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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN JOSE DIVISION**

19 DCG SYSTEMS, INC.,
 20 Plaintiff,
 21 v.
 22 CHECKPOINT TECHNOLOGIES, LLC,
 23 Defendant.

Case No. 5:11-cv-03792-PSG
STIPULATED [~~PROPOSED~~]
PROTECTIVE ORDER
 JUDGE: HON. PAUL S. GREWAL

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection may be warranted.
4 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
5 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
6 all disclosures or responses to discovery and that the protection it affords from public disclosure
7 and use extends only to the limited information or items that are entitled to confidential treatment
8 under the applicable legal principles. The parties further acknowledge, as set forth in Section
9 14.3 (Filing Protected Material), below, that this Stipulated Protective Order does not entitle them
10 to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
11 must be followed and the standards that will be applied when a party seeks permission from the
12 court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 documents, information, or other items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: documents, information (regardless of
17 how it is generated, stored or maintained), or tangible things that qualify for protection under
18 Federal Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
20 well as their support staff).

21 2.4 Designated Code: Material that has been designated HIGHLY CONFIDENTIAL
22 – SOURCE CODE as defined in section 2.9, below.

23 2.5 Designating Party: a Party or Non-Party that designates documents, information,
24 or items that it produces in disclosures or in response to discovery as “CONFIDENTIAL,”
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL
26 – SOURCE CODE”.

27 2.6 Disclosure or Discovery Material: all documents, information, or items, regardless
28 of the medium or manner in which they were generated, stored, or maintained (including, among

1 other things, testimony, transcripts, and tangible things), that are produced or generated in
2 disclosures or in response to discovery in this matter.

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

8 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
9 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
10 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
11 less restrictive means, including without limitation technical documentation such as schematics,
12 block diagrams, technical manuals, service manuals, and other highly sensitive technical
13 information, that do not fall within the ambit of "HIGHLY CONFIDENTIAL – SOURCE
14 CODE" as defined below, and further including without limitation sales, revenue, profit and loss,
15 and customer identity information. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY" information or items" shall further include any materials, the dissemination of which a
17 party reasonably believes may be restricted under ITAR, defined below.

18 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
19 information that falls within the definition of "HIGHLY CONFIDENTIAL – ATTORNEYS'
20 EYES ONLY" information and that is formatted as computer code (e.g., C++ code), hardware
21 design language (HDL) or register transcription language (RTL) (e.g., Verilog), netlists (e.g.,
22 EDIF), integrated circuit layout data (e.g., GDSII), or printed circuit board layout data (e.g.,
23 Gerber files) that define or otherwise establish the algorithms or structure of software or hardware
24 designs may be marked "HIGHLY CONFIDENTIAL – SOURCE CODE." Materials marked
25 "HIGHLY CONFIDENTIAL – SOURCE CODE" shall not include descriptions or summaries of
26 the Designated Code, design specifications, schematics, flow charts, or block diagrams, nor shall
27 it include materials that appear in user manuals, technical manuals, service manuals,
28 presentations, or similar documents.

1 2.10 House Counsel: attorneys who are employees of a party to this action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.11 ITAR: the United States regulations and laws that control the export and
4 dissemination of defense-related articles and services. These regulations and laws include the
5 International Traffic in Arm Regulations (at Title 22, Chapter 1, Subchapter M of the Code of
6 Federal Regulations) and the Arms Export Control Act.

7 2.12 Non-Party: any natural person, partnership, corporation, association, or other legal
8 entity not named as a Party to this action.

9 2.13 Outside Counsel of Record: attorneys who are not employees of a party to this
10 action but are retained to represent or advise a party to this action and have appeared in this action
11 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

12 2.14 Party: any party to this action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14 2.15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this action.

16 2.16 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
18 organizing, storing, or retrieving data in any form or medium) and their employees and
19 subcontractors.

20 2.17 Protected Material: any Disclosure or Discovery Material that is designated
21 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
22 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

23 2.18 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
28 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

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

10 4. DURATION

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

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection: Each Party
20 or Non-Party that designates information or items for protection under this Order must take care
21 to limit any such designation to specific material that qualifies under the appropriate standards.
22 To the extent it is practical to do so, the Designating Party must designate for protection only
23 those parts of material, documents, items, or oral or written communications that qualify – so that
24 other portions of the material, documents, items, or communications for which protection is not
25 warranted are not swept unjustifiably within the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
27 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
28

1 unnecessarily encumber or retard the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the Designating Party to sanctions.

