EXHIBIT 3

Wabtec v. Railware, Inc.
IPR2026-00134
EX2001 - 0001

Shinkowsky Investigations
Post Office Box 126538
Harrisburg, PA 17112

506
98-901/1251

11 October 2024

PAY TO THE ORDER OF Westinghouse Air Brake Technologies Corporation $ 40.00

Forty and 00/100 DOLLARS

Security Features Details on Back.

FOR Witness Fee- 97115

⑈125109019⑈ 875105623255⑈0506

MP

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

RAILWARE, INC.,
Plaintiff
v.
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
Defendant

Civil Action No. 2:24-cv-02963 (JMY)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION (d/b/a Wabtec)
4 Warehouse Ln, Elmsford, NY 10523
(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place:	Date and Time:
Robins Kaplan LLP 1325 Avenue of the Americas, Suite 2601 New York, NY 10019	11/08/2024 9:00 am

The deposition will be recorded by this method: Stenographic, audio, audiovisual and/or realtime transcript

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Schedule A (attached)

Place:	Date and Time:
Robins Kaplan LLP 1325 Avenue of the Americas, Suite 2601 New York, NY 10019	10/30/2024 9:00 am

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/10/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Bryan J. Vogel
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff Railware, Inc., who issues or requests this subpoena, are:

Bryan J. Vogel, ROBINS KAPLAN LLP, 1325 Avenue of the Americas, Suite 2601, New York, NY 10019, bvogel@robinskaplan.com, 212-980-7400

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 2:24-cv-02963 (JMY)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ 74.84 .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

SCHEDULE A

DEFINITIONS

1. The terms "and," "or," and "and/or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

2. The term "any" means any and all.

3. The term "all" means all and every.

4. The singular includes the plural and the plural includes the singular. Words in the present, past, or future tense include each of the other tenses. Words in the masculine, feminine, or neutral form include each of the other forms.

5. The term "person" or "persons" means a natural person, corporate or other business, governmental, organizational, or legal entity, unincorporated association, joint venture, sole proprietorship, company, or any other organization, association, or individual. The acts of a person are defined to include the acts of a director, officer, owner, member, employee, agent, or attorney acting on the person's behalf.

6. The term "communication" or "communications" means any recording of any transfer of information, ideas, opinions, or thoughts made by any means, at any time or place, under any circumstances. Communications may be embodied in any means or media, including, but not limited to, writing, electronic or magnetic storage of computer files, voice mail, answering machine, digital recording, sound recording, and facsimile transmission.

7. The terms "concerning," "concern," "reflect," "reflecting," "related," "relating," "relate," "refer," or "referring" and other variations thereof, as used herein shall be construed in their broadest possible sense, and mean without limitation and whether in whole or in part: referring to, constituting, bearing upon, commenting upon, reflecting, evidencing, pertaining to, describing, depicting, consisting of, containing, comprising, embodying, identifying, stating, discussing, analyzing, studying, summarizing, dealing with, relating to, or having any logical or factual connection whatsoever with the subject addressed, regardless whether the factual

connection is favorable to or adverse to you.

8. The terms "document," and "documents" shall have the broadest meanings possible under Rules 33, 34, and 45 of the Federal Rules of Civil Procedure and include the meanings given the terms "writing" and "recordings" in Federal Rule of Evidence 1001. The terms include all documents and things and all means of conveying, storing, or memorializing information, whether in paper, electronic, or other physical form in your possession, custody or control. Any comment or notation appearing on any document and not a part of the original text is considered to be a separate "document," and any draft or other version is considered to be a separate "document." "document" and "documents" shall include, but are not limited to, all written or graphic matter, including computer and data files, of every kind and description, however produced or reproduced, whether draft or final, original or reproduction, now or formerly within your actual or constructive possession, custody, or control, or that of your present and former attorneys. By way of non-limiting example, the terms "document" and "documents" include all records, letters, correspondence, communications, manuals, memoranda, notes, files, transcripts, papers, advertisements, literature, brochures, statements, invoices, notices, reports, orders, receipts, worksheets, books, audits, financial statements, ledgers, journals, telephone records, telexes, telegrams, cable, movies, tapes, work papers, calculations, recordings, and materials similar to any of the foregoing, whether electronic or hard copy, however denominated, and including writings, drawings, and photographs. The terms "document" and "documents" specifically include e-mails, instant messages, text messages and other electronically stored communications. The terms "document" and "documents" also include all copies of each document if the copies contained any additional writing or are not identical copies of the original.

9. The term "identify," when used with reference to a natural person, means provide his/her full name; his/her current and last known business affiliation, title, and employment position, including a description of duties and responsibilities; his/her current business address or, if that is not known, his/her last known business address; and his/her current residential address or, if that is not known, his/her last known residential address.

10. The term "identify," when used with reference to an entity, such as a partnership (either general or limited), joint venture, trust, corporation, company, governmental agency, or association, means provide the full legal name of the entity; each trade name under which the entity has done business; the entity's present address or, if that is not known, its last known address; the entity's present telephone number or, if that is not known, its last known telephone number; and the identities of the officers, directors, managers, trustees, and other principal representatives and managing agents.

11. The term "identify," when used with reference to any document means provide the type of document; the date it was prepared or created; the identities of all authors and preparers; the identities of all addressees and recipients; its general subject matter; its title, heading, and the number of pages; and the identity of the custodian or other person last known to have possession of it, together with its present or last known location.

12. The term "source code" means all software, hardware, and firmware code of any kind including executable code and source code as well as the contents of any directories or documents stored with source code in the ordinary course of business, development files, header files, build files, build environment, macros, run-time libraries, management software, kernels, device drivers, interface, and any and all other types of software, whether stored in ROM or RAM, data files, or configuration files, and all other runtime files that affect the creation or execution of software present on a product when shipped.

13. The term "thing(s)" shall mean any tangible item, including without limitation, models, prototypes, and samples of any device or apparatus or product.

