

1 Greg L. Lippetz (State Bar No. 154228)  
 2 glippetz@jonesday.com  
 3 JONES DAY  
 4 Silicon Valley Office  
 1755 Embarcadero Road  
 Palo Alto, CA 94303  
 Telephone: 650-739-3939  
 Facsimile: 650-739-3900

Ronald S. Lemieux (SB# 120822)  
 ronlemieux@paulhastings.com  
 PAUL, HASTINGS, JANOFSKY &  
 WALKER LLP  
 1117 S. California Avenue  
 Palo Alto, CA 94304-1106  
 Telephone: (650) 320-1800  
 Facsimile: (650) 320-1900

5 John R. Colgan (IL Bar No. 6289249)  
 6 (Admitted *Pro Hac Vice*)  
 7 jcolgan@jonesday.com  
 8 JONES DAY  
 9 77 W. Wacker Drive  
 Chicago, IL 60601  
 Telephone: 312-782-3939  
 Facsimile: 312-782-8585

Attorney for Defendant  
 CHIPMOS TECHNOLOGIES, INC.

Attorney for Plaintiff  
 FREESCALE SEMICONDUCTOR,  
 INC.

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN JOSE DIVISION

16 **Freescale Semiconductor, Inc.,**  
 17 **Plaintiff,**  
 18 **v.**  
 19 **ChipMOS Technologies, Inc.,**  
 20 **Defendant.**

**Case No. 5:09-CV-03689-JF-PVT**  
**STIPULATED PROTECTIVE ORDER**  
**FOR LITIGATION INVOLVING**  
**PATENTS, HIGHLY SENSITIVE**  
**CONFIDENTIAL INFORMATION**  
**AND/OR TRADE SECRETS**

22 1. PURPOSES AND LIMITATIONS

23 Disclosure and discovery activity in this action are likely to involve production of  
 24 confidential, proprietary, or private information for which special protection from public  
 25 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 26 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 27 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 28 all disclosures or responses to discovery and that the protection it affords from public disclosure

1 and use extends only to the limited information or items that are entitled to confidential treatment  
2 under the applicable legal principles. The parties further acknowledge, as set forth in Section 10,  
3 below, that this Stipulated Protective Order does not entitle them to file confidential information  
4 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
5 standards that will be applied when a party seeks permission from the court to file material under  
6 seal.

7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how  
11 it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
12 Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
14 Counsel (as well as their support staff).

15 2.4 [Removed]

16 2.5 Designating Party: a Party or Non-Party that designates information or  
17 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

19 2.6 Disclosure or Discovery Material: all items or information, regardless of  
20 the medium or manner in which it is generated, stored, or maintained (including, among other  
21 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
22 or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a matter  
24 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert  
25 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a  
26 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a  
27 Party or of a Party’s competitor.

28

1                   2.8    “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
2    Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of  
3    which to another Party or Non-Party would create a substantial risk of serious harm that could not  
4    be avoided by less restrictive means.

5                   2.9    [Removed]

6                   2.10   House Counsel: attorneys who are employees of a party to this action.  
7    House Counsel does not include Outside Counsel of Record or any other outside counsel.

8                   2.11   Non-Party: any natural person, partnership, corporation, association, or  
9    other legal entity not named as a Party to this action.

10                  2.12   Outside Counsel of Record: attorneys who are not employees of a party to  
11   this action but are retained to represent or advise a party to this action and have appeared in this  
12   action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
13   that party.

14                  2.13   Party: any party to this action, including all of its officers, directors,  
15   employees, consultants, retained experts, and Outside Counsel of Record (and their support  
16   staffs).

17                  2.14   Producing Party: a Party or Non-Party that produces Disclosure or  
18   Discovery Material in this action.

19                  2.15   Professional Vendors: persons or entities that provide litigation support  
20   services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
21   organizing, storing, or retrieving data in any form or medium) and their employees and  
22   subcontractors.

23                  2.16   Protected Material: any Disclosure or Discovery Material that is  
24   designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
25   ONLY.”

26                  2.17   Receiving Party: a Party that receives Disclosure or Discovery Material  
27   from a Producing Party.

28                  3.    SCOPE

1           The protections conferred by this Stipulation and Order cover not only Protected  
2 Material (as defined above), but also (1) any information copied or extracted from Protected  
3 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
4 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
5 Material. However, the protections conferred by this Stipulation and Order do not cover the  
6 following information: (a) any information that is in the public domain at the time of disclosure to  
7 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party  
8 as a result of publication not involving a violation of this Order, including becoming part of the  
9 public record through trial or otherwise; and (b) any information known to the Receiving Party  
10 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
11 obtained the information lawfully and under no obligation of confidentiality to the Designating  
12 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

13           4.     DURATION

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

21           5.     DESIGNATING PROTECTED MATERIAL

22           5.1    Exercise of Restraint and Care in Designating Material for Protection.

