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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

POWER ANALYTICS
CORPORATION,

Plaintiff,

v.

OPERATION TECHNOLOGY, INC.,
d/b/a ETAP, OSISOFT LLC, and
SCHNEIDER ELECTRIC USA, INC.,

Defendants.

Case No. 8:16-cv-01955-JAK (FFMx)

**PROTECTIVE ORDER AFTER
HEARING**

Having reviewed the submissions of the parties, the Court enters the following protective order to cover discovery in these proceedings:

To expedite the flow of discovery material, to facilitate the prompt resolution of disputes regarding the over-designated 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 reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it is hereby ORDERED THAT

1 **INFORMATION SUBJECT TO THIS ORDER**

2 1. For purposes of this Protective Order (“Order”), “CONFIDENTIAL”
3 information shall mean all non-public information, material, documents, or
4 electronically stored information that is produced for or disclosed, either through
5 the formal discovery process, with a pleading or motion, or informally in this
6 litigation; that has been disclosed to a party that requests or receives Protected
7 Material (a “Receiving Party”); and the party that possesses, owns, or otherwise
8 controls the Protected Material requested by the Receiving Party (a “Producing
9 Party”), including any party to this action and any non-party producing
10 information or material voluntarily or pursuant to a subpoena or a court order,
11 considers the information to constitute or to contain non-public business, financial,
12 technical, operations, development, commercial, or other non-public information,
13 whether embodied in physical objects, documents, or the factual knowledge of
14 persons, the disclosure of which could reasonably result in detriment to the
15 Producing Party or person; and which has been so designated by the Producing
16 Party.

17 2. For purposes of this Order, “HIGHLY CONFIDENTIAL–OUTSIDE
18 COUNSEL ONLY” information shall mean CONFIDENTIAL INFORMATION
19 that constitutes or contains (a) commercially sensitive marketing, financial, sales,
20 research and development, or technical data or information; (b) commercially
21 sensitive competitive information, including, without limitation, information
22 obtained from a non-party pursuant to a current Nondisclosure Agreement
23 (“NDA”); (c) information or data relating to future products not yet commercially
24 released and/or strategic plans; (d) commercial agreements, settlement agreements,
25 or settlement communications, the disclosure of which is likely to cause harm to
26 the competitive position of the Producing Party; (e) trade secrets, pricing
27 information, sales or marketing forecasts or plans, business plans, sales or
28 marketing strategy, product development information, engineering documents,

1 testing documents, employee information, customer lists, and other non-public
2 information of similar competitive and business sensitivity; and (f) information
3 that is likely to cause economic harm or significant competitive disadvantage to
4 the Producing Party if disclosed. In determining whether information should be
5 designated as HIGHLY CONFIDENTIAL–OUTSIDE COUNSEL ONLY, each
6 party agrees to use such designation only when necessary pursuant to the terms
7 herein.

8 3. For purposes of this Order, “Protected Material” shall encompass any
9 documents or information designated as CONFIDENTIAL, HIGHLY
10 CONFIDENTIAL-OUTSIDE COUNSEL ONLY, or HIGHLY CONFIDENTIAL-
11 OUTSIDE COUNSEL ONLY-SOURCE CODE pursuant to this Order.

12 4. The following information is not Protected Material:

- 13 a. any information that at the time of disclosure to a Receiving
14 Party is already lawfully in the public domain through no fault
15 of the Receiving Party;
- 16 b. any information that after disclosure to a Receiving Party
17 lawfully becomes part of the public domain as a result of
18 publication not involving a violation of this Order;
- 19 c. any information that a Receiving Party can show was received
20 by it, whether before or after the disclosure, from a source who
21 obtained the information lawfully and was under no obligation
22 of confidentiality to the Producing Party; or
- 23 d. any information that a Receiving Party can show was
24 independently developed by it or by personnel who have not
25 had access to the Producing Party’s Protected Material.

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1 **DESIGNATION OF INFORMATION AS CONFIDENTIAL, OR HIGHLY**
2 **CONFIDENTIAL-OUTSIDE COUNSEL ONLY**

3 5. The Producing Party's designation of information as
4 CONFIDENTIAL or HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY
5 means that the Producing Party believes in good faith, upon reasonable inquiry,
6 that the information qualifies as such.

7 6. Any document, electronically stored information, or tangible thing
8 containing or including any CONFIDENTIAL or HIGHLY CONFIDENTIAL-
9 OUTSIDE COUNSEL ONLY information may be designated as such by the
10 Producing Party by placing the appropriate designation on every page of the
11 written material prior to production. For digital files being produced in native
12 format, the Producing Party shall mark each viewable page or image with the
13 appropriate designation when possible, and the Producing Party shall mark the
14 medium, container, and/or communication in which the digital files are produced.
15 For electronic documents produced in native form which cannot be marked with
16 the appropriate designation, the Producing Party shall embed the confidentiality
17 designation in the metadata, document title, or production load file, and shall mark
18 the medium, container, and/or communication in which the digital files were
19 contained. No electronic file, folder or disk will be designated in its entirety as
20 CONFIDENTIAL or HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY
21 based on only some of the documents therein being entitled to such a designation.

