

1 Michael J. McCue (Nevada Bar #6055)
 Meng Zhong (Nevada Bar #12145)
 2 LEWIS ROCA ROTHGERBER CHRISTIE LLP
 3993 Howard Hughes Parkway, Suite 600
 3 Las Vegas, NV 89169-5996
 (702) 949-8200 (phone)
 4 E-mail: mmccue@lrrc.com
 E-mail: mzhong@lrrc.com

5 Attorneys for Defendant and Counter-Claimant
 6 Cirrus Design Corporation

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

9 CIRRUS AVIATION SERVICES, LLC,
 Plaintiff and Counter-Defendant,
 10
 v.
 11 CIRRUS DESIGN CORPORATION,
 12 Defendant and Counter-Plaintiff.
 13

Case No. 2:16-cv-2656-JAD-GWF

PROPOSED PROTECTIVE ORDER

14 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for good cause,
 15 IT IS HEREBY ORDERED THAT:

16 1. Scope of Protection

17 This Protective Order shall govern any record of information produced in this
 18 action and designated pursuant to this Protective Order, including all designated deposition
 19 testimony, all designated testimony taken at a hearing or other proceeding, all designated
 20 deposition exhibits, interrogatory answers, admissions, documents and other discovery
 21 materials, whether produced informally or in response to interrogatories, requests for
 22 admissions, requests for production of documents or other formal methods of discovery.

23 This Protective Order shall also govern any designated record of information
 24 produced in this action pursuant to required disclosures under any federal procedural rule
 25 or local rule of the Court and any supplementary disclosures thereto.

26 This Protective Order shall apply to the parties and to any nonparty from whom
 27 discovery may be sought.

28 Nonparties may challenge the confidentiality of the protected information by filing a

1 motion to intervene and a motion to de-designate.

2 2. Definitions

3 (a) The term PROTECTED INFORMATION shall mean confidential or
4 proprietary technical, scientific, financial, business, health, or medical information
5 designated as such by the producing party.

6 (b) The term CONFIDENTIAL INFORMATION shall mean all
7 PROTECTED INFORMATION.

8 3. Designation of Information

9 (a) Documents and things produced or furnished during the course of
10 this action shall be designated as containing CONFIDENTIAL INFORMATION, by
11 placing on each page, each document (whether in paper or electronic form), or each thing a
12 legend substantially as follows:

13 CONFIDENTIAL INFORMATION

14 (b) A party may designate information disclosed at a deposition as
15 CONFIDENTIAL INFORMATION by requesting the reporter to so designate the
16 transcript at the time of the deposition.

17 (c) A producing party shall designate its discovery responses, responses
18 to requests for admission, briefs, memoranda, and all other papers sent to the Court or to
19 opposing counsel as containing CONFIDENTIAL INFORMATION when such papers are
20 served or sent.

21 (d) A party shall designate information disclosed at a hearing or trial as
22 CONFIDENTIAL INFORMATION by requesting the Court, at the time the information is
23 proffered or adduced, to receive the information only in the presence of those persons
24 designated to receive such information and Court personnel, and to designate the transcript
25 appropriately.

26 (e) The parties will use reasonable care to avoid designating any
27 documents or information as CONFIDENTIAL INFORMATION that is not entitled to
28 such designation or which is generally available to the public. The parties shall designate

1 only that part of a document or deposition that is CONFIDENTIAL INFORMATION,
2 rather than the entire document or deposition. For example, if a party claims that a
3 document contains pricing information that is CONFIDENTIAL, the party will designate
4 only that part of the document setting forth the specific pricing information as
5 CONFIDENTIAL INFORMATION, rather than the entire document.