14. The terms "Westinghouse Air Brake Technologies Corporation," "Wabtec," "You," or "Your" means Westinghouse Air Brake Technologies Corporation and any past or present related company, division, subsidiary, parent, affiliate, joint venture, predecessor, successor, or assign, whether U.S. or foreign, whether incorporated or not, including, but not limited to, any Westinghouse Air Brake Technologies Corporation company, any Westinghouse Air Brake Technologies Corporation distributor or international distributor, any company that

shares employees, management, or facilities with Westinghouse Air Brake Technologies Corporation, and all past or present directors, officers, employees, accountants, consultants, experts, investigators, advisors, representatives, agents, and attorneys thereof, and any other person acting on their behalf.

15. The terms "Plaintiff" or "Railware" mean Railware, Inc.

16. The terms "Southeastern Pennsylvania Transportation Authority" or "SEPTA" means Southeastern Pennsylvania Transportation Authority and any past or present related company, division, subsidiary, parent, affiliate, joint venture, predecessor, successor, or assign, whether U.S. or foreign, whether incorporated or not, including any SEPTA distributor or international distributor, any company that shares employees, management, or facilities with SEPTA, and all past or present directors, officers, employees, accountants, consultants, experts, investigators, advisors, representatives, agents, and attorneys thereof, and any other person acting on their behalf.

17. The terms "Product" or "Products" means any dispatching and/or centralized traffic control systems currently or previously offered by You, including but not limited to those products or services like the Advanced Information Management (AIM®) CTC system[1], the RailwayNet Positive Train Control Communication Solution[2], and/or other same or similar system or method, as well as any dispatching and/or centralized traffic control systems that provides redundant signal protections for roadway work groups, including systems utilizing a "Work Zone Block" functionality, an "Enhanced Employee Protection System (EEPS)", and/or other same or similar functionality.

18. The term "Asserted Patent(s)" shall mean U.S. Pat. No. 9,517,782, U.S. Reissue Pat. No. RE47,835, U.S. Reissue Pat. No. RE49,115.

19. The phrase "the '545 patent" shall mean and refer to U.S. Pat. No. 9,403,545.

[1] *See, e.g.*, https://www.wabteccorp.com/digital-intelligence/signaling-and-train-control/dispatch/advanced-information-management-aim-rail-dispatch.
[2] *See, e.g.*, https://www.wabteccorp.com/digital-intelligence/signaling-and-train-control/communications/railwaynet-positive-train-control-communication-solution.

20. The phrase "the '782 Patent" shall mean and refer to U.S. Pat. No. 9,517,782.

21. The phrase "the '835 patent" shall mean and refer to U.S. Reissue Pat. No. RE47,835.

22. The phrase "the '115 patent" shall mean and refer to U.S. Reissue Pat. No. RE49,115.

23. The term "Related Application(s)" means any parent or ancestral application related in any way to a given patent and any continuing application, continuation-in-part application, divisional application, file-wrapper continuation, reexamination proceeding, reissue application, abandoned application or foreign counterpart application for that patent.

24. The term "Related Patent(s)" means any patent that issued from any Related Application.

25. The term "SEPTA Lawsuit" or "SEPTA Litigation" mean the action captioned here, Case No. 2:24-cv-02963 (JMY), including any and all amendments thereto, in the United States District Court for the Eastern District of Pennsylvania by Railware against SEPTA for past and continuing infringement of the Asserted Patents.

INSTRUCTIONS

1. Each Document Request shall be answered fully unless it is in good faith objected to, in which event the reason for your objection shall be stated in detail. If an objection pertains to only a portion of a Document Request, or a word, phrase or clause contained within it, you are required to state your objection to that portion only and to respond to the remainder of the Document Request, using your best effort to do so.

2. If you encounter any ambiguities when construing a request or definition, respond with the matter deemed ambiguous and the construction used in responding.

3. In producing documents, provide all documents known or available to you, whether such documents or things are within your direct possession, custody, or control, or that of any present or former employees, agents, officers, directors, representatives, contractors, consultants,

or attorneys.

4. Electronic documents must be produced in an intelligible format together with a description of the system from which it was derived sufficient to permit rendering of the materials intelligible.

5. If any document requested herein is withheld pursuant to any objection based upon privilege, identify each document for which the privilege is claimed and state:

a. The type of document (letter, report, memoranda, etc.), including any title or identifying number thereon;

b. Its date of origin or preparation;

c. The name of its author or originator;

d. The name of its addressee(s), if any;

e. A brief summary of its substance; and

f. A factual and legal basis upon which a privilege is claimed sufficient to permit the Court to adjudicate the validity of the claim.

6. If you withhold any document or communication on the grounds that production is unduly burdensome or expensive, describe the reasons that the production is unduly burdensome or expensive.

7. If any document requested herein was formerly in your possession, custody, or control and has been lost or destroyed or otherwise disposed of, you are requested to submit, in lieu of any such document, a written statement (a) describing in detail the nature of the document and its contents, (b) identifying the person(s) who prepared or authored the document, and, if applicable, the person(s) to whom the document was sent, (c) specifying the date on which the document was prepared or transmitted, and (d) specifying the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the person(s) performing the destruction.

8. If any document or communication has been redacted or altered in any fashion, identify the reason for the redaction or alteration, the date of the redaction or alteration, and the

person performing the redaction or alteration. Make any redaction clearly visible.

9. These requests are ongoing. You must supplement your responses as required by Federal Rule of Civil Procedure 26(e).

REQUESTS FOR PRODUCTION

REQUEST NO. 1

Documents referring and/or relating to SEPTA's use of any Product, including, but not limited to, all uses related to centralized train control, track blocking, the protection and/or safety of track workers, and/or the operation of any dispatch or control center, from January 1, 2013 to present.

REQUEST NO. 2

Documents referring and/or relating to any centralized traffic control (CTC) system utilized by SEPTA, including, but not limited to, the design, function, performance, composition, characteristics, manufacture, testing, analyses, use, sale, offers to sell, purchase, costs, value, pricing, revenue, advertising, marketing, promotion, and distribution of any such system, from January 1, 2013 to present.

