



1 2. DEFINITIONS

2 2.1. Party: any party to this action, including all of its officers, directors, employees, consultants,  
3 retained experts, and outside counsel (and their support staff).

4 2.2. Disclosure or Discovery Material: all items or information, regardless of the medium or manner  
5 generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible  
6 things) that are produced or generated in disclosures or responses to discovery in this matter.

7 2.3. "Confidential" Information or Items: information (regardless of how generated, stored or  
8 maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P.  
9 26(c).

10 2.4. "Highly Confidential - Attorneys' Eyes Only" Information or Items: extremely sensitive  
11 "Confidential Information or Items" whose disclosure to another Party or non-party would create a  
12 substantial risk of serious injury that could not be avoided by less restrictive means.

13 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

14 2.6. Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this  
15 action.

16 2.7. Designating Party: a Party or non-party that designates information or items that it produces in  
17 disclosures or in responses to discovery as "Confidential" or "Highly Confidential - Attorneys' Eyes  
18 Only."

19 2.8. Protected Material: any Disclosure or Discovery Material that is designated as "Confidential" or  
20 as "Highly Confidential - Attorneys' Eyes Only."

21 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or  
22 advise a Party in this action.

23 2.10. House Counsel: attorneys who are employees of a Party.

24 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

25 2.12. Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation  
26 who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this  
27 action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at  
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1 the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's.  
2 This definition includes a professional jury or trial consultant retained in connection with this litigation.  
3 2.13. Professional Vendors: persons or entities that provide litigation support services (e.g., photo-  
4 copying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving  
5 data in any form or medium; etc.) and their employees and subcontractors.

### 6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as defined  
8 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,  
9 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel  
10 to or in court or in other settings that might reveal Protected Material.

### 11 4. DURATION

12 Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall  
13 remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

### 14 5. DESIGNATING PROTECTED MATERIAL

15 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party  
16 that designates information or items for protection under this Order must take care to limit any such  
17 designation to specific material that qualifies under the appropriate standards. A Designating Party must  
18 take care to designate for protection only those parts of material, documents, items, or oral or written  
19 communications that qualify - so that other portions of the material, documents, items, or communica-  
20 tions for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

25 If it comes to a Party's or a non-party's attention that information or items that it designated for  
26 protection do not qualify for protection at all, or do not qualify for the level of protection initially  
27 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the  
28 mistaken designation.

1 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,  
2 second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies  
3 for protection under this Order must be clearly so designated before the material is disclosed or  
4 produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial  
7 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDEN-  
8 TIAL - ATTORNEYS' EYES ONLY" at the top of each page that contains protected material. If only a  
9 portion or portions of the material on a page qualifies for protection, the Producing Party also must  
10 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
11 specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY  
12 CONFIDENTIAL - ATTORNEYS' EYES ONLY").

13 A Party or non-party that makes original documents or materials available for inspection need not  
14 designate them for protection until after the inspecting Party has indicated which material it would like  
15 copied and produced. During the inspection and before the designation, all of the material made  
16 available for inspection shall be deemed "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -ATTOR-  
17 NEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and  
18 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
19 protection under this Order, then, before producing the specified documents, the Producing Party must  
20 affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'  
21 EYES ONLY") at the top of each page that contains Protected Material. If only a portion or portions of  
22 the material on a page qualifies for protection, the Producing Party also must clearly identify the  
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
24 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDEN-  
25 TIAL - ATTORNEYS' EYES ONLY").

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party  
27 offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing,  
28 or other proceeding, all protected testimony, and further specify any portions of the testimony that

1 qualify as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." When  
2 it is impractical to identify separately each portion of testimony that is entitled to protection, and when it  
3 appears that substantial portions of the testimony may qualify for protection, the Party or non-party that  
4 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is  
5 concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which  
6 protection is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or  
7 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"). Only those portions of the testimony  
8 that are appropriately designated for protection within the 20 days shall be covered by the provisions of  
9 this Stipulated Protective Order.

10 Transcript pages containing Protected Material must be separately bound by the court reporter, who  
11 must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
12 - ATTORNEYS' EYES ONLY," as instructed by the Party or non- party offering or sponsoring the  
13 witness or presenting the testimony.

14 (c) for information produced in some form other than documentary, and for any other tangible items,  
15 that the Producing Party affix in a prominent place on the exterior of the container or containers in  
16 which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL  
17 - ATTORNEYS' EYES ONLY." If only portions of the information or item warrant protection, the  
18 Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they  
19 qualify as "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

20 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
21 qualified information or items as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" does  
22 not, standing alone, waive the Designating Party's right to secure protection under this Order for such  
23 material. If material is appropriately designated as "Confidential" or "Highly Confidential - Attorneys'  
24 Eyes Only" after the material was initially produced, the Receiving Party, on timely notification of the  
25 designation, must make reasonable efforts to assure that the material is treated in accordance with the  
26 provisions of this Order.

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28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality  
2 designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a  
3 later significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
4 confidentiality designation by electing not to mount a challenge promptly after the original designation  
5 is disclosed.

6 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidential-  
7 ity designation must do so in good faith and must begin the process by conferring directly (in voice to  
8 voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party.  
9 In conferring, the challenging Party must explain the basis for its belief that the confidentiality  
10 designation was not proper and must give the Designating Party an opportunity to review the designated  
11 material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis  
12 for the chosen designation. A challenging Party may proceed to the next stage of the challenge process  
13 only if it has engaged in this meet and confer process first.