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

7 5.2 Manner and Timing of Designations: Except as otherwise provided in this Order,
8 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
9 protection under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

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

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

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

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

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

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

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

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

12 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the Designating Party’s
14 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 designation of
19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
21 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

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

1 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
2 forms of communication are not sufficient) within fourteen (14) days of the date of service of
3 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 court
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
12 Civil Local Rule 7 (and in compliance with Civil Local Rule 79 5, if applicable) within 21 days of
13 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
14 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 Designating
25 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
27 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
28 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: Protected Material that is designated protected by another Party
5 or by a Non-Party in connection with this case may be disclosed only to the categories of persons
6 and under the conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with the provisions of section 15 below (Final Disposition).

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

10 7.2 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
11 Information or Items: Unless otherwise ordered by the court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to U.S. citizens and legal permanent
14 residents of the United States that fall within one or more of the following categories:

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 the
17 information for this litigation;

18 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
19 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be
20 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a) below, have
21 been followed;

22 (c) the Court and its personnel;

23 (d) court reporters and their staff, professional jury or trial consultants, and
24 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (e) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information; and
28

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 Bound”
3 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court, where at
4 least one of the following conditions applies:

5 (i) the witness is an employee of the Designating Party when the
6 disclosure is made;

7 (ii) the witness’s name appears on the Protected Material as a person
8 who has previously seen or received the material, or it is otherwise established that the
9 witness has previously seen or received the Protected material or knows the information
10 contained within it; or

11 (iii) at least three business days before the deposition, the Party wishing
12 to show the witness the Protected Material notifies the Designating Party in writing of its
13 intent to do so, with a specific listing of the Protected Material to be shown, and the
14 Designating Party fails to provide, within one business day of receipt of the notice, written
15 objection to this use of the Protected Material. If a timely written objection is provided,
16 the Protected Material identified in the written objection shall not be shown to the witness
17 unless and until the party wishing to show that material to the witness moves for and
18 obtains appropriate relief from the Court. Witnesses shown Protected Material under this
19 section must sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before
20 being shown the Protected Material. A copy of the witness’s signed Acknowledgement
21 must be provided to the Designating Party before the Protected Material is provided to the
22 witness.

23 To establish whether a witness falls within category 7.2(f)(ii), limited portions of
24 Designated Material may be disclosed to a witness as a foundation for questions regarding his or
25 her previous knowledge of or access to the Designated Material. The Designated Material shall
26 be marked and identified in the same manner as any other deposition exhibit, but no more of the
27 Designated Material may be disclosed to the witness than is necessary to establish the witness’s
28 previous knowledge of or access to the Designated Material. If it is determined that the witness

1 does not fall into category 7.2(f)(ii) then the proposed exhibit will be withdrawn and will not be
2 bound with any transcript of the deposition.

3 If a receiving party wishes to disclose a document or information designated HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY to an individual that is not a U.S. citizen or a
5 legal permanent resident of the United States, the receiving party and the designating party shall
6 meet and confer to discuss whether the designating party reasonably believes the document or
7 information may be restricted under ITAR. No disclosure to a foreign national shall be made
8 absent the consent of the designating party or a court order.

9 7.3 Disclosure of “CONFIDENTIAL” Information or Items: Unless otherwise
10 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
11 disclose any information or item designated “CONFIDENTIAL” only to (a) any person who may
12 access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material pursuant to
13 section 7.2 above, or (b) any person who is not a U.S. Citizen or legal permanent resident but who
14 otherwise falls within one of the categories in section 7.2 above, or (c) the officers, directors, and
15 employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably
16 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
17 Bound” (Exhibit A);

18 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL –
20 SOURCE CODE” Information or Items to Experts:

21 (a) Unless otherwise ordered by the Court or agreed to in writing by the
22 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
23 document, information, or other item that has been designated “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” first must
25 make a written request to the Designating Party that (1) identifies the general categories of
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
27 SOURCE CODE” Protected Material that the Receiving Party seeks permission to disclose to the
28 Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary

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

9 (b) Following a waiting period of fourteen (14) days after providing the
10 request to the Designating Party, a Party that makes a request and provides the information
11 specified in the preceding respective paragraphs may disclose the subject Protected Material to
12 the identified Expert unless, within those 14 days following the delivery the request, the Party
13 receives a written objection from the Designating Party. Any such objection must set forth in
14 detail the grounds on which it is based.

