

1 SONA DE (SBN#193896)

2 sde@sidley.com

3 CHING-LEE FUKUDA (*admitted pro hac vice*)

4 clfukuda@sidley.com

5 BRADFORD J. BADKE (*admitted pro hac vice*)

6 jbadke@sidley.com

7 GRACE CHIANG (*admitted pro hac vice*)

8 gchiang@sidley.com

9 **SIDLEY AUSTIN LLP**

10 787 Seventh Avenue

11 New York, NY 10019

12 Telephone: (212) 839-5300

13 Facsimile: (212) 839-5599

14 THOMAS A. BROUGHAN (*admitted pro hac vice*)

15 tbroughan@sidley.com

16 **SIDLEY AUSTIN LLP**

17 1501 K Street, N.W.

18 Washington, D.C. 20005

19 Telephone: (202) 736-8000

20 Facsimile: (202) 736-8711

21 ERIK J. CARLSON (SBN #265167)

22 ecarlson@sidley.com

23 **SIDLEY AUSTIN LLP**

24 555 West Fifth Street

25 Los Angeles, CA 90013

26 Telephone: (213) 896-6000

27 Facsimile: (213) 896-6600

28 Attorneys for Plaintiff, Dexcom, Inc.

29 M. JOHN CARLSON (SBN #41285)

30 jcarson@lrrc.com

31 DREW WILSON (SBN #283616)

32 dwilson@lrrc.com

33 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

34 655 North Central Avenue, Suite 2300

35 Glendale, CA 91203-1445

36 Telephone: 626.795.9900

37 Facsimile: 626.795.577.8800

1 SCOTT D. EADS, (*admitted pro hac vice*)
2 seads@schwabe.com
3 NICHOLAS F. ALDRICH, JR.,(*admitted pro hac vice*)
4 naldrich@schwabe.com
5 JASON A. WRUBLESKI, (*admitted pro hac vice*)
6 jwrubleski@schwabe.com
7 **SCHWABE, WILLIAMSON & WYATT, P.C.**
8 1211 SW 5th Ave., Suite 1900
9 Portland, OR 97204
10 Telephone: 503.222.9981
11 Facsimile: 503.796.2900

12 Attorneys for Defendant, AgaMatrix, Inc.

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 DEXCOM, INC.,

17 Plaintiff,

18 v.

19 AGAMATRIX, INC.,

20 Defendant.

Case No.: 2:16-cv-5947 SJO (ASx)

**AMENDED STIPULATED
PROTECTIVE ORDER**

Judge: Hon. S. James Otero
Magistrate: Hon. Alka Sagar

21 1. A. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential,
23 proprietary, or private information for which special protection from public disclosure
24 and from use for any purpose other than prosecuting this litigation may be warranted.
25 Accordingly, the parties hereby stipulate to and petition the Court to enter the
26 following Stipulated Protective Order. The parties acknowledge that this Order does
27 not confer blanket protections on all disclosures or responses to discovery and that the
28 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

1 legal principles. The parties further acknowledge, as set forth in Section 12.5, below,
2 that this Stipulated Protective Order does not entitle them to file confidential
3 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
4 followed and the standards that will be applied when a party seeks permission from
5 the court to file material under seal.

6 B. GOOD CAUSE STATEMENT

7 This action is likely to involve trade secrets, customer and pricing lists and
8 other valuable research, development, commercial, financial, technical and/or
9 proprietary information for which special protection from public disclosure and from
10 use for any purpose other than prosecution of this action is warranted. Such
11 confidential and proprietary materials and information consist of, among other things,
12 confidential business or financial information, information regarding confidential
13 business practices, or other confidential research, development, or commercial
14 information (including information implicating privacy rights of third parties and
15 source code), information otherwise generally unavailable to the public, or which may
16 be privileged or otherwise protected from disclosure under state or federal statutes,
17 court rules, case decisions, or common law. Accordingly, to expedite the flow of
18 information, to facilitate the prompt resolution of disputes over confidentiality of
19 discovery materials, to adequately protect information the parties are entitled to keep
20 confidential, to ensure that the parties are permitted reasonable necessary uses of such
21 material in preparation for and in the conduct of trial, to address their handling at the
22 end of the litigation, and serve the ends of justice, a protective order for such
23 information is justified in this matter. It is the intent of the parties that information
24 will not be designated as confidential for tactical reasons and that nothing be so
25 designated without a good faith belief that it has been maintained in a confidential,
26 non-public manner, and there is good cause why it should not be part of the public
27 record of this case.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. DEFINITIONS

2.1. Action: The above-captioned federal law suit.

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

2.3. "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), and as specified above in the Good Cause Statement.

2.4. "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" Information or Items: documents detailing financial information, customer names and/or vendor names.

2.5. "HIGHLY CONFIDENTIAL— HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" Information or Items: documents detailing non-public technical aspects of a party's products, processes or methods including documents related to product designs, specifications, manufacturing methods or processes, product testing, and documents related to future business plans, including information pertaining to products in development that have not yet been released.

2.6. "HIGHLY CONFIDENTIAL—SOURCE CODE" Information or Items: extremely sensitive confidential information or items representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that 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, provided that any document or thing receiving this designation must contain at least some source code (*i.e.* computer instructions) that can be compiled, interpreted, or executed by a computer. Any document that only partially contains source code (*i.e.* computer instructions) that can be compiled, interpreted, or executed by a

1 computer must be produced with said source code redacted to the receiving party with
2 a designation appropriate for the remainder of the document, and the complete
3 unredacted version of said document shall be made available to the receiving party
4 and treated pursuant to the provisions herein pertaining to source code.

5 2.7. Counsel: Outside Counsel of Record and House Counsel (as well as their
6 support staff).

7 2.8. Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 "CONFIDENTIAL."

10 2.9. Disclosure or Discovery Material: all items or information, regardless of
11 the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.10. Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
16 expert witness or as a consultant in this Action.

17 2.11. House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.12. Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.13. Outside Counsel of Record: attorneys who are not employees of a party
23 to this Action but are retained to represent or advise a party to this Action and have
24 appeared in this Action on behalf of that party or are affiliated with a law firm which
25 has appeared on behalf of that party, and includes support staff.

26 2.14. Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28

1 support staffs).

2 2.15. Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 2.16. Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium)
7 and their employees and subcontractors.

8 2.17. Protected Material: any Disclosure or Discovery Material that is
9 designated as "CONFIDENTIAL, " "HIGHLY CONFIDENTIAL—ATTORNEYS'
10 EYES ONLY," "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES
11 ONLY" or "HIGHLY CONFIDENTIAL—SOURCE CODE."

12 2.18. Receiving Party: a Party that receives Disclosure or Discovery Material
13 from a Producing Party.

14
15 3. SCOPE

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or extracted
18 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
19 Protected Material; and (3) any testimony, conversations, or presentations by Parties
20 or their Counsel that might reveal Protected Material.

21 Any use of Protected Material at trial shall be governed by the orders of the trial
22 judge. This Order does not govern the use of Protected Material at trial.

23
24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
2 or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
4 including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.
6

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1. Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items, or oral or written
13 communications that qualify so that other portions of the material, documents, items,
14 or communications for which protection is not warranted are not swept unjustifiably
15 within the ambit of this Order.

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

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 5.2. Manner and Timing of Designations. Except as otherwise provided in
25 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that
26 qualifies for protection under this Order must be clearly so designated before the
27 material is disclosed or produced.
28

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix at a minimum, one of the legends
5 "CONFIDENTIAL, " "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY,"
6 "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES ONLY" OR
7 "HIGHLY CONFIDENTIAL—SOURCE CODE" (collectively "Legend"), as
8 appropriate, to each page that contains protected material. If only a portion or portions
9 of the material on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

12 A Party or Non-Party that makes original documents available for inspection
13 need not designate them for protection until after the inspecting Party has indicated
14 which documents it would like copied and produced. During the inspection and before
15 the designation, all of the material made available for inspection shall be deemed
16 "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES ONLY." After the
17 inspecting Party has identified the documents it wants copied and produced, the
18 Producing Party must determine which documents, or portions thereof, qualify for
19 protection under this Order. Then, before producing the specified documents, the
20 Producing Party must affix a "Legend" to each page that contains Protected Material.
21 If only a portion or portions of the material on a page qualifies for protection, the
22 Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) for testimony given in depositions, within twenty-one (21) days after
25 receipt of the final transcript of the deposition of any party or witness in this case, a
26 party or the witness may designate as "CONFIDENTIAL," "HIGHLY
27 CONFIDENTIAL—ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL—
28

1 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—
2 SOURCE CODE" any portions of the transcript that the party or witness contends
3 discloses confidential information. Any question or testimony which describes or
4 discusses a document which has been designated "CONFIDENTIAL," "HIGHLY
5 CONFIDENTIAL—ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL—
6 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—
7 SOURCE CODE" shall also be deemed designated "CONFIDENTIAL," "HIGHLY
8 CONFIDENTIAL—ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL—
9 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—
10 SOURCE CODE" as appropriate. If a transcript, or any portion(s) thereof, containing
11 any such material is filed with the Court, it shall be filed under seal and marked in the
12 manner described in subparagraph 5.2. Unless otherwise agreed, all deposition
13 transcripts shall be treated as "HIGHLY CONFIDENTIAL—OUTSIDE
14 ATTORNEYS' EYES ONLY" until the expiration of the twenty-one-day period.

15 (c) for information produced in some form other than documentary and for
16 any other tangible items, that the Producing Party affix a Legend in a prominent place
17 on the exterior of the container or containers in which the information is stored. If
18 only a portion or portions of the information warrants protection, the Producing Party,
19 to the extent practicable, shall identify the protected portion(s).

20 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
21 failure to designate qualified information or items does not, standing alone, waive the
22 Designating Party's right to secure protection under this Order for such material. Upon
23 timely correction of a designation, the Receiving Party must make reasonable efforts
24 to assure that the material is treated in accordance with the provisions of this Order.
25

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
28

1 designation of confidentiality at any time that is consistent with the Court's
2 Scheduling Order.

3 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process under Local Rule 37.1 et seq.

5 6.3. The burden of persuasion in any such challenge proceeding shall be on
6 the Designating Party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
9 withdrawn the confidentiality designation, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the Producing
11 Party's designation until the Court rules on the challenge.
12

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1. Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this
16 Action only for prosecuting, defending, or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and under the
18 conditions described in this Order. When the Action has been terminated, a Receiving
19 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

23 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
26 only to:

- 27 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
28

1 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this Action;

3 (b) five (5) officers, directors, and employees (including House Counsel) of
4 the Receiving Party to whom disclosure is reasonably necessary for this Action and
5 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this Action and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

16 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
17 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
18 requests that the witness sign an acknowledgement of the protective order; and (2)
19 they will not be permitted to keep any confidential information unless they sign the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed
21 by the Designating Party or ordered by the court. Pages of transcribed deposition
22 testimony or exhibits to depositions that reveal Protected Material may be separately
23 bound by the court reporter and may not be disclosed to anyone except as permitted
24 under this Stipulated Protective Order; and

25 (i) any mediator or settlement officer, and their supporting personnel,
26 mutually agreed upon by any of the parties engaged in settlement discussions.

27 7.3. Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
28

1 ONLY" information or items. Unless otherwise ordered by the court or permitted in
2 writing by the Designating Party, a Receiving Party may disclose any information or
3 item designated "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES" only to
4 persons listed in subparagraphs 7.2(a), in-house counsel included in 7.2(b), and 7.2(c)-
5 (h), unless additional persons are stipulated by counsel or authorized by the Court.

6 7.4. Disclosure of "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS'
7 EYES ONLY" and "HIGHLY CONFIDENTIAL—SOURCE CODE" information or
8 items. Unless otherwise ordered by the court or permitted in writing by the
9 Designating Party, a Receiving Party may disclose any information or item designated
10 "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES" only to persons
11 listed in subparagraphs 7.2(a) and 7.2(c)-(h), unless additional persons are stipulated
12 by counsel or authorized by the Court.

13 7.5. No later than ten (10) days prior to disclosure of any Protected Material
14 to persons listed in subparagraphs 7.2(b) and 7.2(c), the party intending to disclose
15 such information shall provide to the designating party the identities and roles of the
16 persons to whom such disclosure will be made, along with a copy of their current
17 *Curriculum Vitae*, so that the designating party may object to the disclosure and/or
18 seek relief from the Court, as appropriate.

19 7.6. Absent written consent from the Producing Party, any individual who
20 receives access to "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES
21 ONLY" or "HIGHLY CONFIDENTIAL—SOURCE CODE" information shall not be
22 involved in the prosecution of patents or patent applications pertaining to the fields of
23 invention of the patents-in-suit, including without limitation the patents asserted in
24 this action and any patent or application claiming priority to or otherwise related to the
25 patents asserted in this action, before any foreign or domestic agency, including the
26 United States Patent and Trademark Office ("the Patent Office"). To avoid ambiguity,
27 the field of the invention is glucose monitoring, and further specifically includes
28

1 devices with single-use test strips for monitoring glucose levels. To ensure compliance
2 with the purpose of this provision, each Party shall put into place a screen sufficient to
3 ensure that persons involved in prosecution, as described above, shall not have direct
4 or indirect access to any documents or information designated under this Protective
5 Order as "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or
6 "HIGHLY CONFIDENTIAL—SOURCE CODE." For purposes of this
7 subparagraph, "prosecution" includes directly or indirectly drafting, amending,
8 advising, or otherwise affecting the scope or maintenance of patent claims. To avoid
9 any doubt, "prosecution" as used in this subparagraph does not include representing a
10 party in a proceeding involving a challenge to a patent before a domestic or foreign
11 agency (including, but not limited to, a reissue protest, *ex parte* reexamination, *inter*
12 *partes* reexamination, post grant review, or *inter partes* review). This "Prosecution
13 Bar" set forth in this section shall begin when access to "HIGHLY CONFIDENTIAL
14 – OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—
15 SOURCE CODE" information of a technical nature is first received by the affected
16 individual and shall end two (2) years after final termination of this action. This
17 section shall not serve as a Prosecution Bar with respect to an individual who
18 inadvertently is sent or receives materials marked "HIGHLY CONFIDENTIAL –
19 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL—
20 SOURCE CODE" where that individual has not been exposed to the contents of the
21 inadvertently sent documents.

22 7.7. To the extent production of source code becomes necessary in this case, a
23 producing party may designate source code as "HIGHLY CONFIDENTIAL—
24 SOURCE CODE" if it comprises or includes confidential, proprietary or trade secret
25 source code as set forth in subparagraph 2.6. This subparagraph governs issues and
26 procedures unique to such information.

27 (a) Material designated as "HIGHLY CONFIDENTIAL—SOURCE
28

1 CODE" shall be subject to all of the protections afforded to "HIGHLY
2 CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES ONLY" information, including
3 the Prosecution Bar set forth in subparagraph 7.6, and may be disclosed only to the
4 individuals to whom "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES
5 ONLY" information may be disclosed, as set forth in subparagraph 7.4.

6 (b) Any source code produced in discovery shall be made available for
7 inspection, in a format allowing it to be reasonably reviewed and searched, during
8 normal business hours or at other mutually agreeable times, at an office of the
9 producing party's counsel or another mutually agreed-upon location. The source code
10 shall be made available for inspection on a secured computer in a secured room
11 without Internet access or network access to other computers, and the receiving party
12 shall not copy, remove, or otherwise transfer any portion of the source code onto any
13 recordable media or recordable device. The receiving party may bring computers and
14 mobile phones into the secure room in order to take notes that would be permitted if
15 taken using pen and paper, and make calls, provided that the receiving party does not
16 use any computer or mobile phone for a prohibited purpose including those identified
17 in the preceding sentence. Any computer or mobile phone brought into the secure
18 room must have its camera deactivated or physically obscured (*e.g.* by black electrical
19 tape provided by the receiving party). The producing party may visually monitor the
20 activities of the receiving party's representatives during any source code review, but
21 only to ensure that there is no unauthorized recording, copying, or transmission of the
22 source code.

