

*This is a sample two-tier confidentiality stipulation referenced in Section C(7)(f)(iv) (“Confidentiality Stipulations and Orders”), page 27 of the Guidelines to Help Lawyers Practice in the Court of Chancery. It should be modified to fit the circumstances and used in conformity with the Guidelines. The parties shall advise the Court in a letter when filing a confidentiality stipulation, whether there are any variations to these forms and shall submit a marked/redlined version to the Court showing all changes to the terms.*

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

[Plaintiff Name], )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. [Type No.]  
 )  
 [Defendant Name], )  
 )  
 Defendant. )

**STIPULATION AND [PROPOSED] ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, as follows:

1. Definitions:
  - a. “Competitor” means any person or entity engaged in the same or similar lines of business as the Producing Person.
  - b. “Confidential Discovery Material” means Discovery Material that contains nonpublic, confidential, personal, business, strategic, proprietary, or commercially sensitive information that requires the protections provided in this Stipulation and that has not become part of the public record. The term includes copies, summaries, excerpts, and derivative works.

c. “Covered Action” means any dispute arising out of or relating in any way to this Stipulation, whether in contract, tort, or otherwise.

d. “Discovery Material” means documents, deposition testimony, deposition exhibits, deposition transcripts, written discovery requests, interrogatory responses, responses to requests for admissions, and responses to requests for documents and electronically stored information, and any other information or material produced, given or exchanged as part of discovery in this Litigation. The term includes copies, summaries, excerpts, and derivative works.

e. “Highly Confidential Discovery Material” means Confidential Discovery Material that, if disclosed other than as permitted pursuant to paragraph 8 of this Stipulation, the Producing Person in good faith and reasonably believes is substantially likely to cause injury to the Producing Person.

f. “Litigation” means this action.

g. “Party” means a party to the Litigation.

h. “Privilege” means the attorney-client privilege, attorney work product, or any other privilege or immunity.

i. “Producing Person” means any Party or non-Party providing Discovery Material.

j. “Receiving Person” means any Party or non-Party receiving or holding Discovery Material.

k. “Stipulation” means this Stipulation and Order for the Production and Exchange of Confidential and Highly Confidential Information.

l. “Testimony” means a deposition or other pre-trial testimony not given in court.

m. “Undertaking” means an undertaking in the form attached as Exhibit A.

n. “Witness” means any witness or deponent.

2. This Stipulation governs the handling of Discovery Material by or among any Party or non-Party to this Litigation, except to the extent Discovery Material is filed with the Court.

3. This Stipulation does not govern the filing of Discovery Material with the Court. Only Court of Chancery Rule 5.1 governs the filing of Discovery Material with the Court.

4. Confidential Discovery Material and Highly Confidential Discovery Material can only be used for purposes of this Litigation and cannot be used for any other purpose, including, without limitation, any business or commercial purpose.

5. A Producing Person must designate Discovery Material as Confidential Discovery Material or Highly Confidential Discovery Material in the following manner:

a. For paper documents other than Testimony, by affixing the legend “Confidential” or “Highly Confidential” to each page containing any Confidential Discovery Material or Highly Confidential Discovery Material, respectively.

b. For electronically stored information other than Testimony, by affixing the legend “Confidential” or “Highly Confidential” to each page of the document, except that in the case of electronically stored information that is produced in native format, the “Confidential” or “Highly Confidential” designation can be made by adding it to the file or directory name, affixing the legend “Confidential” or “Highly Confidential” to the media containing the Discovery Material (*e.g.*, CD-ROM, DVD, flash drive), or by including a watermark or other label on each page in the file.

c. For Testimony, by (i) stating on the record at the time of the disclosure or before the conclusion of the Testimony or (ii) written notice, sent to all Parties within five days of receipt of the rough or final transcript (whichever is received first) designating the entire transcript or portions thereof. All Testimony is Highly Confidential

Discovery Material until five days after counsel receives a copy of the rough or final transcript (whichever is received first).

d. For any other Discovery Material, by written notice.

