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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

20 ST. PAUL MERCURY INSURANCE
 21 COMPANY,
 22 Plaintiff,
 23 v.
 24 TESSERA, INC.,
 25 Defendant.

Case No. 5:12-cv-1827 RMW
 STIPULATION AND PROTECTIVE
 ORDER - CONFIDENTIAL
 DESIGNATION ONLY

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 27 In order to facilitate the exchange of information and documents that may be subject to
 28 confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights, the

1 Parties (as defined in Paragraph 1 below) to the above-captioned matter, by and through their
2 respective counsel of record, stipulate as follows:

3 1. In this Stipulation and Protective Order, the words set forth below shall have the
4 following meanings:

5 a. "Proceeding" means the above-entitled proceeding (U.S. Dist. Ct., N.D.
6 Cal., Case No. 5:12-cv-1827 RMW).

7 b. "Court" means the Honorable Ronald M. Whyte, or any other magistrate
8 judge or district judge to which this Proceeding may be assigned, including Court staff
9 participating in such proceedings.

10 c. "Confidential" means any information that is in the possession of a
11 Designating Party who believes in good faith that such information is entitled to confidential
12 treatment under applicable law.

13 d. "Confidential Materials" means any Documents, Testimony, or
14 Information (as defined below) designated as "Confidential" pursuant to the provisions of this
15 Stipulation and Protective Order.

16 e. "Designating Party" means the Party that designates Materials as
17 "Confidential."

18 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal, divulge, give,
19 or make available Materials, or any part thereof, or any information contained therein.

20 g. "Documents" means (i) any "Writing," "Original," and "Duplicate" as
21 those terms are defined Rule 34(a) of the Federal Rules of Civil Procedure and Rule 1001 of the
22 Federal Rules of Evidence, which have been produced in this Proceeding by any person, and
23 (ii) any copies, reproductions, or summaries of all or any part of the foregoing.

24 h. "Information" means the content of any Documents or Testimony.

25 i. "Party" or "Parties" shall mean the signatories to this Stipulation and
26 Protective Order, St. Paul Mercury Insurance Company ("St. Paul") and Tessera, Inc.,
27 ("Tessera") individually or collectively.
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1 j. “Testimony” means all depositions, declarations or other testimony taken
2 or used in this Proceeding.

3 2. The Designating Party shall have the right to designate as “Confidential” any
4 Documents, Testimony, or Information that the Designating Party in good faith believes to
5 contain non-public information that is entitled to confidential treatment under applicable law.

6 3. The entry of this Stipulation and Protective Order does not alter, waive, modify,
7 or abridge any right, privilege or protection otherwise available to any Party with respect to the
8 discovery of matters, including but not limited to any Party’s right to assert the attorney-client
9 privilege, the work product doctrine, or other privileges, or any Party’s right to contest any such
10 assertion. Furthermore, St. Paul has agreed to participate in Tessera’s defense of the action
11 entitled *Powertech Technology Inc. v. Tessera, Inc.*, U.S.D.C. N.D. Cal. Case No. 4:11-cv-
12 06121-CW (the “*PTI v. Tessera* Action”), under a reservation of rights. The Parties anticipate
13 that in the course of this action, it may become reasonably necessary for Tessera to disclose
14 Information, Documents, and/or Testimony, including potentially privileged or confidential
15 Information, Documents, and/or Testimony, to St. Paul for the purpose, in whole or in part, of
16 permitting and facilitating St. Paul’s participation in its defense of the *PTI v. Tessera* Action.
17 Accordingly, the production of Information, Documents, or Testimony by Tessera to St. Paul in
18 this action shall not alter, waive, modify, or abridge any attorney-client privilege, work product
19 protection, confidentiality, or trade secret protection applicable to such Information,
20 Documents, or Testimony.

21 4. Any Documents, Testimony or Information to be designated as “Confidential”
22 must be clearly so designated before the Document, Testimony or Information is Disclosed or
23 produced. The “Confidential” designation should not obscure or interfere with the legibility of
24 the designated Information.