15 (c) A Party that receives a timely written objection must meet and confer with
16 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
17 agreement within seven days of the written objection. If no agreement is reached, the Party
18 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
19 (and in compliance with Civil Local Rule 79 5, if applicable) seeking permission from the court
20 to do so. Any such motion must describe the circumstances with specificity, set forth in detail the
21 reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the
22 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
23 In addition, any such motion must be accompanied by a competent declaration describing the
24 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
25

26
27 ¹ 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 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
2 to approve the disclosure.

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

6 8. PROSECUTION BAR

7 Absent written consent from the Producing Party, any individual who receives access to
8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
9 SOURCE CODE" information shall not be involved in the prosecution of patent applications
10 relating to technologies used to analyze and test integrated circuits and other electronic
11 components on behalf of any party to this litigation, before any foreign or domestic agency,
12 including the United States Patent and Trademark Office ("the Patent Office"). For purposes of
13 this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or
14 otherwise affecting the scope or maintenance of patent claims in new or pending applications. To
15 avoid any doubt, "prosecution" as used in this paragraph does not include representing a party
16 with respect to proceedings relating to issued patents (including, but not limited to, reissue and
17 reexamination proceedings). This Prosecution Bar shall begin when access to "HIGHLY
18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
19 CODE" information is first received by the affected individual and shall end two (2) years after
20 final termination of this action through entry of a final non-appealable judgment or order for
21 which appeal has been exhausted, or the complete settlement of all claims against all parties in
22 this action.

23 9. SOURCE CODE

24 (a) To the extent production of materials formatted in the manner defined in
25 section 2.9, above, becomes necessary in this case, a Producing Party may designate those
26 materials as "HIGHLY CONFIDENTIAL – SOURCE CODE" to the extent they comprise or
27 include confidential, proprietary, or trade secret information or other highly-confidential technical
28 information, as defined in section 2.8, above. This Designated Code shall be subject to the same

1 restrictions as materials designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY.” The following additional restrictions shall apply to Designated Code:

3 (b) Electronic copies of such Designated Code may be installed on a
4 standalone, non-networked computer at a secure location at the offices of the Receiving Party’s
5 Outside Counsel of Record and at the offices of any previously approved Experts. All or portions
6 of such Designated Code may be printed into a hard copy, provided that such hard copies are
7 marked “HIGHLY CONFIDENTIAL – SOURCE CODE” and that access to such hard copies is
8 restricted as set forth in this section.

9 (c) Outside Counsel of Record shall be limited to no more than three electronic
10 copies of any item of Designated Code, including any copies shared with Experts.

11 (d) Code must be maintained and stored by the Receiving Party at an office of
12 the Receiving Party’s Outside Counsel of Record or an office of an Expert in a manner that
13 prevents unauthorized access, including without limitation, the following minimum safeguards:

14 (i) The Designated Code shall be placed on encrypted, password-
15 protected external media such as optical discs, flash drives, or hard drives. Encryption
16 shall be by BitLocker, TrueCrypt, or other encryption means that are equally effective.
17 The Designated Code may only be viewed on a non-networked computer maintained in a
18 locked room accessible only by Outside Counsel of Record or authorized Experts, and on
19 an access restricted floor. The external media must be kept in a locked safe or storage
20 cabinet when not connected to or inserted in the non-networked computer for viewing.
21 No Designated Code may be left on the non-networked computer when the external media
22 is not connected to or inserted in the non-networked computer.

23 (ii) If the Designated Code is to be maintained and stored at an office of
24 an Expert, counsel must disclose to the supplying party the location where the Designated
25 Code will be maintained, and the security precautions undertaken to maintain
26 confidentiality of the Designated Code both while the Designated Code is being reviewed
27 and while the Designated Code is not being reviewed.

1 (iii) Each page of Designated Code, or portion thereof, that has been
2 printed or copied onto paper shall be recorded on a print log. All printing and copying
3 shall be onto paper conspicuously marked “HIGHLY CONFIDENTIAL - SOURCE
4 DESIGNATED CODE” on each page. All print logs shall be made available to the
5 supplier of the Designated Code for inspection upon request.