6. Designating Discovery Material as Confidential Discovery Material or Highly Confidential Discovery Material constitutes a representation that the Producing Person has reviewed the Discovery Material and has a good faith basis for the designation.

7. Confidential Discovery Material may be transmitted only to the following persons for use in accordance with this Stipulation:

a. the Parties and any of their directors, officers, general partners, limited partners, managers, members, and employees who are assisting with or making decisions concerning the Litigation, to the extent deemed reasonably necessary by counsel of record for the purpose of assisting in the prosecution or defense of the Litigation;

b. counsel who represent Parties in this Litigation (including in-house counsel), and any of their partners, counsel, associates, paralegals, secretaries, clerical, regular and temporary employees, and service vendors (including outside copying and litigation support services) who are assisting with the Litigation;

c. experts, and any of their, or their firms', partners, counsel, associates, paralegals, secretaries, clerical, regular and

temporary employees, and service vendors (including outside copying and litigation support services) who are assisting with the Litigation;

d. Witnesses, and their counsel, only to the extent necessary to conduct or prepare for depositions or testimony or to prepare and submit declarations or affidavits in this Litigation;

e. any person indicated on the face of a document or accompanying cover letter, email, or other communication to be the author, addressee, or an actual or intended recipient of the document, (or indicated as a blind copy recipient in such document/communication's metadata);

f. any person indicated as the custodian of the document in corresponding metadata or as confirmed by the Producing Person;

g. in the case of meeting minutes, presentations, or other materials presented at a meeting, any attendee of the meeting;

h. the Court, persons employed by the Court, and court reporters transcribing any hearing, trial, or deposition in this Litigation or any appeal;

i. any mediator, arbitrator or other similar party engaged by the Parties in connection with the Litigation and any persons employed by such mediator or arbitrator; and

j. any other person only upon (i) order of the Court entered after notice to the Parties, or (ii) written stipulation of, or statement on the record by, the Producing Person, so long as the Receiving Person signs an Undertaking.

8. Highly Confidential Discovery Material may be transmitted only to the following persons for use in accordance with this Stipulation:\*

a. counsel who represent Parties in this Litigation (including in-house counsel), and any of their partners, counsel, associates, paralegals, secretaries, clerical, regular and temporary employees, and service vendors (including outside copying and litigation support services) who are assisting with the Litigation;

b. experts, and any of their, or their firms', partners, counsel, associates, paralegals, secretaries, clerical, regular and temporary employees, and service vendors (including outside copying and litigation support services) who are assisting with the Litigation;

c. Witnesses, and their counsel, only to the extent necessary to conduct or prepare for depositions or testimony or to prepare and submit declarations or affidavits in this Litigation;

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\* [Note: Parties may agree to add a subsection to Paragraph 8 permitting designated representatives of each Party to review Highly Confidential Discovery Material for the purposes of (for example) verifying and approving pleadings, briefs or other filings; deposition, hearing and trial preparation; engaging in settlement discussions; or otherwise satisfying duties owed to a class or nominal party.]

d. any person indicated on the face of a document or accompanying cover letter, email, or other communication to be the author, addressee, or an actual or intended recipient of the document, (or indicated as a blind copy recipient in such document/communication's metadata);

e. any person indicated as the custodian of the document in corresponding metadata or as confirmed by the Producing Person;

f. in the case of meeting minutes, presentations, or other materials presented at a meeting, any attendee of the meeting;

g. the Court, persons employed by the Court, and court reporters transcribing any hearing, trial, or deposition in this Litigation or any appeal;

h. any mediator, arbitrator or other similar party engaged by the Parties in connection with the Litigation and any persons employed by such mediator or arbitrator; and

i. any other person only upon (i) order of the Court entered after notice to the Parties, or (ii) written stipulation of, or statement on the record by, the Producing Person, so long as the Receiving Person signs an Undertaking.

