**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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| AX WIRELESS LLC<br>*Plaintiff*, | §<br>§<br>§ | |
| v. | §<br>§ | Civil Action No. 2:22-CV-00277-RWS-RSP |
| DELL INC., et al.<br>*Defendants* | §<br>§<br>§ | |

**SUPPLEMENTAL PROTECTIVE ORDER GOVERNING NON-PARTY INTEL CORPORATION'S CONFIDENTIAL BUSINESS INFORMATION**

Additional protections for confidential information, documents, and source code beyond those provided in the Stipulated Protective Order (Dkt. 70) as between Plaintiff AX Wireless ("AX Wireless"), Dell Inc., and Dell Technologies Inc. (together, "Dell"), shall be provided for Non-Party Intel Corporation ("Intel") to provide enhanced confidentiality protections for the disclosure of competitive and highly sensitive trade secrets and confidential materials including source code, pursuant to Fed. R. Civ. P. 26(c). *See also* Dkt. 70 at ¶ 35 ("The Parties anticipate that there may be Source Code productions by third parties, who may produce Source Code subject to a supplemental protective order."). It is the Parties' understanding that Non-Party Intel supplies certain Wi-Fi 6 components (*e.g.*, Wi-Fi chips and software) incorporated in some of Dell's products. AX Wireless has sought access to Non-Party Intel's source code and other confidential materials regarding those components. Intel has represented that the source code and documents sought by AX Wireless contain highly sensitive, proprietary trade secret and confidential materials, such that these materials are not shared with any third party, absent strict confidentiality and non-disclosure obligations, given the highly competitive nature of the semiconductor industry.



**AX Wireless, LLC**
**Exhibit AXW-2046**
**Intel v. AX Wireless**
**IPR2023-01139**
AXW-2046-001

Accordingly, this Supplemental Protective Order governs the discovery of documents and source code that are produced and designated by Non-Party Intel as "NON-PARTY INTEL CONFIDENTIAL BUSINESS INFORMATION" and "NON-PARTY INTEL CONFIDENTIAL BUSINESS INFORMATION - SOURCE CODE" in connection with the above-captioned matter. In the event of a conflict between the Protective Order (Dkt. 70) and this Supplemental Protective Order, the terms of this Supplemental Protective Order will govern for NON-PARTY INTEL CONFIDENTIAL BUSINESS INFORMATION and NON-PARTY INTEL CONFIDENTIAL BUSINESS INFORMATION - SOURCE CODE. It is therefore hereby

**ORDERED** that:

**A. Definitions**

1. "Party": any party to this action, 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 things produced, served or otherwise provided in this action (whether paper, electronic, tangible or otherwise) by the Parties or by non-parties.

3. "Producing Party": a Party or non-party that produces Material in this action.

4. "Receiving Party": a Party that receives Material from a Producing Party.

5. "Designating Party": a Party or non-party that designates Material as "CONFIDENTIAL," "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE."

6. "Source Code": Source code, object code (i.e., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), any text written in any high-level programming language defining firmware and/or software

functionalities implemented on an integrated circuit, microcode, register transfer language ("RTL"), firmware, and hardware description language ("HDL"), as well as any and all notes, annotations, and other comments of any type related thereto and accompanying the code. No schematics, layout files (such as GDS, GDSII, OASIS, or other comparable file types), process flows, or process recipes will be requested or produced in these actions. For avoidance of doubt, Source Code may include source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debut files. Source Code does not include file names, version or revisions identifications, and directory listings, which shall, when no Source Code is present, be designated CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.

7. "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.

8. "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.

9. "CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material": Material that is designated or otherwise includes Source Code and copies, abstracts, compilations, summaries, and extracts of Source Code which the Designating Party believes in good faith is not generally known to others and has significant competitive value such that unrestricted disclosure to others would create a substantial risk of serious injury, and which the Designating Party, in the ordinary course of business, takes precautions to protect and would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence.

10. "Designated Material": Material that is designated "CONFIDENTIAL," "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL -

OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" and all copies, abstracts, compilations, summaries, and extracts of such Material.

11. "Export Controlled Information": all Source Code and any other Designated Material identified by a Designating Party as being subject to federal export control regulations, including the Export Administration Regulations ("EAR"), 15 C.F.R. §§ 730, et seq.