REQUEST NO. 3

Documents referring and/or relating to any studies, research, development, co-development, testing, qualification studies, trials, patents, patent applications, or analysis of any of Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf, from January 1, 2013 to present.

REQUEST NO. 4

Documents sufficient to identify the number of blocks SEPTA has placed on tracks, on a daily, monthly, quarterly, and annual basis, and on a track segment-by-track segment basis, from January 1, 2013 to the present.

REQUEST NO. 5

Documents sufficient to show the operation, performance, composition, and/or function of any Product supplied by You to SEPTA and/or maintained or operated on SEPTA's behalf from January 1, 2013 to present.

REQUEST NO. 6

Source Code for each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf from January 1, 2013 to present.

REQUEST NO. 7

Documents sufficient to show each Source Code version or subversion used with each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf from January 1, 2013 to present.

REQUEST NO. 8

Documents (including, *e.g.*, any specification, requirements, study, analysis, and/or report) that describe any modification(s) and/or changes made, requested, or recommended by SEPTA or on SEPTA's behalf to any Source Code for each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf from January 1, 2013 to present.

REQUEST NO. 9

Technical Documents referring and/or relating to each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf, including, but not limited to, block

diagrams, schematics, technical reference manuals, data books, data sheets, development documents, presentations, training materials, use logs, change logs, and/or any other documents related to the Products' hardware and software design, development, integration, manufacturability, and/or usability from January 1, 2013 to present.

REQUEST NO. 10

Assembly instructions, installation instructions, operator manuals, maintenance manuals, user manuals, data sheets, instructions for use, and/or any other instructions referring or relating to each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf from January 1, 2013 to present.

REQUEST NO. 11

Documents referring and/or relating to the design, development, and/or implementation of each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf, including, but not limited to, product requirements, specification sheets, design documents, block diagrams, flow charts, Source Code, outlines, lab notebooks, summaries, presentations, and/or meeting minutes from January 1, 2013 to present.

REQUEST NO. 12

Documents sufficient to identify the business divisions, business units, departments, teams, corporate marketing groups, and/or other groups of individuals within Your organization involved in and/or responsible for the design, development, implementation, manufacture, maintenance, operation, marketing, sale, and/or commercialization of each Product, including the locations, leadership, and responsibilities of the identified business divisions, business units, departments, teams, and/or groups from January 1, 2013 to present.

REQUEST NO. 13

Documents referring and/or relating to SEPTA's decision to implement or not implement the Products from January 1, 2013 to present.

REQUEST NO. 14

Documents sufficient to identify the entities, third parties, and individuals that were and/or are involved in any manner in, the conception, design, development, manufacturing, testing, use, changing, marketing, sale, or licensing of each Product that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf, and the corporate or contractual relationships among these entities, third parties, departments, and individuals from January 1, 2013 to present.

REQUEST NO. 15

Documents sufficient to identify any person, entity or customer to whom You have acquired, purchased, distributed, produced, offered for sale, sold, sampled, qualified, tested, analyzed, marketed, promoted, or corresponded about regarding any of Your Products, from January 1, 2013 to present.

REQUEST NO. 16

Documents sufficient to identify any person, entity or customer to whom You have acquired, purchased, distributed, produced, offered for sale, sold, sampled, qualified, tested, analyzed, marketed, promoted, or corresponded about regarding any systems utilizing a "Work Zone Block" functionality, an "Enhanced Employee Protection System (EEPS)," and/or other same or similar functionality, from January 1, 2013 to present.

REQUEST NO. 17

Documents referring to, relating to, or constituting communications with SEPTA regarding the Products from January 1, 2013 to present.

REQUEST NO. 18

Documents sufficient to show the actual and projected sales, U.S. sales, outside the U.S. sales, profits, revenue, value, units sold, and unit sales price by month, year, and customer for each Product from January 1, 2013 to present.

REQUEST NO. 19

Documents sufficient to show the revenue, units sold, and unit sales price by month, year, and customer for any systems utilizing a "Work Zone Block" functionality, an "Enhanced Employee Protection System (EEPS)", and/or other same or similar functionality from January 1, 2013 to the present.

REQUEST NO. 20

Documents referring and/or relating to any licenses, agreements, or other transactions that involve or relate to any technology or intellectual property rights associated with the Products, including, but not limited to, actual or proposed agreements, patents, patent applications, licenses, or other transactions with SEPTA from January 1, 2013 to present.

REQUEST NO. 21

Any licenses, agreements, or other transaction document for each Product from January 1, 2013 to the present.

REQUEST NO. 22

Documents referring and/or relating to Railware, Dispatch X, an Enhanced Employee Protection System (EEPS), Metro North's dispatching and/or centralized traffic control system

that provides redundant signal protections for roadway work groups, or any same or similar system or technology from January 1, 2013 to present.

REQUEST NO. 23

Documents referring and/or relating to any of the Asserted Patents and/or any Related Patent and/or Related Application from January 1, 2013 to present.

REQUEST NO. 24

Documents referring and/or relating to Your knowledge of Railware, the Asserted Patents, any Related Patent and/or Related Application, and/or any inventor of the Asserted Patents and/or Related Patent and/or Related Application, including, but not limited to, the circumstances under which You first became aware of the existence of Railware, the Asserted Patents, any Related Patent and/or Related Application, and/or any inventor of the Asserted Patents, Related Patent and/or Related Application from January 1, 2013 to present.

REQUEST NO. 25

Documents referring and/or relating to all comparisons made between and/or amongst the Products and the Asserted Patents and/or any of Railware's products, including, but not limited to, Dispatch X, and/or Enhanced Employee Protection System (EEPS) from January 1, 2013 to present.

REQUEST NO. 26

Documents referring and/or relating to any communications between You and any third party, and/or documents shared between You and any third party, concerning the SEPTA Litigation, any Asserted Patents and/or any Related Patent and/or Related Application, Railware, Dispatch X, Enhanced Employee Protection System (EEPS), and/or Railware's intellectual property rights from January 1, 2013 to present.

