Filed on behalf of: AX Wireless, LLC

~~DEFAULT~~

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,
Petitioner, v.

AX Wireless, LLC, Patent Owner.

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Case IPR2023-01135 Patent 9,973,361

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# JOINT PROPOSED PROTECTIVE ORDER

AX Wireless, LLC
Exhibit AXW-2081
Intel v. AX Wireless
IPR2023-01135

~~The following Default~~[PROPOSED] **Protective Order**~~ will govern the filing and treatment of confidential information in the~~

A. Definitions

1. "Party": any party to this proceeding~~:~~

~~Default Protective Order~~

~~This protective order governs the treatment and filing of confidential information~~, including all of its officers, directors, employees, consultants, retained experts and consultants, and outside counsel (and their support staff).

2. "Material": all information, documents, items and ~~testimony.~~things produced,

~~1.Confidential information shall be clearly marked "PROTECTIVE ORDER MATERIAL."~~

~~2.Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:(A)~~Parties~~. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.~~served or otherwise provided in this proceeding (whether paper, electronic, tangible or otherwise) by the Parties or by non-parties.

3. ~~(B)~~"Producing Party ~~Representatives. Representatives of record for~~": a Party or non-party that produces Material in ~~the~~this proceeding.

~~(C)Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.~~

~~(D)In-house counsel. In-house counsel of a party.~~

~~(E)Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are~~"Receiving Party": a Party that receives Material from a Producing Party.

4. "Designating Party": a Party or non-party that designates Material as "CONFIDENTIAL," or "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY."

5. "CONFIDENTIAL Material": Material that the Designating Party believes in good faith is not generally known to others and that the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy. Copies, abstracts, compilations, summaries, and extracts of Materials designated as CONFIDENTIAL will also be treated as CONFIDENTIAL Material.

6. "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY Material": Material that the Designating Party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others, including in-house counsel, would create a

substantial risk of serious injury and that the Designating Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy. The designation may apply to information that constitutes proprietary financial, technical, competitive, or commercially sensitive information that the Designating Party maintains as highly confidential in its business, including but not limited to information relating to future products, strategic plans, non-public financial data, documents that would reveal trade secrets, licensing documents or licensing communications, and settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the Designating Party. This designation

also includes Material obtained from a non-party pursuant to a Nondisclosure Agreement ("NDA") unless the non-party permits a different designation in writing. Copies, abstracts, compilations, summaries, and extracts of Materials designated as CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY will also be treated as CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY

Material.

7. "Designated Material": Material that is designated "CONFIDENTIAL," or "OUTSIDE ATTORNEYS' EYES ONLY" and all copies, abstracts, compilations, summaries, and extracts of such Material.

8. "Counsel of Record": outside counsel who appear as counsel for a Party, as well as administrative personnel employed by the outside counsel, such as paralegals, legal translators, legal secretaries, legal clerks, eDiscovery specialists, and shorthand reporters. "Counsel of Record" does not include (i) a person who is an employee, director, or officer of a Party or a Party's affiliates, even if that person appears as counsel for a Party or (ii) a person employed by the attorneys who gives technical, scientific or financial advice relating to the substantive issues in this proceeding unless that person is a licensed attorney or patent agent.

9. "Outside Consultant": a person with specialized knowledge or experience in a matter pertinent to the proceeding who is retained by a Party or retained or employed by its Counsel of Record to serve as an expert witness or as a consultant in this proceeding and who is not a current or anticipated: (i) officer, director, or employee of a Party or of a Party's competitor, or (ii) consultant involved in product and/or process design or development for a

Party or for a Party's competitor.

10. "Professional Vendors": persons or entities unaffiliated with a Party or a competitor of a Party that provide support services (e.g., photocopying, organizing, storing, or retrieval of data in any form or medium, videotaping, translating, preparing transcripts, designing and preparing exhibits, graphics, or demonstrations, organizing or processing data) and their employees and subcontractors.