9. If Testimony is sought concerning Confidential Discovery Material or Highly Confidential Discovery Material, any Party may exclude any

person who cannot receive the Confidential Discovery Material or Highly Confidential Discovery Material under this Stipulation for the duration of the Testimony.

10. Confidential Discovery Material or Highly Confidential Discovery Material may be provided to an expert (i) only to the extent necessary for the expert to prepare a written opinion, to prepare to testify, or to assist counsel in this Litigation; (ii) only so long as the expert is not as of the time of signing an employee of, or advising or discussing employment with, any Party or any known Competitor as far as the expert can reasonably determine; (iii) only so long as the Expert uses the Confidential Discovery Material or Highly Confidential Discovery Material consistent with the terms of this Stipulation; and (iv) only if the Expert agrees to be bound by this Stipulation by signing an Undertaking. For the avoidance of doubt, the restrictions in (ii) apply only to the individual person designated as the expert; however, Confidential Discovery Material and Highly Confidential Discovery Material may not be disclosed to any person working with the expert who is a Competitor or an employee of a Competitor of the Producing Person absent further order of the Court or consent of the Producing Person.

11. Confidential Discovery Material or Highly Confidential Discovery Material may be provided to a Witness only after (i) the person agrees to abide by this Stipulation by making a statement on the record or by signing an Undertaking, or (ii) a court of competent jurisdiction orders the person to abide by the terms of this Stipulation.

12. Counsel for any Party who provides Confidential Discovery Material or Highly Confidential Discovery Material to any person required to execute an Undertaking must obtain the signed Undertaking before providing the Confidential Discovery Material or Highly Confidential Discovery Material and retain the signed Undertaking during the pendency of the Litigation.

13. Any person providing Confidential Discovery Material or Highly Confidential Discovery Material to another person must state that the information is being disclosed under this Stipulation and that the person receiving the Confidential Discovery Material or Highly Confidential Discovery Material must maintain it in a manner reasonably calculated to prevent unauthorized disclosure.

14. Any Party issuing a subpoena to a non-Party must include a copy of this Stipulation and notify the non-Party that the protections of this Stipulation are available to the non-Party when producing information.

15. Any Party objecting to the designation of Discovery Material as Confidential Discovery Material or Highly Confidential Discovery Material may move on reasonable notice for an order vacating the designation. While the motion is pending, the Discovery Material remains Confidential Discovery Material or Highly Confidential Discovery Material, as originally designated. The Producing Person bears the burden of establishing that Discovery Material qualifies as Confidential Discovery Material or Highly Confidential Discovery Material.

16. A Party may move for an order seeking additional safeguards for the use or handling of Discovery Material or to modify the terms of this Stipulation.

17. The Parties must meet and confer in good faith before filing any motion relating to this Stipulation.

18. Entering into this Stipulation, producing or receiving Discovery Material (regardless of its designation), agreeing to produce or receive Discovery Material (regardless of its designation), or otherwise complying with the terms of this Stipulation, does not:

a. Prejudice any right of any Party to (i) seek production of documents or information; (ii) object to the production of documents or information; (iii) petition the Court for additional protections; or (iv) seek a ruling regarding whether any Discovery Material (regardless of its designation) is subject to this Stipulation;

b. Operate as an admission that any Discovery Material constitutes Confidential Discovery Material or Highly Confidential Discovery Material or contains or reflects trade secrets or any other type of confidential information;

c. Prevent any Party from agreeing in writing to alter or waive the provisions or protections of this Stipulation;

d. Limit any Party's ability to object to the relevance, authenticity, use, or admissibility into evidence of any Discovery Material; or

e. Operate as a waiver of any Privilege.

19. This Stipulation has no effect upon, and shall not apply to (i) a Producing Person's use or disclosure of its own Discovery Material for any purpose; or (ii) documents, materials, or information designated as Confidential Discovery Material or Highly Confidential Discovery Material but obtained lawfully through means independent of discovery in this Litigation.