REQUEST NO. 27

Documents referring and/or relating to any correspondence and communications with SEPTA or Railware concerning any of Your Products or the SEPTA Litigation from January 1, 2013 to present.

REQUEST NO. 28

Documents (from January 1, 2013 to present) referring and/or relating to Your or Your customers attempts to comply with any law, rule, regulation, or administrative guidance related to roadway worker protection, including at least the following regulation, rule, law, or administrative guidance:

- Federal Railroad Administration ("FRA") Safety Advisory 2014-02;
- 49 C.F.R. 214.319(b);
- Department of Transportation ("DOT") Roadway Worker Protection Final Rule, 81 Fed. Reg. 37839, 37861.

DEPOSITION TOPICS

TOPIC NO. 1

Any Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf.

TOPIC NO. 2

The facts and circumstances related to the design and development of any Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf.

TOPIC NO. 3

The facts and circumstances related to the sale, offer for sale, or licensing, of any Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf.

TOPIC NO. 4

The facts and circumstances related to the use or application of any Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf.

TOPIC NO. 5

Actual or proposed agreements, patents, patent applications, or licenses concerning any Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf.

TOPIC NO. 6

Any person, entity or customer to whom You have acquired, purchased, distributed, produced, offered for sale, sold, sampled, qualified, tested, analyzed, marketed, promoted, or corresponded about regarding any of Your Products.

TOPIC NO. 7

Any person, entity or customer to whom You have acquired, purchased, distributed, produced, offered for sale, sold, sampled, qualified, tested, analyzed, marketed, promoted, or

corresponded about regarding any systems utilizing a "Work Zone Block" functionality, an "Enhanced Employee Protection System (EEPS)," and/or other same or similar functionality.

TOPIC NO. 8

All correspondence and communications with SEPTA or Railware concerning any of Your Products or the SEPTA Litigation.

TOPIC NO. 9

Studies, research, development, co-development, testing, qualification studies, trials, patents, patent applications, or analysis of any of Products that You have supplied to SEPTA and/or maintained or operated on SEPTA's behalf.

TOPIC NO. 10

The relationship between You and SEPTA, including as it relates to and of Your Products.

TOPIC NO. 11

Your knowledge of any centralized traffic control (CTC) system utilized by SEPTA, including, but not limited to, the design, function, performance, composition, characteristics, manufacture, testing, analyses, use, sale, offers to sell, purchase, costs, value, pricing, revenue, advertising, marketing, promotion, and distribution of any such system.

TOPIC NO. 12

Your knowledge of any systems or methods utilized by SEPTA to provide redundant signal protections for roadway work groups, such as the work zone block functionality utilized by SEPTA, including, but not limited to, the design, function, performance, composition, characteristics, manufacture, testing, analyses, use, sale, offers to sell, purchase, costs, value,

pricing, revenue, advertising, marketing, promotion, and distribution of any such systems or methods.

TOPIC NO. 13

Facts and circumstances relating to the actual and projected sales, U.S. sales, outside the U.S. sales, profits, revenue, value, units sold, and unit sales price by month, year, and customer for each Product.

TOPIC NO. 14

Documents produced or identified in response to this Subpoena.

TOPIC NO. 15

Your efforts to produce documents in response to this Subpoena.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAILWARE, INC.,	:	
Plaintiff,	:	Civil Action
-against-	:	Case No.: 2:24-cv-02963 (JMY)
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,	:	**STIPULATED PROTECTIVE ORDER**
Defendant.	:	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Stipulated Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; the parties agree to follow the procedures and standards set by the Court for when a party seeks permission from the Court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Stipulated Protective Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is

generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support staff) and Designated House Counsel.

2.4 Designated House Counsel: Counsel listed below who are allowed access to certain information in this matter as outlined herein.

SEPTA:

- Billy Smith (Deputy General Counsel)

Railware:

- G. Hallett Denton (outside in-house – Corporate Counsel).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE".

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or

Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, as well as formulas, engineering specifications, or schematics, each of which define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a Party to this action but are retained to represent or advise a Party to this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.12 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staff).

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: persons or entities that provide litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees

and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or as "HIGHLY CONFIDENTIAL – SOURCE CODE."

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Stipulated Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and is under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later

of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Stipulated Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Stipulated Protective Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated Protective Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for

protection under this Stipulated Protective Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Stipulated Protective Order requires:

(a) for information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE," as appropriate. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Stipulated Protective Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE") to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the

Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to twenty-one (21) days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the twenty-one (21) days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to twenty-one (21) days afterwards if that period is properly invoked, that the entire transcript shall be treated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY", or "HIGHLY CONFIDENTIAL – SOURCE CODE."

Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other Parties can ensure that only authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –

SOURCE CODE."

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE," as appropriate, in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Stipulated Protective Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Stipulated

Protective Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Stipulated Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within seven (7) days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court intervention, the Challenging Party may file and serve a motion to challenge

confidentiality under applicable local rules (and/or in compliance with Judge Younge's Policies and Procedures, if applicable). Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. In addition, the Designating Party may file a motion to retain a confidentiality designation at any time if there is good cause for doing so, including retaining the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (*e.g.*, to delay, harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Similarly, frivolous over-designation and those made for an improper purpose (*e.g.*, to delay, harass or impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to respond to a motion to challenge confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Stipulated Protective Order. When the litigation has been terminated, a

Receiving Party must comply with the provisions of Section 14 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Designated House Counsel who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) Experts (as defined in this Stipulated Protective Order) of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) and provided such signed "Acknowledgment and Agreement to Be Bound" to the other Parties, and (3) as to whom the procedures set forth in Section 7.4(a), below, have been followed;

(e) the Court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants, mock jurors,

and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) and provided such signed "Acknowledgment and Agreement to Be Bound" to the other Parties, and (3) as to whom the procedures set forth in Section 7.4(a), below, have been followed;

(c) the Court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(e) the author or recipient of a document containing the information or a custodian

or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of Protected Material or Items to Experts.