6 4. Disclosure and Use of Confidential Information

7 Information that has been designated CONFIDENTIAL INFORMATION shall be
8 disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall
9 hold such information received from the disclosing party in confidence, shall use the
10 information only for purposes of this action and for no other action, and shall not use it for
11 any business or other commercial purpose, and shall not use it for filing or prosecuting any
12 patent application (of any type) or patent reissue or reexamination request, and shall not
13 disclose it to any person, except as hereinafter provided. All information that has been
14 designated CONFIDENTIAL INFORMATION shall be carefully maintained so as to
15 preclude access by persons who are not qualified to receive such information under the
16 terms of this Order.

17 5. Qualified Recipients

18 For purposes of this Order, "Qualified Recipient" means

19 (a) For CONFIDENTIAL INFORMATION:

20 (1) Outside counsel of record for the parties in this action, and
21 the partners, associates, secretaries, paralegal assistants, and employees of such counsel to
22 the extent reasonably necessary to render professional services in the action, outside
23 copying services, document management services and graphic services;

24 (2) Court officials involved in this action (including Court
25 reporters, persons operating video recording equipment at depositions, and any special
26 master appointed by the Court);

27 (3) Any person designated by the Court in the interest of justice,
28 upon such terms as the Court may deem proper;

1 (4) Any witness during the course of discovery, so long as it is
2 stated on the face of each document designated CONFIDENTIAL INFORMATION being
3 disclosed that the witness to whom a party is seeking to disclose the document was either
4 an author, recipient, or otherwise involved in the creation of the document. Where it is not
5 stated on the face of the confidential document being disclosed that the witness to whom a
6 party is seeking to disclose the document was either an author, recipient, or otherwise
7 involved in the creation of the document, the party seeking disclosure may nonetheless
8 disclose the confidential document to the witness, provided that: (i) the party seeking
9 disclosure has a reasonable basis for believing that the witness in fact received or reviewed
10 the document, (ii) the party seeking disclosure provides advance notice to the party that
11 produced the document, and (iii) the party that produced the document does not inform the
12 party seeking disclosure that the person to whom the party intends to disclose the document
13 did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a
14 deposition of a document designated CONFIDENTIAL INFORMATION to the officers,
15 directors, and managerial level employees of the party producing such CONFIDENTIAL
16 INFORMATION, or to any employee of such party who has access to such
17 CONFIDENTIAL INFORMATION in the ordinary course of such employee's
18 employment; and

19 (5) Any designated arbitrator or mediator who is assigned to hear
20 this matter, or who has been selected by the parties, and his or her staff, provided that such
21 individuals agree in writing, pursuant to the Disclosure Agreement, to be bound by the
22 terms of this Order.

23 (6) In-house counsel for a party to this action who are acting in a
24 legal capacity and who are actively engaged in the conduct of this action, and the secretary
25 and paralegal assistants of such counsel to the extent reasonably necessary;

26 (7) The insurer of a party to litigation and employees of such
27 insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer
28 an opportunity to investigate and evaluate the claim for purposes of determining coverage

1 and for settlement purposes; and

2 (8) Representatives, officers, or employees of a party as
3 necessary to assist outside counsel with this litigation.

4 6. Use of Protected Information

5 (a) In the event that any receiving party's briefs, memoranda, discovery
6 requests, requests for admission, or other papers of any kind that are served or filed include
7 another party's CONFIDENTIAL INFORMATION, the papers must be appropriately
8 designated, redacted if necessary, and filed under seal if necessary, pursuant to any
9 applicable Local Rules of the District of Nevada, including LR IA 10-5 ("Sealed
10 Documents"), LR IC 6-1 ("Redaction"), and LR IC 4-1 ("Service").

11 (b) All documents, including attorney notes and abstracts, that contain
12 another party's CONFIDENTIAL INFORMATION, shall be handled as if they were
13 designated pursuant to paragraph 4.

14 (c) Documents, papers, and transcripts that are filed with the Court and
15 contain any other party's CONFIDENTIAL INFORMATION shall be filed in accordance
16 with LR IA 10-5 ("Sealed Documents").