25 a. For Documents (apart from transcripts of depositions or other pretrial or
26 trial proceedings), the Designating Party must affix the legend “Confidential” on each page of
27 any Document containing such designated Confidential Material.

28 b. For Testimony given in depositions, the Designating Party may either:

1 i. Identify on the record, before the conclusion of the deposition, all
2 “Confidential” Testimony, by specifying all portions of the Testimony that
3 qualify as “Confidential;” or

4 ii. Designate the entirety of the Testimony at the deposition as
5 “Confidential” (before the deposition is concluded) with the right to identify
6 more specific portions of the Testimony as to which protection is sought within
7 30 days following receipt of any party’s challenge to the designation of the
8 entirety of the Testimony as Confidential. In circumstances where portions of
9 the deposition Testimony are designated for protection, the transcript pages
10 containing “Confidential” Information may be separately bound by the court
11 reporter, who must affix to the top of each page the legend “Confidential,” as
12 instructed by the Designating Party.

13 c. For Information produced in some form other than Documents, and for
14 any other tangible items, including, without limitation, compact discs or DVDs, the Designating
15 Party must affix in a prominent place on the exterior of the container or containers in which the
16 Information or item is stored the legend “Confidential.” If only portions of the Information or
17 item warrant protection, the Designating Party, to the extent practicable, shall identify the
18 “Confidential” portions.

19 5. The inadvertent production by any of the undersigned Parties or non-Parties to
20 the Proceeding of any Document, Testimony, or Information in this Proceeding without a
21 “Confidential” designation shall be without prejudice to any claim that such item is
22 “Confidential,” and such Party shall not be held to have waived any rights by such inadvertent
23 production. In the event that any Document, Testimony, or Information that is subject to a
24 “Confidential” designation is inadvertently produced without such designation, the Party that
25 inadvertently produced the document shall give written notice of such inadvertent production
26 within twenty (20) days of discovery of the inadvertent production, together with a further copy
27 of the subject Document, Testimony or Information designated as “Confidential” (the
28 “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production Notice, the

1 Party that received the inadvertently produced Document, Testimony, or Information shall
2 promptly destroy the inadvertently produced Document, Testimony, or Information and all
3 copies thereof, or, at the expense of the producing Party, return such Document, Testimony, or
4 Information together with all copies thereof to counsel for the producing Party and shall retain
5 only the “Confidential” designated Materials. Should the receiving Party choose to destroy
6 such inadvertently produced Document, Testimony, or Information, the receiving Party shall
7 notify the producing Party in writing of such destruction within ten (10) days of receipt of
8 written notice of the inadvertent production. This provision is not intended to apply to any
9 inadvertent production of any Information protected by the attorney-client or work product
10 privileges. In the event that this provision conflicts with any applicable law regarding waiver of
11 confidentiality through the inadvertent production of Documents, Testimony, or Information,
12 such law shall govern.

13 6. In the event that counsel for a Party receiving Documents, Testimony, or
14 Information designated as “Confidential” objects to such designation with respect to any or all
15 of such items, said counsel shall advise counsel for the Designating Party, in writing, of such
16 objections, the specific Documents, Testimony, or Information to which each objection pertains,
17 and the specific reasons and support for such objections (the “Designation Objections”).
18 Counsel for the Designating Party shall have thirty (30) days from receipt of the written
19 Designation Objections to either (a) agree in writing to de-designate Documents, Testimony, or
20 Information pursuant to any or all of the Designation Objections and/or (b) file a motion with
21 the Court seeking to uphold any or all designations on Documents, Testimony, or Information
22 addressed by the Designation Objections (the “Designation Motion”). Pending a resolution of
23 the Designation Motion by the Court, any and all existing designations on the Documents,
24 Testimony, or Information at issue in such Motion shall remain in place. The Designating Party
25 shall have the burden on any Designation Motion of establishing the applicability of its
26 “Confidential” designation. In the event that the Designation Objections are neither timely
27 agreed to nor timely addressed in the Designation Motion, then such Documents, Testimony, or
28 Information shall be de-designated in accordance with the Designation Objection applicable to

1 such material. Failure to challenge a “Confidential” designation shall not preclude a
2 subsequent challenge thereto.