B. Scope

12. Compliance with Applicable Rules Governing Confidentiality and Filing Under Seal. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under applicable legal principles. Nor does this Order entitle the parties to file confidential information under seal; the Parties must follow the applicable rules, procedures, and standards when seeking permission to file material under seal.

C. Access to Designated Material

**13. Access to CONFIDENTIAL Material. Only the following persons are permitted to have access to CONFIDENTIAL Material:**

**(A) employees of the Receiving Party to whom disclosure is** reasonably necessary ~~to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the~~**for the management, supervision, or oversight of this proceeding and who have signed the "Agreement to Be Bound by** Protective Order ~~by the person they are supporting who receives~~ ~~confidential information.~~**" attached as Exhibit A, so long as such employees are not involved in competitive decision-making activities. For the avoidance of doubt, an individual is not a competitive decisionmaker solely by virtue of participating in the negotiation of a settlement agreement;**

**(B) persons who appear on the face of Designated Material as an author, addressee or recipient thereof, provided, however, that no one may show Designated Material to an ex-employee of a Producing Party without first notifying the Producing Party and providing the Producing Party**

with an opportunity to object prior to such disclosure;

(C) Counsel of Record;

(D) Outside Consultants, subject to the procedures set forth in Section D;

(E) ~~(F)~~The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign ~~an Acknowledgement~~the "Agreement to Be Bound by Protective Order." Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office~~.~~;

(F)court reporters; and

(G) ~~3.Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those~~Professional Vendors to which disclosure is reasonably necessary for this proceeding and a representative of which has signed the "Agreement To

Be Bound By Protective Order" attached as Exhibit A.

14. Access to CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY Material. Only the persons identified ~~above~~ in ~~(d)~~Paragraph 13(~~2~~B)-(~~A~~G) ~~(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.~~ are permitted to have access to CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY Material.

15. Acknowledgements to be Bound. Each person to whom Designated Material may be disclosed, and who is required to sign the "Agreement to Be Bound by Protective Order" and/or the "Certification of Consultant" must do so prior to reviewing Designated Material. Counsel of Record for the Receiving Party must retain each original executed document and, on written request, must provide copies to Counsel of Record for all other Parties after the termination of this proceeding. The identification of an individual pursuant to this Order does not make that individual subject to deposition or any other form of discovery.

D. Disclosure to Outside Consultants

16. Notice. Before disclosing another party's Designated Material to an Outside Consultant, a Receiving Party must first provide written notice by hand- delivery or email to Counsel of Record for the Designating Party. The notice must include: (a) the Outside Consultant's name, business title, business address, and business or profession; (b) a current CV; (c) the Outside Consultant's previous or current relationship (personal or professional) with any of the Parties, their predecessors, or their successors in interest; (d) a list

of cases in which the Outside Consultant has testified (at trial or deposition) within the last seven years; (e) a list of all companies for which the Outside Consultant has consulted or that have employed the Outside Consultant within the last seven years; and (f) a signed copy of the Agreement to Be Bound by Protective Order attached as Exhibit A and the "Certification of Outside Consultant" attached as Exhibit B.

17. Objections. The Designating Party will have five calendar days from receipt of the notice to object to the disclosure. The notice must identify the grounds for the objection. If the Designating Party does not object during that five- day period, then the Receiving Party may disclose Designated Material to the Outside Consultant pursuant to the terms of this Order. However, if the Designating Party objects within that period, the Receiving Party may not disclose Designated Material to the challenged individual absent resolution of the dispute or Board Order. In the event the Designating Party makes a timely objection, the parties shall promptly meet and confer by telephone or in person to try in good faith to resolve the matter by agreement. If the parties cannot reach an agreement, the Receiving Party may within three (3) business days following the meet and confer email a summary of the issue(s) and specific relief requested to all counsel of record. The summary of the issue shall not exceed 500 words for one issue or a combined 1,000 words for multiple issues. The Producing Party has three (3) days thereafter to provide an email response, also not to exceed 500 words for one issue or a combined 1,000 words for multiple issues. Once the Producing Party provides its response, the Receiving Party shall email the summaries of the issues to the Board with opposing counsel copied. If the Receiving Party fails to email a summary of the issue(s) and specific relief requested to all counsel of record within the prescribed period, it waives any argument that such Designated Material should be disclosed to the Outside Consultant, and Designated Material may not be disclosed to such an individual. Designated Material shall not be disclosed to the challenged individual until and unless a final ruling allowing such disclosure is made by the Board or by the consent of the Designating Party, whichever occurs first.

