The Business Court of Texas,
Third Division

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

AGREED PROTECTIVE ORDER

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1. Purposes and Scope

1.1 Disclosure and discovery activity in this case are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this case may be warranted. Accordingly, the Parties have stipulated to and petitioned the Court to enter the following Protective Order (the "Order").

1.2 The purpose of this Order is to facilitate the production of discovery material in these proceedings, to facilitate the prompt resolution of disputes over confidentiality and privilege, to protect material to be kept confidential and/or privileged, and to ensure that protection is afforded only to material entitled to such treatment,

pursuant to the Court's inherent authority, its authority under Texas Rules of Civil Procedure Rule 192.6, the judicial opinions interpreting such Rule, and any other applicable law. Except as otherwise stated in this Order, in response to a valid discovery request, parties shall produce otherwise discoverable information in their possession, custody, or control that is Confidential or Highly Confidential, and such information shall be handled in accordance with the procedures set forth herein.

1.3 This Order and all subsequent Protective Orders shall be binding on all Parties and their counsel in this case, as well as any other persons or entities who become bound by this Order by executing the "Acknowledgment and Agreement" attached as Exhibit A.

1.4 The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge that this Order does not entitle them to file Confidential or Highly Confidential information under seal unless they comply with both Rule 76a of the Texas Rules of Civil Procedure and the requirements set forth in Section 13 below.

1.5 Mass, indiscriminate, or routinized designations are prohibited. A Designating Party must be prepared to explain the rationale for each Confidential or Highly Confidential designation.

1.6 Nothing herein precludes any Party from seeking additional protections not currently contemplated by this Order to be applied to any particular document or category of documents, including Highly Confidential Information.

2. Definitions

The following definitions apply for purposes of this Order (and any singular definition includes the plural form):

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

2.2 Confidential Information: Discovery Material that a Designating Party determines in good faith is a trade secret or reveals confidential, proprietary, sensitive, personal, or financial information that is entitled to protection under state or federal law. Confidential Information does not include information in the public domain.

2.3 Counsel: Outside Counsel of Record and In-House Counsel, as well as their employees and support staff.

2.4 Designating Party: a Party or Non-Party that designates documents, information, or items as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" under this Order. A party may designate information as confidential regardless of who produced the information.

2.5 Discovery Material: all items or information, regardless of the medium or manner in which they are generated, stored, or maintained (including, among other

things, testimony, transcripts, answers to interrogatories, documents, responses to requests for admissions, tangible things, and informal exchanges of information), that are produced or generated in connection with any discovery in this case, whether formally or informally.

2.6 Expert: a person retained by a Party or its Counsel to serve as an expert witness or consultant or technical advisor in this case, as well as his or her employees and support staff.

2.7 Foreign Private Data: any information that a Party believes in good faith to be subject to foreign data protection laws or other foreign privacy obligations. Foreign Private Data constitutes Highly Confidential Information under the terms of this Order.

2.8 Governmental Party: a Party that is the United States of America, the State of Texas, or a governmental body of the United States of America or the State of Texas.

2.9 Highly Confidential Information: Discovery Material that (a) is Foreign Private Data or (b) meets the definition of "Confidential Information" and that the Designating Party reasonably believes disclosing without the protections afforded herein to Highly Confidential Information could (i) harm the United States or any state, local, or foreign government's ability to investigate and/or enforce applicable laws or (ii) create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 In-House Counsel: attorneys who are employees of a Party to this case. In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Designating Party: a party that receives Discovery Material that is designated Confidential or Highly Confidential under this Order.

2.12 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this case and not Counsel.

2.13 Outside Counsel of Record: attorneys who are not employees of a Party to this case but have been retained to represent or advise a Party to this case and have appeared in this case on behalf of that Party or are affiliated with a law firm or governmental entity which has appeared on behalf of that Party.

2.14 Party: any party to this case, including, for governmental entities, the referring agency.

2.15 Privileged Material: Discovery Material protected from disclosure under the attorney-client privilege, work product doctrine, or any other privilege or protection afforded or recognized by Texas law, including, without limitation, the Texas Rules of Civil Procedure, Article V of the Texas Rules of Evidence, Texas common law, and any Texas statutes or administrative regulations.