22 7. In the case of interrogatory answers and the information contained
23 therein, designation shall be made by marking the first page and all subsequent
24 pages containing the Protected Material with the appropriate confidentiality
25 designation.

26 8. The original and all copies of any deposition transcript and video
27 record shall be marked CONFIDENTIAL or HIGHLY CONFIDENTIAL-
28 OUTSIDE COUNSEL ONLY by the reporter, and shall thereafter be treated in

1 accordance with the terms of this Order, if an attorney states on the record at the
2 deposition that the information is CONFIDENTIAL or HIGHLY
3 CONFIDENTIAL-OUTSIDE COUNSEL ONLY or by advising the opposing
4 party and the stenographer and videographer in writing, within fourteen days after
5 the deposition and before the transcript has been distributed by the stenographer
6 and videographer, that the information is CONFIDENTIAL or HIGHLY
7 CONFIDENTIAL-OUTSIDE COUNSEL ONLY. In the event the transcript
8 and/or video record has been distributed within the 14-day period, the parties will
9 mark the original and copies of the transcript and record in their possession as
10 designated. Deposition transcripts, in their entirety, and any video record shall be
11 treated by default as CONFIDENTIAL until the expiration of the time to make a
12 confidentiality designation or the making of a confidentiality designation,
13 whichever occurs first.

14 9. All Protected Material not reduced to documentary, tangible or
15 physical form or that cannot be designated as set forth in Paragraphs 6-8, shall be
16 designated by informing the Receiving Party of the designation in writing. To the
17 extent the Receiving Party subsequently generates copies of this information,
18 whether electronic or hard-copy, it shall mark such copies with the appropriate
19 confidentiality designations.

20 10. When documents are produced in electronic form, the Producing
21 Party shall include a confidentiality designation on the medium containing the
22 documents. If a Receiving Party uses a hard-copy of a native format document,
23 the Receiving Party shall mark each such page of such document with the
24 applicable confidentiality designation.

25 11. A Producing Party's failure to designate a document, thing, or
26 testimony as CONFIDENTIAL or HIGHLY CONFIDENTIAL-OUTSIDE
27 COUNSEL ONLY does not constitute forfeiture of a claim of confidentiality as to
28 any document, thing, or testimony. The Producing Party may immediately, upon

1 discovery, inform the Receiving Party of the CONFIDENTIAL or HIGHLY
2 CONFIDENTIAL-OUTSIDE COUNSEL ONLY nature of the disclosed
3 information, and the Receiving Party shall treat the disclosed information as
4 CONFIDENTIAL or HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY
5 information upon receipt of written notice from the Producing Party. The
6 Receiving Party shall not be held liable to the Producing Party for having
7 previously disclosed such re-designated information, but shall be obligated to
8 undertake reasonable efforts to retrieve any previously disclosed, re-designated
9 information.

10 12. A Producing Party who has designated information as
11 CONFIDENTIAL or HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY
12 may withdraw the designation by written notification to all receiving parties who
13 received a copy of the designated information.

14 **PERSONS AUTHORIZED TO REVIEW CONFIDENTIAL**
15 **INFORMATION**

16 13. Protected Material designated CONFIDENTIAL and information
17 contained therein shall be available only to the Producing Party and to the
18 following persons, except upon receipt of the prior written consent of the
19 Producing Party, or upon order by the Court:

- 20 a. Outside litigation counsel of record and supporting personnel
21 employed by the law firm(s) of outside litigation counsel of
22 record, such as attorneys, paralegals, legal translators, legal
23 secretaries, legal clerks, shorthand reporters or others assisting
24 litigation counsel of record, including any independent data
25 processing, production and review vendors to whom it is
26 reasonably necessary to disclose the information for this
27 litigation;

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- 1 b. Outside consultants, as defined in Paragraph 16, subject to the
2 provisions of Paragraphs 17-21, and who have signed and
3 provided the form attached hereto as Attachment A.;
- 4 c. The Court, its personnel and stenographic reporters (under seal
5 or with other suitable precautions determined by the Court);
- 6 d. Subject to Paragraph 21, independent legal translators retained
7 to translate in connection with this action; independent
8 stenographic reporters and videographers retained to record and
9 transcribe testimony in connection with this action; graphics,
10 translation, or design services retained by counsel for purposes
11 of preparing demonstrative or other exhibits for deposition,
12 trial, or other court proceedings in the actions; persons or
13 entities that provide litigation support services such as
14 photocopying, preparing exhibits or demonstrations,
15 organizing, storing, retrieving data in any form or medium;
- 16 e. Any mediator who is assigned by the Court or by mutual
17 agreement of the parties to hear this matter, and his or her staff,
18 subject to their agreement to maintain confidentiality to the
19 same degree as required by this Protective Order;
- 20 f. An author, signatory, prior recipient, or the original source of
21 the Protected Material. Such person shall be given access only
22 to the specific document or information therein, such as during
23 a deposition in accordance with the provisions of Paragraph 27;
- 24 g. Subject to Paragraph 21, jury consultants or trial consultants
25 retained by or on behalf of a party to assist outside counsel for
26 any party in connection with this litigation, together with
27 technicians, assistants, or mock jurors who are (1) supervised