E. Disclosure to Employees of Receiving Party

**18. Notice. Before disclosing another party's Confidential material to employees of the Receiving Party who have signed Exhibit A (as defined under Paragraph 13)(a)), a Receiving Party must first provide written notice by hand- delivery or email to Counsel of Record for the Designating Party. The notice must include: (a) the employee's name, business title, business address, and business or profession; (b) a current CV; (c) the employee's previous or current relationship (personal or professional) with any of the Parties, their predecessors, or their successors in interest; and (c) a signed copy of the Agreement to Be Bound by Protective Order attached as Exhibit A.**

**(A) Objections. The Designating Party will have five calendar days from receipt of the notice to object to the disclosure. The notice must identify the grounds for the objection. If the Designating Party does not object during that five-day period, then the Receiving Party may disclose Designated Material to the employees pursuant to the terms of this Order. However, if the Designating Party objects within that period, the**

~~**4.Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:**~~

~~**(A)Maintaining such information in a secure location to which persons not**~~

~~authorized to receive the information shall not have access;~~

~~(B)Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;~~

~~(C)Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and~~

~~(D)Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.~~

~~5.Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the~~Receiving Party may not disclose Designated Material to the challenged individual absent resolution of the dispute or Board Order. In the event the Designating Party makes a timely objection, the parties shall promptly meet and confer by telephone or in person to try in good faith to resolve the matter by agreement. If the parties cannot reach an agreement, the Receiving Party may within three (3) business days following the meet and confer email a summary of the issue(s) and specific relief requested to all counsel of record. The summary of the issue shall not exceed 500 words for one issue or a combined 1,000 words for multiple issues. The Producing Party has three (3) days thereafter to provide an email response, also not to exceed 500 words for one issue or a combined 1,000 words for multiple issues. Once the Producing Party provides its response, the Receiving Party shall email the summaries of the issues to the Board with opposing counsel copied. If the Receiving Party fails to email a summary of the issue(s) and specific relief requested to all counsel of record within the prescribed period, it waives any argument that such Designated Material should be disclosed to

the employee, and Designated Material may not be

disclosed to such an individual. Designated Material shall

not be disclosed to the challenged individual until and unless a final ruling allowing such disclosure is made by this Board or by the consent of the Designating Party, whichever occurs first.

F. Use of Designated Material

19. Use of Designated Material by a Receiving Party. A Receiving Party, including its Counsel of Record, Outside Consultants, and Professional Vendors, is permitted to use Designated Material only for purposes of this proceeding and is prohibited from disclosing Designated Material except in accordance with this Order. The Receiving Party shall use reasonable efforts to maintain the confidentiality of the information. The Receiving Party shall have and maintain appropriate physical, organizational, and technical processes, security standards, guidelines, controls, and procedures to protect against a data breach ("Appropriate Safeguards"), and shall ensure that its vendors, consultants, experts and any other person or entity that receives Protected Material pursuant to the Order implements and maintains Appropriate Safeguards. Each of the Parties shall also retain the right to file a motion with the Board (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this proceeding; and (b) to apply for

additional protection of DESIGNATED MATERIAL.

20. Use of Designated Material by a Producing Party. Nothing in this Order restricts a Producing Party's or Designating Party's use or disclosure of its own Designated Material.

21. Use of Designated Material at Depositions. A Receiving Party can examine Outside Consultants of a Designating Party about any Designated Material of that Designating Party. Any person not permitted to have access to Designated Material that is disclosed at a deposition will be excluded from the portion of the deposition relating to that information~~:~~.