23 (c) The receiving party may request paper copies of limited portions
24 of source code that are reasonably necessary for the preparation of court filings,
25 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
26 request paper copies for the purposes of reviewing the source code other than
27 electronically as set forth in paragraph (b) in the first instance. The producing party
28

1 shall provide all such source code in paper form including Bates numbers and the
2 legend "HIGHLY CONFIDENTIAL—SOURCE CODE." The producing party may
3 challenge the amount of source code requested in hard copy form pursuant to the
4 dispute resolution procedure set forth in section 6, whereby the producing party is the
5 "challenging party" and the receiving party is the "designating party" for purposes of
6 dispute resolution.

7 (d) The receiving party shall maintain a record of any individual who
8 has inspected any portion of the source code in electronic or paper form. The
9 receiving party shall maintain all paper copies of any printed portions of the source
10 code in a secured, locked area. The receiving party shall not create any electronic or
11 other images of the paper copies and shall not convert any of the information
12 contained in the paper copies into any electronic format. The receiving party shall
13 only make additional paper copies if such additional copies are (1) necessary to
14 prepare court filings, pleadings, or other papers (including a testifying expert's expert
15 report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of
16 its case. Any paper copies used during a deposition shall be retrieved by the
17 producing party at the end of each day and must not be given to or left with a court
18 reporter or any other unauthorized individual.

19 7.8. Whenever Protected Material is to be discussed by a party or disclosed in
20 a deposition, hearing, or pre-trial proceeding, the designating party may exclude from
21 the room any person, other than persons designated in subparagraph 7.2, as
22 appropriate, for that portion of the deposition, hearing or pre-trial proceeding.
23

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation
27 that compels disclosure of any information or items designated in this Action as
28

1 "CONFIDENTIAL," that Party must:

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

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

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

10 If the Designating Party timely seeks a protective order, the Party served with
11 the subpoena or court order shall not produce any information designated in this
12 action as "CONFIDENTIAL" before a determination by the court from which the
13 subpoena or order issued, unless the Party has obtained the Designating Party's
14 permission. The Designating Party shall bear the burden and expense of seeking
15 protection in that court of its confidential material and nothing in these provisions
16 should be construed as authorizing or encouraging a Receiving Party in this Action to
17 disobey a lawful directive from another court.

18
19 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
20 IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a Non-
22 Party in this Action and designated as "CONFIDENTIAL." Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party's confidential information in its possession, and the Party is
28

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

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

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

9 (3) make the information requested available for inspection by the
10 Non-Party, if requested.

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

19
20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
24 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
25 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
26 persons to whom unauthorized disclosures were made of all the terms of this Order,
27 and (d) request such person or persons to execute the "Acknowledgment and
28

1 Agreement to Be Bound" that is attached hereto as Exhibit A.
2

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other protection,
7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
9 may be established in an e-discovery order that provides for production without prior
10 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
11 parties reach an agreement on the effect of disclosure of a communication or
12 information covered by the attorney-client privilege or work product protection, the
13 parties may incorporate their agreement in the stipulated protective order submitted to
14 the court. If the claim is disputed, a single copy of the materials may be retained by
15 the requesting party for the exclusive purpose of seeking a judicial determination of
16 the matter pursuant to Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502.

17 The receiving party or its counsel shall not disclose such documents, materials,
18 or information if, but for the absence of the confidentiality designation, that party or
19 counsel reasonably should know or believe that the producing party intended to
20 maintain the documents, materials, or information in question as confidential.
21 Promptly after receiving notice from the producing party of a claim of confidentiality,
22 and upon request, the receiving party or its counsel shall inform the producing party of
23 all pertinent facts relating to the prior disclosure, if any, of the mis-designated
24 documents or materials, and shall make reasonable efforts to retrieve such documents
25 and materials and to prevent further disclosure.
26
27
28

1 12. MISCELLANEOUS

2 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2. Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3. Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the
12 specific Protected Material at issue. If a Party's request to file Protected Material
13 under seal is denied by the court, then the Receiving Party may file the information in
14 the public record unless otherwise instructed by the court.