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1 by such consultants and (2) subject to a written obligation of
2 confidentiality; and

- 3 h. Up to two in-house counsel employed by a party, who are
4 members of at least one state bar in good standing (or a foreign
5 equivalent thereof), and up to two technical or business
6 personnel, to whom disclosure is reasonably necessary for
7 purposes of this litigation. Each in-house counsel and technical
8 or business personnel must execute the form attached hereto as
9 Attachment A.

10 **PERSONS AUTHORIZED TO REVIEW HIGHLY CONFIDENTIAL-**
11 **OUTSIDE COUNSEL ONLY INFORMATION**

12 14. Protected Material Designated “HIGHLY CONFIDENTIAL-
13 OUTSIDE COUNSEL ONLY” and information contained therein shall be
14 available only to the persons or entities listed in Paragraph 13(a)-(g).

- 15 a. Prosecution Bar. Absent written consent from the Producing
16 Party, any individual who receives access to HIGHLY
17 CONFIDENTIAL-OUTSIDE COUNSEL ONLY or HIGHLY
18 CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE
19 CODE information shall not be involved in the prosecution of
20 patents or patent applications related to software used in the
21 operation of electric power distribution systems and historian
22 software (software that collects operational and processing data
23 from devices attached to an electric power distribution system
24 and stores this information in a time series database historian)
25 relating to such systems including, without limitation, the
26 patents asserted in this action and any patent or application
27 claiming priority to or otherwise related to the patents asserted

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1 in this action, before any foreign or domestic agency, including
2 the United States Patent and Trademark Office.

3 (i) Exception. The foregoing prosecution bar does not
4 apply as to product information that has been provided to
5 customers or prospective customers or to information
6 that is or has been publicly available even if such
7 information has been designated as HIGHLY
8 CONFIDENTIAL-OUTSIDE COUNSEL ONLY.
9 However, the exception does not apply to information
10 designated as HIGHLY CONFIDENTIAL-OUTSIDE
11 COUNSEL ONLY-SOURCE CODE or extend to
12 HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL
13 ONLY information that has not been provided to
14 customers or prospective customers and is not and has
15 never been publicly available.

16 b. Prosecution. For purposes of this paragraph, “prosecution”
17 includes directly or indirectly drafting, amending, advising, or
18 otherwise affecting the scope or maintenance of patent claims,
19 including in the original prosecution, and any inter partes
20 review. Prosecution does not include representing a party
21 challenging a patent before a domestic or foreign agency
22 (including, for example, an inter parties review). This
23 Prosecution Bar shall begin when access to HIGHLY
24 CONFIDENTIAL-OUTSIDE COUNSEL ONLY or HIGHLY
25 CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE
26 CODE information is first received by the affected individual
27 and shall end one (1) year after final termination of this action.

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OUTSIDE CONSULTANTS

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2 15. Protected Materials, and such copies as are reasonably necessary for
3 maintaining, defending or evaluating this litigation, may be furnished and
4 disclosed to outside consultants retained for purposes of this litigation.

5 16. The term “outside consultant” shall mean any outside person (who is
6 not a current or former employee of the retaining party) and include their
7 engineering, technical, accounting, financial or other support personnel, including,
8 but not limited to, a proposed expert witness or consultant with whom counsel
9 may deem it necessary to consult concerning technical, financial, or other aspects
10 of this case.

11 17. A Receiving Party desiring to disclose Protected Materials to a
12 technical outside consultant, shall first give written notice to the Producing Party
13 that it desires to disclose such information to such person(s), and thereafter the
14 Producing Party shall have three (3) business days after such notice is given to
15 object in writing. The party desiring to disclose the Protected Material to a
16 technical outside consultant shall provide to the Producing Party the curriculum
17 vitae of each technical outside consultant, a signed copy of the Agreement found
18 in Attachment A from each technical outside consultant, and shall also include the
19 following information about each technical outside consultant in the written
20 notice:

- 21 a. Current employer;
- 22 b. Business address and employer’s address if not the same;
- 23 c. Business title;
- 24 d. Business or profession;
- 25 e. Any previous or current relationship (personal, profession, or
26 the employer’s) with any of the parties; and
- 27 f. For the preceding four years, a listing of the cases in which the
28 individual has testified (at trial or deposition), all companies for

1 which the individual has worked or provided any consulting
2 services, either directly or through a consulting firm, and all
3 companies by which the individual has been employed.