20. An inadvertent failure to designate Discovery Material as Confidential Discovery Material or Highly Confidential Discovery Material does not constitute a waiver and may be corrected promptly. A Producing Person may designate as "Confidential" or "Highly Confidential" any Discovery Material that has already been produced, including Discovery Material that the Producing Person inadvertently failed to designate as Confidential Discovery Material or Highly Confidential Discovery Material by notifying the Receiving Person and promptly marking and providing replacement copies of the previously supplied Discovery Material. After receiving notice, the Receiving Person must treat the newly designated Discovery Material as Confidential Discovery Material or Highly Confidential Discovery Material, as appropriate. The Receiving Person must use best efforts to ensure that (i) any person not authorized to receive the newly designated Confidential Discovery Material or Highly Confidential Discovery Material returns or destroys it; (ii) any of the newly designated Confidential Discovery Material or Highly Confidential Discovery Material is treated as Confidential Discovery Material or Highly Confidential Discovery Material, as appropriate; (iii) any newly designated Confidential Discovery Material or Highly Confidential Discovery Material is not

disclosed except in compliance with this Stipulation; and (iv) any newly designated Confidential Discovery Material or Highly Confidential Discovery Material is used solely for purposes permitted by this Stipulation.

21. If Discovery Material subject to a claim of Privilege is inadvertently produced (“Inadvertently Produced Material”), the inadvertent production does not waive the claim of Privilege.

a. The claim of inadvertent production constitutes a representation that the Producing Person or its counsel has reviewed the Inadvertently Produced Material and believes there is a good faith basis for claiming inadvertent production.

b. Any Party possessing Inadvertently Produced Material must, except as provided in the next subsection, (i) refrain from any further examination or disclosure of the Inadvertently Produced Material; (ii) if requested, promptly make a good faith effort to return the Inadvertently Produced Material or destroy the Inadvertently Produced Material, (iii) not use the Inadvertently Produced Material for any purpose until further order of the Court, and (iv) if asked, certify the foregoing.

c. A Party may move to compel production of the Inadvertently Produced Material. A Party may retain a copy of the material on an attorney’s-eyes-only basis for the purpose of bringing the motion and may submit a copy of the material to the Court for in camera

review. The motion may not assert the fact or circumstances of the inadvertent production as a ground for production.

22. If an additional Party joins the Litigation, the additional Party cannot access Confidential Discovery Material or Highly Confidential Discovery Material until the Party has executed an agreement to be bound by this Stipulation.

23. This Stipulation binds the Parties pending Court approval. Any violation of this Stipulation before Court approval is subject to the same sanctions and penalties as if the Court had approved the Stipulation.

24. This Stipulation continues to be binding throughout the Litigation, including any appeals.

25. If any Confidential Discovery Material or Highly Confidential Discovery Material is used in open court during any proceeding or introduced into evidence as a trial exhibit, the material loses its confidential status and becomes part of the public record, unless the Producing Person applies for and obtains an order from the Court specifically maintaining the confidential status of the material. Before any court proceeding where Confidential Discovery Material or Highly Confidential Discovery Material will be used, the Parties must confer in good faith on procedures to protect the confidentiality of any of the Confidential Discovery Material or Highly Confidential Discovery Material.

26. Within thirty (30) days after receiving notice of the entry of the final disposition of this Litigation, or any other proceeding in which Confidential Discovery Material or Highly Confidential Discovery Material can be used, and

upon the written request of the Producing Person, any person with Confidential Discovery Material or Highly Confidential Discovery Material must make reasonable efforts to (i) return the Confidential Discovery Material and Highly Confidential Discovery Material to counsel for the Producing Person; or (ii) destroy all Confidential Discovery Material and Highly Confidential Discovery Material and certify that fact in writing to the Producing Person. However, counsel for the Parties may retain court papers, deposition and trial transcripts, and litigation files (including attorney work product and discovery material containing Confidential Discovery Material or Highly Confidential Discovery Material) as long as counsel maintain its confidentiality. Good faith reasonable efforts to return or destroy material need not include destroying Confidential Discovery Material or Highly Confidential Discovery Material residing on back-up tapes or other disaster recovery systems, so long as the person who has received such Confidential Discovery Material or Highly Confidential Discovery Material maintains the confidentiality of such material.