(a) Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Stipulated Protective Order) any Protected Material first must make a written request to the Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert's current resume, (3) identifies the Expert's current employer(s), (4) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,[1] and (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraph may disclose the subject Protected Material to the identified Expert unless, within five (5) business days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with

[1] If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available, if requested, to meet and confer with the Designating Party regarding any such engagement.

the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven (7) days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in applicable local rules (and/or in compliance with Judge Younge's Policies and Procedures, if applicable) seeking permission from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who receives access to "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—SOURCE CODE" technical information shall not be involved in the prosecution of patents or patent applications relating to tools, systems, and methods for railway traffic control, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly

drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.[2] To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party in a patent proceeding before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination, *inter partes* reexamination, or *inter partes* review), so long as that representation does not involve directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—SOURCE CODE" information is first received by the affected individual and shall end after final termination of this Action.

9. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it comprises or includes confidential, proprietary or trade secret source code.

(b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Sections 7.3 and 7.4.

(c) Any source code produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party's counsel or another mutually agreed upon location. The source code shall be made available for inspection on a

[2] Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

secured computer in a secured room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The Producing Party may visually monitor the activities of the Receiving Party's representatives during any source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

(d) The Receiving Party may request paper copies of limited portions of source code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all such source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the amount of source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set forth in Section 6 whereby the Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute resolution.

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying

expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL SOURCE CODE" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's written permission. The Designating Party shall bear the burden and expense of seeking

protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Stipulated Protective Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Stipulated Protective Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within

fourteen (14) days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulated Protective Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A and provide such signed "Acknowledgment and Agreement to Be Bound" to the other Parties.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the

right of any person to seek its modification by the Court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and regulations relating to the export of technical data contained in such Protected Material, including the release of such technical data to foreign persons or nationals in the United States or elsewhere. The Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving Party shall take measures necessary to ensure compliance.

14.4 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with applicable local rules and/or Judge Younge's Policies and Procedures, if any. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. A sealing order will issue only upon a request establishing that the Protected Material at issue is entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the Protected Material in the public record unless otherwise instructed by the Court.

15. FINAL DISPOSITION

Within sixty (60) days after the final disposition of this action, as defined in Section 4, each Receiving Party must return all Protected Material to the Producing Party or destroy

such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Outside Counsel of Record are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Stipulated Protective Order as set forth in Section 4 (DURATION).

16. The Court retains the right to allow, *sua sponte* or upon motion, disclosure of any subject covered by this Protective Order and/or to modify this Protective Order at any time in the interest of justice.

SO STIPULATED AND AGREED.

Dated: September 23, 2024

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Dated: September 24, 2024
Philadelphia, Pennsylvania

SO ORDERED.

/s/ John Milton Younge
Hon. John Milton Younge
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Pennsylvania on _____ [date] in the case of *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-cv-02963. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose or use in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my Pennsylvania agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAILWARE, INC.,	:	
Plaintiff,	:	Case No.: 2:24-cv-02963 (JMY)
-against-	:	**STIPULATION AND ORDER REGARDING SEARCH AND PRODUCTION OF ELECTRONICALLY STORED INFORMATION AND PAPER DOCUMENTS**
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,	:	
Defendant.	:	

WHEREAS, the Parties having negotiated and agreed to the following terms on an Order Regarding Search and Production of Electronically Stored Information and Paper Documents ("ESI Protocol");

WHEREAS, the implementation of this ESI Protocol will serve the purpose of streamlining Electronically Stored Information ("ESI") production to promote a "just, speedy, and inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1;" and

WHEREAS, the Court having found that good cause exists for the issuance of an order governing ESI Production, it is hereby:

ORDERED that any person subject to this ESI Protocol, including without limitation the Parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order, shall adhere to the below terms.

I. DEFINITIONS

The following definitions apply to this ESI Protocol:

A. "Electronically stored information" (ESI) – means electronic information that is stored in a medium from which it can be retrieved and examined. It includes, but is not limited to, all electronic files that are electronically stored.

B. "Electronic Communications" – means any form of exchanging information through an electronic means including (1) emails and attachments, (2) text messages and attachments, (3) messaging apps (e.g., WeChat, WhatsApp, Facebook Messenger, iMessage) and (4) any other forms of electronic communication.

C. "Electronic file" – means a collection of related data or information electronically stored as a unit under a specified name on storage medium. It includes, but is not limited to, the following: electronic communications and any deleted files. Unless otherwise defined, each example used to illustrate the term "electronic file" will have the meaning assigned to it by the Sedona Conference, as set forth in Sedona Conference, Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 Sedona Conf. J. 263 (2020).

D. "Electronic Storage" – refers to magnetic, optical, or other storage media in which electronic files may be stored, including, but not limited to, hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, mobile devices, smart cards, integrated-circuit cards (e.g., SIM cards).

E. "Parties" – means the plaintiff and the defendant. The term "plaintiff" or "defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, means the party and, when applicable, its agents, representatives, officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose an obligation on any person who is not a party to the litigation.

F. "Protective Order" means the operative Stipulation and Protective Order entered

in this Action.

II. GENERAL PROVISIONS

To the extent not unduly burdensome, the Parties shall produce documents and ESI in this Action in accordance with the agreed-upon specifications set forth below.

A. **Applicability:** This ESI Protocol will govern the preservation, identification, collection, and production of ESI and paper documents.

B. **Limitations & Non-Waiver:** Pursuant to the terms of this ESI Protocol, information regarding search process, and ESI practices may be disclosed, but compliance with this ESI Protocol does not constitute a waiver, by any Party, of any objection to the production of particular ESI for any reason, including that it is undiscoverable, unduly burdensome or not reasonably accessible, or privileged, nor does it constitute a waiver of any right to discovery by any Party. Nothing in this ESI Protocol shall be construed to affect the discoverability of information or the admissibility of discoverable information. All objections to the discoverability, admissibility, authenticity, confidentiality, or production of any documents and ESI are preserved and may be asserted at any time, except as set forth herein. For the avoidance of doubt, a Party's compliance with this ESI Protocol will not be interpreted to require disclosure of information potentially protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. All Parties preserve all such privileges and protections, and all Parties reserve the right to challenge any such privileges and protections.

