The Business Court of Texas,
3rd Division

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

AGREED PROTECTIVE ORDER

The parties in this matter anticipate they will disclose or produce during discovery documents, testimony, or other materials containing confidential, proprietary, trade secret, and/or commercially sensitive information. The parties agree that public disclosure of such confidential information could severely injure the party owning the information as well as others who have an interest in maintaining the secrecy of the information.

Accordingly, the parties request that the Court enter this Order setting forth the conditions for handling, obtaining, and using confidential information. To protect the parties' rights to claim and preserve confidentiality, the Court orders as follows:

I. CONFIDENTIALITY DESIGNATIONS

1. For purposes of this Order, "confidential" information means non-public information that (i) relates to trade secrets, business strategies, customers or prospective customers, financial information, sales, or other proprietary information that provides a technical or commercial advantage to its possessor; (ii) is protected from disclosure by contractual obligations with third parties; or (iii) is protected from disclosure by law.

2. Any party may designate as confidential any information it reasonably believes should be protected by this Order. A party may designate information as confidential regardless of who produced the information. The designating party shall do so by conspicuously stamping or embossing on the documents or materials that the information is (i) "Confidential" or (ii) "Attorneys' Eyes Only." Where practicable, such designation shall be placed at the top of each page of a document, or if the top of the page is not practicable, near the Bates number of each page. By using such a designation, a party represents it has made a bona fide, good faith determination that the document does, in fact, contain confidential information.

3. Information shall not be marked "Attorneys' Eyes Only" unless the disclosing party has a good-faith belief that the information is of such a proprietary and commercially sensitive nature that disclosure to anyone other than the opposing party's outside counsel could (i) materially harm the disclosing party's business, or (ii) materially

impact any competitive advantage that the disclosing party may have. Such information may include, but is not limited to, confidential research and development, financial, technical, marketing, or other sensitive trade secret information.

4. For depositions, parties must designate the portion of the transcript (including exhibits) that contains confidential information either on the record at the deposition or within fifteen (15) days after receipt of the transcript by counsel for the party whose confidential information is sought to be protected. During this fifteen (15) day period, the entire transcript must be treated as "Attorneys' Eyes Only." In the event a question is asked at a deposition with respect to which it is asserted, on the record, that the answer requires the disclosure of "Confidential" or "Attorneys' Eyes Only" information, all persons who are not entitled to hear such information pursuant to paragraphs 6 or 7, below, shall leave the room before the question is answered.

5. If parties seek discovery from non-parties, the party seeking the discovery shall simultaneously give the non-party a copy of this Order. A non-party producing information in response to a discovery request, or voluntarily, may designate documents or information as confidential under the terms of this Order.

II. PERMITTED USES AND DISCLOSURES

6. Information designated as "Confidential" shall be used solely for the purpose of litigating this case and shall only be disclosed to the following persons:

(a) counsel of record for a party in this action and in-house counsel employed by a party to this action, and the paralegal, clerical, and

secretarial staff employed by such counsel to assist in the preparation and trial of this action;

(b) officers, directors, partners, and employees of a party who are reasonably necessary to assist counsel in this case, but only after they have signed the attached Agreement to Comply with Protective Order;

(c) litigation support vendors retained by counsel for copying, scanning, coding, imaging, and reproducing documents and to whom disclosure is reasonably necessary;

(d) any mediator appointed by the Court or agreed to by the parties;

(e) any testifying or consulting expert retained by counsel of record to assist in preparing this action for trial, with disclosure only to the extent necessary to perform such work, and only after the expert has signed the attached Agreement to Comply with Protective Order;

(f) the Court;

(g) any court reporter personnel present in their official capacity at any hearing, deposition, or other proceeding in this action;

(h) any jury consultants, mock trial personnel, participants in a mock trial or jury exercise, and any staff of jury consultants or mock trial personnel, provided that any information marked "Confidential" is immediately returned to counsel of record after the mock trial or jury exercise, and only after they have been given a copy of this Agreed Protective Order; and

(i) Any witness (whether at trial, at deposition, or in preparation for trial or deposition) to determine if the witness was the author, editor, contributor, or recipient of the document, or if the witness has any information about the document. Any witness who authored, edited, contributed to, received, or due to their position was entitled to receive or review materials designated under this Order, may receive, review, and be questioned about the document at deposition or trial. Any corporate officer of a party that would have received materials designated under this Order may review and testify about the materials.

