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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

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AIRCRAFT TECHNICAL PUBLISHERS,

Case No. Civil Action No. C07-04154 SBA

6

Plaintiff,

STIPULATED PROTECTIVE ORDER

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v.

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AVANTEXT, INC.,

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Defendant.

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AND RELATED COUNTERCLAIM

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1. PURPOSES AND LIMITATIONS

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Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation (or any related proceedings, such as an appeal) would be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The Parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a Party seeks permission from the Court to file material under seal.

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2. DEFINITIONS

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2.1 Party: any party to this action, including all of its officers, directors, employees,

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consultants, retained experts, and outside counsel (and their support staff).

1 2.2 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner generated, stored, or maintained (including, among other things, testimony,
3 transcripts, electronic or tangible things) that are produced or generated in disclosures or
4 responses to discovery in this matter.

5 2.3 "Confidential" Information or Items: information (regardless of how generated,
6 stored or maintained) or tangible things that qualify for protection under standards developed
7 under F.R.Civ.P. 26(c).

8 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely
9 sensitive "Confidential Information or Items" whose disclosure to another Party or non-party
10 would create a substantial risk of serious injury that could not be avoided by less restrictive
11 means.

12 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
15 Material in this action.

16 2.7 Designating Party: a Party or non-party that designates information or items that it
17 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential —
18 Attorneys' Eyes Only."

19 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
20 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

21 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
22 to represent or advise a Party in this action or any related action (e.g. an appeal).

23 2.10 House Counsel: attorneys who are employees of a Party.

24 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
25 support staffs).

26 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
27 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
28 consultant in this action and who is not a current employee of a Party or of a competitor of a

1 Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a
2 competitor of a Party's. An Expert may be a former employee of the Party who retains the
3 Expert, or a former employee of a competitor, but only if the former employee certifies that
4 he/she has no other relationship with the Party, or competitor, other than acting as an Expert.
5 This definition includes a professional jury or trial consultant retained in connection with this
6 litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
9 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

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11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
14 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
15 parties or counsel to or in court or in other settings that might reveal Protected Material.

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17 4. DURATION

18 Even after the termination of this litigation, the confidentiality obligations imposed by this
19 Order shall remain in effect until a Designating Party agrees otherwise in writing, a Court order
20 otherwise directs.

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22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
24 non-party that designates information or items for protection under this Order must take care to
25 limit any such designation to specific material that qualifies under the appropriate standards. A
26 Designating Party must take care to designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify – so that other portions of the
28 material, documents, items, or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of this Order.

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

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
11 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
12 that qualifies for protection under this Order must be clearly so designated before the material is
13 disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of depositions or
16 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
17 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top or bottom of each
18 page that contains protected material. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
20 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
21 level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY").

23 A Party or non-party that makes original documents or materials available for
24 inspection need not designate them for protection until after the inspecting Party has indicated
25 which material it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
28 documents it wants copied and produced, the Producing Party must determine which documents,

1 or portions thereof, qualify for protection under this Order, then, before producing the specified
2 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top or bottom of each page
4 that contains Protected Material. If only a portion or portions of the material on a page qualifies
5 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
6 making appropriate markings in the margins or within the body of the document) and must
7 specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
10 the Party or non-party offering or sponsoring the testimony identify on the record, before the
11 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
12 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
14 entitled to protection, and when it appears that substantial portions of the testimony may qualify
15 for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on
16 the record through its counsel (before the deposition or proceeding is concluded) a right to have
17 up to 20 days to identify the specific portions of the testimony as to which protection is sought
18 and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
20 are appropriately designated for protection within the 20 days shall be covered by the provisions
21 of this Stipulated Protective Order. During said 20 day period, the entire transcript shall be
22 deemed “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

23 Transcript pages containing Protected Material must be separately bound by the
24 court reporter, who must affix to the top or bottom of each such page the legend
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
26 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

27 (c) for information produced in some form other than documentary, and for any
28 other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend "CONFIDENTIAL"
2 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the
3 information or item warrant protection, the Producing Party, to the extent practicable, shall
4 identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly
5 Confidential – Attorneys' Eyes Only." In the event it is impracticable to identify the protected
6 portions of tangible items or information produced in some form other than documentary (e.g. a
7 DVD containing thousands of separate files), the Parties agree to meet and confer promptly to
8 resolve any designation issues regarding any such protected portions.

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys'
11 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection
12 under this Order for such material. If material is appropriately designated as "Confidential" or
13 "Highly Confidential – Attorneys' Eyes Only" after the material was initially produced, the
14 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
15 that the material is treated in accordance with the provisions of this Order.

16 17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
19 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
20 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
21 waive its right to challenge a confidentiality designation by electing not to mount a challenge
22 promptly after the original designation is disclosed.

23 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
24 confidentiality designation must do so in good faith and must begin the process by providing
25 counsel for the Designating Party a written explanation of the basis for its belief that the
26 confidentiality designation was not proper and must give the Designating Party an opportunity to
27 review the designated material, to reconsider the circumstances, and, if no change in designation
28 is offered, to explain the basis for the chosen designation. If the challenging Party elects to press

1 its challenge, counsel for the challenging Party shall confer directly (in voice to voice dialogue;
2 other forms of communication are not sufficient) with counsel for the Designating Party, to
3 attempt to resolve the challenge. A challenging Party may proceed to the next stage of the
4 challenge process only if it has engaged in this meet and confer process first. At all times, the
5 burden of showing the designation is appropriate remains with the Designating Party.

