THE BUSINESS COURT OF TEXAS
ELEVENTH DIVISION

[Plaintiff(s)],	§	
Plaintiff(s),	§	
v.	§	Cause No. _____
[Defendant(s)],	§	
Defendant(s).	§	

PROTECTIVE ORDER

Based on the Parties' representations, the materials on file in this case, and the nature of the Parties' alleged causes of action and defenses, the Court finds and concludes that these terms are fair, just, and proper. Accordingly,

It is ORDERED that:

I. DEFINITIONS

As used in this Order:

1. **"Party" or "Parties"** means (i) any named party to this lawsuit or (ii) any non-party that provides Information in this Lawsuit pursuant to subpoena or by consent. Party includes a Party's counsel, officers, directors, employees, agents, representatives, and service providers.

2. **"Producing Party"** means a Party that Produces Information in this Lawsuit.

3. **"Receiving Party"** means a Party that receives Information in this Lawsuit.

4. **"Produce"** means to provide in (i) discovery; (ii) sworn testimony, affidavit, or declaration; or (iii) court filings.

5. **"Information"** means any written or oral communication or reduction of facts or data to written form or oral testimony.

6. **"Confidential Information (CI)"** means Information that a Producing Party determines in good faith is a trade secret or reveals confidential, proprietary, sensitive, financial, or other Information. CI does not include public domain Information.

7. **"Attorney's Eyes Only (AEO)"** means any CI that a Producing Party in good faith determines is especially sensitive and entitled to highly confidential treatment.

8. **"Matter"** means all asserted or unasserted causes of action or affirmative defenses that arise from the facts, circumstances, transactions, or occurrences giving rise to this Lawsuit, regardless of whether those causes of action or affirmative defenses are asserted in this Lawsuit or in another forum.

9. **"Lawsuit"** means the proceeding under this cause number and its related proceedings that result from this proceeding such as by severance, consolidation, appeal, or remand from this Court.

10. **"Expert"** means a person who is retained to assist a Party in handling this Lawsuit. Expert includes those firm owners, employees, or agents who assist the Expert in his or her tasks.

11. **"Subpoena"** means any civil, criminal, or arbitration subpoena; civil demand; administrative inquiry or request; order, or other process.

II. SCOPE

12. General Scope. This Order applies to Information a Party Produces in this Lawsuit. This Order does not alter any confidentiality obligations a Party may have at law or under another Order or agreement.

13. Ability to Challenge. A Party may challenge a Producing Party's CI or AEO designations.

14. Ability to Object. A Party may object to the admissibility of any Produced Information.

15. Non-Waiver. Producing CI or AEO does not waive any privilege or right to claim the trade secret or confidential status of the Produced Information.

III. DESIGNATION PROCEDURES

A. Marking Documents

16. Producing Party's Own Information. A Party designating documents as containing CI or AEO must (i) mark each page of that document "Confidential," "Attorney's Eyes Only" or (ii) identify to each other Party in writing the document(s) by Bates number or other unequivocal identifier the CI or AEO Information.

17. Information Produced by Someone Else. A Party may designate Information Produced by a different Party (including a non-litigant) as the designating Party's CI or AEO by complying with this Order within fourteen (14) days after receiving that Information and notifying all other Parties. The notice must describe with particularity the Information being designated as CI or AEO. Upon receiving that notice, counsel for all other Parties must treat that designated Information as CI or AEO according to this Order.

18. Late Designation. A Producing Party may in a written notice emailed to all Receiving Parties designate Information as CI or AEO within seven (7) days after its production. Thereafter, the Producing Party must provide correctly designated copies of such Information within seven (7) days of the Producing Party's Notice, and the Receiving Party must replace the previously undesignated Information with the newly designated Information. Upon receiving the Producing Party's notice, a Party must treat late designated CI or AEO as subject to this Order.