7. Information designated as "Attorneys' Eyes Only" shall be used solely for the purpose of litigating this case and shall only be disclosed to the following persons:

(a) counsel of record for a party in this action, and the paralegal, clerical, and secretarial staff employed by such counsel to assist in the preparation and trial of this action;

(b) litigation support vendors retained by counsel for copying, scanning, coding, imaging, and reproducing documents and to whom disclosure is reasonably necessary, but only after they have signed the attached Agreement to Comply with Protective Order;

(c) any mediator appointed by the Court or agreed to by the parties, but only after they have signed the attached Agreement to Comply with Protective Order;

(d) any testifying or consulting expert retained by counsel of record to assist in preparing this action for trial, with disclosure only to the extent necessary to perform such work, and only after they have signed the attached Agreement to Comply with Protective Order;

(e) the Court;

(f) any jury consultants, mock trial personnel, participants in a mock trial or jury exercise, and any staff of jury consultants or mock trial personnel, provided that documents and information marked "Highly Confidential—Attorneys' Eyes Only" are immediately returned to counsel after the mock trial or jury exercise, and only after they have signed the attached Agreement to Comply with Protective Order; and

(g) any court reporter personnel present in their official capacity at any hearing, deposition, or other proceeding in this action.

8. Materials designated as "Confidential" or "Attorneys' Eyes Only" may only be used in connection with this action.

9. If, at any time, a party (other than the party who originally produced the confidential information) is subpoenaed or ordered to produce any designated confidential information by any court, administrative agency, legislative body, or other entity, then the party who is subpoenaed or ordered shall promptly provide written notice to the producing party or its attorney.

III. OBJECTIONS TO DESIGNATIONS

10. A party's designation of documents or materials as "Confidential" or "Attorneys' Eyes Only" does not unilaterally establish that the documents or materials are protected as a matter of law. Confidential information does not include information that has been publicly disclosed.

11. Any party may object to the designation of materials as "Confidential" or "Attorneys' Eyes Only" by serving a written notice of objection. The notice must state the basis for the objection and be served at least ninety (90) days prior to the end of the discovery period or, if the material so designated is provided less than ninety (90) days before the end of discovery, the objecting party shall have fourteen (14) days to serve its notice of objection. The parties must confer in good faith to resolve any objections.

12. In the event a designation is challenged, and the parties cannot resolve the dispute, the party objecting to the confidential treatment may move for a Court ruling. The designated material shall continue to be accorded confidential treatment until the Court rules.

IV. COURT FILINGS

13. If a party wishes to file with the Court documents, tangible things, other materials designated "Confidential" or "Attorneys' Eyes Only," or any pleading, motion, or other document disclosing information designated under this Order, the party shall follow the procedures in Rule IV(C) of the Third Division Court Procedures, available on the Third Division page of the Business Court's website.

V. PRETRIAL HEARINGS

14. If a party wishes to use documents, tangible things, or other materials designated "Confidential" or "Attorneys' Eyes Only" at a pretrial hearing, or otherwise disclose information designated under this Order at a pretrial hearing, the party shall follow the following process:

(a) To the extent the party can achieve its purposes without disclosing the designated information, the party shall use a redacted version of the document, tangible thing, or other material that does not disclose the designated information.

(b) The party intending to use or disclose the designated information must provide written notice of such intent to all other parties no less than five (5) days prior to the hearing, identifying the document, tangible thing, or other material by Bates Number and stating which designated information therein the party intends to use or disclose.

(c) Any party who seeks to protect such designated information from use or disclosure at the hearing must request any desired relief at least three (3) days prior to the hearing.

(d) The parties' use or disclosure of such designated information at the hearing will be determined by agreement of the parties or by order of the Court.

VI. MAINTAINING CONFIDENTIAL INFORMATION

15. The recipient of any confidential information must maintain such information in a secure and safe area and protect it from disclosure.

16. Counsel of record will maintain the executed Agreements to Comply with Protective Order and shall produce them to a party upon request, except that counsel is not obligated to produce such agreements for expert witnesses who are not yet required to be disclosed under Texas Rule of Civil Procedure 195.2.