2.16 Producing Party: a Party or Non-Party that produces Discovery Material in this case.

2.17 Professional Vendors: persons or entities that provide litigation support services (*e.g.*, photocopying, videotaping, graphic support services, coding, translating,

preparing exhibits or demonstrations, document review, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.18 Protected Material: any Discovery Material that is designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

2.19 Receiving Party: a Party that receives Discovery Material from a Producing Party.

2.20 Submitting Entity: any entity or individual that has submitted to a Governmental Party information that the entity or individual claims is protected from public disclosure or the Governmental Party has informed the entity or individual would be protected from public disclosure by applicable Texas law.

3. Scope

3.1 The protections conferred by this Order apply to Protected Material and also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, translations, or compilations of Protected Material; and (3) any oral, written, or electronic communications, testimony or presentations, including for purposes of settlement, by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover information that is in the public domain at the time of production or becomes part of the public domain after its production as a result of publication not involving a violation of this Order.

3.2 This Order and its protections apply for pre-trial purposes only. The Parties will meet and confer at the appropriate time regarding any use of Protected Material at trial, which use shall be governed by a separate agreement or order.

4. Duration

4.1 Even after final disposition of this case, the confidentiality obligations imposed by this Order shall remain in effect, except as otherwise provided under the Texas Public Information Act, until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of dismissal of all claims and defenses in this case, with or without prejudice, or final judgment herein, after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this case, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. Designating Protected Material

5.1 Good Faith and De-designation. The Parties shall make Confidential and Highly Confidential designations in good faith to ensure that only those documents or testimony that merit Confidential or Highly Confidential treatments are so designated. Either designation may be withdrawn by the Designating Party. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, the Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Designation Procedure. Designation in conformity with this Order requires the following:

5.2.1 *Marking as Designated.*

5.2.1.1 Documents containing or communicating Confidential Information obtained from Discovery Material may be designated Confidential or Highly Confidential by marking the appropriate legend ("CONFIDENTIAL – [case number]" or "HIGHLY CONFIDENTIAL – [case number]") on the face of the document and each page so designated. If the Designating Party is not the Producing Party, the Designating Party must notify all other Parties in writing of the designation at the time the designation occurs and reproduce the material with the appropriate legend.

5.2.1.2 With respect to tangible items, the Designating Party shall affix the appropriate legend in a prominent place on the face of the tangible item or on the exterior of the container or containers in which the item is stored. If the Designating Party is not the Producing Party, the Designating Party must notify all other Parties in writing of the designation at the time the designation occurs and reproduce the item with the appropriate legend.

5.2.1.3 With respect to Electronically Stored Information (ESI), the ESI Protocol to be entered in this case shall govern the form and method for marking such documents as Confidential or Highly Confidential. If Protected Material is produced in an electronic form with a load file, the Designating Party shall note that there is Protected

Material in the load file; if only a portion or portions of the information or item warrant protection, the Designating Party, to the extent practicable, shall identify the protected portion(s).

5.2.1.4 The court reporter must separately bind deposition transcript pages and deposition exhibits containing Confidential or Highly Confidential Information with the appropriate legend ("CONFIDENTIAL – [case number]" or "HIGHLY CONFIDENTIAL – [case number]"), and those portions of the deposition record may not be disclosed to anyone except as permitted under this Order. Any additional court reporter charges for this treatment of the transcript shall be borne by the Designating Party.

5.2.1.5 A Non-Designating Party shall exercise good faith efforts to ensure that any copies, print-outs of natively produced documents or data, translations, excerpts, summaries, or compilations include a confidentiality legend that matches the confidentiality designation the Designating Party applied to the document, discovery response, transcript, or pleading.

5.2.2 *Timing for Designation*.

5.2.2.1 Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Discovery Material that qualifies for protection under this Order must be clearly so designated: (a) if the Designating Party is also the Producing Party, at the time the material is disclosed, produced, or made available; or (b) if the Designating

Party is not the Producing Party, within fourteen (14) days of the Designating Party's receipt of the Discovery Material.