12. "Counsel of Record": (i) outside counsel who appear on the pleadings as counsel for a Party, and (ii) licensed partners, counsel, associates, and patent agents of such outside counsel to whom it is reasonably necessary to disclose the information for this litigation and 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 on the pleadings 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 action unless that person is a licensed attorney or patent agent.

13. "Outside Consultant": a person with specialized knowledge or experience in a matter pertinent to the action 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 action 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.

14. "Professional Vendors": persons or entities unaffiliated with a Party or a competitor of a Party that provide litigation 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. This definition includes a professional jury or trial consultant retained in connection with this action and mock jurors retained by such a consultant to assist them in their work. Professional Vendors do not include consultants who fall within the definition of Outside Consultant.

15. "Relevant Technology": The subject matter of the Relevant Technology is technical, confidential information related to "Wi-Fi 6 Modules" and "Wi-Fi 6 Functionality" as sought by and defined in the subpoenas issued by AX Wireless to Intel ("Subpoenas"). For the avoidance of doubt, the Subpoenas define "Wi-Fi 6 Module" as "any discrete or integrated component of the ACCUSED INSTRUMENTALITY that provides, implements, embodies and/or supports WI-FI 6 FUNCTIONALITY, or is configured to do so, including, but not limited to, the AX200, AX201, AX210, AX211, Gig+ Series, Killer AX1675, Killer AX1650 and 22260 products." The Subpoenas define "Wi-Fi 6 Functionality" as the "technical functionalities as illustrated in, but not limited by, the 802.11ax standard promulgated by the Institute of Electrical and Electronics Engineers (IEEE) ("Wi-Fi 6 Standard")."

**B. Scope**

16. 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

17. 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 for the management, supervision, or oversight of this litigation and who have signed the "Agreement to Be Bound by Protective Order" 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) the Court and its personnel;

(f) court reporters;

(g) a mediator assigned to hear this matter, and his or her staff, who have signed the "Agreement to Be Bound by Protective Order" attached as Exhibit A and the "Certification of Consultant" attached as Exhibit B; and

(h) Professional Vendors to which disclosure is reasonably necessary for this litigation and a representative of which has signed the "Agreement To Be Bound By Protective Order" attached as Exhibit A.

18. Access to CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY Material. Only the persons identified in Paragraph 17(b)-(h) are permitted to have access to CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY Material.

19. Access to CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material. Only the persons identified in Paragraph 17(c)-(f) are permitted to have access to CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material. Absent consent of the Producing Party (which will not be unreasonably withheld), no more than 10 Counsel of Record and 6 Outside Consultants for a Receiving Party are permitted to have access to CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material.

20. 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 action. 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**

21. 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.

22. Objections. The Designating Party will have ten 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 ten-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 Court 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 Court's law clerk 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 this Court or by the consent of the Designating Party, whichever occurs first.

**E. Disclosure to Employees of Receiving Party**

23. Notice. Before disclosing another party's Confidential material to employees of the Receiving Party who have signed Exhibit A (as defined under Paragraph 17)(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.

24. Objections. The Designating Party will have ten 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 ten-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 Court 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 Court's law clerk 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 this Court or by the consent of the Designating Party, whichever occurs first.

**F. Inspection and Production of Source Code**

25. The Secure Room. Source Code will be made available for inspection in a secure room in computer searchable format on a stand-alone computer connected to a printer (that is, a computer not connected to a network or the Internet, and that is locked down so that additional peripheral devices cannot be connected to it) during regular business hours on reasonable notice, at a location in the United States selected by the Producing Party (the "Secure Room"). Before being admitted into the Secure Room, an individual must provide a photo identification card sanctioned by the government of a state of the United States or by the national government of the individual's current citizenship.

26. Review of Source Code. The Receiving Party shall provide reasonable notice prior to a proposed inspection. Reasonable notice shall mean at least ten (10) business days' notice prior to an initial proposed inspection, and at least three (3) business days' notice for any subsequent review sessions. The Producing Party shall make reasonable efforts to accommodate the Receiving Party's request for access to the stand-alone computer upon shorter notice, and the Receiving Party

shall make reasonable efforts to provide as much advance notice for any subsequent review sessions as possible. If a Party has in its possession any Source Code that is owned by a third party and subject to a claim of confidentiality or subject to any license restriction on its distribution or release, the Party possessing the third party Source Code will not be required to produce such data until such time as the third party has been notified by the Party of the anticipated production of such data and the third party has had an opportunity to object to such production and to seek a protective order from the Court concerning the same within fifteen (15) calendar days of being notified of the anticipated production of such data. The party possessing the third party Source Code must notify the third party within three (3) days of the request.

No electronic devices are permitted in the Secure Room, including laptops, floppy drives, zip drives, cellular telephones, personal digital assistants, cameras, voice recorders, telephone jacks or other hardware. Non-electronic devices capable of similar functionality are also prohibited, as is loose paper that could be used in a printer. Written notes relating to the Source Code may be taken only in spiral- or permanently-bound notebooks and shall be designated CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED - SOURCE CODE. The Source Code may not be copied into the notes. Notwithstanding this provision, file name and location (i.e., directory path), may be copied into the notes. The Producing Party may visually monitor the activities of the Receiving Party's representatives during any review but only to ensure there is no unauthorized recording, copying, or transmission of the Source Code; the Producing Party may not monitor what code is being reviewed by the Receiving Party's representative(s) and no provision in this section gives the Producing Party the right to inspect or review any notes and/or other work product of the Receiving Party – and nothing herein shall be construed to make such notes discoverable absent a waiver of attorney-client, work product, or other privilege.

The Producing Party shall provide the Receiving Party with information explaining how to start, log on to, and operate the computer in order to access the produced source code on the computer. The computer will have a monitor of at least 32 inches diagonal and an attached mouse.

The Producing Party shall install reasonably available commercial tools that are sufficient for viewing and searching the code produced, on the platform produced, if such tools exist, are presently used in the ordinary course of the Producing Party's business, and do not require payment of additional license fees. The Receiving Party may request that additional software tools be installed on the computer to assist the Receiving Party's review of the source code. The Receiving Party shall be responsible for providing the tools or licenses to the tools that it wishes to use to the Producing Party at least ten (10) days prior to the first date on which access to the Secured Room is sought so that the producing Party may install such tools on the computer. If the Parties are unable to agree on the additional requested software tools, the Receiving Party may seek an Order from the Court after making a good faith effort to resolve the dispute.

A telephone and internet access will be provided in a room convenient to and near the Secured Room—i.e., a room in close proximity to the Secured Room; a reviewer shall be permitted to access the internet and use a personal cell phone in that room.

27. Inspection Hours. Source Code will be made available for inspection between the hours of 9 a.m. to 6 p.m. local time, on business days (*i.e.*, weekdays that are not Federal holidays). The Receiving Party shall make all reasonable efforts to inspect Source Code during these hours. However, upon reasonable notice from the Receiving Party, the Producing Party shall make reasonable efforts to accommodate the Receiving Party's request for access to the stand-alone computer beyond these hours.

28. Printing Portions of the Source Code. A Receiving Party is allowed to print paper copies of necessary, specific portions of the Source Code at the time of inspection. Paper copies are restricted to what is necessary for use in a filing, in an expert report, at a deposition, or at a hearing, *i.e.*, only the portions of the Source Code that address the specific functionality relevant to the claims and defenses in this action. A Receiving Party is not entitled to print passages to facilitate review of the Source Code away from the Secure Room; the Source Code is to be reviewed and analyzed using the stand-alone computer. The Receiving Party is prohibited from removing the paper copies from the Secure Room.

29. Delivery of Printouts. The Producing Party will collect any printed pages of the Source Code, and Bates number, copy, and label them "CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE." Within seven (7) calendar days, the Producing Party must either (a) deliver four (4) paper copy sets of such pages to one or more offices of the Receiving Party's Counsel of Record or (b) provide notice that the printed portions are excessive or were not requested for a permitted purpose. A reasonable request will be presumed to extend for no more than a total of five hundred (500) total pages, for no more than sixty (60) contiguous pages. The Producing Party shall not unreasonably deny requests for additional necessary printouts. These limits may be increased by agreement of the Parties or on a showing of need. The Receiving Party will make reasonable efforts to group together any print requests to minimize the burden of the requests.

30. Objection to Printouts. In the event that the Producing Party provides notice that the printed portions are excessive or were not requested for a permitted purpose under Paragraph 29 and the Receiving Party disagrees, the parties shall first try to resolve the dispute in good faith including through a meet and confer. If the dispute cannot be resolved, the Receiving Party may

within five (5) 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 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 Court's law clerk with opposing counsel copied. The burden will be on the Receiving Party to demonstrate that such portions are no more than is reasonably necessary for a permitted purpose, and not merely for the purpose of review and analysis in another location.

31. Producing Party Log. The Producing Party may maintain a log identifying: (a) the name of each person who accessed the Secure Room; (b) the date and time of access; (c) the length of time of access; and (d) whether any pages were printed. The Producing Party may also retain copies of any printed pages of the Source Code.

32. Receiving Party Log. The Receiving Party must maintain a log identifying each person who reviews the printouts and the date and time of that person's first review. The Receiving Party must provide the Producing Party with a copy of the log on two (2) business days' notice, but no more than once per month absent a showing of good cause.

33. Maintenance of Printouts. The copy sets of the Source Code printouts must be kept at all times in the office(s) of Counsel of Record to which the Producing Party delivered them unless otherwise provided below. The delivered copy sets must be kept in a locked storage container where they will not be accessible to persons other than those allowed access under this Order. Except as explicitly permitted below, the Receiving Party is prohibited from making additional copies or scanning the Source Code printouts. Outside Consultants are prohibited from

keeping, storing, or reviewing copy sets at their office. Persons allowed to access the Source Code printouts under this Protective Order may also temporarily keep the Source Code printouts in their physical possession, where physical possession means actual physical possession, while at: (1) Court for any proceedings(s) relating to the Source Code, for the dates associated with the proceeding(s); and (2) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s). If any Source Code printouts have to be stored during travel, the Receiving Party agrees to procure and store all Source Code printouts in a locked storage container at a secure storage location approved by the Producing Party at the Receiving Party's expense. The Receiving Party shall exercise due care in limiting visual access to the Source Code printouts, maintaining the security of the printouts at these temporary locations, and securely transporting the printouts to and from these temporary locations.

34. Transportation of Copy Sets. In the event that a Producing Party authorizes a Receiving Party to transport copy sets of the Source Code, transportation is permitted only by hand by a person authorized to have access under Paragraph 19. If an authorized person is taking copy sets on a flight, they must be carried on the plane and may not be checked. Copy sets may not be shipped by courier, such as Federal Express.

35. Use at Depositions and Hearings. If a Receiving Party intends to use Source Code in a deposition or at a hearing, the Receiving Party agrees to provide the Producing Party with seven (7) calendar days' advance notice of its intention to use Source Code, so that the Producing Party can make a secure computer available containing the Source Code on the day of the deposition or hearing. The Producing Party will not unreasonably refuse to provide a computer containing the Source Code in the event that a deposition is reset, however, the Producing Party will need at least seven (7) calendar days' advance notice in order to set up a computer for Source

Code. This provision is intended to obviate the need for the Producing Party to print any source code for purposes of a deposition or a hearing. If a Receiving Party additionally intends to bring Source Code printouts to a hearing or deposition, the Receiving Party may make a single copy of the Source Code printouts for use at the deposition or at the hearing without the Producing Party's prior written consent. If additional copies of Source Code printouts are requested, the Receiving Party must provide the Producing Party with four (4) calendar days' advance notice of its need for additional printed copies and identify the volume number of the code production. The Producing Party will not unreasonably refuse to provide copies of the Source Code printouts in the event that a deposition is reset or other unforeseen events prevent the Receiving Party from providing four (4) calendar days' advance notice (including in the event that a Source Code review session occurs within the four (4) calendar days' notice period). The Producing Party will then either authorize the Receiving Party to prepare copies for use in the deposition or hearing, agree to supply copies itself on the day of the deposition or hearing, or provide its objections to the request for additional copies. At the conclusion of the deposition or hearing, all copies of Source Code printouts will be returned to the Producing Party or destroyed. Copies will not be attached to deposition transcripts

36. Use in Filings. A Receiving Party that wants to file or otherwise submit pages of Source Code in connection with a filing may make only as many copies, and only of the specific pages as needed, for submission. It must file the materials under seal and must immediately notify the Producing Party. The Receiving Party will not make any such copies necessary for the filing earlier than reasonably necessary, which is presumed to be no earlier than 48 hours prior to the relevant filing.

