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7 Attorneys for Defendant and Counter-claimant
 NVIDIA CORPORATION

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

12 NATIONAL UNION FIRE INSURANCE
 COMPANY OF PITTSBURGH, PA,

13 Plaintiff,

14 vs.

15 NVIDIA CORPORATION,

16 Defendant.

Case No. C 09-2046 CW

~~[PROPOSED]~~ STIPULATED PROTECTIVE
 ORDER REGARDING CONFIDENTIAL
 DOCUMENTS

18 NVIDIA CORPORATION,

19 Counter-claimant,

20 vs.

21 NATIONAL UNION FIRE INSURANCE
 COMPANY OF PITTSBURGH, PA,

22 Counter-defendant.

23 The parties to the above-captioned action (the "Action") recognize that the case may
 24 involve or is likely to involve information of parties and non-parties from whom discovery may
 25 be sought – that, under applicable law, is considered confidential. In order to protect the

1 confidential information obtained by the parties in connection with this Action and to ensure that
2 documents produced in the Action are not used or disclosed except in connection with the Action,
3 the parties, through their counsel of record, hereby stipulate and agree as follows:

4 A. Any party or non-party may designate as “Confidential,” as set forth herein, any
5 document or information that that party or witness considers in good faith to contain non-public,
6 confidential, trade secret, proprietary, or private financial information subject to protection under
7 applicable law (hereinafter referred to as “Confidential Information”).

8 B. Confidential Information may not be used for any purpose other than the
9 prosecution or defense of the Action.

10 C. A party or non-party may designate a document produced by it, which party or
11 witness considers in good faith to contain Confidential Information, by marking the document
12 “Confidential.”

13 D. A party or non-party may designate information disclosed by it during a deposition
14 or in response to written discovery that that party or witness considers in good faith to contain
15 Confidential Information by so indicating in said responses or on the record at the deposition.
16 Additionally, a party may designate in writing, within 30 days after receipt of said responses or of
17 the deposition transcript for which the designation is proposed, that specific pages of the
18 transcript (or portions of the videotape) and/or specific responses be treated as Confidential
19 Information. All costs associated with the preparation of separate confidential and non-
20 confidential transcripts and videotapes or of executing procedures for denominating Confidential
21 Information in transcripts as referenced in this Section shall be borne by the designating party
22 who shall also arrange for separate payment for such services through the service provider(s).

23 E. Any Confidential Information that is inadvertently produced without written notice
24 or identification as to its confidential nature may be so designated in writing by the producing
25 party after the realization that the Confidential Information has been produced without such
26 designation. However, until the discovery materials are designated Confidential as set forth
27 above, the parties shall be entitled to treat the material as non-confidential. Upon designation,
28 such Confidential Information shall then be treated as Confidential in accordance with the

1 provisions of this Order.

2 F. Any non-designating party may object to any confidentiality designations or any
3 proposed confidentiality designations in writing or on the record. Upon such an objection, the
4 parties shall follow the procedures described in paragraph J below. After any confidentiality
5 designation is made according to the procedures set forth in paragraphs C, D or E, the designated
6 documents or information shall be treated as confidential until the objection is resolved according
7 to the procedures described in paragraph J below.

8 G. Except with the prior written consent of the party or non-party designating
9 documents or other information confidential, or upon prior order of this Court obtained upon
10 notice to such other counsel, Confidential Information shall not be disclosed to any person other
11 than:

- 12 1. Counsel of record for the respective parties to the Action, including in-
13 house counsel, co-counsel or insurance counsel;
- 14 2. Employees of such counsel assisting in the prosecution or defense of the
15 Action for use in accordance with this stipulation and order;
- 16 3. The parties to the Action (including their employees and affiliates, as well
17 as their auditors and/or reinsurers, as reasonably necessary);
- 18 4. Consultants or experts retained for the prosecution or defense of the
19 Action, provided that each such consultant or expert shall have executed a
20 copy of the Certification annexed to this Order (which shall be retained by
21 counsel to the party so disclosing the Confidential Information) before
22 being shown or given any Confidential Information;
- 23 5. Any authors of the Confidential Information and any individuals shown to
24 have been an original recipient of the Confidential Information;
- 25 6. The Court, court personnel, and court reporters in the Action;
- 26 7. Any mediator or arbitrator retained by the parties to the Action;
- 27 8. Mock jurors and related service providers, provided that each juror and
28 related service provider shall have executed a copy of the Certification