4 18. A Receiving Party desiring to disclose Protected Materials to a
5 financial outside consultant, shall first give written notice to the Producing Party
6 that it desires to disclose such information to such person(s), and thereafter the
7 Producing Party shall have three (3) business days after such notice is given to
8 object in writing. The party desiring to disclose the Protected Material to a
9 financial outside consultant shall provide to the Producing Party the curriculum
10 vitae of each lead financial outside consultant, a signed copy of the Agreement
11 found in Attachment A from each lead financial outside consultant, and shall also
12 include the following information about each lead financial outside consultant in
13 the written notice:

- 14 a. Current employer;
- 15 b. Business address and employer's address if not the same;
- 16 c. Business title;
- 17 d. Business or profession;
- 18 e. Any previous or current relationship (personal, profession, or
19 the employer's) with any of the parties; and
- 20 f. For the preceding four years, a listing of the cases in which the
21 individual has testified (at trial or deposition), all companies for
22 which the individual has worked or provided any consulting
23 services, either directly or through a consulting firm, and all
24 companies by which the individual has been employed.

25 19. No Protected Material shall be disclosed to any such outside
26 consultant until after the expiration of the foregoing notice period unless written
27 consent to such disclosure is provided by the Producing Party prior to the
28 expiration of the foregoing notice period.

1 20. If, however, during the notice period the Producing Party serves an
2 objection upon the Receiving Party desiring to disclose Protected Material to the
3 outside consultant, and identifies in particular the nature of the Protected Material
4 that it objects to disclosure and the reasons for the objection, there shall be no
5 disclosure of the Protected Material so identified as the subject of objection to
6 such outside consultant pending resolution of the objection. The Producing Party
7 objecting to disclosure of Protected Material to the outside consultant shall provide
8 an explanation of the basis of its objection, and consent to the disclosure of
9 Protected Material to the outside consultant shall not be unreasonably withheld. If
10 a Producing Party objects to the disclosure of Protected Material to an outside
11 consultant, the Receiving Party shall then have three (3) business days after such
12 objection is served to respond to the objection. The Producing Party shall then
13 have three (3) business days after such response is served to file an objection with
14 the Court and seek a protective order to prevent the disclosure of Protected
15 Material to the proposed outside consultant or other appropriate relief, if the
16 parties cannot come to an agreement. The Producing Party shall bear the burden
17 of establishing that the objectionable outside consultant should not have access to
18 the Producing Party's Protected Material. No Protected Material shall be provided
19 to the proposed outside consultant until after resolution of the objection either by
20 the parties or by the Court. If the Producing Party fails to file an objection with
21 the Court within the prescribed period, then any objection to the outside consultant
22 is waived, and any Protected Material may be thereafter disclosed to such outside
23 consultant. No document designated by a Producing Party as Protected Material
24 information shall be disclosed by a Receiving Party to an outside consultant until
25 after the applicable outside consultant has signed the Confidentiality Agreement
26 appended hereto as Attachment A. Such agreement shall be retained by counsel
27 for the Receiving Party.

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1 21. A Receiving Party desiring to disclose Protected Materials to an
2 outside consultant shall first require such financial outside consultant to execute
3 the Agreement found in Attachment A. Such executed agreement shall be retained
4 by counsel for the Receiving Party.

5 22. Only the parties to this litigation may invoke the notice provisions in
6 Paragraphs 17-20 regarding outside consultants.

7 **CHALLENGES TO CONFIDENTIALITY DESIGNATIONS**

8 23. The parties will use reasonable care when designating documents or
9 information as CONFIDENTIAL or HIGHLY CONFIDENTIAL-OUTSIDE
10 COUNSEL ONLY information. Nothing in this Order shall prevent a Receiving
11 Party from contending that any documents or information designated as
12 CONFIDENTIAL, HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY, or
13 HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE
14 information have been improperly designated. A Receiving Party may at any time
15 request that the Producing Party cancel or modify the confidentiality designation
16 with respect to any document or information contained therein.

