

**\*\* E-filed November 18, 2011 \*\***

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

INNOVATIVE AUTOMATION LLC,  
Plaintiff,

v.

PRIMERA TECHNOLOGY, INC.,  
Defendant.

Case No. 5:11-CV-03409-HRL

~~PROPOSED~~ **Stipulated Protective Order**

**(AS MODIFIED BY THE COURT)**

\_\_\_\_\_  
AND RELATED COUNTERCLAIMS  
\_\_\_\_\_

Plaintiff Innovative Automation LLC (“Innovative”) and Defendant Primera Technology, Inc. (“Primera”) by and through their respective counsel, hereby request that the Court enter the following Protective Order (“Order”).

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4 below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil

and General Order 62

1 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will  
2 be applied when a party seeks permission from the court to file material under seal.  
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4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the  
6 designation of information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
8 how it is generated, stored or maintained) or tangible things that qualify for protection under  
9 Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
11 Counsel (as well as their support staff).

12 2.4 Designated House Counsel: House Counsel who seek access to  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

14 2.5 Designating Party: a Party or Non-Party that designates information  
15 or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,”  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE.”

18 2.6 Disclosure or Discovery Material: all items or information, regardless  
19 of the medium or manner in which it is generated, stored, or maintained (including, among  
20 other things, testimony, transcripts, and tangible things), that are produced or generated in  
21 disclosures or responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
24 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
25 Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become  
26 an employee of a Party or of a Party's competitor.

27 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
28 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of

1 which to another Party or Non-Party would create a substantial risk of serious harm that  
2 could not be avoided by less restrictive means.

3           2.9    “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
4 Items: extremely sensitive “Confidential Information or Items” representing computer code  
5 and associated comments and revision histories, formulas, engineering specifications, or  
6 schematics that define or otherwise describe in detail the algorithms or structure of software  
7 or hardware designs, disclosure of which to another Party or Non-Party would create a  
8 substantial risk of serious harm that could not be avoided by less restrictive means.

9           2.10   House Counsel: attorneys who are employees of a party to this action.  
10 House Counsel does not include Outside Counsel of Record or any other outside counsel.

11           2.11   Non-Party: any natural person, partnership, corporation, association,  
12 or other legal entity not named as a Party to this action.

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

17           2.13   Party: any party to this action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
19 staffs).

20           2.14   Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this action.

22           2.15   Professional Vendors: persons or entities that provide litigation  
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their  
25 employees and subcontractors.  
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1                   2.16 Protected Material: any Disclosure or Discovery Material that is  
2 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4                   2.17 Receiving Party: In the event that the Producing Party is a party to  
5 this action, the “Receiving Party” shall mean the party to this action that receives Disclosure  
6 or Discovery Material from the Producing Party. In the event that the Producing Party is a  
7 non-party, the “Receiving Party” shall mean any Party to this action.  
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9                   3.       SCOPE

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

23                   4.       DURATION

24                   Even after final disposition of this litigation, the confidentiality obligations  
25 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in  
26 writing or a court order otherwise directs. Final disposition shall be deemed to be the later of  
27 (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2)  
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1 final judgment herein after the completion and exhaustion of all appeals, rehearings,  
2 remands, trials, or reviews of this action, including the time limits for filing any motions or  
3 applications for extension of time pursuant to applicable law. **This court will retain jurisdiction for a**  
4 **period of six months following final**  
5 **disposition of this litigation.**

5. DESIGNATING PROTECTED MATERIAL

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

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

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

19 If it comes to a Designating Party's attention that information or items that it  
20 designated for protection do not qualify for protection at all or do not qualify for the level of  
21 protection initially asserted, that Designating Party must promptly notify all other Parties  
22 that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in  
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
25 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must  
26 be clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:  
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1 (a) for information in documentary form (e.g., paper or electronic documents,  
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
3 Producing Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to  
5 each page that contains protected material. If only a portion or portions of the material on a  
6 page qualifies for protection, the Producing Party also must clearly identify the protected  
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
8 portion, the level of protection being asserted.