6 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
7 designation after considering the justification offered by the Designating Party may file and serve
8 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
9 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
10 such motion must be accompanied by a competent declaration that affirms that the movant has
11 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
12 forth with specificity the justification for the confidentiality designation that was given by the
13 Designating Party in the meet and confer dialogue.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating
15 Party. Until the Court rules on the challenge, all parties shall continue to afford the material in
16 question the level of protection to which it is entitled under the Designating Party's designation.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a non-party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation or any related action (e.g. an appeal). Such
21 Protected Material may be disclosed only to the categories of persons and under the conditions
22 described in this Order. When the litigation has been terminated, a Receiving Party must comply
23 with the provisions of section 11, below (FINAL DISPOSITION).

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

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

2 (a) the Receiving Party's Outside Counsel of record in this action, as well as
3 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
4 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
5 hereto as Exhibit A;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
8 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
10 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
11 Protective Order" (Exhibit A);

12 (d) the Court and its personnel;

13 (e) court reporters, their staffs, and professional vendors to whom disclosure is
14 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
15 Protective Order" (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
18 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
19 Protected Material must be separately bound by the court reporter and may not be disclosed to
20 anyone except as permitted under this Stipulated Protective Order.

21 (g) the author of the document or the original source of the information.

22 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

23 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

26 (a) the Receiving Party's Outside Counsel of record in this action, as well as
27 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
28 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached

1 hereto as Exhibit A;

2 [(b) omitted];

3 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
4 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective
5 Order" (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom disclosure is
8 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
9 Protective Order" (Exhibit A); and

10 (f) the author of the document or the original source of the information.

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12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
13 **LITIGATION.**

14 If a Receiving Party is served with a subpoena or an order issued in other litigation that
15 would compel disclosure of any information or items designated in this action as
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
17 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
18 and in no event more than five court days after receiving the subpoena or order. Such notification
19 must include a copy of the subpoena or court order.

20 The Receiving Party also must immediately inform in writing the Party who caused the
21 subpoena or order to issue in the other litigation that some or all the material covered by the
22 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
23 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
24 caused the subpoena or order to issue.

25 The purpose of imposing these duties is to alert the interested parties to the existence of
26 this Protective Order and to afford the Designating Party in this case an opportunity to try to
27 protect its confidentiality interests in the court from which the subpoena or order issued. The
28 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its

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

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4 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12
13 10. FILING PROTECTED MATERIAL. Without written permission from the Designating Party
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this action any Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5.

17
18 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing
19 Party, within sixty (60) days after the final termination of this action, each Receiving Party must
20 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
21 Material” includes all copies, abstracts, compilations, summaries or any other form of
22 reproducing or capturing any of the Protected Material. With permission in writing from the
23 Producing Party, the Receiving Party may destroy some or all of the Protected Material instead of
24 returning it. If the Producing Party elects to have the Receiving Party return rather than destroy
25 the Protected Material, the Producing Party shall bear the costs of the return. If the Producing
26 Party provides permission to the Receiving Party to destroy the Protected Material, but the
27 Receiving Party elects to return the Protected Material, the Receiving Party shall bear the costs of
28 the return. Whether the Protected Material is returned or destroyed, the Receiving Party must

1 submit a written certification to the Producing Party (and, if not the same person or entity, to the
2 Designating Party) by the sixty (60) day deadline that affirms under oath that the Receiving Party
3 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
5 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
6 correspondence or attorney work product, even if such materials contain Protected Material. Any
7 such archival copies that contain or constitute Protected Material remain subject to this Protective
8 Order as set forth in Section 4 (DURATION), above.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
11 its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
13 no Party waives any right it otherwise would have to object to disclosing or producing any
14 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
15 Party waives any right to object on any ground to use in evidence of any of the material covered
16 by this Protective Order.

17
18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 Dated: September 17, 2008

RUSSO & HALE LLP

Tim C. Hale

JACK RUSSO
TIM C. HALE
WILLIAM C. MILKS, III

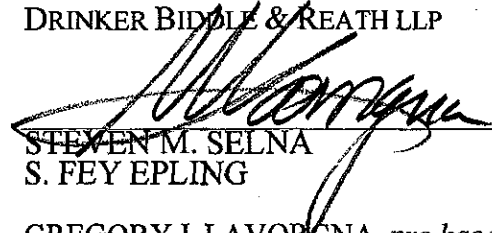
Attorneys for Plaintiff
AIRCRAFT TECHNICAL PUBLISHERS

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Dated: September 17, 2008

DRINKER BIDDLE & REATH LLP



STEVEN M. SELNA
S. FEY EPLING

GREGORY J. LAVORGNA, *pro hac vice*
DANIEL P. REILLY, *pro hac vice*
Attorneys for Defendant
AVANTEXT, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 9/23/08



~~SAUNDRA BROWN ARMSTRONG~~

~~United States District Judge~~
Edward M. Chen, U. S. Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Aircraft Technical Publishers v. Avantext, Inc.*, Civil Action No. C 07-04154 SBA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]