17 24. A party shall not be obligated to challenge the propriety of any
18 CONFIDENTIAL, HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY, or
19 HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE
20 designation at the time it receives the Protected Material, and a failure to do so
21 shall not preclude a subsequent challenge thereto. Such a challenge shall be
22 written, shall be served on counsel for the Producing Party, and shall particularly
23 identify the documents or information that the Receiving Party contends was
24 improperly designated. The parties shall use their best efforts to promptly and
25 informally resolve such disputes. If agreement cannot be reached, the Receiving
26 Party may request that the Court revoke or modify a CONFIDENTIAL, HIGHLY
27 CONFIDENTIAL-OUTSIDE COUNSEL ONLY, or HIGHLY CONFIDENTIAL-
28 OUTSIDE COUNSEL ONLY-SOURCE CODE designation. Any such request

1 must fully comply with Local Rule 37. The party or parties producing the
2 designated documents shall have the burden of establishing that the disputed
3 documents are entitled to confidential treatment. Until such a dispute is resolved,
4 either by the parties or by direction of the Court, the Receiving Party shall
5 continue to treat the information at issue consistent with its current confidentiality
6 designation under this Order. A party's failure to contest a designation of
7 information as CONFIDENTIAL, HIGHLY CONFIDENTIAL-OUTSIDE
8 COUNSEL ONLY, or HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL
9 ONLY-SOURCE CODE is not an admission that the information was properly
10 designated as such.

11 **LIMITATIONS ON THE USE OF PROTECTED MATERIAL**

12 25. Any Protected Material obtained by any Receiving Party from any
13 Producing Party in this litigation or other person shall be used only for purposes of
14 this litigation and any appeals therefrom, and may not be used for any other
15 purpose, such as use in other litigation or for any business purpose.

16 26. Protected Material shall be held in confidence by each person to
17 whom it is disclosed. Such information shall not be disclosed to any person who
18 is not entitled to receive such information as herein provided. All Protected
19 Material shall be carefully maintained so as to preclude access by persons who are
20 not entitled to receive such information. However, nothing in this Order shall
21 prevent any court reporter, videographer, mediator or their employees, or the
22 Court, any employee of the Court or any juror from reviewing any evidence in this
23 case for the purpose of these proceedings. Further, nothing in this Order shall
24 impact the admissibility of any document or other evidence at any hearing or at
25 trial.

26 27. Except as may be otherwise ordered by the Court, any person may be
27 examined as a witness at depositions and trial and may testify concerning any

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1 Protected Material of which such person has prior knowledge. Without in any
2 way limiting the generality of the foregoing:

- 3 a. A present director, officer, and/or employee of a Producing
4 Party may be examined and may testify concerning all
5 Protected Material which has been produced by that party;
- 6 b. A former director, officer, agent and/or employee of a
7 Producing Party may be interviewed and examined, and may
8 testify concerning any Protected Material that refers to matters
9 which the interviewer, examiner or questioner believes are
10 within the personal knowledge of the witness, which has been
11 produced by that party, and which pertains to the period or
12 periods of his or her employment or other involvement with the
13 party; and
- 14 c. Non-parties may be examined or testify concerning any
15 Protected Material of a Producing Party which appears on its
16 face or from other documents or testimony to have been
17 received from or communicated to the non-party as a result of
18 any contact or relationship with the Producing Party, or a
19 representative of such Producing Party. Any person other than
20 the witness, his or her attorney(s), and any person qualified to
21 receive Protected Material under this Order shall be excluded
22 from the portion of the examination concerning such
23 information, unless the Producing Party fails to object to
24 persons other than qualified recipients being present at the
25 examination. If the witness is represented by an attorney who
26 is not qualified under this Order to receive such information,
27 then prior to the portion of the examination relating to such
28 information, the attorney shall be requested to provide a signed

1 Confidentiality Agreement, in the form of Attachment A hereto
2 In the event that such attorney declines to sign such a
3 Confidentiality Agreement, prior to the examination, the
4 parties, by their attorneys, shall jointly seek a protective order
5 from the Court prohibiting such attorney from disclosing such
6 Protected Material.

7 28. All transcripts of depositions, exhibits, answers to interrogatories,
8 pleadings, briefs, and other documents submitted to the Court which include
9 Protected Material or which contain information so designated, shall be submitted
10 for filing under seal pursuant to the provisions of Local Rule 79.

11 29. Nothing in this Order shall prohibit the transmission or
12 communication of Protected Material between or among qualified recipients:

- 13 a. by hand-delivery;
- 14 b. in sealed envelopes or containers via the mails or an established
15 freight, delivery, or messenger service; or
- 16 c. by telephone, telegraph, facsimile, email or other electronic
17 transmission system, where, under the circumstances, there is
18 no reasonable likelihood that the transmission will be
19 intercepted or misused by any person who is not a qualified
20 recipient.

21 **PRODUCTION OF SOURCE CODE**

22 30. All source code produced in this litigation (“Designated Code”) shall
23 be subject to the same restrictions as information designated as HIGHLY
24 CONFIDENTIAL-OUTSIDE COUNSEL ONLY provided that the producing
25 party designates such code HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL
26 ONLY-SOURCE CODE. Only the code itself shall be so marked. Descriptions or
27 summaries of the Designated Code shall not be marked as HIGHLY
28 CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE CODE. The

1 following additional restrictions shall apply to Designated Code. Designated Code
2 shall not include any machine readable code such as executable program files
3 which shall not be governed by these provisions regarding the production of
4 source code.