5.2.2.2 If a Designating Party designates some or all of a witness's deposition or other pre-trial testimony (or related exhibits) Confidential or Highly Confidential, such designation may be made on the record of the deposition or hearing or within thirty (30) calendar days after receipt of the final transcript of such deposition or hearing. The specific page and line designations over which confidentiality is claimed must be provided to all Non-Designating Parties' lead counsel within thirty (30) calendar days of receipt of the transcript in final form from the court reporter; provided, however, that Counsel will consider reasonable requests for an extension of the deadline. Deposition or pre-trial testimony shall be treated as Highly Confidential pending the deadline or, if applicable, extended deadline for designation. After the expiration of that period, the transcript shall be treated only as actually designated.

5.3 Inadvertent Failures to Designate. Accidental or inadvertent disclosure of Protected Material—including Protected Material inadvertently disclosed by failure to redact—does not waive the confidential status of such information or any privilege or other protection attached thereto. If Protected Material is inadvertently disclosed without appropriate designations, any Party or Non-Party may thereafter reasonably assert a claim or designation of confidentiality, and the Producing Party shall promptly provide replacement media. Thereafter, all Receiving Parties must promptly return the

original information and all copies of the same to the Producing Party, or destroy the original information and all copies, and make no use of such information. If Protected Material is inadvertently disclosed in a manner that is not permitted by the terms of this Order, the Party or Non-Party making the inadvertent disclosure will make all reasonable efforts to ensure the original and all copies of inadvertently disclosed information are not used and are promptly returned or destroyed.

6. Challenging Confidentiality Designations

6.1 Timing of Challenges. A challenge to a designation of confidentiality may be made at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the confidentiality designation is made.

6.2 Form of Challenges. The Challenging Party shall object to the propriety of the designation of specific material as Confidential or Highly Confidential by providing written notice to the Designating Party of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific Section of this Order.

6.3 Response and Reply. The Designating Party or its counsel shall thereafter, within fourteen (14) calendar days, respond to a designation challenge in writing by either: (i) agreeing to remove the designation; or (ii) stating the reasons for the designation. Counsel may agree to reasonable extensions. If the Challenging Party continues to dispute the designation(s) at issue, it shall notify the Designating Party in writing within seven (7) calendar days after the response. Counsel may agree to reasonable extensions.

6.4 Meet and Confer. The Parties shall attempt to resolve each challenge in good faith by conferring directly in voice-to-voice dialogue; other forms of communication are not sufficient. A Challenging Party may proceed to judicial intervention only if it has engaged in this meet-and-confer process first or establishes that the Designating Party is unwilling to participate in the meet-and-confer process in a timely manner.

6.5 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Challenging Party may move the Court for an order withdrawing the designation as to the specific designations on which the Challenging Party and the Designating Party could not agree, within fourteen (14) calendar days of the Parties agreeing that the meet-and-confer process will not resolve their dispute.

6.5.1 *Declaration.* Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet-and-confer requirements imposed in the preceding Section.

6.5.2 *Burden.* The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

6.5.3 *Interim Treatment.* While a challenge is pending, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation unless the Court orders otherwise.

7. Access to and Use of Protected Material

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or Non-Party in this case only for prosecuting, defending, or attempting to settle this case, including any appeal(s), so long as such use is permitted herein. Any Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. After the final disposition of the case, a Receiving Party must comply with the provisions of Section 16 below. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Restrictions on Use of Confidential Information. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, and except as specifically

authorized by Section 13, a Receiving Party may disclose any information or item designated "CONFIDENTIAL – [case number]" only to:

7.2.1 the Receiving Party's Counsel;

7.2.2 the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this case;

7.2.3 Experts retained by the Receiving Party or the Receiving Party's Counsel to whom disclosure is reasonably necessary for this case and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7.2.4 the Court and its personnel, and any appellate court or other court (and their personnel) before which the Parties appear in this case;

7.2.5 special masters or discovery referees appointed by the Court in this case;

7.2.6 mediators and their staff, provided such persons have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7.2.7 court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this case and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7.2.8 potential or actual witnesses in the case to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be

Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. If a potential or actual witness refuses to sign Exhibit A, the witness shall be permitted to see Protected Material but will not be permitted to retain such material;

7.2.9 the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

7.2.10 any other person to whom the Designating Party, in writing, authorizes disclosure.

