depositions that the Designating Party
11 identify the Disclosure or Discovery Material on the record, before the close of the
12 deposition all protected testimony.

13 (c) for information produced in some form other than documentary
14 and for any other tangible items, that the Producing Party affix in a prominent
15 place on the exterior of the container or containers in which the information is
16 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
17 information warrants protection, the Producing Party, to the extent practicable,
18 shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an
20 inadvertent failure to designate qualified information or items does not, standing
21 alone, waive the Designating Party’s right to secure protection under this Order for
22 such material. Upon timely correction of a designation, the Receiving Party must
23 make reasonable efforts to assure that the material is treated in accordance with the
24 provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be
8 on the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party’s designation until the Court rules on the
14 challenge.

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 Action only for prosecuting, defending, or attempting to settle this Action. Such
20 Protected Material may be disclosed only to the categories of persons and under
21 the conditions described in this Order. When the Action has been terminated, a
22 Receiving Party must comply with the provisions of section 13 below (FINAL
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

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

6 (b) the officers, directors, and employees (including House
7 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
8 this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to
10 whom disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and
15 Professional Vendors to whom disclosure is reasonably necessary for this Action
16 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
17 A);

18 (g) the author or recipient of a document containing the
19 information or a custodian or other person who otherwise possessed or knew the
20 information;

21 (h) during their depositions, witnesses ,and attorneys for witnesses,
22 in the Action to whom disclosure is reasonably necessary provided: (1) the
23 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
24 and (2) they will not be permitted to keep any confidential information unless they
25 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
26 otherwise agreed by the Designating Party or ordered by the court. Pages of
27 transcribed deposition testimony or exhibits to depositions that reveal Protected
28

1 Material may be separately bound by the court reporter and may not be disclosed
2 to anyone except as permitted under this Stipulated Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5
6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such
12 notification shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena
14 or order to issue in the other litigation that some or all of the material covered by
15 the subpoena or order is subject to this Protective Order. Such notification shall
16 include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party
20 served with the subpoena or court order shall not produce any information
21 designated in this action as “CONFIDENTIAL” before a determination by the
22 court from which the subpoena or order issued, unless the Party has obtained the
23 Designating Party’s permission. The Designating Party shall bear the burden and
24 expense of seeking protection in that court of its confidential material and nothing
25 in these provisions should be construed as authorizing or encouraging a Receiving
26 Party in this Action to disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
5 information produced by Non-Parties in connection with this litigation is protected
6 by the remedies and relief provided by this Order. Nothing in these provisions
7 should be construed as prohibiting a Non-Party from seeking additional
8 protections.

9 (b) In the event that a Party is required, by a valid discovery
10 request, to produce a Non-Party’s confidential information in its possession, and
11 the Party is subject to an agreement with the Non-Party not to produce the Non-
12 Party’s confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the
14 Non-Party that some or all of the information requested is subject to a
15 confidentiality agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the
17 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
18 reasonably specific description of the information requested; and

19 (3) make the information requested available for inspection by
20 the Non-Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party’s confidential information responsive
24 to the discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control that
26 is subject to the confidentiality agreement with the Non-Party before a
27 determination by the court. Absent a court order to the contrary, the Non-Party
28

1 shall bear the burden and expense of seeking protection in this court of its
2 Protected Material.

3
4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately (a)
8 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
9 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
10 the person or persons to whom unauthorized disclosures were made of all the terms
11 of this Order, and (d) request such person or persons to execute the
12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
13 A.

14
15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other
19 protection, the obligations of the Receiving Parties are those set forth in Federal
20 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
21 whatever procedure may be established in an e-discovery order that provides for
22 production without prior privilege review. Pursuant to Federal Rule of Evidence
23 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
24 of a communication or information covered by the attorney-client privilege or
25 work product protection, the parties may incorporate their agreement in the
26 stipulated protective order submitted to the court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with the Pilot Program – Instructions to Attorneys
12 Procedures For Filing Under Seal Documents, found at: [http://court.cacd.uscourts.](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5006b081b?OpenDocument)
13 [gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5006b081b?OpenDocumen](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5006b081b?OpenDocument)
14 [t](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/0/20a99d8eb7044b3f882579f5006b081b?OpenDocument). Protected Material may only be filed under seal pursuant to a court order
15 authorizing the sealing of the specific Protected Material at issue. If a Party's
16 request to file Protected Material under seal is denied by the court, then the
17 Receiving Party may file the information in the public record unless otherwise
18 instructed by the court.

19
20 13. FINAL DISPOSITION

21 After the final disposition of this Action, as defined in paragraph 4, within
22 60 days of a written request by the Designating Party, each Receiving Party must
23 return all Protected Material to the Producing Party or destroy such material. As
24 used in this subdivision, “all Protected Material” includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the
26 Protected Material. Whether the Protected Material is returned or destroyed, the
27 Receiving Party must submit a written certification to the Producing Party (and, if
28 not the same person or entity, to the Designating Party) by the 60 day deadline that

1 (1) identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and (2) affirms that the Receiving Party has not retained any
3 copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel
5 are entitled to retain an archival copy of all pleadings, motion papers, trial,
6 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
7 and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain Protected Material. Any such archival
9 copies that contain or constitute Protected Material remain subject to this
10 Protective Order as set forth in Section 4 (DURATION).

11
12 14. Any violation of this Order may be punished by any and all
13 appropriate measures including, without limitation, contempt proceedings and/or
14 monetary sanctions.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16
17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18
19 DATED: October 8, 2015

20
21 /S/ FREDERICK F. MUMM
22 The Honorable Frederick F. Mumm
23 United States Magistrate Judge
24
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28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on _____ [date] in the case of _____ *CMI Integrated Technologies, Inc. v.*
9 *Xzeres Corporation*, Case No. 2:15-cv-00805-RGK-FFM. I agree to comply with
10 and to be bound by all the terms of this Stipulated Protective Order and I
11 understand and acknowledge that failure to so comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will
13 not disclose in any manner any information or item that is subject to this Stipulated
14 Protective Order to any person or entity except in strict compliance with the
15 provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States
17 District Court for the Central District of California for the purpose of enforcing the
18 terms of this Stipulated Protective Order, even if such enforcement proceedings
19 occur after termination of this action. I hereby appoint
20 _____ [print or type full name] of _____
21 [print or type full address and telephone number] as my California agent for
22 service of process in connection with this action or any proceedings related to
23 enforcement of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed:

26 _____

27 Printed name: _____

28 Signature: _____