27. If any Receiving Person receives a subpoena or other compulsory process seeking the production or other disclosure of Confidential Discovery Material or Highly Confidential Discovery Material produced or designated by a Producing Person (collectively, a “Demand”), the Receiving Person must:

- a. Give written notice to the Producing Person within three (3) business days and at least twenty-four (24) hours before the deadline for a response to the Demand, identifying the Confidential Discovery

Material or Highly Confidential Discovery Material sought and enclosing a copy of the Demand; and

- b. Give written notice to the party making the Demand that this Stipulation exists.

The Producing Person bears the burden of opposing the Demand. The Receiving Person is not obligated to challenge or appeal any order requiring production of Confidential Discovery Material or Highly Confidential Discovery Material, to subject itself to any penalties for noncompliance with any legal process or order, or to seek any relief from this Court or any other court. Compliance by the Receiving Person with any order directing production of Confidential Discovery Material or Highly Confidential Discovery Material does not violate this Stipulation.

28. A Receiving Person must not reveal any Confidential Discovery Material or Highly Confidential Discovery Material to anyone not entitled to receive it. If a Receiving Person provides Confidential Discovery Material or Highly Confidential Discovery Material to any person other than as permitted by this Stipulation, or if a Receiving Person learns about a potential loss of confidentiality, then the Receiving Person must immediately notify the Producing Person in writing of all pertinent facts, including, if known, the name, address, and employer of each person to whom the disclosure was made. The Receiving Person responsible for the disclosure or loss of confidentiality must make reasonable efforts to prevent further disclosure of Confidential Discovery Material or Highly Confidential Discovery Material.

29. This Stipulation and any Covered Action is governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles.

30. Each of the Parties agrees irrevocably (i) to the personal jurisdiction of any state or federal court sitting in the State of Delaware for any Covered Action; (ii) to bring any Covered Action exclusively in this Court (provided that, if this Court lacks subject matter jurisdiction, then in any other state or federal court in the State of Delaware); (iii) not to attempt to deny or defeat the exercise of jurisdiction by a court in the State of Delaware; (iv) not to bring a Covered Action in any other court; (v) to waive any right to jury trial for any Covered Action; and (vi) to waive any defense of inconvenient forum for a Covered Action.

31. The Parties waive any bond, surety, or other security that might be required for any Covered Action or appeal.

32. Process in any Covered Action may be served by certified mail, return receipt requested, addressed to the Party or the Party's registered agent in its state of incorporation or organization, or in any other manner provided by law.

***[SIGNATURE PAGE FOLLOWS]***

\_\_\_\_\_  
[COUNSEL]

*Attorneys for Plaintiff*

\_\_\_\_\_  
[COUNSEL]

*Attorneys for Defendant*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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[Vice] Chancellor

**EXHIBIT A**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

[Plaintiff Name], )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. [Type No.]  
 )  
 [Defendant Name], )  
 )  
 Defendant. )

**AGREEMENT TO BE BOUND BY STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION**

I have read the Stipulation and Order for the Production and Exchange of Confidential and Highly Confidential Information (the “Stipulation”) in the above-captioned action. I understand its terms and agree to be fully bound by them, and I hereby submit to the jurisdiction of the Court of Chancery of the State of Delaware for purposes of enforcement of the Stipulation. I further agree not to disclose or use any Confidential Discovery Material or Highly Confidential Discovery Material (both as defined in the Stipulation) for purposes other than those permitted under the Stipulation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Affiliation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title