23           Each Party or Non-Party that designates information or items for protection under this Order must  
24 take care to limit any such designation to specific material that qualifies under the appropriate  
25 standards. To the extent it is practical to do so, the Designating Party must designate for  
26 protection only those parts of material, documents, items, or oral or written communications that  
27 qualify – so that other portions of the material, documents, items, or communications for which  
28 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

5 If it comes to a Designating Party's attention that information or items that it  
6 designated for protection do not qualify for protection at all or do not qualify for the level of  
7 protection initially asserted, that Designating Party must promptly notify all other parties that it is  
8 withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
10 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
11 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
12 designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents,  
15 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
16 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
17 EYES ONLY" to each page that contains protected material. If only a portion or portions of the  
18 material on a page qualifies for protection, the Producing Party also must clearly identify the  
19 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
20 each portion, the level of protection being asserted.

21 A Party or Non-Party that makes original documents or materials available for  
22 inspection need not designate them for protection until after the inspecting Party has indicated  
23 which material it would like copied and produced. During the inspection and before the  
24 designation, all of the material made available for inspection shall be deemed "HIGHLY  
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
26 documents it wants copied and produced, the Producing Party must determine which documents,  
27 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
28 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains  
2 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
3 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins) and must specify, for each portion, the level of protection  
5 being asserted.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
7 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
8 other proceeding, all protected testimony and specify the level of protection being asserted.  
9 When it is impractical to identify separately each portion of testimony that is entitled to protection  
10 and it appears that substantial portions of the testimony may qualify for protection, the  
11 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
12 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
13 which protection is sought and to specify the level of protection being asserted. Only those  
14 portions of the testimony that are appropriately designated for protection within the 21 days shall  
15 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating  
16 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked,  
17 that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
18 – ATTORNEYS’ EYES ONLY.”

19 Parties shall give the other parties notice if they reasonably expect a deposition,  
20 hearing or other proceeding to include Protected Material so that the other parties can ensure that  
21 only authorized individuals who have signed the “Acknowledgment and Agreement to Be  
22 Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a  
23 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 Transcripts containing Protected Material shall have an obvious legend on the title  
26 page that the transcript contains Protected Material, and the title page shall be followed by a list  
27 of all pages (including line numbers as appropriate) that have been designated as Protected  
28 Material and the level of protection being asserted by the Designating Party. The Designating

1 Party shall inform the court reporter of these requirements. Any transcript that is prepared before  
2 the expiration of a 21-day period for designation shall be treated during that period as if it had  
3 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety  
4 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
5 actually designated.

6 (c) for information produced in some form other than documentary and for any  
7 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
8 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
9 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions  
10 of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
11 identify the protected portion(s) and specify the level of protection being asserted.

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
13 failure to designate qualified information or items does not, standing alone, waive the Designating  
14 Party’s right to secure protection under this Order for such material. Upon timely correction of a  
15 designation, the Receiving Party must make reasonable efforts to assure that the material is  
16 treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
19 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s  
20 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
21 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its  
22 right to challenge a confidentiality designation by electing not to mount a challenge promptly  
23 after the original designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
25 resolution process by providing written notice of each designation it is challenging and describing  
26 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
27 written notice must recite that the challenge to confidentiality is being made in accordance with  
28 this specific paragraph of the Protective Order. The parties shall attempt to resolve each

1 challenge in good faith and must begin the process by conferring directly (in voice to voice  
2 dialogue; other forms of communication are not sufficient) within 14 days of the date of service  
3 of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
4 confidentiality designation was not proper and must give the Designating Party an opportunity to  
5 review the designated material, to reconsider the circumstances, and, if no change in designation  
6 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
7 the next stage of the challenge process only if it has engaged in this meet and confer process first  
8 or establishes that the Designating Party is unwilling to participate in the meet and confer process  
9 in a timely manner.

10           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
11 court intervention, the Designating Party shall file and serve a motion to retain confidentiality  
12 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21  
13 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
14 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
15 accompanied by a competent declaration affirming that the movant has complied with the meet  
16 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
17 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
18 shall automatically waive the confidentiality designation for each challenged designation. In  
19 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
20 time if there is good cause for doing so, including a challenge to the designation of a deposition  
21 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
22 accompanied by a competent declaration affirming that the movant has complied with the meet  
23 and confer requirements imposed by the preceding paragraph.

24           The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass  
26 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
27 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing  
28 to file a motion to retain confidentiality as described above, all parties shall continue to afford the



1 material in question the level of protection to which it is entitled under the Producing Party's  
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
5 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
6 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
7 disclosed only to the categories of persons and under the conditions described in this Order.  
8 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
9 section 15 below (FINAL DISPOSITION).

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
15 disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
17 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
18 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
19 Bound" that is attached hereto as Exhibit A;

20 (b) the officers, directors, and employees (including House Counsel) of the  
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom  
24 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
25 and Agreement to Be Bound" (Exhibit A);

26 (d) the court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, and  
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is  
5 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
6 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
7 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
8 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
9 under this Stipulated Protective Order.

10 (g) authors and recipients identified on the face of a document containing the  
11 information or a custodian or other person who otherwise possessed or knew the information.