6 (iv) No portion of the Designated Code shall be e-mailed or transmitted
7 via any electronic transmission method except when included in a pleading (served or
8 filed) or attached to a deposition transcript. All transfers of Designated Code shall be by
9 way of physical transfer of encrypted external media. Designated Code, other than that
10 attached to a pleading (served or filed) or a deposition exhibit, shall not be placed on an
11 FTP site or stored in an internet accessible location for any reason for any period of time.

12 (e) If counsel desires to store and access Designated Code at a secure facility
13 other than the offices of Outside Counsel of Record or the office of an Expert, counsel shall
14 provide notice in writing to outside counsel of record for the supplying party the precise location
15 of the proposed secure facility and the custodian of the Designated Code in that facility.

16 (f) At the conclusion of the litigation any entity receiving Designated Code
17 will certify that: (a) all external media, print-outs, and copies containing Designated Code have
18 been destroyed or erased in a manner that prevents any forensic recovery of the Designated Code,
19 with the exception of exhibits that were attached to filed or served pleadings or attached to
20 deposition transcripts or admitted into evidence; and (b) the print logs have been archived along
21 with counsel's other records from this litigation. Other than as set forth in this subparagraph,
22 counsel may not maintain or retain a file copy of the Designated Code.

23 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
24 LITIGATION

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

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

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

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

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

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

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

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

3 (i) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement with
5 a Non-Party;

6 (ii) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (iii) make the information requested available for inspection by the
10 Non-Party.

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

18 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a Producing Party gives notice to a Receiving Party that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever privilege review procedure may be established in an
7 e-discovery order. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties
8 reach an agreement on the effect of disclosure of a communication or information covered by the
9 attorney-client privilege or work product protection, the parties may incorporate their agreement
10 in the stipulated protective order submitted to the court.

11 14. MISCELLANEOUS

12 14.1 Right to Further Relief: Nothing in this Order abridges the right of any person to
13 seek its modification by the court in the future.

14 14.2 Right to Assert Other Objections: By stipulating to the entry of this Protective
15 Order no Party waives any right it otherwise would have to object to disclosing or producing any
16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
17 no Party waives any right to object on any ground to use in evidence of any of the material
18 covered by this Protective Order.

19 14.3 Filing Protected Material: Without written permission from the Designating Party
20 or a court order secured after appropriate notice to all interested persons, a Party may not file in
21 the public record in this action any Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79 5. Protected Material may only be filed
23 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
24 issue. Pursuant to Civil Local Rule 79 5, a sealing order will issue only upon a request
25 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
26 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
27 Material under seal pursuant to Civil Local Rule 79 5(d) is denied by the court, then the
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1 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
2 79 5(e) unless otherwise instructed by the court.

3 15. FINAL DISPOSITION

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

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21 Dated: October 25, 2011

MARK E. MILLER
MICHAEL SAPOZNIKOW
ALEXANDER B. PARKER
O'MELVENY & MYERS LLP

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23
24 By: /s/ Mark E. Miller
Mark E. Miller
Attorneys for Plaintiff
DCG SYSTEMS, INC.

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Dated: October 25, 2011

HOPKINS & CARLEY
A Law Corporation

By: /s/ John V. Picone, III

John V. Picone, III
Gary H. Ritchey
HOPKINS & CARLEY, a Law Corporation
70 South First Street
San Jose, CA 95113
Telephone: (408) 286-9800
Facsimile: (408) 998-4790

Attorneys for Defendant
CHECKPOINT TECHNOLOGIES, LLC

IT IS SO ORDERED

Dated: October 31, 2011

Paul S. Grewal
The Honorable Paul S. Grewal
United States Magistrate Judge

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FILER’S ATTESTATION

Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from Mark E. Miller and John V. Picone, III.

Dated: October 25, 2011

By: /s/ Michael Sapoznikow
Michael Sapoznikow
Counsel for Plaintiff
DCG SYSTEMS, INC.

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Northern District of
7 California on _____ [date] in the case of DCG Systems, Inc. v. Checkpoint
8 Technologies, LLC, Case No. 11-CV-03792-PSG. I agree to comply with and to be bound by all
9 the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
13 of this Order.

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

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

21 Date: _____

22
23 City and State where sworn and signed: _____

24
25 Printed name: _____
26 [printed name]

27 Signature: _____
28 [signature]