17 (d) To the extent that documents are reviewed by a receiving party prior
18 to production, any knowledge learned during the review process will be treated by the
19 receiving party as CONFIDENTIAL INFORMATION until such time as the documents
20 have been produced, at which time any stamped classification will control. No photograph
21 or any other means of duplication, including but not limited to electronic means, of
22 materials provided for review prior to production is permitted before the documents are
23 produced with the appropriate stamped classification.

24 (e) In the event that any question is asked at a deposition with respect to
25 which a party asserts that the answer requires the disclosure of CONFIDENTIAL
26 INFORMATION, such question shall nonetheless be answered by the witness fully and
27 completely. Prior to answering, however, all persons present shall be advised of this Order
28 by the party making the confidentiality assertion and, all persons who are not allowed to

1 obtain such information pursuant to this Order, other than the witness, shall leave the room
2 during the time in which this information is disclosed or discussed.

3 (f) Nothing in this Protective Order shall bar or otherwise restrict
4 outside counsel from rendering advice to his or her client with respect to this action and, in
5 the course thereof, from relying in a general way upon his examination of materials
6 designated CONFIDENTIAL INFORMATION, provided, however, that in rendering such
7 advice and in otherwise communicating with his or her clients, such counsel shall not
8 disclose the specific contents of any materials designated CONFIDENTIAL
9 INFORMATION to persons not authorized to view such information pursuant to this
10 Order.

11 7. Inadvertent Failure to Designate

12 (a) In the event that a producing party inadvertently fails to designate
13 any of its information pursuant to paragraph 4, it may later designate by notifying the
14 receiving parties in writing. The receiving parties shall take reasonable steps to see that the
15 information is thereafter treated in accordance with the designation.

16 (b) It shall be understood however, that no person or party shall incur
17 any liability hereunder with respect to disclosure that occurred prior to receipt of written
18 notice of a belated designation.

19 8. Challenge to Designation

20 (a) Any receiving party may challenge a producing party's designation
21 at any time. A failure of any party to expressly challenge a claim of confidentiality or any
22 document designation shall not constitute a waiver of the right to assert at any subsequent
23 time that the same is not in-fact confidential or not an appropriate designation for any
24 reason.

25 (b) Any receiving party may disagree with the designation of any
26 information received from the producing party as CONFIDENTIAL INFORMATION. In
27 that case, any receiving party desiring to disclose or to permit inspection of the same
28 otherwise than is permitted in this Order, may request the producing party in writing to

1 change the designation of a document or documents, stating with particularity the reasons
2 for that request, and specifying the category to which the challenged document(s) should be
3 de-designated. The producing party shall then have seven (7) days from the date of service
4 of the request to:

5 (i) advise the receiving parties whether or not it persists in such
6 designation; and

7 (ii) if it persists in the designation, to explain the reason for the
8 particular designation and to state its intent to seek a
9 protective order or any other order to maintain the
10 designation.

11 (c) If no response is made within seven (7) days after service of the
12 request under subparagraph (b), the information will be de-designated to the category
13 requested by the receiving party. If, however, the request under subparagraph (b) above is
14 responded to under subparagraph (b)(i) and (ii), seven (7) the producing party may then
15 move the Court for a protective order or any other order to maintain the designation. The
16 burden of proving that the designation is proper shall be upon the producing party. If no
17 such motion is made within seven (7) days after the statement to seek an order under
18 subparagraph (b)(ii), the information will be de-designated to the category requested by the
19 receiving party. In the event objections are made and not resolved informally and a motion
20 is filed, disclosure of information shall not be made until the issue has been resolved by the
21 Court (or to any limited extent upon which the parties may agree).

22 No party shall be obligated to challenge the propriety of any designation when
23 made, and failure to do so shall not preclude a subsequent challenge to the propriety of
24 such designation.

