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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 IGUAÇU, INC.,
 14
 15 Plaintiff,
 16
 17 v.
 18 ANTONIO CABRERA MANO FILHO,
 19
 20 Defendant.

Case No. C 09-0380 RS (EMC)
**AMENDED STIPULATED PROTECTIVE
 ORDER FOR LITIGATION INVOLVING
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION; ORDER THEREON**

21 SF-231912 v4 0815210-00001

**STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION**

1 Plaintiff Iguacu, Inc. ("Plaintiff") and Defendant Antonio Cabrera Mano Filho ("Defendant"
2 or "Mr. Cabrera") hereby stipulate pursuant to Federal Rule of Civil Procedure 26(c), subject to the
3 approval of the Court, to the entry of a protective order in the above-captioned action as follows:

4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve production of
6 confidential, proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
8 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
9 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
10 disclosures or responses to discovery and that the protection it affords from public disclosure and use
11 extends only to the limited information or items that are entitled to confidential treatment under the
12 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
13 that this Stipulated Protective Order does not entitle them to file confidential information
14 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
15 that will be applied when a party seeks permission from the court to file material under seal.

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it
20 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
21 of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House
23 Counsel (as well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL," or "HIGHLY
26 CONFIDENTIAL—ATTORNEYS' EYES ONLY."

27 2.5 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including, among

1 other things, testimony, transcripts, and tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
7 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party
8 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
9 restrictive means.

10 2.8 House Counsel: attorneys who are employees of a party to this action.
11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party
15 to this action but are retained to represent or advise a party to this action and have appeared in this
16 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
17 that party.

18 2.11 Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this action.

22 2.13 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
25 their employees and subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

28 2.15 Receiving Party: a Party that receives Disclosure or Discovery

1 Material from a Producing Party.

2 3. SCOPE

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

7 However, the protections conferred by this Stipulation and Order do not cover the following
8 information: (a) any information that is in the public domain at the time of disclosure to a
9 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
10 result of publication not involving a violation of this Order, including becoming part of the public
11 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
12 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
13 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
14 use of Protected Material at trial shall be governed by a separate agreement or order.

15 4. DURATION

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

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under this Order
26 must take care to limit any such designation to specific material that qualifies under the appropriate
27 standards. To the extent it is practical to do so, the Designating Party must designate for protection
28 only those parts of material, documents, items, or oral or written communications that qualify – so

1 that other portions of the material, documents, items, or communications for which protection is
2 not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
17 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
18 ONLY" to each page that contains protected material. If only a portion or portions of the material on
19 a page 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 level
21 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 which
25 material it would like copied and produced. During the inspection and before the designation, all of
26 the material made available for inspection shall be deemed "CONFIDENTIAL" or "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, or

1 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”) to each page that contains Protected
4 Material. If only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins) and must specify, for each portion, the level of protection being asserted
7 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

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

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

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

9 A Designating Party shall have the right to exclude from attendance during any part of a
10 deposition any person other than those persons identified in Section 7.2 and/or 7.3 upon an objection
11 that the Protected Information and/or Materials subject to testimony is “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” if it is reasonably expected that the
13 testimony during that part of the deposition will disclose such information and/or materials.

14 Notwithstanding anything to the contrary in this Order, any deponent may review the
15 transcript of his own deposition in compliance with the Federal Rules of Civil Procedure.

16 (c) for information produced in some form other than documentary and for any
17 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
18 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
20 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
21 the protected portion(s), specifying whether they qualify as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
24 designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
25 ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to
26 secure protection under this Order for such material. If material is appropriately designated after the
27 material was initially produced, the Receiving Party, on timely notification of the designation, must
28 make reasonable efforts to assure that the material is treated in accordance with the provisions of this

1 Order, and must use its best efforts to retrieve any Protected Material from any person not eligible to
2 receive Protected Material under this Order.

3 If a Receiving Party receives materials that have not been designated
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” but which
5 the Receiving Party has reason to believe are subject to such a designation, the Receiving Party shall
6 notify the Producing Party of its receipt of such materials and inquire as to its proper designation
7 under this Order. If any person required to produce documents inadvertently produces any Protected
8 Material without marking it with an appropriate legend, the Producing Party may give written notice
9 to the Receiving Party, including appropriately stamped copies of the Protected Material, that the
10 document, thing, or response is deemed Protected Material and should be treated as such in
11 accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

1 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
2 this meet and confer process first or establishes that the Designating Party is unwilling to participate
3 in the meet and confer process in a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
5 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
6 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
7 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
8 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
9 competent declaration affirming that the movant has complied with the meet and confer requirements
10 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
11 including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive
12 the confidentiality designation for each challenged designation. In addition, the Challenging Party
13 may file a motion challenging a confidentiality designation at any time if there is good cause for
14 doing so, including a challenge to the designation of a deposition transcript or any portions thereof.
15 Any motion brought pursuant to this provision must be accompanied by a competent declaration
16 affirming that the movant has complied with the meet and confer requirements imposed by the
17 preceding paragraph.