5 31. Any Designated Code made available for inspection in discovery
6 shall be made available in a format allowing it to be reasonably reviewed and
7 searched, during normal business hours or at other mutually agreeable times, at an
8 office of the Producing Party's counsel or another mutually agreed upon location.
9 The Designated Code shall be made available for inspection on a secured
10 computer in a secured room without Internet access or network access to other
11 computers ("Source Code Computer"), and the Receiving Party shall not copy,
12 remove, or otherwise transfer any portion of the Designated Code onto any
13 recordable media or recordable device. The Producing Party may visually monitor
14 the activities of the Receiving Party's representatives during any source code
15 review, but only to ensure that there is no unauthorized recording, copying, or
16 transmission of the Designated Code. The Producing Party may not view any
17 notes or writings prepared by the Receiving Party's representative.

18 32. All persons viewing source code shall sign and print their names and
19 the date of the inspection in an inspection log on each day they view the
20 Designated Code. The inspection log will be maintained by the Producing Party,
21 and shall be provided to the Receiving Party upon request.

22 33. The Producing Party shall provide a manifest of the contents of the
23 Source Code Computer. This manifest shall be supplied in both printed and
24 electronic form and shall list the name, version histories, and location (i.e.,
25 filename and filepath) of every source code file on the Source Code Computer.

26 34. The Source Code Computer shall include software utilities,
27 designated and provided to the Producing Party for installation on the Source
28 Code Computer by the Receiving Party, which allow the Receiving Party's

1 representative to view, search, and analyze the source code (“source code review
2 utilities”). At a minimum, the source code review utilities must provide the
3 ability to (a) view, search, and line-number any source code file (i.e., text editors
4 such as notepad++ and sublime text), (b) search for a given pattern of text through
5 a number of files, (c) compare two files and display their differences, (d) compute
6 the MD5 checksum of a file, (e) and any other reasonable requests by the
7 Reviewing Party. To the extent the Receiving Party seeks to use a specific source
8 code review utility that the Producing Party does not have, then the Receiving
9 Party must provide that source code review utility to the Producing Party.

10 35. The Receiving Party may request paper copies of limited portions of
11 the Designated Code that are reasonably necessary for the preparation of court
12 filings, pleadings, expert reports, or other papers, or for deposition or trial, but
13 shall not request paper copies for the purpose of reviewing the Designated Code
14 other than electronically as set forth in Paragraph 34 in the first instance. The
15 Producing Party shall provide all requested Designated Code in paper form,
16 including bates numbers and the label HIGHLY CONFIDENTIAL-OUTSIDE
17 COUNSEL ONLY-SOURCE CODE. The Producing Party may challenge the
18 amount of Designated Code requested in hard copy form. If, after meeting and
19 conferring, the Producing Party and the Receiving Party cannot resolve the
20 objection, the Parties shall file a joint motion within three (3) business days after
21 the completion of the meet and confer process, and the Parties will request
22 expedited consideration of the motion.

23 36. The Receiving Party shall maintain a record of any individual who
24 has inspected any portion of the Designated Code in paper form. The Receiving
25 Party shall maintain all paper copies of any printed portions of the Designated
26 Code in a secured, locked area. The Receiving Party shall only make additional
27 paper copies if such additional copies are (1) necessary to prepare court filings,
28 pleadings, or other papers (including a testifying expert's expert report), (2)

1 necessary for deposition, or (3) otherwise necessary for the preparation of its case.
2 The Receiving Party shall not convert any of the information contained in the
3 paper copies into any electronic format other than for the preparation of a
4 pleading, exhibit, expert report, discovery document, deposition transcript, or
5 other Court document. Any paper copies used during a deposition shall be
6 retrieved by the Producing Party at the end of each day and must not be given to or
7 left with a court reporter or any other unauthorized individual.

8 37. At the conclusion of the litigation, counsel for each Party will certify
9 on behalf of itself and anyone working with and/or at the direction of counsel or
10 the Party that all copies, electronic or paper, of or containing Designated Code
11 have been returned to the Producing Party, or destroyed or erased in a manner that
12 prevents any forensic recovery of the Designated Code, with the exception of
13 portions of Designated Code that were included in filed or served pleadings or
14 their exhibits, or as exhibits to depositions, or admitted into evidence. Other than
15 as set forth in this subparagraph, counsel may not retain any copies of Designated
16 Code.

17 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
18 **OTHER LITIGATION**

19 38. If a Receiving Party is served with a subpoena or a court order issued
20 in other litigation that compels disclosure of any information or items designated
21 in this Action as “CONFIDENTIAL, HIGHLY CONFIDENTIAL-OUTSIDE
22 COUNSEL ONLY-SOURCE CODE.” that Party must:

- 23 (a) promptly notify in writing the Producing Party. Such
24 notification shall include a copy of the subpoena or court order;
25 (b) promptly notify in writing the party who caused the
26 subpoena or order to issue in the other litigation that some or all
27 of the material covered by the subpoena or order is subject to
28 this Protective Order. Such notification shall include a copy of

1 this Stipulated Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought
3 to be pursued by the Producing Party whose Protected Material
4 may be affected.

5 39. If the Producing Party timely seeks a protective order, the Party
6 served with the subpoena or court order shall not produce any information
7 designated in this action as “CONFIDENTIAL” before a determination by the
8 court from which the subpoena or order issued, unless the Party has obtained the
9 Producing Party’s permission. The Producing Party shall bear the burden and
10 expense of seeking protection in that court of its confidential material and nothing
11 in these provisions should be construed as authorizing or encouraging a Receiving
12 Party in this Action to disobey a lawful directive from another court.

13 **NONPARTY USE OF THIS PROTECTIVE ORDER**

14 40. A nonparty producing information or material voluntarily or pursuant
15 to a subpoena or a court order may designate such material or information in the
16 same manner and shall receive the same level of protection under this Order as any
17 party to this lawsuit, provided that such nonparty complies with the provisions of
18 this Order.

19 41. A nonparty’s use of this Order to protect its Protected Material does
20 not entitle that nonparty access to any Protected Material produced by any party in
21 this case.

22 **RETURN OR DESTRUCTION OF PROTECTED MATERIAL**

23 42. Within sixty (60) days after this action is terminated, either by the
24 entry of a final, non-appealable judgment or order, the complete settlement of all
25 claims asserted against all parties in this action, or by other means, each party
26 shall, at its option, either return to the Producing Party or destroy all Protected
27 Materials which were received from the Producing Party. After ninety (90) days
28 have passed since the termination of this action, a Producing Party may write to

1 any Receiving Party and request confirmation that any Protected Material
2 produced by the Producing Party and identified as Protected Material not
3 previously returned to the Producing Party have been destroyed. Notwithstanding
4 the foregoing, counsel shall be entitled to maintain copies of all notes, memoranda,
5 and other work product materials, as well as pleadings, motions and trial briefs
6 (including all supporting and opposing papers and exhibits thereto), written
7 discovery requests and responses (and exhibits thereto), deposition transcripts (and
8 exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence
9 at trial. Notwithstanding the provisions of this Paragraph, counsel is not required
10 to delete information that may reside on their electronic disaster recovery systems
11 which are over-written in the normal course of business. However, counsel agree
12 that no Protected Material shall be purposefully retrieved from the electronic
13 disaster recovery systems after the conclusion of the above-captioned matter.

14 **NON-WAIVER OF PRIVILEGE**

15 43. Production of documents (including physical objects) for inspection,
16 or production of copies of documents, shall not constitute a waiver of the attorney-
17 client privilege or work product immunity or any other applicable privilege or
18 immunity from discovery if, after the Producing Party becomes aware of any
19 inadvertent or unintentional disclosure, the Producing Party designates any such
20 documents as within the attorney-client privilege or work product immunity or any
21 other applicable privilege or immunity and requests destruction or return of such
22 documents to the Producing Party identifying the documents(s), the asserted
23 privilege or protection, and the grounds therefor (hereinafter “claw-back”). Upon
24 request by the Producing Party, the Receiving Party shall immediately destroy or
25 return all copies of such inadvertently produced document(s), regardless of
26 whether the Receiving Party agrees with the designation of the documents as
27 protected by the applicable privilege or immunity without making any further use
28 of such documents(s), and shall immediately destroy any notes or other writings

1 that summarize, reflect or discuss the privileged or protected content of such
2 document(s). The Producing Party shall thereafter put any document designated in
3 this manner onto its privilege log. Nothing herein shall prevent the Receiving
4 Party from challenging the propriety of the attorney-client privilege or work
5 product immunity or other applicable privilege or immunity designation by
6 submitting a written challenge to the Court. However, the Receiving Party may
7 not use the production of the document(s) in question to support the challenge,
8 except as evidence that such production was not inadvertent or unintentional, or to
9 show that the production was not otherwise entitled to the above claw-back
10 provision.

11 **DISCOVERY RULES REMAIN UNCHANGED**

12 44. Nothing herein shall alter or change in any way the discovery
13 provisions of the Federal Rules of Civil Procedure, the Local Rules of the District
14 Court, or the Court's Scheduling Order. Identification of any individual pursuant
15 to this Order does not make that individual available for deposition or any other
16 form of discovery outside of the restrictions and procedures of the Federal Rules
17 of Civil Procedure, the Local Rules, or the Court's Scheduling Order. Nothing in
18 this Order shall be construed to require a party to produce or disclose information
19 not otherwise required to be produced under the applicable rules or orders of this
20 Court.

21 45. Any party is free to use its own Protected Material for any purpose,
22 and no use by the Producing Party shall affect or otherwise act as a waiver with
23 respect to the confidential status of that information.