22. ~~(A)~~Documents and Information Filed With the Board.~~(i)~~ A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.~~(ii)~~ Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of

its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

**23. Transmittal of Designated Material. A Receiving Party will not transmit or transport Designated Material outside of the United States. To the extent that a Receiving Party is authorized to transport or transmit electronic copies of Designated Material, only the following methods may be used: (i) encrypted email using an encryption tool that has a passphrase of at least 20 characters in length and using at least 128-bit Advanced Encryption Standard (AES) cipher option; (ii) a secure FTP site that implements 256 bit AES encryption over SSL and utilizes access controls, and the files containing the information are encrypted using a key length of at least 20 characters and 256 bit AES encryption and are removed from the Secure FTP site within 3 days; and (iii) hand-delivery, where the**

data is stored on an encrypted hard-drive using at least AES 128-bit hardware encryption algorithm and a removable hardware key or an RFID secured card.

24. Unauthorized Use or Disclosure. If a Receiving Party learns of the disclosure or use of Designated Material in any circumstance not authorized by this Order, it must promptly notify in writing the Designating Party of the unauthorized use or disclosure. In the event of unauthorized disclosure, the Receiving Party must also promptly (a) use its best efforts to retrieve all copies of the Designated Material, (b) inform the person to whom unauthorized disclosures were made of the terms of this Order, and (c) ask that person to execute the "Acknowledgment and Agreement to Be Bound" that is attached as Exhibit A.

G. Procedure for Designating Materials

~~(B)Documents and Information Exchanged Among the Parties. Documents(including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "PROTECTIVE ORDER MATERIAL" and shall be produced in a manner that maintains its confidentiality.~~Designating Documents. For Material in documentary form (other than transcripts), the Designating Party must affix the legend

**"CONFIDENTIAL," or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" on each page that contains Designated Material.**

**25. Designating Other Material. For non-documentary Material, the Designating Party must affix in a prominent place on the exterior of the container or containers in which the information or thing is stored the legend "CONFIDENTIAL," or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY."**

**26. Testimony and Transcripts. For testimony given in deposition or in other pretrial or trial proceedings, the Designating Party will specify any portions of the testimony that it wishes to designate as "CONFIDENTIAL," or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY." In the case of depositions, the Designating Party may also designate any portion of a deposition transcript by informing the reporter and the Parties in writing of the applicable designations within thirty calendar days of completion of the certified transcript. The entire transcript of all other depositions will be treated as CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY until the thirty-day period has expired.**

**Transcript pages identified by a Designating Party must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," or "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" as instructed by the Designating– Party. Subject to the Board's preferences, the parties will work together to make arrangements for making such designations to exhibits, testimony, and other Material used during hearings, pre- trial proceedings, and during the trial of this case.**

**27. Non-party Designations. A non-party producing information or Material voluntarily or pursuant to a subpoena or court order may**

designate the information or Material in the same manner as a Party. A non-party's use of this Protective Order for production of its Material does not entitle that non-party to have access to Material produced by any Party in this proceeding.

28. Challenges to Designations. A Receiving Party may at any time request that a Designating Party withdraw or modify a confidentiality designation; it is not obligated to do so at the time the designation is made. Challenges must be in writing, identify each document, and set forth the reason for believing the designation was improper. The Receiving Party will continue to treat the document in accordance with the Designating Party's designation unless and until otherwise agreed to by the Designating Party or ordered by the Board. If the parties are unable to agree in good faith concerning a challenge, the Receiving Party may pursue its challenge by Motion. A Receiving Party may also challenge the designation according to the procedures in set forth in paragraph 22 above.

H. Inadvertent Production

29. Inadvertent Failure to Designate. An inadvertent failure to designate

confidential Material does not waive a Designating Party's right to secure protection under this Order for that Material. On discovery of an inadvertent failure to designate, a Designating Party may give written notice of the designation and provide substitute copies of the Material bearing the appropriate legend. The Receiving Party must then treat the Material in accordance with the new designation, retrieve and destroy all copies of the previously produced version of

the Material from anyone who had received it, and destroy any electronic copies of the previously produced version.