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annexed to this Order before being shown or given any Confidential Information;

9. Persons engaged by any counsel or party to the Action to photocopy, image, or maintain the Confidential Information;

10. Witnesses (other than persons described in paragraph G(5)). A witness shall be requested to sign the Certification before being shown Confidential Information. Any witness who will not sign the Certification as requested may nevertheless be shown Confidential Information only in a deposition (or at trial as provided for in paragraph N). At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to paragraph D above.

Witnesses who will not sign the Certification as requested but who are shown Confidential Information at a deposition shall not be allowed to retain copies of the Confidential Information;

11. Under no circumstances shall any Confidential Information or information derived from Confidential Information, be communicated, directly or indirectly, to any member or form of the press or media, or any other person or entity, without the prior consent of the party or non-party that designated the Confidential Information.

H. For applications and motions to the Court on which a party submits Confidential Information, all documents and chamber copies containing Confidential Information that are submitted to the Court shall be filed in the manner provided by the applicable Northern District of California Civil Local Rules, which are currently 3-17 and 79-5.

I. Information produced by non-parties may be designated as "Confidential" pursuant to paragraphs C, D, or E of this Order. Nothing herein shall restrict a party or non-party from using or disclosing its own Confidential Information in any manner it deems appropriate.

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1 J. If a party contends that any material designated as “Confidential” is not entitled to
2 confidential treatment, that party may at any time give written notice challenging the designation
3 to the party that designated the material (the “designating party”) as “Confidential.” The
4 designating party shall respond in writing to the notice challenging the designation within 5
5 calendar days, or within such other period of time as may be agreed upon by the parties. If the
6 designating party refuses to remove the “Confidential” designation, its response shall state the
7 reasons for this refusal. If the parties are unable to resolve their dispute over the designation of
8 the material, any party may move the Court for an order removing the designation or affirming
9 that the designation was properly made. In the event that any such motion is made, the party that
10 designated the material as “Confidential” shall have the burden of establishing that the material is
11 entitled to confidential treatment.

12 K. Notwithstanding any challenge to the designation of material as Confidential
13 Information, all material shall be treated as confidential and shall be subject to the provisions
14 hereof unless and until one of the following occurs:

- 15 1. The party or non-party who designated the material as Confidential
16 Information withdraws such designation in writing; or
- 17 2. The Court rules the material is not Confidential Information.

18 L. In the event any Confidential Information is subpoenaed or requested during the
19 pendency of the Action by any court, regulatory, administrative, law enforcement or legislative
20 body or any person or litigant purporting to have authority to subpoena or request such
21 information, including requests based on any state or federal Freedom of Information Act, notice
22 will be given to the designating party or non-party upon receipt. In addition, no Confidential
23 Information shall be so disclosed earlier than the designated date in the subpoena, so as to enable
24 the party or non-party to have a reasonable opportunity to seek appropriate relief.

25 M. All provisions of this Order restricting the communication or use of Confidential
26 Information shall continue to be binding after the conclusion of this action, unless otherwise
27 agreed to by the producing party in writing or ordered by this Court. Upon conclusion of the
28 Actions, a party in the possession of documents designated Confidential, other than that which is

1 contained in attorney work product, discovery responses, deposition transcripts and documents
2 filed with the Court, shall upon written request after termination of the actions either (a) return
3 such documents no later than 90 days after the request, to counsel for the party or non-party who
4 provided such documents, or (b) destroy such documents within 90 days upon written consent of
5 the party or non-party who provided the documents, and certify in writing within 90 days that the
6 documents have been destroyed.

