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6 THE AMERICAS, INC. and INCINERATOR
SPECIALISTS, INC.

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 JONATHAN SALAS,

11 Plaintiff,

12 v.

13 FACULTATIEVE TECHNOLOGIES
14 THE AMERICAS, INC., *et al.*,

15 Defendants.

No. 1:17-CV-00335-LJO-BAM

**STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING PATENTS, HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

16
17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
19 confidential, proprietary, or private information for which special protection from public
20 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
21 Accordingly, the parties hereby stipulate to and petition the court to enter the following
22 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
23 protections on all disclosures or responses to discovery and that the protection it affords from
24 public disclosure and use extends only to the limited information or items that are entitled to
25 confidential treatment under the applicable legal principles. The parties further acknowledge, as
26 set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file
27 confidential information under seal.

28 2. DEFINITIONS

1 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
4 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
5 of Civil Procedure 26(c).

6 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
7 well as their support staff).

8 2.4 *Reserved*

9 2.5 Designating Party: a Party or Non-Party that designates information or items that
10 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other things,
14 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
15 responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
18 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
19 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
20 or of a Party’s competitor.

21 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
22 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
23 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
24 less restrictive means.

25 2.9 *Reserved*

26 2.10 House Counsel: attorneys who are employees of a party to this action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

28 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal

1 entity not named as a Party to this action.

2 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
3 action but are retained to represent or advise a party to this action and have appeared in this
4 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
5 that party.

6 2.13 Party: any party to this action, including all of its officers, directors, employees,
7 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

8 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
9 Material in this action.

10 2.15 Professional Vendors: persons or entities that provide litigation support services
11 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
12 organizing, storing, or retrieving data in any form or medium) and their employees and
13 subcontractors.

14 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
15 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected Material
20 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
21 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
22 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
23 However, the protections conferred by this Stipulation and Order do not cover the following
24 information: (a) any information that is in the public domain at the time of disclosure to a
25 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
26 a result of publication not involving a violation of this Order, including
27 becoming part of the public record through trial or otherwise; and (b) any information known to
28 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure

1 from a source who obtained the information lawfully and under no obligation of confidentiality
2 to the Designating Party. Any use of Protected Material at trial shall be governed by a separate
3 agreement or order.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations imposed by
6 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
7 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
8 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
9 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
10 action, including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
14 or Non-Party that designates information or items for protection under this Order must take care
15 to limit any such designation to specific material that qualifies under the appropriate standards.
16 To the extent it is practical to do so, the Designating Party must designate for protection only
17 those parts of material, documents, items, or oral or written communications that qualify – so
18 that other portions of the material, documents, items, or communications for which protection is
19 not warranted are not swept unjustifiably within the ambit of this Order.

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

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

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order

1 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
2 Disclosure or Discovery

3 Material that qualifies for protection under this Order must be clearly so designated
4 before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
8 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
10 material on a page qualifies for protection, the Producing Party also must clearly identify the
11 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
12 each portion, the level of protection being asserted.

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

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
27 the Designating Party identify on the record, before the close of the deposition, hearing, or other
28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

1 impractical to identify separately each portion of testimony that is entitled to protection and it
2 appears that substantial portions of the testimony may qualify for protection, the Designating
3 Party may invoke on the record (before the deposition, hearing, or other proceeding is
4 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
5 which protection is sought and to specify the level of protection being asserted. Only those
6 portions of the testimony that are appropriately designated for protection within the 21 days shall
7 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
8 Party may specify, at the deposition or up to 21 days afterwards if that period is properly
9 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

26 (c) for information produced in some form other than documentary and for any
27 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
28 container or containers in which the information or item is stored the legend “CONFIDENTIAL”

1 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions
2 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items does not, standing alone, waive the Designating Party’s
6 right to secure protection under this Order for such material. Upon timely correction of a
7 designation, the Receiving Party must make reasonable efforts to assure that the material is
8 treated in accordance with the provisions of this Order.

9
10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
18 process by providing written notice of each designation it is challenging and describing the basis
19 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
20 notice must recite “THIS IS A CHALLENGE” and that the challenge to confidentiality is being
21 made in accordance with this specific paragraph of the Protective Order. The parties shall
22 attempt to resolve each challenge in good faith and must begin the process by conferring directly
23 (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of
24 the date of service of notice. In conferring, the Challenging Party must explain the basis for its
25 belief that the confidentiality designation was not proper and must give the Designating Party an
26 opportunity to review the designated material, to reconsider the circumstances, and, if no change
27 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
28 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

1 meet and confer process in a timely manner.

2 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
3 intervention, the Designating Party shall file and serve a motion to retain confidentiality within
4 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
5 and confer process will not resolve their dispute, whichever is earlier. Each such motion must be
6 accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
8 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
9 shall automatically waive the confidentiality designation for each challenged designation. In
10 addition, the Challenging Party may file a motion challenging a confidentiality designation at
11 any time if there is good cause for doing so, including a challenge to the designation of a
12 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
13 be accompanied by a competent declaration affirming that the movant has complied with the
14 meet and confer requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
16 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
19 file a motion to retain confidentiality as described above, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing Party's
21 designation until the court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
24 or produced by another Party or by a Non-Party in connection with this case only for
25 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
26 disclosed only to the categories of persons and under the conditions described in this Order.
27 When the litigation has been terminated, a Receiving Party must comply with the provisions of
28 section 15 below (FINAL DISPOSITION).

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
8 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
9 Bound” that is attached hereto as Exhibit A;

10 (b) the Receiving Party and the officers, directors, and employees (including
11 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
14 reasonably necessary for this litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
24 separately bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this Stipulated Protective Order.