30. No Waiver of Privilege. No privilege or protection is waived in this or

any other federal or state proceeding by disclosure connected with this proceeding. For example, inspection or production of Material will not constitute a waiver of the attorney-client privilege or work product immunity or any other applicable privilege or immunity from discovery if, after becoming aware of an inadvertent or unintentional disclosure, the Producing Party designates the Material as privileged or immune from discovery. On request by the Producing Party, the Receiving Party will immediately retrieve and return (or destroy) any copies of the inadvertently produced Material, including copies distributed to others (e.g., Outside Consultants and

Professional Vendors). The Receiving Party will remain entitled to challenge the privilege or immunity or immunity designation.

I. Miscellaneous

31. Final Disposition. Unless otherwise ordered or agreed in writing by ~~6.Within 60~~the Producing Party, within sixty (60) calendar days after the final disposition of this ~~action~~proceeding, including the exhaustion of all appeals and motions, each ~~party receiving confidential information~~Receiving Party must return, or certify the destruction of, all ~~copies of the confidential information to the producing~~Designated Material to the Producing Party and submit a written confirmation of the return or destruction to the Producing Party (and, if not the same person or entity, to the Designating Party). However, Counsel of Record are entitled to retain two (2) archival copies of all filings, motion papers and supporting materials, transcripts, legal memoranda, correspondence, briefs and supporting materials, written discovery requests and responses, exhibits offered or introduced into evidence, or attorney work product. Any such archival copies remain subject to this Protective Order.

32. Duration. The confidentiality obligations imposed by this Order will remain in place until lifted or modified by the Board, unless otherwise agreed to by the Designating Party.

**33. Further Protections. This Order is entered without prejudice to the right of any** party **to apply to the Board at any time for additional protection or to relax or rescind the restrictions of this Order**.

**34.** ~~(k) Standard~~ Acknowledgement of Protective Order. The following ~~form~~**forms** may be used to acknowledge ~~a~~**the** protective order and gain access to information covered by the protective order:

~~[CAPTION]~~

**Exhibit A**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**INTEL CORPORATION,**
**Petitioner, v.**

**AX Wireless, LLC, Patent Owner.**

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**Case IPR2023-01135 Patent 9,973,361**

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**Standard Acknowledgment for Access to Protective Order Material**

I , affirm that I have read the Protective Order **filed in Case IPR2023-01135**; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose**, except that any portion of the confidential material that is obtained by other, appropriate means, such as through discovery in a district court or other proceeding, that portion of the confidential material may be used in the other proceeding, subject to any confidentiality terms applicable to that portion of the**

**confidential material in the other proceeding**; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

~~{~~**Dated:** Signature~~}~~**:**

**Exhibit B**

**CERTIFICATION OF OUTSIDE CONSULTANT REGARDING PROTECTIVE ORDER**

**I, _____, state:**

**1. I have read the Protective Order filed in Case IPR2023-01135 ("Order") dated _____, and understand and will abide by its terms.**

**2. I am not a current or anticipated officer, director, or employee of a Party or of a Party's competitor, or a current or anticipated consultant involved in product and/or process design or development for a Party or for a Party's competitor.**

**3. If at any time after I execute this Certification of Consultant and during the pendency of the proceeding I become an employee or competitor of a Party, I will promptly inform the counsel for the Party who retained me in this proceeding. I will not thereafter review any Designated Materials marked as "CONFIDENTIAL**

**– OUTSIDE ATTORNEYS' EYES ONLY" unless and until the Parties agree in writing or the Office orders otherwise.**

**4. I will not use any Designated Material for any purpose other than this proceeding.**

**5. I agree to be subject to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of**

**enforcing the terms of the Order and providing remedies for its breach.**

**8. I state under penalty of perjury under the laws of the United States that the foregoing is true and correct.**

**Executed on , 20 .**

**Signature**