25 (d) With respect to requests and applications to remove or change a
26 designation, information shall not be considered confidential or proprietary to the
27 producing party if:

28 ///

- 1 (i) the information in question has become available to the
- 2 public through no violation of this Order; or
- 3 (ii) the information was known to any receiving party prior to its
- 4 receipt from the producing party; or
- 5 (iii) the information was received by any receiving party without
- 6 restrictions on disclosure from a third party having the right
- 7 to make such a disclosure.

8 9. Inadvertently Produced Privileged Documents

9 The parties hereto also acknowledge that regardless of the producing party's
10 diligence an inadvertent production of attorney-client privileged or attorney work product
11 materials may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502,
12 they therefore agree that if a party through inadvertence produces or provides discovery
13 that it believes is subject to a claim of attorney-client privilege or attorney work product,
14 the producing party may give written notice to the receiving party that the document or
15 thing is subject to a claim of attorney-client privilege or attorney work product and request
16 that the document or thing be returned to the producing party. The receiving party shall
17 return to the producing party such document or thing. Return of the document or thing shall
18 not constitute an admission or concession, or permit any inference, that the returned
19 document or thing is, in fact, properly subject to a claim of attorney-client privilege or
20 attorney work product, nor shall it foreclose any party from moving the Court pursuant to
21 Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has
22 been improperly designated or should be produced.

23 10. Inadvertent Disclosure

24 In the event of an inadvertent disclosure of another party's CONFIDENTIAL
25 INFORMATION to a non-Qualified Recipient, the party making the inadvertent disclosure
26 shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure
27 was made that it contains CONFIDENTIAL INFORMATION subject to this Order; (ii)
28 make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL

1 INFORMATION by the person to whom disclosure was inadvertently made including, but
2 not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and
3 (iii) notify the producing party of the identity of the person to whom the disclosure was
4 made, the circumstances surrounding the disclosure, and the steps taken to ensure against
5 the dissemination or use of the information.

6 11. Limitation

7 This Order shall be without prejudice to any party's right to assert at any time that
8 any particular information or document is or is not subject to discovery, production or
9 admissibility on the grounds other than confidentiality.

10 12. Conclusion of Action

11 (a) At the conclusion of this action, including through all appeals, each
12 party or other person subject to the terms hereof shall be under an obligation to destroy or
13 return to the producing party all materials and documents containing CONFIDENTIAL
14 INFORMATION and to certify to the producing party such destruction or return. Such
15 return or destruction shall not relieve said parties or persons from any of the continuing
16 obligations imposed upon them by this Order.

17 (b) After this action, trial counsel for each party may retain one archive
18 copy of all documents and discovery material even if they contain or reflect another party's
19 CONFIDENTIAL INFORMATION. Trial counsel's archive copy shall remain subject to
20 all obligations of this Order.

21 (c) The provisions of this paragraph shall not be binding on the United
22 States, any insurance company, or any other party to the extent that such provisions conflict
23 with applicable Federal or State law. The Department of Justice, any insurance company,
24 or any other party shall notify the producing party in writing of any such conflict it
25 identifies in connection with a particular matter so that such matter can be resolved either
26 by the parties or by the Court.

27 13. Production by Third Parties Pursuant to Subpoena

28 Any third party producing documents or things or giving testimony in this action

1 pursuant to a subpoena, notice or request may designate said documents, things, or
2 testimony as CONFIDENTIAL INFORMATION. The parties agree that they will treat
3 CONFIDENTIAL INFORMATION produced by third parties according to the terms of
4 this Order.

5 14. Compulsory Disclosure to Third Parties

6 If any receiving party is subpoenaed in another action or proceeding or served with
7 a document or testimony demand or a Court order, and such subpoena or demand or Court
8 order seeks CONFIDENTIAL INFORMATION of a producing party, the receiving party
9 shall give prompt written notice to counsel for the producing party and allow the producing
10 party an opportunity to oppose such subpoena or demand or Court order prior to the
11 deadline for complying with the subpoena or demand or Court order. No compulsory
12 disclosure to third parties of information or material exchanged under this Order shall be
13 deemed a waiver of any claim of confidentiality, except as expressly found by a Court or
14 judicial authority of competent jurisdiction.