7.3 Restrictions on Use of Highly Confidential Information. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, and except as specifically authorized by Section 13, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – [case number]" only to the persons identified in Section 7.2 in accordance with the terms set forth therein, except that disclosure may not be made to the persons identified in Section 7.2.2 or by persons identified in Section 7.2.8 who refuse to sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

7.4 Exclusion of Individuals from Depositions. Counsel for any Designating Party shall have the right to exclude from depositions any person who is not authorized by the Order to receive Protected Material, but only during periods of examination or testimony directed to or comprising Protected Material.

8. Protected Material Subpoenaed or Ordered Produced in Other Litigation

8.1 If a Non-Designating Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any Protected Material, the Non-Designating Party must:

8.1.1 promptly notify the Designating Party in writing and include a copy of the subpoena or court order, unless prohibited by law from doing so;

8.1.2 promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order and include a copy of this Order; and

8.1.3 cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

8.2 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any Protected Material before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection of its Protected Material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this case to disobey a lawful directive from another court.

9. A Non-Party's Protected Material Sought to Be Produced in This Case

9.1 The terms of this Order are applicable to Protected Material produced by a Non-Party in this case. Such information produced by Non-Parties in connection with this case is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

9.2 Any Party issuing a subpoena and/or discovery to a Non-Party shall enclose a copy of this Order.

9.3 For a period of fourteen (14) calendar days following production by a Non-Party, that production shall be deemed Highly Confidential Information even if not so designated by the Non-Party, to provide the Parties an adequate opportunity to designate information as Confidential or Highly Confidential Information. The inadvertent failure by any Party to designate information produced by Non-Parties as "CONFIDENTIAL – [case number]" or "HIGHLY CONFIDENTIAL – [case number]" within that fourteen (14) day period shall not waive a Party's right to later so designate such information with prospective effect, so long as the designation correction is made in a timely fashion, consistent with Section 5.3 of this Order.

9.4 In the event that a Party is required, by a valid discovery request, to produce a Non-Party's Protected Material in the Party's possession, and the Party is subject to an agreement with the Non-Party not to produce such information, then the Party shall:

9.4.1 promptly notify in writing the Party requesting the Protected Material that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

9.4.2 promptly provide the Non-Party with a copy of this Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and

9.4.3 make the information requested available for inspection by the Non-Party.

9.5 If the Non-Party fails to object or seek a protective order from the appropriate court within fourteen (14) calendar days of receiving a notice and accompanying information pursuant to Section 9.4, the Party may produce the Non-Party's Protected Material responsive to the discovery request, with the same designation as the one made by the Non-Party. If the Non-Party timely seeks a protective order, the Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in an appropriate court of its Protected Material.

10. Unauthorized Disclosure of Protected Material

10.1 If a Non-Designating Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under

this Order, the Non-Designating Party must immediately (a) notify the Designating Party of the unauthorized disclosures in writing; (b) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (c) make all reasonable efforts to retrieve all unauthorized copies of the Protected Material.

11. Redactions Allowed

11.1 Procedure. Any Producing Party may redact from Discovery Material matter that the Producing Party claims is (i) Privileged Material; or (ii) subject to Section 11.2, Foreign Private Data. The Producing Party shall mark each redaction with a legend stating "REDACTED" and specify the basis for the redaction as appropriate, or a comparable notice. Where a document consists of more than one page, at least each page on which information has been redacted shall be so marked. If counsel for the Producing Party agrees or if the Court orders that Discovery Material initially redacted shall not be subject to redaction or shall receive alternative treatment, and the Discovery Material is subsequently produced in unredacted form, then that unredacted Discovery Material shall continue to receive the protections and treatment afforded to documents bearing the confidentiality designation assigned to it by the Producing Party.