9 A Party or Non-Party that makes original documents or materials available  
10 for inspection need not designate them for protection until after the inspecting Party has  
11 indicated which material it would like copied and produced. During the inspection and  
12 before the designation, all of the material made available for inspection shall be deemed  
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
14 has identified the documents it wants copied and produced, the Producing Party must  
15 determine which documents, or portions thereof, qualify for protection under this Order.  
16 Then, before producing the specified documents, the Producing Party must affix the  
17 appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
18 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that  
19 contains Protected Material. If only a portion or portions of the material on a page qualifies  
20 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
21 by making appropriate markings in the margins) and must specify, for each portion, the level  
22 of protection being asserted.

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

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

16 Transcripts containing Protected Material shall have an obvious legend on the  
17 title page that the transcript contains Protected Material, and the title page shall be followed  
18 by a list of all pages (including line numbers as appropriate) that have been designated as  
19 Protected Material and the level of protection being asserted by the Designating Party. The  
20 Designating Party shall inform the court reporter of these requirements. Any transcript that  
21 is prepared before the expiration of a 21-day period for designation shall be treated during  
22 that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
23 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the  
24 transcript shall be treated only as actually designated.

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

5           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent  
6 failure to designate qualified information or items does not, standing alone, waive the  
7 Designating Party’s right to secure protection under this Order for such material. Upon  
8 timely correction of a designation, the Receiving Party must make reasonable efforts to  
9 assure that the material is treated in accordance with the provisions of this Order.  
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11           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

12           6.1     Timing of Challenges. Any Party or Non-Party may challenge a  
13 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
14 Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
15 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
16 does not waive its right to challenge a confidentiality designation by electing not to mount a  
17 challenge promptly after the original designation is disclosed.

18           6.2     Meet and Confer. The Challenging Party shall initiate the dispute  
19 resolution process by providing written notice of each designation it is challenging and  
20 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has  
21 been made, the written notice must recite that the challenge to confidentiality is being made  
22 in accordance with this specific paragraph of the Protective Order. The parties shall attempt  
23 to resolve each challenge in good faith and must begin the process by conferring directly (in  
24 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of  
25 the date of service of notice. In conferring, the Challenging Party must explain the basis for  
26 its belief that the confidentiality designation was not proper and must give the Designating  
27 Party an opportunity to review the designated material, to reconsider the circumstances, and,  
28 if no change in designation is offered, to explain the basis for the chosen designation. A



1 Challenging Party may proceed to the next stage of the challenge process only if it has  
2 engaged in this meet and confer process first or establishes that the Designating Party is  
3 unwilling to participate in the meet and confer process in a timely manner.

4           6.3 Judicial Intervention. ~~If the Parties cannot resolve a challenge without~~  
5 ~~court intervention, the Designating Party shall file and serve a motion to retain~~  
6 ~~confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if~~  
7 ~~applicable) within 21 days of the initial notice of challenge or within 14 days of the parties~~  
8 ~~agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.~~  
9 ~~Each such motion must be accompanied by a competent declaration affirming that the~~  
10 ~~movant has complied with the meet and confer requirements imposed in the preceding~~  
11 ~~paragraph. Failure by the Designating Party to make such a motion including the required~~  
12 ~~declaration within 21 days (or 14 days, if applicable) shall automatically waive the~~  
13 ~~confidentiality designation for each challenged designation. In addition, the Challenging~~  
14 ~~Party may file a motion challenging a confidentiality designation at any time if there is good~~  
15 ~~cause for doing so, including a challenge to the designation of a deposition transcript or any~~  
16 ~~portions thereof. Any motion brought pursuant to this provision must be accompanied by a~~  
17 ~~competent declaration affirming that the movant has complied with the meet and confer~~  
18 ~~requirements imposed by the preceding paragraph.~~ See page 9.1, below.

19           The burden of persuasion in any such challenge proceeding shall be on the  
20 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to  
21 harass or impose unnecessary expenses and burdens on other parties) may expose the  
22 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality  
23 designation by failing to file a motion to retain confidentiality as described above, all parties  
24 shall continue to afford the material in question the level of protection to which it is entitled  
25 under the Producing Party's designation until the court rules on the challenge.