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

28 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

1 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
2 Designating Party, a Receiving Party may disclose any information or item designated
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” that is attached hereto as Exhibit A;

8 (b) the Receiving Party;

9 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
10 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
12 have been followed];

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants,¹ and
15 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
16 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
20 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counselor Experts.

21 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
22 Designating Party, a Party that seeks to disclose to Designated House Counsel any information
23 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
25 sets forth the full name of the Designated House Counsel and the city and state of his or her
26 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable

27 _____
28 ¹ The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored Undertaking for mock jurors to sign.

1 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
2 involved, or may become involved, in any competitive decision-making.

3 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
4 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
5 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating
7 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
9 (2) sets forth the full name of the Expert and the city and state of his or her primary residence,
10 (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
11 employer(s), (5) identifies each person or entity from whom the Expert has received
12 compensation or funding for work in his or her areas of expertise or to whom the expert has
13 provided professional services, including in connection with a litigation, at any time during the
14 preceding five years, and (6) identifies (by name and number of the case, filing date, and location
15 of court) any litigation in connection with which the Expert has offered expert testimony,
16 including through a declaration, report, or testimony at a deposition or trial, during the preceding
17 five years.

18 (b) A Party that makes a request and provides the information specified in the
19 preceding respective paragraphs may disclose the subject Protected Material to the identified
20 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
21 receives a written objection from the Designating Party. Any such objection must set forth in
22 detail the grounds on which it is based.

23 (c) A Party that receives a timely written objection must meet and confer with the
24 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
25 agreement within seven days of the written objection. If no agreement is reached, the Party
26 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion
27 seeking permission from the court to do so. Any such motion must describe the circumstances
28 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel

1 or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,
2 and suggest any additional means that could be used to reduce that risk. In addition, any such
3 motion must be accompanied by a competent declaration describing the parties' efforts to resolve
4 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
5 setting forth the reasons advanced by the Designating Party for its refusal to approve the
6 disclosure.

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

11 8. *Reserved*

12 9. *Reserved*

13 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
14 LITIGATION

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

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

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

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by
25 the Designating Party whose Protected Material may be affected.²

26 If the Designating Party timely seeks a protective order, the Party served with the
27

28 ² The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 subpoena or court order shall not produce any information designated in this action as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
3 determination by the court from which the subpoena or order issued, unless the Party has
4 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
5 expense of seeking protection in that court of its confidential material – and nothing in these
6 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
7 disobey a lawful directive from another court.

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

10 (a) The terms of this Order are applicable to information produced by a Non-
11 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with
13 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
14 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

26 (c) If the Non-Party fails to object or seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving Party may
28 produce the Non-Party’s confidential information responsive to the discovery request. If the

1 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
2 in its possession or control that is subject to the confidentiality agreement with the Non-Party
3 before a determination by the court.³ Absent a court order to the contrary, the Non-Party shall
4 bear the burden and expense of seeking protection in this court of its Protected Material.

5 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other protection, the
17 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
18 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
19 an e-discovery order that provides for production without prior privilege review. Pursuant to
20 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect
21 of disclosure of a communication or information covered by the attorney-client privilege or work
22 product protection, the parties may incorporate their agreement in the stipulated protective order
23 submitted to the court.

24 14. MISCELLANEOUS

25 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
26 seek its modification by the court in the future.

27
28 ³ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
4 no Party waives any right to object on any ground to use in evidence of any of the material
5 covered by this Protective Order.

6 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
7 laws and regulations relating to the export of technical data contained in such Protected Material,
8 including the release of such technical data to foreign persons or nationals in the United States or
9 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
10 data, and the Receiving Party shall take measures necessary to ensure compliance.

11 14.4 Filing Protected Material. Without written permission from the Designating Party
12 or a court order secured after appropriate notice to all interested persons, a Party may not file in
13 the public record in this action any Protected Material. Protected Material may only be filed
14 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
15 issue. Pursuant to Civil Local Rules 141 and 141.1, a sealing order will issue only upon a request
16 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
17 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
18 Material under seal is denied by the court, then the Receiving Party may file the Protected
19 Material in the public record unless otherwise instructed by the court.

20 15. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in paragraph 4,
22 each Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has

1 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected
6 Material. Any such archival copies that contain or constitute Protected Material remain subject to
7 this Protective Order as set forth in Section 4 (DURATION).

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: May 31, 2017

_____/s/_____
Attorneys for Plaintiff

11
12 DATED: May 31, 2017

_____/s/_____
Attorneys for Defendants

13
14 EXHIBIT A

15 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

16 I, _____ [print or type full name], of _____ [print or
17 type full address], declare under penalty of perjury that I have read in its entirety and understand
18 the Stipulated Protective Order that was issued by the United States District Court for the Eastern
19 District of California on [date] in the case of **Jonathan Salas v. Facultatieve Technologies The**
20 **Americas, Inc., et al., Eastern District of California Case No. 1:17-CV-00335-LJO-BAM.** I
21 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
22 understand and acknowledge that failure to so comply could expose me to sanctions and
23 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
24 any information or item that is subject to this Stipulated Protective Order to any person or entity
25 except in strict compliance with the provisions of this Order.
26

27 I further agree to submit to the jurisdiction of the United States District Court for the
28 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective

1 Order, even if such enforcement proceedings occur after termination of this action.

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

6
7 Date: _____

8 City and State where sworn and signed: _____

9
10 Printed name: _____
[printed name]

11
12 Signature: _____
[signature]

13
14 **ORDER**

15 The parties' stipulated protective order filed on May 31, 2017 (Doc. 9) complies with the
16 requirements of Local Rules 141 and 141.1. Accordingly, IT IS HEREBY ORDERED that the
17 parties' Stipulated Protective Order is APPROVED in its entirety.

18 IT IS SO ORDERED.

19 Dated: June 7, 2017

20 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE