The Business Court of Texas,
Third Division

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

AGREED 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 concludes that these terms are fair, just, and proper. Accordingly, it is ORDERED that:

I. Definitions

As used in this Order:

1. **"Attorney's Eyes Only" or "AEO"** means any Confidential Information that a Producing Party in good faith determines is especially sensitive and entitled to highly confidential treatment.

2. **"Confidential Information" or "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.

3. **"Designating Party"** means the Party who designated the Information at issue as CI or AEO under this Order.

4. **"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.

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

6. **"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.

7. **"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.

8. **"Party"** 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.

9. "**Party's Attorney**" means any attorney working on this Lawsuit on a Party's behalf and that attorney's employees, agents, and signing contractors who provide assistance in this Lawsuit.

10. **"Produce"** means to provide in written discovery, sworn testimony, affidavit, or declaration.

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

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

13. "**Signing Party**" means non-litigant that signs the agreement attached as Exhibit "A."

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

II. General Provisions

15. **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.

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

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

18. **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 and Tangible Items

19. **Producing Party's Own Information.** Except as provided in paragraph 18, below, a Party designating documents or tangible items it Produces as containing CI or AEO must mark the item or each page of that document "Confidential" or "Attorney's Eyes Only" at the time of production.

20. **Information Produced by Someone Else.** A Party may designate Information Produced by another Party (including a non-litigant) as the Designating Party's Cl or AEO by, within fourteen days after receiving that Information, notifying all other Receiving Parties in writing. 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. Within seven days of the notice, the Designating Party must re-produce the document or tangible item containing the designated Information with the appropriate "Confidential" or "Attorney's Eyes Only" markings, and the Receiving Parties must promptly replace the previously unmarked document or item with the marked document or item.

21. **Late Designation.** A Producing Party may, in a written notice emailed to all Receiving Parties, designate Information it Produced as CI or AEO within seven days after its production. Upon receiving the notice, a Party must treat late designated CI or AEO as

subject to this Order. Within seven days of the notice, the Producing Party must re-produce the document or tangible item containing the designated Information with the appropriate "Confidential" or "Attorney's Eyes Only" markings, and the Receiving Parties must promptly replace the previously unmarked document or item with the marked document or item.

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

B. Deposition Testimony and Exhibits

23. **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 days after the Designating Party receives a copy of the transcript.

24. **Separate Binding.** The court reporter must separately bind deposition transcript pages and deposition exhibits containing Information designated as CI or AEO with the appropriate "Confidential" or "Attorney's Eyes Only" markings on each page. Any

additional court reporter charges for this treatment of the transcript shall be borne by the Designating Party.

C. Court Filings

25. **Filing Requirements.** A Party wishing to include CI or AEO in a court filing, declaration, affidavit, attachment, exhibit, or appendix must comply with procedures in Rule IV(C) of the Third Division Court Procedures, available on the Third Division page of the Business Court's website.

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

D. Non-Litigants

27. **Ability to Designate.** A non-litigant 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. Designation Rules

28. **Mass Designation.** Mass, indiscriminate, or routinized designations are prohibited.

29. **Duty to Support.** A Designating Party must be prepared to explain the rationale for each CI or AEO designation.

30. **Abuse.** Abuse of this Order may result in sanctions, including to cover costs incurred by other Parties as a result of such abuse.

IV. CI Protections

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

- a Signing Party, including a mediator, court reporter, or videographer in this Lawsuit who signs the Agreement attached as Exhibit "A";
- a Party's Attorney;
- an Expert;
- the Court, its personnel, and the jury;
- persons who in the ordinary course of business authored or received the subject CI; and
- persons granted access to the CI by agreement of the Parties or a Court order.

V. AEO Protections

32. **Limited Disclosure.** AEO must not be disclosed or shown to anyone other than:

- a Party's Attorney;
- an Expert, except that AEO material may only be disclosed to an Expert after a good faith conference between legal counsel for the Party who retained the expert witness and the Designating Party;
- the Court, its personnel, and the jury;
- a mediator, court reporter, or videographer in this Lawsuit who signs the Agreement attached as Exhibit "A";
- persons who in the ordinary course of business authored or received the subject AEO; and

- persons granted access to the AEO by agreement of the Parties or a Court order.

VI. General Protections

33. **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.

34. **Notice of Intended Use.** Except as authorized in Sections IV or V, above, no person or entity may disclose CI or AEO unless (a) the person or entity first provides ten days' written notice to the Designating Party and (b) either (i) the Designating Party does not object to the disclosure in writing within five days after receiving the notice or (ii) the Court resolves any objections to the disclosure.

35. If the Designating Party opposes the requested disclosure, it must object in writing within five days after receiving notice of any intent to disclose.

36. Regardless of whether a Party designates such Information as CI or AEO, any Party may use without restriction:

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

37. **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.

38. **Duty to Acknowledge Order.** If such persons are not a Party or Party's Attorney, 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."

39. **Non-party Subpoenas.** Any Receiving Party that receives a Subpoena seeking Information that includes CI or AEO must, within seven days, provide the Designating Party with a copy of that Subpoena.

VII. Inadvertent Production of Privileged Information

40. **No Automatic Waiver.** A Producing Party's inadvertent production of Information that is privileged or subject to work product protection will not alone waive any such privilege or protection.

41. **Duty to Notify.** A Receiving Party that discovers it has received Information that reasonably appears to be privileged or subject to work product protection must promptly inform the Producing Party.

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

43. **Non-Use.** No inadvertently Produced Information that the Producing Party claims is privileged or subject to work product protection may be offered or submitted as

evidence unless (a) the Producing Party consents or (b) the Court rules the Information is not protected or that the Producing Party waived the asserted privilege or work product protection.

VIII. Inadvertent Production of CI or AEO

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

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

IX. Modification

46. The Parties may modify this Order by Rule 11 agreement and Court approval. The Parties must submit with their filed Rule 11 agreement a proposed Amended Protective Order for the Court to consider.

X. Local Rules

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

XI. End of Case

48. **Duty to Destroy or Return.** Upon a Designating Party's request, within thirty days after the settlement or final adjudication, including appeals, in this Lawsuit, a Receiving Party will destroy or permanently delete the Designating Party's CI or AEO. The Receiving Party must then provide the Designating 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 ON: [_____]

_____
[judge]
Judge, Texas Business Court,
Third Division

EXHIBIT A

I have read the Protective Order entered in the case styled [xxx] ("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 Cause.

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: _____