19. Marking Impractical. If marking is impractical, such as documents or ESI produced in native format, like audio, video, database, and spreadsheet-type files (*e.g.* Microsoft Excel), the Producing Party must designate in writing the Information it asserts is CI or AEO by including a single-page Bates-stamped slip-sheet with each document Produced in native format. The slip-sheets must display the Bates number of the native file, the Confidential or AEO designation, and this endorsement "File Produced Natively."

B. Deposition Testimony and Exhibits

20. Designation Procedures. A Party (including non-litigants) wishing to designate deposition testimony as CI or AEO must do so by stating that designation on the record during the deposition testimony that includes that CI or AEO. A Party may later designate additional deposition testimony as CI or AEO if that Party provides written notice to all Parties of record within fourteen (14) days after the designating Party receives a transcript.

C. Court Filings

21. Filing Requirements. A Party wishing to include CI or AEO in a court filing, declaration, affidavit, attachment, exhibit, or appendix must:

- Include in the filing's caption a parenthetical stating that the filing contains CI or AEO;

- Redact the CI or AEO from the publicly filed document; and
- Provide the Court with an unredacted electronic copy of the filing.

22. Rule 76a. The Court Clerk will make redacted CI or AEO available for public viewing thirty (30) days following a non-Party's written request filed with the Clerk unless a Party obtains a sealing order pursuant to TEX. R. CIV. P. 76a. Provided, however, this paragraph does not apply to documents containing unredacted CI or AEO that were submitted for in camera inspection solely to obtain a ruling on their discoverability (*see* TEX. R. CIV. P. 76a(2)(a)(1)).

23. Other Protections Preserved. This Order does not authorize or require the disclosure of personal or other Information that the rules of procedure or a statute otherwise permit or require to be redacted.

D. Non-Litigants

24. Ability to Designate. A non-Party who signs the agreement attached as Exhibit "A" may designate its Produced Information as CI or AEO. A requesting Party must serve the non-litigant with a copy of this Order when the requesting party makes the request by subpoena or otherwise.

E. Mass Designations Prohibited

25. Mass Designation. Mass, indiscriminate, or routinized designations are prohibited.

26. Duty to Support. A designating Party must be prepared to explain the rationale for each CI or AEO designation.

IV. CI PROTECTIONS

27. Limited Disclosure. Except as this Order otherwise provides a Party must not disclose CI to anyone other than:

- Signing Parties;
- Attorneys working on this Lawsuit on a Party's behalf and those attorneys' employees, agents, and signing contractors who provide assistance in this Lawsuit;
- Experts retained regarding this Lawsuit;
- The Court, its personnel, and jurors;
- Qualified court reporters and videographers participating in this Lawsuit;
- Any mediator serving in connection with this Lawsuit;
- Persons who in the ordinary course of business authored or received the subject CI; and
- Persons who otherwise are permitted access to the CI by Court order or stipulation of the Party that produced or disclosed the CI, after notice to all Parties and an opportunity to object.

V. AEO PROTECTIONS

28. More Limited Disclosure. AEO must not be disclosed or shown to anyone other than:

- Attorneys working on this Lawsuit on a Party's behalf and those attorneys' employees and agents assisting in this Lawsuit;
- Expert witnesses retained to assist in this Lawsuit. If a Party is designated as an expert witness, AEO material may only be disclosed to that individual after a good faith conference between legal counsel for the Party designating the expert witness and the designating Party. That conference must occur before any AEO is shared with that Expert;
- The Court, its personnel, and jurors as necessary to conduct the Lawsuit;
- Qualified court reporters and videographers participating in this Lawsuit;
- Any mediator serving in connection with this Lawsuit;
- Persons who in the ordinary course of business authored or received the subject AEO; and
- Any other person to whom the Parties agree in writing or the Court grants leave for disclosure.

VI. GENERAL PROTECTIONS

29. Limited Use. CI and AEO must be used by the Receiving Party solely for the purposes of the Lawsuit and only as this Order provides.

30. Notice of Intended Use. No person may disclose CI or AEO to any non-Party or non-authorized person without providing ten (10) days' written notice to the Producing Party and (i) that Party consents to the disclosure; or (ii) the Court resolves any objections to the disclosure.

