In the Matter of the Arbitration between:

____________________, Claimant

vs.

____________________________, Respondent

AAA Case No. ________________________

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PROTECTIVE ORDER

1. **Purpose and Limits of this Order**

   1.1 The voluntary exchange of documents and such discovery as may be permitted in this matter is likely to involve confidential, proprietary, trade secret, private or privileged information requiring special protection from public disclosure and from use for any purpose other than this arbitration. Thus, the Arbitrator enters this Protective Order (“Order”).

   1.2 This Order does not confer blanket protections on all disclosures or responses to permitted discovery, and the protection it gives from public disclosure and use extends only to the specific materials entitled to confidential treatment under the applicable legal principles. This Order does not govern the use at the evidentiary hearing of any material designated under this Order.

2. **Designating Protected Material**

   2.1 **Over-Designation Prohibited.** Any party or non-party may designate information or items for protection under this order as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “Designator”); provided, however, that such materials must qualify for such protection under appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are
prohibited. Mass, indiscriminate, or routinized designations are prohibited. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause invasion of privacy, or competitive or other recognized harm. Material may not be designated if it has been made public or if designation is otherwise unnecessary to protect a confidentiality, secrecy or privacy interest. If a Designator learns that information or items that it designated for protection do not qualify for protection at all or for the level of protection initially asserted, the Designator must promptly notify all parties in writing that it is withdrawing the mistaken designation.

2.2 Manner and Timing of Designations. Designation under this Order requires the Designator to affix the applicable legend – “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” to each page that contains protected material.

2.2.1 For testimony given in deposition or other proceeding, the Designator shall specify all protected testimony and the level of protection being asserted. Such designation (a) shall be made on the record during the deposition or proceeding, or (b) may be invoked by written notice to all parties on or before the next business day, which notice shall then give the Designator up to twenty-one (21) days from the date of the deposition or proceeding to specify the protected testimony and the level of protection being asserted.

2.2.2 A party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting party has identified which material it would like copied and produced. During the inspection and before the designation, all material shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.” After the inspecting party has identified the documents it wants copied and produced, the producing party must designate the documents, or portions thereof, that qualify for protection under this Order at the time of production to the other party(ies).
2.2.3 Parties shall give advance notice if they expect a deposition or other proceeding to include designated material so that the other party(ies) can ensure that only authorized individuals are present at those proceedings when such material is disclosed or used. The use of a document as an exhibit at a deposition shall not in any way affect its designation. Transcripts containing designated material shall have a legend on the title page noting the presence of designated material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated and the level of protection being asserted. It is the responsibility of the Designator to inform the court reporter of these requirements. Any transcripts or recordings that may be created during the 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” unless otherwise agreed. After the expiration of the 21-day period, the transcript shall be treated only as actually designated.

2.3 Inadvertent Failure to Designate. An inadvertent failure to designate does not, standing alone, waive protection under this Order. Upon timely assertion or correction of a designation, all recipients must make reasonable efforts to ensure that the material is treated according to this Order.

3. Challenges to Confidentiality Designations

3.1 In the event a party disagrees with a designation, that party shall serve a written notice of objection on the Designator, which specifically identifies the designated material and/or information being challenged. Within ten (10) business days of the notice of objection, the parties are required to meet-and-confer in an effort to resolve the dispute. If the parties are unable to come to a resolution, the party seeking to retain the designation of “CONFIDENTIAL” shall, within ten (10) business days of the meet-and-confer, seek an order from the Arbitrator as to whether the designation should be retained or removed.
3.2 Until such time as the Arbitrator enters an order, the challenged materials and/or information shall be treated as designated.

4. Access to Designated Material

4.1 Basic Principles. A receiving party may use designated materials only for this arbitration. Designated material may be disclosed only to the categories of persons and under the conditions described in this Order.

4.2 Disclosure of “CONFIDENTIAL” Material. Unless permitted in writing by the Designator or otherwise ordered by the Arbitrator or a court of competent jurisdiction, a receiving party may disclose any material designated as “CONFIDENTIAL” only to:

a. the Arbitrator and the Arbitrator personnel;

b. the American Arbitration Association (the “AAA”) and AAA personnel responsible for administering this case, including the Case Manager;

c. attorneys of record for any party and their paralegals, paraprofessional, clerical and secretarial staff employed by such attorneys;

d. the parties, including their officers, directors, partners, members, and employees to whom disclosure is reasonably necessary, and who have signed the Agreement to be Bound (Exhibit A);

e. the author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information;

f. court reporters and their staff, professional trial consultants, and professional support vendors to whom disclosure is reasonably necessary, and who have signed the Agreement to be Bound (Exhibit A);

g. experts, consultants, and advisors employed or retained by counsel(s) of record for the parties to perform investigative work, research, analysis or other services related to this case, and who have signed the Agreement to be Bound (Exhibit A); and
h. during their depositions, witnesses in the action to whom disclosure is reasonably necessary, and who have signed the Agreement to be Bound (Exhibit A).