14 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation  
15 after considering the justification offered by the Designating Party may file and serve a motion that  
16 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion  
17 must be accompanied by a competent declaration that affirms that the movant has complied with the  
18 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the  
19 justification for the confidentiality designation that was given by the Designating Party in the meet and  
20 confer dialogue.

21 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
22 Until the court rules on the challenge, all parties shall continue to afford the material in question the  
23 level of protection to which it is entitled under the Producing Party's designation.  
24

## 25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by  
27 another Party or by a non-party in connection with this case only for prosecuting, defending, or  
28 attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of

1 persons and under the conditions described in this Order. When the litigation has been terminated, a  
2 Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

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

5 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court  
6 or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
7 item designated CONFIDENTIAL only to:

8 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel  
9 to whom it is reasonably necessary to disclose the information for this litigation and who have signed  
10 the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound  
13 by Protective Order" (Exhibit A);

14 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary  
15 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for  
18 this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who  
20 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed  
21 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound  
22 by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated  
23 Protective Order.

24 (g) the author of the document or the original source of the information.

25 7.3. Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information or  
26 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
27 Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL -  
28 ATTORNEYS' EYES ONLY" only to:

1 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel  
2 to whom it is reasonably necessary to disclose the information for this litigation and who have signed  
3 the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

4 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation,  
5 (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (3) as to whom  
6 the procedures set forth in paragraph 7.4, below, have been followed;

7 (c) the Court and its personnel;

8 (d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for  
9 this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

10 (e) the author of the document or the original source of the information.

11 7.4. Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES  
12 ONLY" Information or Items to "Experts"

13 (a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that  
14 seeks to disclose to an "Expert" (as defined in this Order) any information or item that has been  
15 designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" first must make a written  
16 request to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL information  
17 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the  
18 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current  
19 resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom  
20 the Expert has received compensation for work in his or her areas of expertise or to whom the expert has  
21 provided professional services at any time during the preceding five years, and (6) identifies (by name  
22 and number of the case, filing date, and location of court) any litigation in connection with which the  
23 Expert has provided any professional services during the preceding five years.

24 (b) A Party that makes a request and provides the information specified in the preceding paragraph may  
25 disclose the subject Protected Material to the identified Expert unless, within seven court days of  
26 delivering the request, the Party receives a written objection from the Designating Party. Any such  
27 objection must set forth in detail the grounds on which it is based.

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1 (c) A Party that receives a timely written objection must meet and confer with the Designating Party  
2 (though direct voice to voice dialogue) to try to resolve the matter by agreement. If no agreement is  
3 reached, the Party seeking to make the disclosure to the Expert may file a motion seeking permission  
4 from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in  
5 detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm  
6 that the disclosure would entail and suggest any additional means that might be used to reduce that risk.  
7 In addition, any such motion must be accompanied by a competent declaration in which the movant  
8 describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the  
9 meet and confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal  
10 to approve the disclosure.

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

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
15 LITIGATION.

16 If a Receiving Party is served with a subpoena or an order issued in other litigation that would  
17 compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
18 "HIGHLY CONFIDENTIAL- ATTORNEYS' EYES ONLY," the Receiving Party must so notify the  
19 Designating Party, in writing (by fax, if possible) immediately and in no event more than three court  
20 days after receiving the subpoena or order. Such notification must include a copy of the subpoena or  
21 court order.

22 The Receiving Party also must immediately inform in writing the Party who caused the subpoena  
23 or order to issue in the other litigation that some or all the material covered by the subpoena or order is  
24 the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this  
25 Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to  
26 issue.

27 The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its

1 confidentiality interests in the court from which the subpoena or order issued. The Designating Party  
2 shall bear the burdens and the expenses of seeking protection in that court of its confidential material -  
3 and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in  
4 this action to disobey a lawful directive from another court.

5 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 10. ENFORCEMENT.

14 Each individual who receives any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-  
15 ATTORNEYS' EYES ONLY" pursuant to this Protective Order shall be subject to the jurisdiction of the  
16 Court in any proceeding relating to the performance under, compliance with or violation of this  
17 Protective Order.

18 11. FILING PROTECTED MATERIAL.

19 Without written permission from the Designating Party or a court order secured after appropriate  
20 notice to all interested persons, a Party may not file in the public record in this action any Protected  
21 Material.

22 12. FINAL DISPOSITION.

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the  
24 final termination of this action, each Receiving Party must return all Protected Material to the Producing  
25 Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
26 summaries or any other form of reproducing or capturing any of the Protected Material. With permission  
27 in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected  
28 Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving

1 Party must submit a written certification to the Producing Party (and, if not the same person or entity, to  
2 the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the  
3 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not  
4 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any  
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy  
6 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,  
7 even if such materials contain Protected Material. Any such archival copies that contain or constitute  
8 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),  
9 above.

10 13. MISCELLANEOUS

11 13.1. Modification. Nothing herein shall restrict the power of the Court to modify this Protective  
12 Order or any term hereof for good cause shown.

13 13.2. Right to Further Relief Nothing in this Order abridges the right of any person to seek its  
14 modification by the Court in the future.

15 13.3. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party  
16 waives any right it otherwise would have to object to disclosing or producing any information or item on  
17 any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to  
18 object on any ground to use in evidence of any of the material covered by this Protective Order.

19 IT IS SO ORDERED.

20 DATED: April 13, 2009

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23 Hon. Anthony J. Battaglia

24 U.S. Magistrate Judge

25 United States District Court  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Southern District of California on [date] in the case of Culp, et al. v. TEKsystems, Inc., Case No. 08CV1836-JM-AJB. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date:  
City and State where sworn and signed:  
Printed name:  
[printed name]  
Signature:  
[signature]

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