12 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
13 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by  
14 the Designating Party, a Receiving Party may disclose any information or item designated  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
17 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
18 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
19 Bound” that is attached hereto as Exhibit A;

20 (b) [Removed]

21 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
22 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
23 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
24 have been followed;

25 (d) the court and its personnel;

26 (e) court reporters and their staff, professional jury or trial consultants, and  
27 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
28 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

1 (f) authors and recipients identified on the face of a document containing the  
2 information or a custodian or other person who otherwise possessed or knew the information.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or Experts.

5 (a)(1) [Removed]

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
8 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating  
10 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
11 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2)  
12 sets forth the full name of the Expert and the city and state of his or her primary residence, (3)  
13 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
14 identifies each person or entity from whom the Expert has received compensation or funding for  
15 work in his or her areas of expertise or to whom the expert has provided professional services,  
16 including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6)  
17 identifies (by name and number of the case, filing date, and location of court) any litigation in  
18 connection with which the Expert has offered expert testimony, including through a declaration,  
19 report, or testimony at a deposition or trial, during the preceding five years.

20 (b) A Party that makes a request and provides the information specified in the  
21 preceding respective paragraphs may disclose the subject Protected Material to the identified  
22 Expert unless, within 5 days of delivering the request, the Party receives a written objection from  
23 the Designating Party. Any such objection must set forth in detail the grounds on which it is  
24 based.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
28 party, then the Expert should provide whatever information the Expert believes can be disclosed  
without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 (c) A Party that receives a timely written objection must meet and confer with  
2 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
3 agreement within seven days of the written objection. If no agreement is reached, the Party  
4 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
5 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court  
6 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
7 reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary,  
8 assess the risk of harm that the disclosure would entail, and suggest any additional means that  
9 could be used to reduce that risk. In addition, any such motion must be accompanied by a  
10 competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the  
11 extent and the content of the meet and confer discussions) and setting forth the reasons advanced  
12 by the Designating Party for its refusal to approve the disclosure.

13 In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
14 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
15 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

16 8. [Removed]

17 9. [Removed]

18 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
19 OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation that  
21 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"  
22 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

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

11 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
12 IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a Non-  
14 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with  
16 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
17 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

22 1. promptly notify in writing the Requesting Party and the Non-Party  
23 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
24 Party;

25 2. promptly provide the Non-Party with a copy of the Stipulated  
26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
27 description of the information requested; and  
28

1                   3.       make the information requested available for inspection by the  
2 Non-Party.

3                   (c)       If the Non-Party fails to object or seek a protective order from this court  
4 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
5 produce the Non-Party's confidential information responsive to the discovery request. If the  
6 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
7 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
8 before a determination by the court. Absent a court order to the contrary, the Non-Party shall  
9 bear the burden and expense of seeking protection in this court of its Protected Material.

10               12.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18               13.       INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
19 PROTECTED MATERIAL

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

1           14.    MISCELLANEOUS

2                   14.1    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                   14.2    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 disclosing or  
6 producing any information or item on any ground not addressed in this Stipulated Protective  
7 Order.  Similarly, no Party waives any right to object on any ground to use in evidence of any of  
8 the material covered by this Protective Order.

9                   14.3    [Removed]

10                  14.4    Filing Protected Material.  Without written permission from the  
11 Designating Party or a court order secured after appropriate notice to all interested persons, a  
12 Party may not file in the public record in this action any Protected Material.  A Party that seeks to  
13 file under seal any Protected Material must comply with Civil Local Rule 79-5.  Protected  
14 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
15 specific Protected Material at issue.  Pursuant to Civil Local Rule 79-5, a sealing order will issue  
16 only upon a request establishing that the Protected Material at issue is privileged, protectable as a  
17 trade secret, or otherwise entitled to protection under the law.  If a Receiving Party’s request to  
18 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then  
19 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local  
20 Rule 79-5(e) unless otherwise instructed by the court.

21           15.    FINAL DISPOSITION

22                   Within 60 days after the final disposition of this action, as defined in paragraph 4,  
23 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
24 material.  As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
25 compilations, summaries, and any other format reproducing or capturing any of the Protected  
26 Material.  Whether the Protected Material is returned or destroyed, the Receiving Party must  
27 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
28 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all

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

9  
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11  
12 DATED: May 20, 2010

/s/ John R. Colgan

Attorney for Plaintiff  
Freescale Semiconductor, Inc.

13  
14  
15 DATED: May 20, 2010

/s/ Shanée Y.W. Nelson

Attorney for Defendant  
ChipMOS Technologies, Inc.

16  
17  
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19  
20 DATED: 6/3/2010

Patricia V. Trumbull  
United States Magistrate Judge



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States  
6 District Court for the Northern District of California on [date] in the case of \_\_\_\_\_ **[insert**  
7 **formal name of the case and the number and initials assigned to it by the court]**. I agree to  
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for  
14 the Northern District of California for the purpose of enforcing the terms of this Stipulated  
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone number]  
18 as my California agent for service of process in connection with this action or any proceedings  
19 related to enforcement of this Stipulated Protective Order.

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
26 [signature]

27  
28