



**The Business Court of Texas,
First Division**

_____, §
Plaintiff, §
v. § Cause No. 25-BC01A-_____
_____, §
Defendant. §
§

Agreed Protective Order

With the agreement of the parties, the following Order governs the production, disclosure, filing, return, and destruction of any discovery documents, testimony, or other materials containing confidential, proprietary, trade secret, and/or commercially sensitive information.

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 any Confidential Information it reasonably believes should be protected by this Order, regardless of who produced it, by conspicuously marking documents or materials either (i) “Confidential” or (ii) “Attorneys’ Eyes Only.” 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. Confidential 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 15 days after receipt of the transcript by counsel for the party whose Confidential Information is sought to be protected. During this 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. References in this Order to a producing party include producing non-parties.

II. Permitted Uses and Disclosures

6. Material marked “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 or in-house counsel for a party to this action, their paralegals and clerical and secretarial staff, and any external litigation support vendors retained by counsel to assist with this action who sign the Agreement to Comply with Protective Order;
- (b) officers, directors, partners, or employees of a party who are reasonably necessary to assist a party's counsel, but only after signing the attached Agreement to Comply with Protective Order;
- (c) a mediator appointed by the Court or agreed to by the parties;
- (d) any testifying or consulting expert, jury consultant, or mock trial personnel, or the support staff of such persons, but only to the extent necessary to perform the services for which the person was retained, and only after signing the attached Agreement to Comply with Protective Order; and
- (e) any witness, but only to the extent that the witness has access to the Confidential Information pursuant to this Order or otherwise testifies to having personal knowledge of the Confidential Information.

7. Material marked “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 or in-house counsel for a party to this action, their paralegals and clerical and secretarial staff, and any external litigation support vendors retained by counsel to assist with this action who sign the Agreement to Comply with Protective Order;
- (b) a mediator appointed by the Court or agreed to by the parties; and
- (c) any testifying or consulting expert, jury consultant, or mock trial personnel, or the support staff of such persons, but only to the extent necessary to perform the services for which the person was retained, and only after signing the attached Agreement to Comply with Protective Order.

8. Confidential Information may also be disclosed to the Court, Court staff, and any court reporter acting in an official capacity, as part of any deposition, hearing, trial, conference, or other proceeding in this action.

9. A party subpoenaed or ordered to disclose or produce Confidential Information by any court, administrative agency, legislative body, or other entity must provide prompt written notice to the producing party.

III. Objections to Designations

10. Any party may object to the designation of materials as “Confidential” or “Attorneys’ Eyes Only” by serving a written objection within 30 days after the designation, or thereafter upon leave of court. The parties must confer in good faith to resolve objections. Confidential Information will continue to be treated as such pursuant to this Order unless and until the Court rules that the designation should be stricken.

IV. Court Filings

11. If a party wishes to file with the Court any document that discloses or attaches the party’s own Confidential Information, and the filing party intends to rely on the Confidential Information, the filing party must:

- (a) Prominently mark the first page of the filing: “REDACTED;”
- (b) Redact the Confidential Information from the filing;
- (c) Deliver an unredacted copy of the filing to the Court for *in camera* review; and
- (d) File a motion to seal the filing in compliance with Texas Rule of Civil Procedure 76a.

12. If a party wishes to file with the Court any document that discloses or attaches the Confidential Information of another, and the filing party intends to rely on the Confidential Information, the filing party must:

- (a) Prominently mark the first page of the filing: “REDACTED;”
- (b) Redact the Confidential Information from the filing; and
- (c) Deliver an unredacted copy of the filing to the Court for *in camera* review.
- (d) If the producing party does not file, within 10 days, a motion to seal the filing in compliance with Texas Rule of Civil Procedure 76a, the filing party may file the unredacted copy, and the Confidential Information loses its designation.

13. If a motion to seal is granted pursuant to this Order, the filing party may file the unredacted copy under seal with the sealing order attached, and the filing date will be deemed to relate back to the date of the redacted filing.

14. If a party wishes to file with the Court any document that contains Confidential Information, and the filing party does not intend to rely on the Confidential Information, the filing party must only:

- (a) Prominently mark the first page of the filing: “REDACTED;” and
- (b) Redact the Confidential Information from the filing.

V. Pretrial Hearings

15. The parties agree to use redacted versions of documents or material containing Confidential Information to the greatest extent possible.
16. Any party intending to use Confidential Information at a pretrial hearing will give all parties, including the producing party, at least 5 days' notice, and will identify each document by Bates Number.
17. Any objection to the use of Confidential Information must be resolved by agreement or by court order before the pretrial hearing.

VI. Maintaining Confidential Information

18. Confidential Information must be securely maintained and protected from disclosure.
19. Parties must maintain executed Agreements to Comply with Protective Order and produce them to a party upon request, except for experts not required to be disclosed under Texas Rule of Civil Procedure 195.2.
20. Any person who violates this Order or the Agreement to Comply with Protective Order may be subject to sanctions or held in contempt of court.

VII. No Waiver of Confidentiality

21. A failure to designate information as "Confidential" or "Attorneys' Eyes Only" does not waive 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

22. The parties will confer on the use of any Confidential Information at trial, and will provide a joint report to the Court at least 30 days before trial identifying any anticipated exhibits or witness testimony for which a request may be made to seal the courtroom or any portion of the reporter's record.

IX. Conclusion of Litigation

23. Within 60 days of the termination of this action, including the exhaustion of all appeals, each person subject to this Order other than outside counsel must return to the producing party all materials containing Confidential Information or notify the producing party that such materials have been destroyed. Outside counsel may retain archival copies of all

materials, including Confidential Information, provided that they are maintained with the same confidence required by this Order.

X. Agreements Among Counsel

24. Nothing in this Order prohibits parties from using or disclosing their own Confidential Information, or from entering into additional agreements concerning the use, disclosure, or filing of their own Confidential Information, except that no party may enter into an agreement that conflicts with Texas Rule of Civil Procedure 76a.

SO ORDERED on _____.

Judge Andrea K. Bouressa

AGREED:



**The Business Court of Texas,
First Division**

_____, §
 Plaintiff, §
v. § Cause No. 25-BC01A-_____
_____, §
 Defendant. §
 §

Agreement to Comply with Protective Order

In consideration for 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 and agree that I am submitting myself to the personal jurisdiction of this Court in connection with the Agreed Protective Order and this Agreement to Comply with Protective Order, and I further understand

that I may be subject to civil or criminal contempt proceedings for violating the same.

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 the attorney who provided them to me or permanently destroyed.

Date

Signature

Printed Name