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

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
27 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
28 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the

1 categories of persons and under the conditions described in this Order. When the litigation has been
2 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION).

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

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
7 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
8 information or item designated "CONFIDENTIAL" only to:

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

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

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

19 (d) the court and its personnel;

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

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

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

3 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
4 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
6 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

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

11 (b) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and
13 Agreement to Be Bound" (Exhibit A);

14 (c) the court and its personnel;

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

18 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL
19 –ATTORNEYS' EYES ONLY" Information or Items to "Experts"

20 Unless otherwise ordered by the court or agreed in writing by the Designating
21 Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any information or item
22 that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" must first
23 make a written request to the Designating Party that: (1) sets forth the full name of the Expert and the
24 city and state of his or her primary residence, (2) attaches a copy of the Expert's current resume, (3)
25 identifies the Expert's current employer(s), and (4) certifies that the Expert is not, and within the past
26 three years has not, been retained in connection with: (a) any proposed bio-fuel development project
27 in Brazil; (b) any competitor of Archer Daniels Midland for foreign bio-fuel projects; or (c) any
28 competitor of Mr. Cabrera or Grupo Cabrera for bio-fuel projects or sugarcane production and sales.

1 A Party that makes a request and provides the information specified in the
2 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
3 within fourteen (14) days of delivering the request, the Party receives a written objection from the
4 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

5 A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
7 within seven (7) days of the written objection. If no agreement is reached, the Party seeking to make
8 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
9 with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so. Any such
10 motion must describe the circumstances with specificity, set forth in detail the reasons for which the
11 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
12 entail and suggest any additional means that might be used to reduce that risk. In addition, any such
13 motion must be accompanied by a competent declaration in which the movant describes the parties'
14 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
15 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve
16 the disclosure.

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

20 In addition to the foregoing, each Expert to whom any Protected Material will
21 be disclosed shall, prior to disclosure of such material, execute the Certification of Expert/Consultant
22 in the form attached as Exhibit B hereto. Outside Counsel who makes any disclosure of Protected
23 Materials shall retain each original executed Certification of Consultant and, upon written request,
24 shall circulate copies to all Outside Counsel at the termination of this action.

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

1 If a Party is served with a subpoena or a court order issued in other litigation that compels
2 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

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

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
20 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” or “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this
24 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
25 should be 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 subject to an
28

1 agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party
2 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 with a Non-
5 Party;

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

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

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

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 11. INADVERTENT OR UNINTENTIONAL DISCLOSURE OF DISCOVERY
27 MATERIALS SUBJECT TO WORK PRODUCT PROTECTION OR PRIVILEGE

1 The production of any documents, information or other materials shall not constitute a waiver
2 of the attorney-client privilege, attorney work product doctrine, or any other legal privilege or
3 immunity if, as soon as reasonably possible after the Producing Party becomes aware of its
4 inadvertent or unintentional disclosure of privileged materials, the Producing Party designates such
5 materials as within the attorney-client privilege, work product immunity or other legal privilege or
6 immunity and requests return of those materials to the Producing Party. Upon request by the
7 Producing Party, the Receiving Party shall immediately return all copies of such inadvertently
8 produced materials and shall destroy all notes or other work product reflecting the contents of such
9 materials, and shall delete such materials from any litigation-support or other database. Within five
10 (5) business days of receiving such notification, the Receiving Party shall return or confirm
11 destruction of all such materials, including any summaries thereof. Such return or confirmation of
12 destruction shall not preclude the Receiving Party from seeking to compel production of the materials
13 for reasons other than the inadvertent production and shall not constitute an admission by the
14 receiving party that the materials were, in fact, privileged in any way.

15 If a Party receives from the other Party any document or information that the Receiving Party
16 reasonably believes is subject to the attorney-client privilege or attorney work product doctrine, the
17 Receiving Party should promptly notify the Producing Party of the potential inadvertent disclosure.
18 Upon request by the Producing Party, the Receiving Party shall immediately return all copies of such
19 inadvertently produced materials and shall destroy all notes or other work product reflecting the
20 contents of such materials, and shall delete such materials from any litigation-support or other
21 database. Such return or confirmation of destruction shall not preclude the Receiving Party from
22 seeking to compel production of the materials for reasons other than the inadvertent production and
23 shall not constitute an admission by the receiving party that the materials were, in fact, privileged in
24 any way.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
27 seek its modification by the court in the future.
28

1 12.2 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, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered by
5 this Protective Order.