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27           7. ACCESS TO AND USE OF PROTECTED MATERIAL  
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6.3 Judicial Intervention. If the Parties cannot resolve a challenge after complying with the meet and confer requirements above, the parties shall file a Discovery Dispute Joint Report (“DDJR”), pursuant to the undersigned’s Standing Order re Civil Discovery Disputes. The DDJR shall affirm that the above meet and confer requirements have been satisfied. The DDJR must be filed within 5 business days after the conclusion of the meet and confer sessions (or 5 business days after reaching impasse as to a particular issue). In no event may a DDJR be filed later than 7 days after the discovery cut-off date(s) as prescribed in Civil L.R. 37-3. Failure by the Designating Party to defend its confidentiality designation(s) through the DDJR shall automatically waive the confidentiality designation for each challenged designation.

1                   7.1 Basic Principles. A Receiving Party may use Protected Material that is  
2 disclosed or produced by another Party or by a Non-Party in connection with this case only  
3 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material  
4 may be disclosed only to the categories of persons and under the conditions described in this  
5 Order. When the litigation has been terminated, a Receiving Party must comply with the  
6 provisions of section 14 below (FINAL DISPOSITION).

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

10                  7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless  
11 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
12 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

17                   (b) the officers, directors, and employees (including House Counsel) of the  
18 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

23                   (d) the court and its personnel; **and anyone as may be ordered by the court;**

24                   (e) court reporters and their staff, professional jury or trial consultants, and  
25 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
26 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
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1 (f) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
3 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
4 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
5 Protected Material must be separately bound by the court reporter and may not be disclosed  
6 to anyone except as permitted under this Stipulated Protective Order.

7 (g) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
10 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless  
11 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
12 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only  
14 to:

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

19 (b) Designated House Counsel of the Receiving Party (1) who has no  
20 involvement in competitive decision-making, (2) to whom disclosure is reasonably  
21 necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be  
22 Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1),  
23 below, have been followed;<sup>1</sup>

24 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
25 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to  
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27 <sup>1</sup> This Order contemplates that Designated House Counsel shall not have access to any  
28 information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2),  
2 below, have been followed;

3 (d) the court and its personnel; **and anyone as may be ordered by the court;**

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

7 (f) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

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10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
12 SOURCE CODE” Information or Items to Designated House Counsel or Experts.

13 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the  
14 Designating Party, a Party that seeks to disclose to Designated House Counsel any  
15 information or item that has been designated “HIGHLY CONFIDENTIAL –  
16 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written  
17 request to the Designating Party that (1) sets forth the full name of the Designated House  
18 Counsel and the city and state of his or her residence and (2) describes the Designated  
19 House Counsel’s current and reasonably foreseeable future primary job duties and  
20 responsibilities in sufficient detail to determine if House Counsel is involved, or may  
21 become involved, in any competitive decision-making.

22 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
23 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
24 information or item that has been designated “HIGHLY CONFIDENTIAL –  
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
26 pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that  
27 (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’  
28 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the

1 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the  
2 Expert and the city and state of his or her primary residence, (3) attaches a copy of the  
3 Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each  
4 person or entity from whom the Expert has received compensation or funding for work in  
5 his or her areas of expertise or to whom the expert has provided professional services,  
6 including in connection with a litigation, at any time during the preceding five years,<sup>2</sup> and  
7 (6) identifies (by name and number of the case, filing date, and location of court) any  
8 litigation in connection with which the Expert has offered expert testimony, including  
9 through a declaration, report, or testimony at a deposition or trial, during the preceding five  
10 years.

11 (b) A Party that makes a request and provides the information specified in the  
12 preceding respective paragraphs may disclose the subject Protected Material to the identified  
13 Designated House Counsel or Expert unless, within 14 days of delivering the request, the  
14 Party receives a written objection from the Designating Party. Any such objection must set  
15 forth in detail the grounds on which it is based.