4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” Material.

a. the Arbitrator and the Arbitrator personnel;

b. the American Arbitration Association (the “AAA”) and AAA personnel responsible for administering this case, including the Case Manager;

c. attorneys of record for any party and their paralegals, paraprofessional, clerical and secretarial staff employed by such attorneys to whom it is reasonably necessary to disclose the information;

d. the author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information; and

e. court reporters and their staff, professional trial consultants, and professional support vendors to whom disclosure is reasonably necessary, and who have signed the Agreement to be Bound (Exhibit A).

4.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” Material to In-House Counsel or Experts.

Unless agreed to in writing by the Designator:

4.4.1 A party seeking to disclose to in-house counsel any material designated “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” must first make a written request to the Designator, providing the full name of the in-house counsel, the city and state of such counsel’s residence, and such counsel’s current and reasonably foreseeable job duties and responsibilities in sufficient detail to determine present or potential involvement in any competitive decision-making.
4.4.2 A party seeking to disclose to an expert retained by outside counsel of record any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” must first make a written request to the Designator that (a) identifies the general categories of information the receiving party seeks permission to disclose to the expert, (b) sets forth the full name of the expert and the city and state of his or her primary residence, (c) attaches a copy of the expert’s current resume, (d) identifies the expert’s current employer(s), and (e) identifies each person or entity from whom the expert has received compensation or funding for work in his or her areas of expertise (including in connection with litigation) in the past five years.

4.4.3 A party that makes a request and provides the information specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-house counsel or expert unless, within seven (7) business days of delivering the request, the party receives a written objection from the Designator providing detailed grounds for the objection. Any challenges to objections from the Designator shall be subject to the provisions of Section 3.

5. Protected Material Subpoenaed or Ordered Produced in Another Action

5.1 Subpoenas and Orders. This Order does not excuse non-compliance with a lawful subpoena or order issued by a court or other tribunal. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the Designator an opportunity to protect its confidentiality, privacy and/or secrecy interests in the court or other tribunal where the subpoena or order has been issued.

5.2 Notification Requirement. If a party is served with a subpoena or a order issued in another matter that compels disclosure of any information or items designated in this matter as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” that party must:

5.2.1 Promptly notify the Designator in writing. Such notification shall include a copy of the subpoena or order;
5.2.2 Promptly notify in writing the party who caused the subpoena or order to issue in the other action that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

5.2.3 Cooperate with all reasonable procedures sought by the Designator whose material may be affected.

5.3 Wait for Resolution of Protective Order. If the Designator timely seeks a protective order, the party served with the subpoena or order shall not produce any information designated in this matter as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” before a determination by the court or other tribunal where the subpoena or order issued, unless the party has obtained the Designator’s written permission to do so. The Designator shall bear the burden and expense of seeking protection of its confidential material in the issuing court or tribunal.

6. Unauthorized Disclosure of Designated Material

6.1 If a receiving party learns that by inadvertence or otherwise, it has disclosed designated material to any person or in any circumstance not authorized under this Order, it must immediately (a) notify in writing the Designator of the unauthorized disclosure(s), (b) use its best efforts to retrieve the unauthorized copies of the designated material, (c) inform the person or person to whom unauthorized disclosures were made of all terms of this Order, and (d) use reasonable efforts to have such person or persons execute the Agreement to be Bound (Exhibit A).

7. Final Disposition

7.1 Within sixty (60) days after the issuance of the final award in this proceeding, each party shall return all designated material to the Designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the Designator by the 60-day deadline that (a) identifies all designated materials that were returned or destroyed, and (b) affirms that the receiving party has not retained any copies, abstracts,
compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel of record from retaining 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, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain subject to this Order.

Dated: ____________________________

________________________________________
Rebecca Callahan, Arbitrator
EXHIBIT A
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 Protective Order issued by the Arbitrator in that certain arbitration matter pending before the American Arbitration Association as ______________________, Case No. ___________________. I agree to comply with and to be bound by all of the terms of the Protective Order, and solemnly promise that I will not disclose in any manner any information or item that is subject to the Protective Order to any person or entity except in strict compliance with said order.

I further agree to submit to the jurisdiction of the Arbitrator in the above-referenced arbitration or any court of competent jurisdiction for the purpose of compliance with and enforcement of the Protective Order, even if such proceedings occur after the conclusion or close of the above-referenced arbitration. I specifically agree, upon threat of penalty of contempt and other civil remedies, to be bound by the terms of the Protective Order.

City and State where sworn and signed: ____________________________________________

Date: ________________________________

_____________________________________
Signature

_____________________________________
Print Name