15 12.4. E-mail is acceptable for any notification purposes herein, provided that
16 the email notification is sent with a request that the receiving party acknowledge
17 receipt of said notice. E-mail notification to Dexcom shall be sent to
18 FWDexcomAgamatrixTeam@sidley.com. E-mail notification to AgaMatrix shall be
19 sent to SEads@Schwabe.com and JAlberico@agamatrix.com.

20
21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within 30
23 days of a written request by the Designating Party, each Receiving Party must return
24 all Protected Material to the Producing Party or destroy such material. As used in this
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected
27 Material. Returned materials shall be delivered in sealed envelopes marked
28

1 "Confidential" to respective counsel. The party requesting the return of materials
2 shall pay the reasonable costs of responding to its request. Notwithstanding the
3 foregoing, counsel for a party may retain an archival copy of confidential documents.
4 Whether the Protected Material is returned or destroyed, the Receiving Party must
5 submit a written certification to the Producing Party (and, if not the same person or
6 entity, to the Designating Party) by the 30 day deadline that (1) identifies (by
7 category, where appropriate) all the Protected Material that was returned or destroyed
8 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
9 compilations, summaries or any other format reproducing or capturing any of the
10 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
11 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
12 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
13 attorney work product, and consultant and expert work product, even if such materials
14 contain Protected Material. Any such archival copies that contain or constitute
15 Protected Material remain subject to this Protective Order as set forth in Section 4
16 (DURATION).

17
18 14. Any violation of this Order may be punished by any and all appropriate
19 measures including, without limitation, contempt proceedings and/or monetary
20 sanctions.
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

4 DEXCOM, INC.,

5 Plaintiff,

6 v.

7 AGAMATRIX, INC.,

8 Defendant.

Case No.: 2:16-cv-5947 SJO (ASx)

**STIPULATED PROTECTIVE
ORDER**

Judge: Hon. S. James Otero
Magistrate: Hon. Alka Sagar

9
10 **EXHIBIT A**
11 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

12
13 I, _____ [print or type full name], of
14 _____ [print or type full address], declare under penalty of perjury that
15 I have read in its entirety and understand the Stipulated Protective Order that was
16 issued by the United States District Court for the Central District of California on
17 [date] in the case of *Dexcom, Inc. v. AgaMatrix, Inc.*, Case No. 16-cv-5947-SJO (ASx).
18 I agree to comply with and to be bound by all the terms of this Stipulated Protective
19 Order and I understand and acknowledge that failure to so comply could expose me to
20 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
21 disclose in any manner any information or item that is subject to this Stipulated
22 Protective Order to any person or entity except in strict compliance with the
23 provisions of this Order.

24 I acknowledge that any improper or unauthorized disclosure or use of any
25 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY,"
26 "HIGHLY CONFIDENTIAL—OUTSIDE ATTORNEYS' EYES ONLY" or
27 "HIGHLY CONFIDENTIAL—SOURCE CODE" information in any manner
28

1 contrary to the provisions of the Protective Order will cause the disclosing party
2 irreparable harm for which monetary damages are an inadequate remedy, and therefor
3 in the event of any such disclosure or use the disclosing party shall be entitled to
4 equitable relief against me, including specific performance and injunctive relief,
5 without the requirement of posting bond or other security.

6 I further agree to submit to the jurisdiction of the United States District Court
7 for the Central District of California for the purpose of enforcing the terms of this
8 Stipulated Protective Order, even if such enforcement proceedings occur after
9 termination of this action. I hereby appoint _____ [print or
10 type full name] of _____ [print or type full
11 address and telephone number] as my California agent for service of process in
12 connection with this action or any proceedings related to enforcement of this
13 Stipulated Protective Order.

14 I disclose the following companies for whom I have worked, whether as an
15 employee, independent contractor or consultant, in the field of glucose sensing
16 systems or devices, including sensors for CGM devices and methods of manufacturing
17 and/or using same: _____
18 _____.

19 //

20 //

21 I hereby agree that, to the extent I am retained or employed by any company to
22 perform services related to glucose sensing systems or devices during the pendency of
23 the above-captioned litigation, that I will immediately disclose that information to the
24 Parties.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

City and State where sworn and signed: _____

Printed name: _____