3 7. Access to and/or Disclosure of Confidential Materials designated as
4 “Confidential” shall be permitted only to the following persons:

5 a. The Court.

6 b. (1) Attorneys of record in the Proceeding and the affiliated attorneys,
7 paralegals, clerical, and secretarial staff employed by such attorneys who are actively involved
8 in the Proceeding and are not employees of any Party. (2) In-house counsel to the undersigned
9 Parties and the paralegal, clerical, and secretarial staff employed by such counsel. Provided,
10 however, that each non-lawyer given access to Confidential Materials shall be advised that such
11 Materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
12 Protective Order and that they may not be Disclosed other than pursuant to its terms.

13 c. Those officers, directors, partners, members, employees, and agents of all
14 nondesignating Parties that have been designated by such Parties to assist counsel in the
15 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of
16 Confidential Materials to any such officer, director, partner, member, employee, or agent,
17 counsel for the Party making such Disclosure shall deliver a copy of this Stipulation and
18 Protective Order to such person, shall explain that such person is bound to follow the terms of
19 such Order, and shall secure the signature of such person on a statement in the form attached
20 hereto as Exhibit A.

21 d. Court reporters in this Proceeding (whether at depositions, hearings, or
22 any other proceeding).

23 e. Any deposition, trial, or hearing witness in the Proceeding who
24 previously has had access to the Confidential Materials, or who is currently or was previously
25 an officer, director, partner, member, employee, or agent of an entity that has had access to the
26 Confidential Materials.

27 f. Any deposition or non-trial hearing witness in the Proceeding who
28 previously did not have access to the Confidential Materials; provided, however, that each such

1 witness given access to Confidential Materials shall be advised that such Materials are being
2 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and
3 that they may not be Disclosed other than pursuant to its terms.

4 g. Mock jury participants, provided, however, that prior to the Disclosure of
5 Confidential Materials to any such mock jury participant, counsel for the Party making such
6 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
7 explain that such person is bound to follow the terms of such Order, and shall secure the
8 signature of such person on a statement in the form attached hereto as Exhibit A.

9 h. Outside experts or expert consultants consulted by the undersigned
10 Parties or their counsel in connection with the Proceeding, whether or not retained to testify at
11 any oral hearing; provided, however, that prior to the Disclosure of Confidential Materials to
12 any such expert or expert consultant, counsel for the Party making such Disclosure shall deliver
13 a copy of this Stipulation and Protective Order to such person, shall explain its terms to such
14 person, and shall secure the signature of such person on a statement in the form attached hereto
15 as Exhibit A. It shall be the obligation of counsel, upon learning of any breach or threatened
16 breach of this Stipulation and Protective Order by any such expert or expert consultant, to
17 promptly notify counsel for the Designating Party of such breach or threatened breach.

18 i. Outside vendors providing counsel for the Parties with litigation support
19 services, including for example photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium, including the
21 employees or subcontractors of such outside vendors; provided, however, that prior to the
22 Disclosure of Confidential Materials to any such outside vendor, counsel for the Party making
23 such Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
24 explain its terms to such person, and shall secure the signature of such person on a statement in
25 the form attached hereto as Exhibit A.

26 j. Any other person that the Designating Party agrees to in writing.
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1 8. Confidential Materials shall be used by the persons receiving them only for the
2 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or
3 defending the Proceeding, and not for any business or other purpose whatsoever.