7 N. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the
8 use of Confidential Information at trial and will continue to apply to Confidential Information
9 unless or until such information is placed in the public record. Nothing herein shall preclude a
10 party from requesting that information used at trial be admitted under seal in accordance with
11 procedures established by the Court at a pretrial conference and applicable law. Moreover,
12 NVIDIA reserves its right to move for additional protection of information, whether designated
13 confidential or not, in light of the discovery stay provisions of the Private Securities Litigation
14 Reform Act (“PSLRA”), and Plaintiffs reserve the right to oppose such requests.

15 O. Nothing herein shall be deemed to waive any applicable privilege or protection, or
16 to affect the ability of a party or non-party to seek relief under Federal Rule of Evidence 502 and
17 other applicable law. Except as may be expressly agreed to the contrary, the parties do not intend
18 to disclose material that is subject to any applicable privilege or protection.

19 P. This Order may be modified only by the written consent of all parties to the Order,
20 or, with respect to the Confidential Information of a specific party or non-party, by the written
21 consent of that party or non-party that designated the Confidential Information, or by order of the
22 Court for good cause shown. Nothing contained herein shall be construed or applied to alter or
23 limit the rights of any party under any applicable insurance policies. This Order shall not prevent
24 any party from later seeking to modify its terms or from seeking any such further provisions or
25 relief as may be deemed appropriate or desirable.

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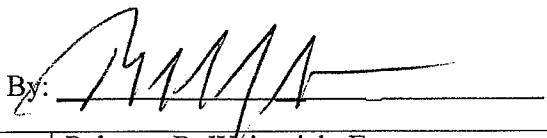
28 //

1 Q. The parties will remain bound by the confidentiality obligations imposed by this
2 Order, and the Court shall retain jurisdiction to enforce this Order, after termination of the Action
3 and until a designating party agrees otherwise in writing or until a court order otherwise directs.

4 SO STIPULATED:

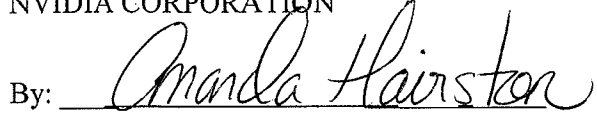
5 DATED: January 21, 2010 Respectfully submitted,
6

7 NATIONAL UNION INSURANCE COMPANY
8 OF PITTSBURGH, PA

9 By: 

<p>10 Richard H. Nicolaides, Jr. 11 Robert S. Marshall 12 Jennifer R. Bergstrom 13 BATES & CAREY LLP 14 191 North Wacker Drive, Suite 2400 Chicago, Illinois 60606 Phone (312) 762-3100 Fax (312) 762-3200</p>	<p>Rebecca R. Weinreich, Esq. Stephen V. Kovarik, Esq. Lewis Brisbois Bisgaard & Smith LLP 221 North Figueroa Street Los Angeles, CA 90012 (213) 250-1800 Telephone (213) 481-0621 Facsimile</p>
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15 DATED: January 21, 2010 NVIDIA CORPORATION


16 By: 

17 Mary E. McCutcheon (State Bar No. 099939)
18 Karen P. Kimmey (State Bar No. 173284)
19 Amanda D. Hairston (State Bar No. 251096)
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22 **[PROPOSED] ORDER**

23 IT IS SO ORDERED.

24 DATED: January 21, 2010, 2010

25 
26 Hon. Bernard Zimmerman
27 United States Magistrate Judge

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CERTIFICATION

I, _____, certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order Regarding Confidential Information dated _____, 2009, in *National Union Fire Insurance Company of Pittsburgh, PA v. NVIDIA Corporation*, Case No. C 09-2046 CW. I have been given a copy of and have read that Order and agree to be bound by it. I understand that all such Confidential Information and copies thereof, including, but not limited to, any notes or other transcripts made therefrom, shall be maintained in a secure manner and shall be returned no later than 30 days after the termination of this action to (1) the counsel for any party or other person who provided such Confidential Information, or (2) the counsel who I have retained, or has retained me.

DATED: _____