15 15. Jurisdiction to Enforce Protective Order

16 After the termination of this action, the Court will continue to have jurisdiction to
17 enforce this Order.

18 16. Modification of Protective Order

19 This Order is without prejudice to the right of any person or entity to seek a
20 modification of this Order at any time either through stipulation or Order of the Court.

21 17. Confidentiality of Party's Own Documents

22 Nothing herein shall affect the right of the designating party to disclose to its
23 officers, directors, employees, attorneys, consultants or experts, or to any other person, its
24 own information. Such disclosure shall not waive the protections of this Protective Order
25 and shall not entitle other parties or their attorneys to disclose such information in violation
26 of it, unless by such disclosure of the designating party the information becomes public
27 knowledge. Similarly, the Protective Order shall not preclude a party from showing its own
28 information, including its own information that is filed under seal by a party, to its officers,

1 directors, employees, attorneys, consultants or experts, or to any other person.

2 **IT IS SO AGREED AND STIPULATED** this 29th day of January, 2019:

3 LEWIS ROCA
4 ROTHGERBER CHRISTIE LLP

FOX ROTHSCHILD LLP

5 By: /s/ Meng Zhong
6 Michael J. McCue (Nevada Bar #6055)
7 Meng Zhong (Nevada Bar #12145)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

By: /s/ Kevin M. Sutehall
Mark J. Connot (Nevada Bar #10010)
Kevin M. Sutehall (Nevada Bar #9437)
1980 Festival Plaza Drive, Suite 700
Las Vegas, NV 89135

8 Attorneys for Defendant and Counter-
9 Claimant Cirrus Design Corporation

Attorneys for Plaintiff and Counter-
Defendant Cirrus Aviation
Services, LLC

10

11

12

IT IS SO ORDERED:

13

14


UNITED STATES MAGISTRATE JUDGE

15

16

DATED: 1/30/2019 _____

17

18

19

20

21

22

23

24

25

26

27

28

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

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CIRRUS AVIATION SERVICES, LLC,
Plaintiff and Counter-Defendant,

Case No. 2:16-cv-2656-JAD-GWF

v.

CIRRUS DESIGN CORPORATION,
Defendant and Counter-Plaintiff.

I, _____, am employed by _____. In
connection with this action, I am:

_____ a director, officer or employee of _____ who is
directly assisting in this action;

_____ Other Qualified Recipient (as defined in the Protective Order)
(Describe: _____).

I have read, understand and agree to comply with and be bound by the terms
of the Protective Order in the matter of _____, Civil
Action No. _____, pending in the United States District Court for the
District of Nevada. I further state that the Protective Order entered by the Court, a copy of
which has been given to me and which I have read, prohibits me from using any
PROTECTED INFORMATION, including documents, for any purpose not appropriate or
necessary to my participation in this action or disclosing such documents or information to
any person not entitled to receive them under the terms of the Protective Order. To the
extent I have been given access to PROTECTED INFORMATION, I will not in any way
disclose, discuss, or exhibit such information except to those persons whom I know (a) are
authorized under the Protective Order to have access to such information, and (b) have

1 executed a Disclosure Agreement. I will return, on request, all materials containing
2 PROTECTED INFORMATION, copies thereof and notes that I have prepared relating
3 thereto, to counsel for the party with whom I am associated. I agree to be bound by the
4 Protective Order in every aspect and to be subject to the jurisdiction of the United States
5 District Court for the District of Utah for purposes of its enforcement and the enforcement
6 of my obligations under this Disclosure Agreement. I declare under penalty of perjury that
7 the foregoing is true and correct.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Signed by Recipient

Name (printed)

Date: _____