31. Objection to Use. The Producing Party must object to the requested disclosure in writing within five (5) days after receiving notice of any intent to disclose.

32. Producing Party's Use. Regardless of whether a Producing Party designates such Information as CI or AEO, any Party may use without restriction:

- its own documents or Information; and
- documents or Information independently developed or obtained by that Party.

33. Duty to Advise Recipients. Each person receiving access to CI or AEO designated Information must be advised that the Information is disclosed subject to this Order and may not be disclosed other than as this Order permits.

34. Non-Party Duty to Acknowledge Order. If such persons are not a Party, that person must sign an agreement to be bound in the form attached hereto as Exhibit "A" before accessing any CI or AEO designated Information. If the CI or AEO designated Information is disclosed in a deposition or in trial of this Lawsuit, it is sufficient for the witness to agree on the record to be bound to this Order's terms and the attached Exhibit "A".

35. Non-Party Subpoenas. Any Receiving Party that receives a Subpoena seeking Information that includes CI or AEO must within seven (7) days provide the Producing Party with a copy of that Subpoena.

VII. INADVERTENT PRODUCTION OF PRIVILEGED INFORMATION

36. Non-Automatic Waiver. A Producing Party's inadvertent production of Information protected by the attorney-client privilege, work product privilege, or any other applicable privilege will not alone waive any such privilege or protection.

37. Duty to Notify. A Receiving Party that discovers it has received Information that reasonably appears to be privileged must promptly inform the Producing Party.

38. Duty to Return. Upon the Producing Party's request, the Receiving Party must promptly return any such Information that Producing Party then asserts is privileged. However, the Receiving Party may retain a copy for the limited purpose of contesting by motion to compel the Producing Party's privilege claim.

39. Non-Use. No inadvertently Produced Information may be offered or submitted as evidence unless the Producing Party consents or the Court rules the Information is not protected or that the Producing Party waived the asserted privilege.

VIII. INADVERTENT PRODUCTION OF CI OR AEO

40. Non-Waiver. A Producing Party's inadvertent disclosure of CI or AEO, regardless of whether the Information was so designated when disclosed, does not waive that Party's confidentiality claim, either as to the specific Information disclosed or as to any other related Information if the Producing Party identifies the subject Information and amends the designation.

41. Duty to Correct Disclosure. The Parties must treat the amended designated Information according to this Order and make reasonable efforts to correct any disclosure of such Information contrary to the designation.

IX. MODIFICATION

42. The Lawsuit Parties may modify this Order by Rule 11 agreement combined with Court approval. When doing so, the Parties must submit with their filed Rule 11 agreement a proposed Amended Protective Order for the Court to consider.

X. LOCAL RULES

43. Parties must comply with the Local Rules of the Texas Business Court regarding all contested non-dispositive motions.

XI. END OF CASE

44. Duty to Destroy or Return. Upon a Producing Party's request, within thirty (30) days after the settlement or final adjudication, including appeals, of this Lawsuit, a Receiving Party will destroy or permanently delete a Producing Party's CI or AEO. The Receiving Party must then provide the Producing Party with a written confirmation that the destruction or deletion has occurred. Alternatively, the Receiving Party may return the Producing Party's CI or AEO and certify that all such Information has been returned.

SIGNED this ____day of _____.

_____
JUDGE, TEXAS BUSINESS COURT
ELEVENTH DIVISION

[Signature blocks for counsel]

EXHIBIT A

I have read the Protective Order entered in the case styled [xx-xxxx] ("Lawsuit") and I understand that Order's terms.

I agree not to use the Confidential or Attorney's Eyes Only Information defined in the Order for any purpose other than in connection with this Lawsuit, including the investigation, prosecution, or defense of the claims in this Lawsuit.

I will not disclose materials designated Confidential or Attorney's Eyes Only Information except as permitted by that Order, and I will otherwise comply with the Order's terms.

I understand that my failure to comply with this Order may subject me to a claim for damages, injunctive relief, and attorney's fees.

SIGNATURE: _____

PRINTED NAME: _____

DATE: _____