4 9. To the extent that any Party produces Information that previously was produced
5 or generated in the *PTI v. Tessera* Action and such Information was designated as “Confidential”
6 or “Highly Confidential – Attorneys’ Eyes Only” by one or more of the parties to the *PTI v.*
7 *Tessera* Action then, with respect to such Information, the Parties shall comply in all respects
8 with the terms of the Protective Order Regarding Confidential Information entered by the court
9 in the *PTI v. Tessera* Action (the “*PTI v. Tessera* Action Protective Order”), a copy of which is
10 attached to this Order as Exhibit B and incorporated into this Order by this reference. To the
11 extent that the provisions of this Order and the *PTI v. Tessera* Action Protective Order conflict,
12 the terms of the *PTI v. Tessera* Action Protective Order shall govern with respect to Information
13 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in the *PTI v.*
14 *Tessera* Action. Without limiting the generality of the preceding sentence, the procedures set
15 forth in paragraph 6 of this Order shall not apply to Information designated as “Confidential” or
16 “Highly Confidential – Attorneys’ Eyes Only” in the *PTI v. Tessera* Action. If any documents
17 are withheld from St. Paul on the basis that the *PTI v. Tessera* Action Protective Order
18 precludes their production, upon the request of St. Paul, Tessera will ask the parties in the *PTI v.*
19 *Tessera* Action for permission to produce such document(s) to St. Paul. If Tessera fails to make
20 such a request or Tessera’s request is denied by the parties in the *PTI v. Tessera* Action, then St.
21 Paul may seek an order from the Court in the PTI Litigation permitting Tessera to produce the
22 requested documents to St. Paul.

23 10. This Order does not apply to any party’s use of:

- 24 a. Its own documents or information;
- 25 b. Documents that were in its possession, custody, or control prior to the
26 filing of this lawsuit;
- 27 c. Documents or information concerning or reflecting transactions or
28 communications to which it was a party; or

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d. Documents or information developed or obtained lawfully and independently of discovery in this action;

unless and to the extent any such documents or information were (i) exchanged among any of the Parties before the filing of this lawsuit, and (ii) have been designated as “Confidential” by any Party to the Proceeding within 30 days after all Parties’ execution of this Stipulation and Protective Order.

11. Any Party to the Proceeding (or other person subject to the terms of this Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective Order.

12. Entering into, agreeing to, and/or complying with the terms of this Stipulation and Protective Order shall not:

a. Operate as an admission by any person that any particular Document, Testimony or Information marked “Confidential” contains or reflects trade secrets, proprietary, confidential or competitively sensitive business, commercial, financial or personal information; or

b. Prejudice in any way the right of any Party (or any other person subject to the terms of this Stipulation and Protective Order):

i. To seek a determination by the Court of whether any particular Confidential Material should be subject to protection as “Confidential” under the terms of this Stipulation and Protective Order; or

ii. To seek relief from the Court on appropriate notice to all other Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either generally or as to any particular Document, Material, or Information.

13. Any Party to the Proceeding that has not executed this Stipulation and Protective Order as of the time it is presented to the Court for signature may thereafter become a Party to

1 this Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and
2 filing the same with the Court, and serving copies of such signed and dated copy upon the other
3 Parties to this Stipulation and Protective Order.

4 14. Any Information that may be produced by a non-Party witness in the Proceeding
5 pursuant to subpoena or otherwise may be designated by such non-Party as “Confidential”
6 under the terms of this Stipulation and Protective Order, and any such designation by a non-
7 Party shall have the same force and effect, and create the same duties and obligations, as if
8 made by one of the undersigned Parties hereto. Any such designation shall also function as a
9 consent by such producing Party to the authority of the Court in the Proceeding to resolve and
10 conclusively determine any motion or other application made by any person or Party with
11 respect to such designation, or any other matter otherwise arising under this Stipulation and
12 Protective Order. Further, a Party can designate documents produced by third Parties as
13 “Confidential.”

14 15. If any person subject to this Stipulation and Protective Order who has custody of
15 any Confidential Materials receives a subpoena or other process (“Subpoena”) from any
16 government or other person or entity demanding production of Confidential Materials, the
17 recipient of the Subpoena shall promptly give notice of the same by electronic mail
18 transmission, followed by either express mail or overnight delivery, to counsel of record for the
19 Designating Party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of
20 this notice, the Designating Party may, in its sole discretion and at its own cost, move to quash
21 or limit the Subpoena, otherwise oppose production of the Confidential Materials, and/or seek
22 to obtain confidential treatment of such Confidential Materials from the subpoenaing person or
23 entity to the fullest extent available under law. The recipient of the Subpoena may not produce
24 any Documents, Testimony, or Information pursuant to the Subpoena prior to the date specified
25 for production on the Subpoena.