C. **Cooperation:** The Parties agree that they will adhere to the principles of cooperation, transparency, reasonableness, and proportionality, as set forth in the Federal Rules of Civil Procedure and as interpreted by federal case law as they conduct discovery in this case. To the extent the Parties cannot reach resolution on any matters under this ESI Protocol after meeting and conferring in good faith, any Party may bring that dispute for Court

resolution, pursuant to this Court's Individual Rules and Practices.

D. **Deadlines:** References to schedules and deadlines in this ESI Protocol shall comply with Federal Rule of Civil Procedure 6 with respect to computing deadlines.

E. **Confidential Information:** For the avoidance of doubt, nothing herein shall contradict the Parties' rights and obligations with respect to any information designated under the Protective Order.

III. PRODUCTION OF ESI

A. **Native and Color Productions**. Except as specified in this section, the Parties shall produce all documents and ESI as single-page, black-and-white Group IV Tagged Image File Format ("TIFF") image files, as described in Section III.B below.

1. Color. ESI or hard copy containing color will be provided in color in JPG format upon request from the requesting party, where a color copy may help to read, understand, interpret or use any document that the requesting party, in its discretion, deems to be significant or potentially significant.

2. For documents and ESI whose native format is MS Excel, MS PowerPoint, MS Access or QuickBooks, multi-media files (audio or video), similar files and any other file type that cannot be converted to TIFF, the original native files shall be produced in addition to a single-page TIFF placeholder. The provisions of this Section III.A.2 notwithstanding, the Parties shall not be required to produce in the first instance an original native file of such documents and ESI if a claim of attorney-client privilege, attorney work product protection and/or any other privilege, protection or immunity from disclosure necessitates the application of redactions to such documents and ESI. Upon written request, and for good cause shown, the Parties shall produce in native format, with any applicable redactions applied natively, documents and ESI documents that necessitate the application of redactions to

such documents and ESI.

3. Other Databases. Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor proportional to the needs of the case. Thus, a party may opt to produce relevant and responsive information from databases in an alternate form, such as a report or data table. These reports or data tables will be produced in a static image format. To the extent that relevant and responsive reports or data tables derived from a database were also maintained in static form (e.g., as a PDF attachment or a hard copy in a file), those documents will be produced as static images consistent with the specifications for production of paper.

4. "Native" files refer to electronic files in the same format in which they were originally collected from custodians or other sources. Native file productions shall include extracted text, metadata, and a single page TIFF image indicating that the associated file was produced in native form. Each produced native file shall be named with a unique production number (*e.g.*, [Party Abbreviation]_SMT00000001.XLS) that is assigned to that specific record in the production. Native Files should be provided in a self-identified Natives directory. A "NativeLink" entry for each Native File should be included in the .DAT load file indicating the relative file path to each Native File on the production media. Any metadata fields for redacted documents that would reveal privileged information may be excluded.

5. To the extent any such native files are used in any pretrial motion or proceeding, those files will be referred to by the production number assigned during processing.

B. **TIFF Productions.**

1. Image Production Standard. Except as provided herein, or if there is good cause to the contrary, the Parties shall produce all non-database ESI and hard copy documents in

TIFF format. All TIFF formatted documents will be single page, black and white, Group 4 TIFFs at 300 x 300 dpi resolution and 8 1/2 X 11-inch page size. If a party requests that a document be imaged at a higher resolution or different page size in order to adequately understand the contents of a specific document(s), the producing party shall make reasonable efforts to reproduce the document(s) in the different format. Each page should be branded with a production number and confidentiality designation, if any, on the face of the image. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). All TIFF images shall be produced in a folder named "IMAGES," which shall contain sub-folders named "0001," "0002," etc.

2. Load Files. The Parties' document productions shall include Concordance compatible Load Files, including a Concordance DAT file and an Opticon delimited file, which indicate document breaks of the TIFF images and additional fields as identified in this Section B below. All Load and Cross-reference files shall be produced in a folder named "DATA."

3. File Name. Each document image file shall be named with the unique production number of the first page of the document in question followed by the file extension "TIF."

4. Document Unitization. If a document is more than one page, the unitization of the document and any attachments and/or notes shall be maintained as they existed in the original document.

5. System Files. Common system and program files as defined by the NIST library (which is commonly used by e-discovery vendors to exclude system and program files from document review and production) need not be processed, reviewed, or produced.

6. Parent-Child Relationships. Parent-child relationships (the association

between an attachment and its parent document) should be preserved and appropriately reflected in the metadata. Production numbering of a parent document and any attachments shall be sequential such that a parent document has the lowest value production number when compared to its attachment(s).

7. Metadata Fields and Processing. Except as otherwise set forth in this ESI Protocol, ESI files shall be produced with at least each of the data fields set forth in **Appendix A** that can reasonably be extracted from a document. The Parties are not obligated to manually populate any of the fields in Appendix A if such fields cannot reasonably be extracted from the document using an automated process, with the exception of the following fields: (a) Beg No, (b) End No, (c) Attach Range, (d) Custodian, (e) Dupe Custodian, (f) Confidentiality, (g) NativeLink, and (h) Text Link, which should be populated regardless of whether the fields can be populated pursuant to an automated process.

8. A party shall produce additional metadata, if any, for a reasonable number of specific documents upon the other party's request and with reasonable cause shown.

9. Redactions. If any party makes any redactions on the ground of the attorney client privilege, the attorney work product doctrine, or any other claim of privilege, protection or immunity from disclosure, these redactions will be listed on a Privilege Log. A Party may not redact material based on relevance or immateriality grounds except to the extent that the irrelevant information may be personal sensitive or proprietary (e.g., individual personal identifier information that has nothing to do with the case). In the event a document is redacted, the redaction will be marked by either a box that covers the protected text and/or the term "Redacted." The extracted text described above will not be delivered for that document; rather, in place of extracted text, OCR output will be delivered based on the redacted images, to the

extent reasonably feasible. Redacted documents may be produced in TIFF format.