11.2 Foreign Private Data. Subject to any Party's right to seek modification, jointly or otherwise, of this Section 11.2, in addition to the foregoing, the following shall apply to redactions of Foreign Private Data:

11.2.1 Any Party may redact Foreign Private Data that it claims, in good faith, requires protections under the terms of this Order. Foreign Private Data, however, shall not be redacted from Discovery Material to the extent it directly relates to or identifies an individual named as a Party.

11.2.2 Foreign Private Data shall be redacted from any public filing not filed under seal.

11.3 Challenges. The right to challenge and process for challenging the designation of redactions shall be the same as the right to challenge and process for challenging the designation of Confidential Information and Highly Confidential Information as set forth in Section 6.

11.4 Nonresponsive Matter. Nothing herein precludes any Party from seeking the other Parties' consent or an order allowing the Party to redact nonresponsive matter from otherwise responsive documents on a case-by-case basis.

12. Governmental Parties and Information

12.1 If a Party requests otherwise discoverable information from a government entity, which a Submitting Entity has claimed is protected from public disclosure, the government entity shall, based upon the claimed grounds of confidentiality, designate such information as "CONFIDENTIAL – [case number]" or "HIGHLY CONFIDENTIAL – [case number]" as appropriate.

12.2 If, pursuant to a valid discovery request, a government entity produces otherwise discoverable information and designates such information as "CONFIDENTIAL – [case number]" or "HIGHLY CONFIDENTIAL – [case number]" because a Submitting Entity claims that it is protected from public disclosure or because the government entity has informed the Submitting Entity that it would be protected from public disclosure by applicable state law, and a Challenging Party raises an objection pursuant to Section 6, the government entity shall, within fourteen (14) calendar days, send notice to the Submitting Entity. The government entity shall not be required to respond to the objection until fourteen (14) calendar days after such notice has been sent to the Submitting Entity. The Submitting Entity shall be permitted to intervene to defend the designation pursuant to the procedures and standards set forth in Section 6.

12.3 Discovery Material may be shared by a Governmental Party with any state, local, or federal law enforcement or regulatory agency with jurisdiction over matters related to this case without limitation, provided that:

12.3.1 such agency signs the "Agency's Agreement to Be Bound by Protective Order" (Exhibit B) with respect to the particular Discovery Material that may be shared,

12.3.2 the Governmental Party provides the Designating Party with a copy of such Exhibit B at least 72 hours in advance of sharing the Discovery Material with the agency, and

12.3.3 upon request of the Designating Party, the Governmental Party provides the Designating Party with information sufficient for the Designating Party to identify the Discovery Material that was provided to each such state, local, or federal law enforcement or regulatory agency.

12.4 Section 12.3 above has no applicability to materials obtained and provided to a government agency outside of this proceeding.

12.5 This Order does not preclude any state, local, or federal law enforcement or regulatory agency that receives Discovery Material from using that material in accordance with the agency's applicable statutes, rules, and regulations, or from seeking materials or information outside of this proceeding pursuant to applicable law.

12.6 This Order does not limit a Governmental Party's duty to comply with all applicable provisions of the Texas Public Information Act. If, however, the Governmental Party receives a Public Information Request for Confidential or Highly Confidential Information produced by a Party, the Governmental Party will provide notice of such request to the Designating Party, pursuant to Sec. 552.305(d) of the Texas Government Code.

12.7 No agency, officer, employee, or attorney of a Governmental Entity that receives Protected Material under the terms of this Order shall release or disclose such Protected Material under the Freedom of Information Act, 5 U.S.C. §§ 552 *et seq.*, or the

Texas Public Information Act, Tex. Gov't Code Ann. §§ 552.001 *et seq.*, when such disclosure is discretionary.

12.8 Otherwise discoverable information that is protected by the HIPAA implementing regulations shall, in response to a valid discovery request, be designated as "Confidential Information" pursuant to this Order. This Section does not preclude any Party from challenging that any Discovery Material meets these criteria.

12.9 This Order shall not govern the production or designation of classified information, sensitive security information, information on classified computer systems, enforcement-sensitive government documents, or information relating to ongoing criminal investigations. This Section does not preclude any Party from challenging that any Discovery Material meets these criteria.

12.10 No agency, officer, employee, or attorney of a Governmental Party shall be subject to any civil or criminal penalty or sanction relating to the disclosure of non-public information, provided that such disclosure is made pursuant to the terms of this Order.

13. Filing Protected Material

A Party may only file Protected Material with the Court by complying with the procedures in Rule IV(C) of the Third Division Court Procedures, available on the Third Division page of the Business Court's website. .

14. Hearings and Appeals

14.1 In the event that a Party intends to utilize Protected Material during a hearing prior to trial, such Party shall provide written notice no less than five (5) calendar days prior to the hearing to the other Parties and the Court, except that shorter notice may be provided if the Party could not reasonably anticipate the need to use the document at the hearing five (5) calendar days in advance, in which event notice shall be given immediately upon identification of that need. The use of such Protected Material during the hearing shall be determined by agreement of the relevant Parties or by order of the Court.

14.1.1 Use of Protected Material at trial is governed by Section 3.2. Use of Protected Material in any other court proceeding in this case shall not cause the Protected Material to lose its protected status. Counsel shall comply with all applicable local rules and shall confer on such procedures as are necessary to protect the confidentiality of any documents, information, and transcripts used in any court proceedings.

15. Other Rights and Reservations

15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future. Any Party, entity, or person covered by this Order may at any time apply to the Court for relief from any provision of this Order. Subject to the agreement of the Parties or an order of the Court, other entities or persons may be included in this Order by acceding to its provisions in a writing served

upon lead counsel for all Parties, with such writings to be filed with the Court if so directed.

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

15.3 Reservations. Entering into, agreeing to, or complying with the provisions of this Order shall not: (1) operate as an admission that any particular material contains Protected Material; or (2) prejudice any right to seek a determination by the Court (a) whether particular material should be produced, or (b) if produced, whether such material should be subject to the provisions of this Order.

15.4 Right to Inspect Certificates (Exhibit A). Unless otherwise provided herein, except in the event of a good-faith claim of violation of this Order, the Parties agree not to request inspections or copies of the certificates (attached hereto in their unexecuted form as Exhibit A) or to determine the identities of the persons signing them.

16. Final Disposition

16.1 Within ninety (90) calendar days after the final disposition of this case, as defined in Section 4, each Receiving Party, including its employees, attorneys,

consultants, and experts, must use commercially reasonable efforts to destroy or return to the Producing Party all Protected Material, except:

16.1.1 backup tapes or other disaster recovery systems that are routinely deleted or written over in accordance with an established routine system maintenance practice, or

16.1.2 documents that must be preserved as state or local government records or in compliance with other statutory, regulatory, or legal authorities.

16.2 As used in this Section, "all Protected Material" includes all originals, copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material.

16.3 Whether the Protected Material is returned or destroyed, upon request of the Producing Party, the Receiving Party must submit a written certification to the Designating Party by the 90-day deadline that (1) states that commercially reasonable efforts have been made to ensure that all Protected Material has been returned or destroyed, and (2) affirms that the Receiving Party has not retained any originals, copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material.

16.4 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings; motion papers; trial, deposition, and hearing transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney work

product (including all emails attaching or referring to Protected Materials); and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Order as set forth in Section 4.

IT is SO ORDERED.

_____

[judge name]
Judge of the Texas Business Court, Third Division

SIGNED ON: [date]

EXHIBIT A

ACKNOWLEDGMENT & AGREEMENT TO BE BOUND

I, [full name], of [full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued [date] in the cause [case caption and number]. I agree to comply with and to be bound by all the terms of this 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 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 Business Court of Texas for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this case.

Date: _____

City and State where sworn and signed: _____,_____

Printed name: _____ Signature: _____

EXHIBIT B

AGENCY'S AGREEMENT TO BE BOUND

[The State of Texas or _____ County] may share Discovery Material produced or provided by [Producing Party] with [name of agency].

In the event [the State of Texas or _____ County] does so, [name of agency] agrees to be bound by the terms of the Protective Order that was issued on [date] in the cause [case name and number], to the fullest extent permitted by law.

Date: _____

City and State where sworn and signed: _____,_____

Printed name: _____ Signature: _____

On Behalf of: _____