26 16. Nothing in this Stipulation and Protective Order shall be construed to preclude
27 either Party from asserting in good faith that certain Confidential Materials require additional
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1 protection. The Parties shall meet and confer to agree upon the terms of such additional
2 protection.

3 17. If, after execution of this Stipulation and Protective Order, any Confidential
4 Materials submitted by a Designating Party under the terms of this Stipulation and Protective
5 Order is Disclosed by a non-Designating Party to any person other than in the manner
6 authorized by this Stipulation and Protective Order, the non-Designating Party responsible for
7 the Disclosure shall bring all pertinent facts relating to the Disclosure of such Confidential
8 Materials to the immediate attention of the Designating Party.

9 18. This Stipulation and Protective Order is entered into without prejudice to the
10 right of any Party to knowingly waive the applicability of this Stipulation and Protective Order
11 to any Confidential Materials designated by that Party. If the Designating Party uses
12 Confidential Materials in a non-Confidential manner, then the Designating Party shall advise
13 counsel for the other Parties that the designation no longer applies.

14 19. Where any Confidential Materials, or Information derived from Confidential
15 Materials, is included in any motion or other proceeding governed by Rule 5.2 of the Federal
16 Rules of Civil Procedure, Civil Local Rule 79-5, or General Order No. 62, the party shall follow
17 those rules. If Confidential Materials or Information derived from Confidential Materials are
18 submitted to or otherwise Disclosed to the Court in connection with discovery motions or other
19 proceedings not governed by Rule 5.2 of the Federal Rules of Civil Procedure, Civil Local Rule
20 79-5, or General Order No. 62, the same shall be separately filed under seal with the clerk of the
21 Court in an envelope marked: "CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO
22 PROTECTIVE ORDER AND WITHOUT ANY FURTHER SEALING ORDER REQUIRED."

23 20. The Parties shall meet and confer regarding the procedures for use of
24 Confidential Materials at any hearing or at trial and, if any Party seeks to protect the use of such
25 Confidential Materials to any greater degree than that protection afforded by Rule 5.2 of the
26 Federal Rules of Civil Procedure, Civil Local Rule 79-5, or General Order No. 62, or any other
27 order of this Court, such party may move the Court for entry of an appropriate order.
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1 21. Nothing in this Stipulation and Protective Order shall affect the admissibility into
2 evidence of Confidential Materials, or abridge the rights of any person to seek judicial review or
3 to pursue other appropriate judicial action with respect to any ruling made by the Court
4 concerning the issue of the status of Confidential Materials.

5 22. This Stipulation and Protective Order shall continue to be binding after the
6 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,
7 except that a Party may seek the written permission of the Designating Party or may move the
8 Court for relief from the provisions of this Stipulation and Protective Order. To the extent
9 permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider this
10 Stipulation and Protective Order, even after the Proceeding is terminated.

11 23. Within thirty (30) days after the settlement or other termination of the
12 Proceeding, the undersigned Parties shall confirm to the Designating Parties that they have
13 destroyed all Confidential Materials and all copies thereof (except that counsel for each Party
14 may maintain in its files, in continuing compliance with the terms of this Stipulation and
15 Protective Order, all work product, and two copies of each pleading filed with the Court,
16 discovery response, deposition transcript, and deposition exhibit).

17 24. After this Stipulation and Protective Order has been signed by counsel for all
18 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set
19 forth herein with regard to any Confidential Materials that have been produced before the Court
20 signs this Stipulation and Protective Order.

21 25. The Parties and all signatories to the Certification attached hereto as Exhibit A
22 agree to be bound by this Stipulation and Protective Order pending its approval and entry by the
23 Court. In the event that the Court modifies this Stipulation and Protective Order, or in the event
24 that the Court enters a different Protective Order, the Parties agree to be bound by this
25 Stipulation and Protective Order until such time as the Court may enter such a different Order.
26 It is the Parties' intent to be bound by the terms of this Stipulation and Protective Order pending
27 its entry so as to allow for immediate production of Confidential Materials under the terms
28 herein.