C. **Searchable Text.** In addition to TIFF images and/or Native files, each production will include text files corresponding to the TIFF image or Native files described above.

1. Hard Copy Documents. Hard copy documents shall be scanned using Optical Character Recognition ("OCR") technology and searchable ASCII text (or Unicode text if the text is in a language requiring characters outside of the ASCII character set) files shall be produced. Each file shall be named with the unique production number of the first page of the corresponding TIFF document followed by the extension "TXT."

2. Extracted Text or OCR Text for TIFF Images and Native Files. To the extent practicable, each individual document based on an electronic file shall be accompanied by one corresponding text file with text that is extracted from the electronic file. The Extracted Text shall be provided in searchable ASCII text format (or Unicode text format if the text is in a language requiring characters outside of the ASCII character set) and shall be named with the unique production number of the first page of the corresponding TIFF document followed by the extension "TXT." When there is no extractable text or when an electronic document has been redacted, OCR text will be provided. For the avoidance of doubt, redacted text need not be provided. The production of relevant ESI in searchable, full text format is limited to those forms of ESI that have text (in other words, any non-text formats [e.g., .wav and .jpeg] would not produce any corresponding text files). All Extracted Text and OCR files shall be produced in a folder named "TEXT." The Concordance load file will contain a link to the extracted text or OCR text file if applicable. The text should not be included in the Concordance DAT load file.

D. **Confidentiality Designations.** If a Party produces Native Files or other ESI

designated under the Protective Order to hardcopy form, it shall mark the hardcopy with the appropriate designation. The failure of a Party to mark such hardcopy documents with the appropriate designation shall not affect such document's designation.

E. **De-Duplication of Productions.** To the extent that exact duplicate documents (based on email threading, hash values) reside within a Party's ESI data set, the Party may produce only a single copy of a responsive document. Exact duplicate shall mean documents containing identical content. For documents removed at processing during global deduplication will be reflected in an "All Custodians" field and provided as part of the document production. Deduplication shall be done at the document family level, such that where any exact duplicate documents have attachments, hash values must be identical for both the document-plus-attachment (including associated metadata) as well as for any attachment (including associated metadata) standing alone. Identical ESI shall be deduplicated horizontally (*i.e.*, globally across custodians).

F. **Thread Deduplication.** Email threads are email communications that contain prior or lesser-included email communications that also may exist separately in the Party's electronic files. A most inclusive email is one that contains all of the prior or lesser-included emails in the thread, including attachments, for that branch of the email thread. The Producing Party need only produce the most inclusive emails within a thread (either last in time emails on a thread, or emails within the thread containing unique attachments) as identified by their review platform's threading software. Any threading must be conducted in a manner that does not withhold any responsive messages or attachments to those messages.

IV. PRODUCTION OF ELECTRONIC COMMUNICATIONS

A. This Section sets forth a specific procedure for the efficient collection and production of Electronic Communications.

B. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall not include Electronic Communications. To obtain Electronic Communications, parties must propound specific Electronic Communications production requests.

C. Electronic Communications production requests shall only be propounded for specific issues rather than for general purposes.

D. **Electronic Communications Production Requests.** Electronic Communications production requests shall identify (1) the producing party, (2) the custodian (i.e., a person's name or other identifying information), (3) proposed search terms and proximity connectors per custodian, and (4) the applicable time frame. The parties shall cooperate in good faith to identify the proper and reasonable number of custodians, proper and reasonable number and substance of search terms, and proper and reasonable timeframe, all in accordance with the proportionality requirements of Fed. R. Civ. P. 26(b)(1).

E. **Responses to Electronic Communications Production Requests.** In response to an Electronic Communications production request, the producing party shall adhere to the following procedure:

1. Confer with the identified custodian to identify any potentially relevant sources of Electronic Communications for that producing party;

2. Communicate the identified Electronic Communications sources to the requesting party, any proposed revisions to the proposed search terms and/or proximity connectors, as well as a list of document "hits" for the identified search terms, on a source-by-source basis;

3. Once the parties reach agreement on search terms and connectors (or any remaining disputes are resolved with the assistance of the court), the producing party shall

commence review of the resulting documents expeditiously and then engage in a rolling production of all non-privileged documents hitting on the agreed to search terms and families thereof. Notwithstanding the foregoing, in the event the producing party's review reveals numerous evident false positives triggered a particular search term or terms, which may materially increase the burden of a privilege review, the parties shall meet and confer about measures and strategies for reducing those false positives prior to privilege review and production.

F. **Hit Counts/Sources.** The parties shall work diligently to promptly provide Electronic Communications sources and hit counts in response to Electronic Communications production requests.

G. **Search Terms.** The parties shall confer on a process to test the efficacy of the search terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction.[1] A conjunctive combination of multiple words or phrases (e.g., "computer" and "system"), or a proximity connector involving multiple words or phrases (e.g., "computer" w/3 "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery.

V. NON-WAIVER PROTECTION

[1] In addition, the parties recognize that, given the nature of SEPTA's operations, the search terms "centralized traffic control," "centralized train control," and "CTC," standing alone, may lead to overbroad and unduly burdensome search results.

A. Production of all documents, ESI, or other information (collectively "Documents") in this case shall be without prejudice to and shall not waive, for purposes of this case or otherwise, attorney-client privilege, work product protection, or other applicable legal privilege or protection that otherwise would apply. This non-waiver provision should be interpreted to provide the broadest privilege protection allowable under Federal Rule of Evidence 502 and any applicable case law.

VI. PROCESSING OF THIRD-PARTY DOCUMENTS

A. A Party that issues a non-party subpoena after the date this ESI Protocol is entered by the Court ("Issuing Party") shall include a copy of this ESI Protocol with the subpoena and request that the non-party produce documents in accordance with the specifications set forth herein. If a Party issued a non-party subpoena prior to the execution of this ESI Protocol, that Party shall promptly forward a copy of this ESI Protocol to the non-party and request that the non-party produce documents in accordance with the specifications set forth herein.