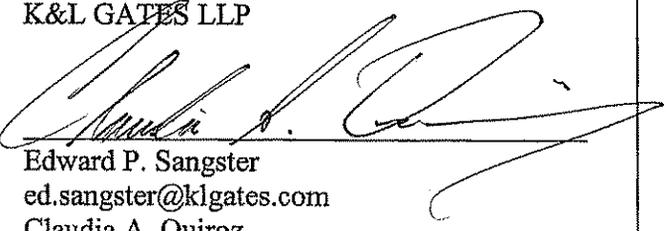
6 12.3 Filing Protected Material. Without written permission from the Designating
7 Party or a court order secured after appropriate notice to all interested persons, a Party may not file in
8 the public record in this action any Protected Material. A Party that seeks to file under seal any
9 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
10 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
11 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
12 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
13 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
14 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
15 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

16 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action, as
17 defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing
18 Party or destroy such material. As used in this subdivision, "all Protected Material" includes all
19 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the
20 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
21 submit a written certification to the Producing Party (and, if not the same person or entity, to the
22 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the
23 Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not
24 retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing
25 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
26 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
27 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
28 consultant and expert work product, even if such materials contain Protected Material. Any such

1 archival copies that contain or constitute Protected Material remain subject to this Protective Order as
2 set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5
6 Dated: February 4, 2011

By: 
K&L GATES LLP
Edward P. Sangster
ed.sangster@klgates.com
Claudia A. Quiroz
claudia.quiroz@klgates.com
Attorneys for Defendant ANTONIO
CABRERA MANO FILHO

11
12
13 Dated: February 4, 2011

By: 
Robert R. Cross
rcross@sideman.com
Attorney for Plaintiff IGUACU, INC.

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16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED

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19
20 Dated: February 8, 2011

By: 
Honorable
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
IT IS SO ORDERED
Judge Edward M. Chen
THE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare under penalty of perjury that I have read
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Northern District of California on _____ [date] in the case of *Iguaçu, Inc. v.*
7 *Antonio Cabrera Mano Filho*, Case No. 09-0380 RS (EMC). I agree to comply with and to be bound
8 by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to
9 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
12 this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____
26
27
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1 **EXHIBIT B**

2 **CERTIFICATION OF EXPERT/CONSULTANT**

3 I, the undersigned, hereby certify that I have read the Protective Order entered in the United
4 States District Court for the Northern District of California, in the case of *Iguaçu Inc. v. Antonio*
5 *Cabrera Mano Filho*, Northern District of California, San Francisco Division, Case No. C 09-0380 RS
6 (EMC), and that I have executed a copy of Exhibit A—the Acknowledgement And Agreement To Be
7 Bound.

8 I further certify that I am not, and within the past three years have not been retained in
9 connection with: (1) any proposed bio-fuel development project in Brazil; (2) any competitor of
10 Archer Daniels Midland for foreign bio-fuel projects; or (3) any competitor of Mr. Cabrera or Grupo
11 Cabrera for bio-fuel projects or sugarcane production and sales, nor do I have a current expectation of
12 such engagement, and I will accept no such engagement nor discuss same during the pendency of this
13 action. If at any time after I execute this Consultant Certification and during the pendency of the
14 Action I become engaged in business in connection with any proposed bio-fuel development project
15 in Brazil, any competitor of Archer Daniels Midland for foreign bio-fuel projects, or any competitor
16 of Mr. Cabrera or Grupo Cabrera for bio-fuel projects or sugarcane production and sales, I will
17 promptly inform the counsel for the party who retained me in the Action, and I will not thereafter
18 review any Protected Materials unless and until the Court in the Action orders otherwise.

19 I further understand and agree that all Protected Material and work product generated there
20 from must be stored and maintained at a location in a secure manner that ensures that access is
21 limited to the persons authorized under this Order.

22 Finally, I understand and agree that within ten (10) business days after a request by Outside
23 Counsel for the party for which I have provided services, the termination of my consultancy or the
24 termination of this action, which ever occurs first, I must return and/or destroy all Designated
25 Material in my possession, custody or control to Outside Counsel for the party for which I have
26 provided services. I further understand and agree that I shall certify my compliance with this
27 requirement and shall deliver such certification to Outside Counsel for the party that I have provided
28 services for no more than ten (10) business days after complying with the aforementioned obligation.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Name of Individual: _____

4 Company or Firm: _____

5 Address: _____

6 Telephone No.: _____

7 Relationship to this action and its parties: _____

8 _____

9 _____

10 Dated: _____ Signature: _____

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