17. If any person or entity violates the terms of this Order or the Agreement to Comply with Protective Order, the Court may, in its discretion, punish such conduct as contempt of court.

VII. NO WAIVER OF CONFIDENTIALITY

18. A failure to designate information as "Confidential" or "Attorneys' Eyes Only" shall not be a waiver of confidentiality if the producing party promptly, upon discovery of the failure, notifies the receiving party in writing that the information is confidential and was inadvertently produced without a designation. Such notification shall constitute a designation of information as confidential. At the time of notification, arrangements shall be made for the designating party to mark the information in accordance with this Order and to provide replacement copies with a proper designation. The receiving party must return all originals and any copies of the improperly marked information within ten (10) days of receiving the replacements.

VIII. TRIAL

19. This Order shall not apply to the disclosure of confidential information at trial. The potential closure of trial proceedings or sealing of the trial record involve considerations not presently before the Court. These issues may be taken up as a separate matter upon the motion of any party in compliance with Texas Rule of Civil Procedure 76a.

20. Nothing in this Order shall be construed as a limitation on the use of admissible evidence at trial or in pretrial matters, subject to such confidentiality provisions as may be ordered by the Court.

21. The parties contemplate that in the ninety (90) days leading up to trial, they will negotiate in good faith for an amendment or supplement to this Order that will allow them a reasonable opportunity to review all materials that may be used at trial. The parties further contemplate that they will negotiate in good faith for an amendment or supplement to this Order that will govern the use of confidential information at trial.

IX. CONCLUSION OF LAWSUIT

22. Within sixty (60) days of the termination of this action, including the exhaustion of all appeals, each party or person subject to this Order is under an obligation to destroy or return to the producing party all materials containing confidential information and to certify to the producing party that this destruction or return has been completed.

23. However, outside counsel for any party is entitled to retain archival copies of all court papers, trial transcripts, exhibits, and attorney work product provided that such materials continue to be maintained in confidence.

X. LIMITATIONS ON THIS ORDER

24. Nothing in this Order shall prohibit any party from using its own documents or information in any manner. However, if a party wishes to examine a witness—at deposition, hearing, trial, or otherwise—using its own designated materials that the witness would not be entitled to review under this Order, the party must amend the designation(s) to allow the witness to view the materials at least seven (7) days before the examination commences.

25. Nothing in this Order shall be construed as limiting the scope of discovery, restricting any party's discovery rights under the Texas Rules of Civil Procedure, or restricting the introduction of materials into evidence.

26. Nothing in this Order shall prevent any party from requesting an amendment to this Order, should the moving party feel this Order is hampering its efforts to prepare for trial.

27. Nothing in this Order shall bar counsel from giving advice to their clients with respect to this litigation and, in the course thereof, relying upon any information designated as confidential, provided that counsel does not disclose the material

contents of the designated information in a manner not specifically authorized under this Order.

28. This Order does not seal court records in this case and is only intended to facilitate the production and handling of discovery materials. Any motion to seal court records must strictly adhere to Rule 76a of the Texas Rules of Civil Procedure, or other applicable law.

SIGNED ON: [date]

_____

Judge [_____]
Texas Business Court, 3rd Division

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AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

In consideration of the disclosure to me of certain information, which is subject to this Court's Agreed Protective Order, I agree as follows:

1. I understand that information designated as confidential is being provided to me pursuant to the terms of the Agreed Protective Order.

2. I have read the Agreed Protective Order, and I agree to be bound by its terms.

3. I understand that if I violate the terms of the Agreed Protective Order, I may be subject to an enforcement proceeding before this Court.

4. I agree not to use any confidential information disclosed to me pursuant to the Agreed Protective Order except for purposes of the above-captioned litigation and

not to disclose any of this information to persons other than those specifically authorized by the Agreed Protective Order.

5. I understand I am to retain all materials designated as confidential in a secure manner, and that all such materials are to remain in my personal custody until the completion of my assigned duties in this matter, whereupon all such materials, including any copies thereof and any writings prepared by me containing any confidential information, are to be returned to counsel who provided me with such materials or are to be destroyed.

6. I agree to submit myself to the personal jurisdiction of this Court in connection with any proceeding concerning the Agreed Protective Order.

Dated: _____

Signature:
_____

For: _____

Printed Name:
_____