

AMERICAN ARBITRATION ASSOCIATION
Large Complex Case Tribunal

In the Matter of the Arbitration between:

_____, *Claimant*

vs.

_____, *Respondent*

AAA Case No. _____

STIPULATION RE PROTECTIVE ORDER
AND ORDER THEREON

Upon stipulation and agreement between Claimant _____
 (“Claimant”) and Respondent _____ (“Respondent”), the parties,
through their respective counsel, agree as follows:

1. Purpose and Limits of this Order

1.1 The voluntary exchange of documents and such discovery as may be permitted in this matter may involve confidential, proprietary, trade secret, private, sensitive, or privileged information, the disclosure of which would qualify for protection from public disclosure and from use for any purpose other than this arbitration. Thus, the undersigned arbitrator, in her capacity as Chair of the three-arbitrator panel in this matter (the “Tribunal”), enters this order based upon the parties’ stipulation for protective order (the “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 insofar as disclosure to the Tribunal is concerned.

2. *Designating Protected Material*

2.1 “Confidential” Defined. “Confidential” shall mean documents, testimony, disclosures and information that contain confidential, proprietary, trade secret, private, sensitive, or privileged information, the disclosure of which would qualify for protection from public disclosure and for use for any purpose other than this arbitration, including such information that, if disclosed outside of this arbitration, could be detrimental to the conduct of a party’s or non-party’s business or that of their respective customers or clients.

2.2 Over-Designation Prohibited. Any party as “Designator” may designate information or items for protection under this order as “CONFIDENTIAL” by affixing the legend – “CONFIDENTIAL” – to each page that contains protected material; *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. 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, the Designator must promptly notify all parties in writing that it is withdrawing the mistaken designation.

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 material designated as “CONFIDENTIAL” 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 Tribunal as to whether the designation should be retained or removed.

3.2 Until such time as the Tribunal 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 Tribunal and the personnel of the arbitrators comprising the Tribunal;
- 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. witnesses who may be called to testify in this arbitration to whom disclosure is reasonably necessary for purposes of taking their testimony.

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 an order issued in another matter that compels disclosure of any information or items designated in this matter as “CONFIDENTIAL,” 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” 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 Subject to the exceptions set forth in paragraph 7.2, below, within 120 days after the issuance of the final award in this proceeding, each receiving party shall return all material designated as “CONFIDENTIAL” 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.

7.2 With regard to any material designated as “CONFIDENTIAL” that may be provided to the Tribunal during the course of these arbitration proceedings and made a part of the panel arbitrators’ personal files and working papers, the members of the Tribunal shall have no

obligation to return such materials to the Designator. The members of the Tribunal may retain such materials as part of their archival files and working papers in this matter.

Dated: _____

_____, Chair
on behalf of the Tribunal

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 Tribunal 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 Tribunal 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