37. Use in Expert Reports and Discovery Documents. To the extent it is necessary to reference Source Code in an expert report or other discovery document, the excerpts must be

limited to the minimum amount necessary to support the specific argument made, but in no event may an excerpt exceed 25 lines of data. If the Receiving Party has reason to require more than 25 lines of data to reference Source Code in an expert report or other discovery document, the Receiving Party may request such consent from the Producing Party by specifying the volume number from which such excerpts are requested and the specific number of lines of data requested. The Producing Party will not unreasonably deny such consent. Documents containing excerpts must be designated "CONFIDENTIAL - OUTSIDE COUNSEL RESTRICTED – SOURCE CODE."

## G. Prosecution, Development, and Acquisition Bars

38. Prosecution Bar. Any individual associated with a Receiving Party who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's technical ATTORNEYS' EYES ONLY Material or OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material is prohibited from prosecuting any claims directed to the Relevant Technology (including supervising, assisting, or participating in the preparation, prosecution, or amendment) of any patent or patent application, inter partes review, reexamination, reissue, or post-grant review proceeding related to the Relevant Technology that was filed, or that claims priority from an application that was filed, less than one year following the final termination of this action (including any appeals). This prosecution bar does not prevent an individual from participating in an inter partes review, reexamination, reissue, or other post-grant review proceeding involving the patents-at-issue, except that the individual is prohibited from participating in the drafting or amendment of any claim.

39. Development Bar. Any Outside Consultants who personally review any technical CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY Material or CONFIDENTIAL -

OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material must execute the "Certification of Consultant" attached as Exhibit B in which they agree not to perform hardware, software, or product development work for commercial purposes that is related to the Relevant Technology until one year following the final termination of this action (including any appeals).

40. Acquisition Bar. Individuals associated with a Receiving Party (*i.e.*, Counsel of Record and Outside Consultants) who personally review any technical material related to the Producing Party's product designs that is designated CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY or CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE are prohibited from directly or indirectly advising or participating in the acquisition of any patent in the Relevant Technology for a period of at least one year following the final termination of this action (including any appeals).

**H. Use of Designated Material**

41. 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 action and is prohibited from disclosing Designated Material except in accordance with this Order. 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 Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action; and (b) to apply for additional protection of DESIGNATED MATERIAL.

42. 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.

43. Use of Designated Material at Depositions. A Receiving Party can examine (a) a witness about Designated Material of which the witness had prior knowledge and (b) present directors, officers, employees, designated Rule 30(6)(b) witnesses, and Outside Consultants of a Designating Party about any Designated Material of that Designating Party. A non-party or Party may be examined about Materials containing Designated Material that appear on their face or from other documents or testimony to have been received from or delivered to the non-party or 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.

44. Filing Designated Material. Absent written permission from the Designating Party or a Court Order issued after appropriate notice, a Party must file Designated Material under seal in conformance with the Court's rules and procedures. Material filed under seal shall include a cover page including the words "FILED UNDER SEAL."

45. 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: (1) 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.

46. Export Controlled Information. Export Controlled Information is prohibited (a) from being disclosed to anyone who is not a "U.S. Person" (as defined in 22 C.F.R. § 120.15), including Counsel of Record and Outside Consultants, and (b) from being transported or transmitted outside of the United States or to any recipient who is located outside of the United States. Counsel of Record must store all Export Controlled Information in a manner such that access is limited to U.S. Persons. If a Receiving Party anticipates disclosing Export Controlled Information to the Court, including at any hearing or at trial, it will confer on the proper safeguards to avoid an export violation with the Designating Party and, if necessary, the Court.

47. 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.

## I. Procedure for Designating Materials

48. Designating Documents. For Material in documentary form (other than transcripts), the Designating Party must affix the legend "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" on each page that contains Designated Material.

49. 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," "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE."

50. 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," "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE." 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 a deposition at which CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE Material was disclosed will be treated as CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE until the thirty-day period has expired. 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," "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" as instructed by the Designating– Party. Subject to the Court'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.

51. 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 action.