24 **MISCELLANEOUS PROVISIONS**

25 46. Any of the notice requirements herein may be waived, in whole or in
26 part, but only by a writing signed by (or email sent by) the attorney of record for
27 the party against whom such waiver will be effective.

28 ///

1 47. Entering into, producing and/or receiving Protected Material or
2 otherwise complying with the terms of this Order shall not:

- 3 a. Operate as an admission by any party that any Protected
4 Material contains or reflects (or does not contain or reflect)
5 trade secrets or any other type of confidential or proprietary
6 information entitled to protection under any applicable laws;
- 7 b. Prejudice in any way the rights of any party to object to the
8 production of documents, electronically stored information and
9 things it considers not subject to discovery, or operate as an
10 admission by any party that the restrictions and procedures set
11 forth herein constitute adequate protection for any particular
12 information deemed by any party to be Protected Material;
- 13 c. Prejudice in any way the rights of any party to object to the
14 authenticity or admissibility into evidence of any document,
15 testimony or the evidence subject to this Order;
- 16 d. Prejudice in any way the rights of any party to seek a
17 determination by the Court whether any discovery material or
18 Protected Material should be subject to the terms of this Order;
- 19 e. Prejudice in any way the rights of any party to petition the
20 Court for a further protective order related to any purportedly
21 Protected Material;
- 22 f. Prejudice in any way the rights of any party to petition the
23 Court for permission to disclose or use particular Protected
24 Material more broadly than would otherwise be permitted by
25 the terms of this Order; or
- 26 g. Prevent any party from agreeing to alter or waive the
27 provisions or protections provided for herein with respect to

28 ///

1 any particular discovery material designated as Protected
2 Material by that party.

3 48. By entering this Order and limiting the disclosure of information in
4 this case, the Court does not intend to preclude another court from finding that
5 information may be relevant and subject to disclosure in another case. Any person
6 or party subject to this Order who becomes subject to a motion, or any obligation
7 through court order, subpoena, or otherwise to disclose another party's Protected
8 Material shall promptly notify the Producing Party of the order or request for the
9 disclosure so that the Producing Party may have an opportunity to contest the
10 order or request for the disclosure and be heard on whether that information should
11 be disclosed.

12 49. In the event that any Protected Material is disclosed to any person or
13 entity that is not, or would not be, permitted to access the Protected Material under
14 this Order, then the disclosing party must immediately upon discovery of such
15 disclosure notify the relevant Producing Party or parties in writing of the
16 disclosure. The disclosing party shall take all reasonable steps to retrieve the
17 disclosed information from any person or entity that is not, or would not be,
18 permitted to access the information under this Order, including requesting the
19 return of all copies of the disclosed information. Such efforts by the disclosing
20 party shall not affect the right of the Producing Party to seek redress against the
21 disclosing party for such improper disclosure.

22 50. The provisions of this Order shall retroactively apply to any Protected
23 Material obtained by any Party or its counsel prior to entry of this Order by the
24 Court.

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28 ///

ATTACHMENT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

POWER ANALYTICS
CORPORATION,

Plaintiff,

v.

OPERATION TECHNOLOGY, INC.,
d/b/a ETAP, OSISOFT LLC, and
SCHNEIDER ELECTRIC USA, INC.,

Defendants.

Case No. 8:16-cv-01955-JAK (FFMx)

I, _____ state as follows:

I reside at _____.

My present employer is _____. My
present occupation or job description is _____.

I have read the Stipulated Protective Order (“Order”) in its entirety and understand the confidentiality restrictions regarding Protected Materials that are exchanged in the matter styled Power Analytics Corp. v. Operation Technology, Inc. et al., Case No. 8:16-cv-01955-JAK-FFM (C.D. Cal.). I agree to comply with and be bound by the terms of the Order. I solemnly promise that I will not divulge any CONFIDENTIAL, HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY, or HIGHLY CONFIDENTIAL-OUTSIDE COUNSEL ONLY-SOURCE

1 CODE information (“Protected Materials”) to persons other than those specifically
2 authorized by the Order. I understand and acknowledge that failure to comply with
3 the Order could expose me to sanctions and punishment in the nature of contempt.
4

5 At the termination of this action, I will return or destroy, as directed, any
6 Protected Material I received and any notes or other documents reflecting any such
7 materials.
8

9 I further agree to submit myself to the authority and jurisdiction of the
10 United States District Court for the District of Delaware in the event of any
11 violation of this agreement or dispute related to the Order that concerns my actions.
12

13 I state under penalty of perjury under the laws of the United States of
14 America that the foregoing is true and correct.
15
16

17 Executed on this ___ day of _____, 201__.

18 City and State where sworn and signed:
19
20 _____

21 Printed Name: _____
22
23

24 Signature: _____
25
26
27
28