16 (c) A Party that receives a timely written objection must meet and confer with  
17 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
18 agreement within seven days of the written objection. If no agreement is reached, the Party  
19 parties must comply with Section 6.3, above, and the undersigned Standing Order re: Civil  
20 ~~seeking to make the disclosure to Designated House Counsel or the Expert may file a motion~~  
21 ~~Discovery Disputes. Any report filed pursuant to the Standing Order~~  
22 ~~as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if~~  
23 ~~applicable) seeking permission from the court to do so. Any such motion~~ must describe the  
24 circumstances with specificity, set forth in detail the reasons why disclosure to Designated  
25 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the  
disclosure would entail, and suggest any additional means that could be used to reduce that

26 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a  
27 third-party, then the Expert should provide whatever information the Expert believes can be  
28 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 risk. In addition, ~~any such motion~~ <sup>the report</sup> must be accompanied by a competent declaration  
2 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the  
3 content of the meet and confer discussions) and setting forth the reasons advanced by the  
4 Designating Party for its refusal to approve the disclosure.

5 In any such proceeding, the Party opposing disclosure to Designated House  
6 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
7 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's  
8 need to disclose the Protected Material to its Designated House Counsel or Expert.

9  
10 8. SOURCE CODE

11 (a) To the extent production of source code becomes necessary in this case, a  
12 Producing Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE  
13 CODE" if it comprises or includes confidential, proprietary or trade secret source code.

14 (b) Protected Material designated as "HIGHLY CONFIDENTIAL –  
15 SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY  
16 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information, including the Prosecution  
17 Bar set forth in Paragraph 8, and may be disclosed only to the individuals to whom  
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be  
19 disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House  
20 Counsel.

21 (c) Any source code produced in discovery shall be made available for  
22 inspection, in a format allowing it to be reasonably reviewed and searched, during normal  
23 business hours or at other mutually agreeable times, at an office of the Producing Party's  
24 counsel or another mutually agreed upon location. The source code shall be made available  
25 for inspection on a secured computer in a secured room without Internet access or network  
26 access to other computers, and the Receiving Party shall not copy, remove, or otherwise  
27 transfer any portion of the source code onto any recordable media or recordable device. The  
28 Producing Party may visually monitor the activities of the Receiving Party's representatives

1 during any source code review, but only to ensure that there is no unauthorized recording,  
2 copying, or transmission of the source code.

3 (d) The Receiving Party may request paper copies of limited portions of  
4 source code that are reasonably necessary for the preparation of court filings, pleadings,  
5 expert reports, or other papers, or for deposition or trial, but shall not request paper copies  
6 for the purpose of reviewing the source code other than electronically as set forth in  
7 paragraph (c) in the first instance. For the avoidance of any doubt, “limited portions of  
8 source code” shall not include the entirety of the source code made available for inspection.  
9 The Producing Party shall provide all requested portions of source code in paper form,  
10 including bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE CODE.”  
11 The Producing Party may challenge the amount of source code requested in hard copy form  
12 pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6  
13 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the  
14 “Designating Party” for purposes of dispute resolution. If the Producing Party challenges  
15 the amount of source code requested, it shall be under no obligation to produce hard copies  
16 of the requested source code until either (1) the Parties reach an agreement regarding the  
17 amount of source requested or (2) the dispute resolution procedure described above has been  
18 completed.

19 (e) The Receiving Party shall maintain a record of any individual who  
20 has inspected any portion of the source code in electronic or paper form. The Receiving  
21 Party shall maintain all paper copies of any printed portions of the source code in a secured,  
22 locked area. The Receiving Party shall not create any electronic or other images of the paper  
23 copies and shall not convert any of the information contained in the paper copies into any  
24 electronic format. The Receiving Party shall only make additional paper copies if such  
25 additional copies are (1) necessary to prepare court filings, pleadings, or other papers  
26 (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise  
27 necessary for the preparation of its case. Any paper copies used during a deposition shall be  
28



1 retrieved by the Producing Party at the end of each day and must not be given to or left with  
2 a court reporter or any other unauthorized individual.

3  
4 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
5 IN OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation  
7 that compels disclosure of any information or items designated in this action as  
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

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

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

16 (c) cooperate with respect to all reasonable procedures sought to be pursued  
17 by the Designating Party whose Protected Material may be affected.<sup>3</sup>

18 If the Designating Party timely seeks a protective order, the Party served with  
19 the subpoena or court order shall not produce any information designated in this action as  
20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Or  
21 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
22 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
23 permission. The Designating Party shall bear the burden and expense of seeking protection  
24 in that court of its confidential material – and nothing in these provisions should be  
25

26  
27 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
28 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
protect its confidentiality interests in the court from which the subpoena or order issued.

1 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
2 directive from another court.

3  
4 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-  
7 Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
8 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
9 information produced by Non-Parties in connection with this litigation is protected by the  
10 remedies and relief provided by this Order. Nothing in these provisions should be construed  
11 as prohibiting a Non-Party from seeking additional protections.

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

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

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

22 3. make the information requested available for inspection by the  
23 Non-Party.

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

1 the Non-Party before a determination by the court.<sup>4</sup> Absent a court order to the contrary, the  
2 Non-Party shall bear the burden and expense of seeking protection in this court of its  
3 Protected Material.  
4

5 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
16 PROTECTED MATERIAL

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

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27 <sup>4</sup> The purpose of this provision is to alert the interested parties to the existence of  
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect  
its confidentiality interests in this court.

1                   13.    MISCELLANEOUS

2                   13.1    Right to Further Relief. Nothing in this Order abridges the right of  
3 any person to seek its modification by the court in the future.

4                   13.2    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  
8 any of the material covered by this Protective Order.

9                   13.3    Export Control. Disclosure of Protected Material shall be subject to  
10 all applicable laws and regulations relating to the export of technical data contained in such  
11 Protected Material, including the release of such technical data to foreign persons or  
12 nationals in the United States or elsewhere. The Producing Party shall be responsible for  
13 identifying any such controlled technical data, and the Receiving Party shall take measures  
14 necessary to ensure compliance.

15                   13.4    Filing Protected Material. Without written permission from the  
16 Designating Party or a court order secured after appropriate notice to all interested persons, a  
17 Party may not file in the public record in this action any Protected Material. A Party that  
18 seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.  
19 Protected Material may only be filed under seal pursuant to a court order authorizing the  
20 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
21 sealing order will issue only upon a request establishing that the Protected Material at issue  
22 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.  
23 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
24 Rule 79-5(d) is denied by the court, then the Receiving Party may file the Protected Material  
25 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the  
26 court.

27  
28                   14.    FINAL DISPOSITION

1                   Within 60 days after the final disposition of this action, as defined in  
2 paragraph 4, each Receiving Party must return all Protected Material to the Producing Party  
3 or destroy such material. As used in this subdivision, “all Protected Material” includes all  
4 copies, abstracts, compilations, summaries, and any other format reproducing or capturing  
5 any of the Protected Material. Whether the Protected Material is returned or destroyed, the  
6 Receiving Party must submit a written certification to the Producing Party (and, if not the  
7 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
8 category, where appropriate) all the Protected Material that was returned or destroyed and  
9 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
10 summaries or any other format reproducing or capturing any of the Protected Material.  
11 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
12 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
13 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
14 consultant and expert work product, even if such materials contain Protected Material. Any  
15 such archival copies that contain or constitute Protected Material remain subject to this  
16 Protective Order as set forth in Section 4 (DURATION).

17  
18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 Dated: November 3, 2011

GUTRIDE SAFIER LLP

/s/ Todd Kennedy

TODD KENNEDY

Attorneys for Plaintiff Innovative Automation,  
LLC

24 Dated: November 3, 2011

HOWARD RICE NEMEROVSKI

CANADY FALK & RABKIN PC

/s/ Edward A. Bayley

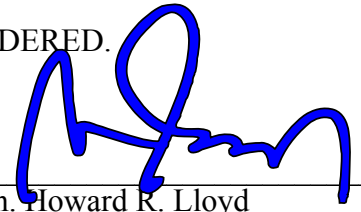
EDWARD A. BAYLEY

Attorneys for Defendant and Counterclaimant  
Primera Technology, Inc.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 18, 2011



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

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

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

21  
22 Date: \_\_\_\_\_

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

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

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

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**CERTIFICATION PURSUANT TO GENERAL ORDER 45**

Pursuant to General Order 45X.B, I attest that the above signatory for Primera Technology, Inc. has concurred and consented to the filing of this document.

DATED: November 4, 2011.

/s/ Todd Kennedy  
Todd Kennedy  
Attorney for Plaintiff Innovative  
Automation, LLC