52. 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 by production number, 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 Court. If the parties are unable to agree in good faith concerning a challenge, the Receiving Party may pursue its challenge by Motion in accordance with the applicable Local Rules.

53. Documents Produced for Inspection Prior to Designation. In the event documents are produced for inspection prior to designation, the documents shall be treated as CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY during inspection, except for Source Code, which shall be treated as CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE. At the time of copying for the Receiving Party, Designated Material shall be marked prominently with "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" by the Producing Party, as appropriate.

**J. Inadvertent Production**

54. 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.

55. No Waiver of Privilege. Pursuant to Federal Rules of Evidence 502(d), no privilege or protection is waived in this or any other federal or state proceeding by disclosure connected with this litigation. 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.

**K. Miscellaneous**

56. Enforcement and Jurisdiction. Absent a transfer, this Court will have exclusive jurisdiction to enforce this Order, even following the final disposition of this action. In the event of transfer, however, the transferee Court will have exclusive jurisdiction to enforce this Order, even following the final disposition of this action. Every individual who reviews Designated

Material agrees to be subject to the jurisdiction of this Court for the purpose of any proceedings related to the enforcement of this Order.

57. Injunctive Relief. Every individual who reviews Designated Material acknowledges that a breach of this Order may result in immediate and irreparable injury for which there is no adequate remedy at law. A party may immediately apply to obtain temporary, preliminary, and permanent injunctive relief against a violation or threatened violation of this Order.

58. Final Disposition. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) calendar days after the final disposition of this action, each Receiving Party must destroy or return all 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 pleadings, motion papers and supporting materials, transcripts, legal memoranda, correspondence, briefs and supporting materials, written discovery requests and responses, exhibits offered or introduced into evidence at trial, or attorney work product. Any such archival copies remain subject to this Protective Order.

59. Duration. The confidentiality obligations imposed by this Order will remain in effect even after the final disposition of this action, until and unless otherwise agreed to by the Designating Party or ordered by the Court.

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

6l. Subpoenas in Other Litigation. If a Receiving Party is served with a subpoena or a court order that would compel disclosure of any Designated Material, it must so notify the Producing Party (and, if not the same person or entity, the Designating Party), in writing (by hand delivery, fax, or email) promptly. The notice must include a copy of the subpoena or order. The Receiving Party also must promptly inform in writing the party who caused the subpoena or order to issue that some or all of the requested material is subject to this Order.

**SIGNED this 4th day of May, 2023.**

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

**Exhibit A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I,_____, state:

1. I reside at_____.

2. My present employer is _____.

3. My present occupation or job description is_____.

4. I have read the Stipulated Protective Order ("Order") dated_____, and understand and will abide by its terms. I will not divulge any confidential information or material to persons other than those specifically authorized by the Order. I will not use any Designated Material in any manner not expressly allowed by the Order.

5. I agree to be subject to the authority of the United States District Court for Eastern District of Texas in the event of any dispute related to this agreement.

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

Executed on _____, 20__. _____
Signature

**Exhibit B**

**CERTIFICATION OF OUTSIDE CONSULTANT REGARDING PROTECTIVE ORDER**

I,_____, state:

1. I have read the Stipulated Protective Order ("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 litigation I become an employee or competitor of a Party, I will promptly inform the counsel for the Party who retained me in this litigation. I will not thereafter review any Designated Materials marked as "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or "CONFIDENTIAL – OUTSIDE COUNSEL RESTRICTED – SOURCE CODE" unless and until the Parties agree in writing or the Court orders otherwise.

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

5. I agree not to participate in the preparation, drafting, revisions, or prosecution of any patent, patent application, *inter partes* review, post-grant review proceedings, or a patent in reexamination or reissue, or for drafting or revising a patent claim, related to the Relevant Technology that was filed, or that claims priority from an application that was filed, less than one year following the final termination of this action (including any appeals).

6. I agree not to perform commercial hardware, software or product development work intended for commercial purposes that is related to the Relevant Technology until one year following the final termination of this litigation (including any appeals).

7. I agree not to directly or indirectly provide advice or participate in the acquisition of any patent in the Relevant Technology for a period of at least one year following the final termination of this action (including any appeals).

8. I agree to be subject to the authority of the United States District Court for Eastern District of Texas in the event of any dispute related to this certification.

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

Executed on_____, 20__. _____

Signature