B. The Issuing Party is responsible for producing to all other Parties to the Action any documents obtained pursuant to a subpoena. Nothing in this ESI Protocol is intended to or should be interpreted as narrowing, expanding, or otherwise affecting the rights of the Parties or third parties to object to a subpoena.

VII. MISCELLANEOUS PROVISIONS

A. Nothing in this ESI Protocol is intended to affect the rights of any Party or Third-Party to object to any requests or demand for production. Nothing in this ESI Protocol shall constitute, or operate as, a waiver of any rights of any Party to object to, or to avoid, discovery or disclosure, in whole or in part, under the laws of the United States, the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Eastern District of

Pennsylvania, this Court's Policies and Procedures: General Matters, Civil Cases and Criminal Cases, or any other applicable law, rule, or order.

B. Nothing in this ESI Protocol establishes any agreement as to either the temporal or subject matter scope of discovery in the Action or as to the relevance or admissibility of any document. Nothing in this ESI Protocol shall be interpreted to require disclosure of information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege, protection or immunity. The Parties do not waive any objections as to the production, discoverability, admissibility, or confidentiality of hard-copy documents or ESI.

C. The Parties may use technology assisted review ("TAR"), such as, e.g., continuous active learning ("CAL") and the like, to assist in identifying relevant and/or privileged information where that can assist in expediting review, improving accuracy and reducing cost, so long as the use of such technology is accompanied by reasonable testing and validation protocols to help ensure the reasonableness and accuracy of the review. The Parties agree to meet and confer, as necessary, with respect to such testing and validation.

D. The Parties shall make good faith efforts to comply with and resolve any differences concerning compliance with this ESI Protocol. If a producing party, notwithstanding their good faith efforts, cannot comply with any material aspect of this ESI Protocol or if compliance with such material aspect would be unduly burdensome or unreasonable, such Party shall inform the receiving party in writing as to why compliance with the ESI Protocol is impossible or unreasonable as soon as reasonably practicable. No Party may seek relief from the Court concerning compliance with the ESI Protocol unless it has first conferred with the other Party.

E. Nothing in this ESI Protocol shall affect, in any way, a producing party's right to

seek reimbursement for costs associated with collection, review, and/or production of documents or ESI that the Court has so-ordered. This ESI Protocol also shall not be construed to indicate that the Court has made any finding regarding whether there is any basis for shifting of costs.

F. Nothing herein is intended to, nor shall be construed to, diminish or otherwise affect any Party's discovery obligations.

G. Any application to the Court regarding this ESI Protocol shall be made pursuant to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Eastern District of Pennsylvania, and this Court's Individual Rules and Practices.

H. The Court will not retain jurisdiction after conclusion of the Action for enforcement of this ESI Protocol.

I. This ESI Protocol may be modified in the Court's discretion or by stipulation of the Parties.

SO STIPULATED AND AGREED.

Dated: September 23, 2024

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Attorneys for Plaintiff Railware, Inc.

Dated: September 24, 2024
Philadelphia, Pennsylvania

SO ORDERED.

/s/ John Milton Younge

Hon. John Milton Younge
United States District Judge

Appendix A

(Metadata Fields)

Field Name	Description/ Comments	Fields for ESI and/or Hard Copy
BEG_NO	Bates number associated with the first page of a document.	ESI and Hard Copy
END_NO	Bates number associated with the last page of a document.	ESI and Hard Copy
ATTACH_RANGE	Attachment range for parent and children. The range should start with the BEG_NO of the parent and end with the END_NO of the last child.	ESI and Hard Copy
CUSTODIAN /	Specific description of who provided the document. This should be a person, unless previously discussed.	ESI and Hard Copy
DUPE CUSTODIAN	Production custodian(s) associated with the produced document. This should be a person, unless previously discussed.	ESI
FILE_EXT	File extension of native file (e.g., XLS, DOC).	ESI
FILE_NAME	File name of document.	ESI
FILE_SIZE	Original file size of produced document.	ESI
PAGE_COUNT	Number of pages per electronic document.	ESI
HASH	The Hash value or "de-duplication key" assigned to a document.	ESI
NATIVELINK	Path on production disk to any native-produced documents.	ESI
TEXTLINK	Path to load extracted or OCR text.	ESI and Hard Copy
TITLE	Title of document or email subject.	ESI
REDACTED	Descriptor for documents that have been redacted. Yes or No.	ESI and Hard Copy
CONFIDENTIALITY	Confidential Designation.	ESI and Hard Copy
CREATE DATE	Document creation date. Must be in mm/dd/yyyy format.	ESI
TIME_CREATED	Creation time of the document	ESI

Field Name	Description/ Comments	Fields for ESI and/or Hard Copy
DATE_LAST_MOD	Date document was last modified. Needs to be in mm/dd/yyyy format	ESI
TIME_LAST_MOD	Time document was last modified.	ESI
DATE_SENT	Date sent. Needs to be in mm/dd/yyyy format	ESI (email)
TIME_SENT	Time sent.	ESI (email)
DATE_RECEIVED	Date received. Needs to be in mm/dd/yyyy format	ESI (email)
TIME_RECEIVED	Time received.	ESI (email)
AUTHOR	Author of the document.	ESI
FROM	Author of the email message	ESI (email)
TO	Recipients of the email message	ESI (email)
CC/BCC	Recipient of Carbon Copies of the e-mail message	ESI (email)
STARTDATE	Start date of chat/appointment	ESI
STARTTIME	Start time of chat/appointment	ESI
ENDDATE	End date of chat/appointment	ESI
ENDTIME	End time of chat/appointment	ESI
SIBLING ID	Group ID of text/message	ESI (mobile device data)
MOBILE_ORIGIN	Sent or received information	ESI (mobile device data)
SENDER	Author of message	ESI messaging
RECEIVER	Recipient of message	ESI messaging