

1 **DICKINSON WRIGHT PLLC**
 2 MICHAEL N. FEDER, Nevada Bar No. 7332
 3 Email: mfeder@dickinson-wright.com
 4 8363 West Sunset Road, Suite 200
 5 Las Vegas, Nevada 89113-2210
 6 Tel: (702) 550-4400
 7 Fax: (844) 670-6009

8 DANIEL S. SILVERMAN (Admitted Pro Hac Vice)
 9 **VENABLE LLP**
 10 Email: dssilverman@venable.com
 11 2049 Century Park East, Suite 2300
 12 Los Angeles, California 90067
 13 Tel: (310) 229-0373
 14 Fax: (310) 229-9901

15 MEAGHAN H. KENT (Admitted Pro Hac Vice)
 16 **VENABLE LLP**
 17 Email: MHKent@venable.com
 18 600 Massachusetts Ave., NW
 19 Washington, DC 20001
 20 Tel: (202) 344-4000
 21 Fax: (202) 344-8300

22 *Attorneys for Plaintiff/Counter-Defendant*
 23 *T.R.P. Company, Inc.*

24 **UNITED STATES DISTRICT COURT**
 25 **DISTRICT OF NEVADA**

26 CASE NO: 2:17-cv-02197-JCM-CWH

27 T.R.P. Company, Inc.,
 28 Plaintiff/Counter-Defendant,
 vs.
 Similasan AG and Similasan Corporation.
 Defendants/Counter-Claimants.

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**



1 Pursuant to Federal Rule of Civil Procedure 26(c), T.R.P. Company, Inc., Similasan
2 Corporation, and Similasan AG (individually, a “Party” and jointly, the “Parties”), by and
3 through their respective counsel of record, hereby submit this stipulated protective order and
4 request entry thereof.

5 **I. Intent of Agreement**

6 1. This agreement is referred to herein as the “Stipulation.” The Parties anticipate
7 exchanging and filing with the court information a Party or any other person considers to be
8 Confidential or Highly Confidential Information – Attorneys’ Eyes Only in this litigation. The
9 Parties wish to agree on methods of protecting such information from disclosure.

10 2. Notwithstanding any provision in this Stipulation seemingly to the contrary, no
11 Party concedes that any information designated by any other Party or other person as
12 “Confidential” or “Highly Confidential” does in fact contain or reflect Confidential or Highly
13 Confidential Information – Attorneys’ Eyes Only. Furthermore, the failure of a Party to contest
14 another Party or other person’s designation of information as “Confidential” or “Highly
15 Confidential” under this Stipulation shall not operate as a concession or an admission that such
16 information does in fact contain, reflect, or otherwise constitute Confidential or Highly
17 Confidential Information – Attorneys’ Eyes Only. However, information designated as
18 “Confidential” or “Highly Confidential” shall be handled in accordance with terms of this
19 Stipulation.

20 **II. Definitions**

21 3. “Confidential Information” is information whose disclosure might injure a Party’s
22 or other person’s business interests including, without limitation, non-public financial
23 information, research information, marketing, strategic, or other future planning information,
24 contracts, internal communications, customer or supplies lists, or other commercially sensitive
25 information. “Confidential Information” also includes personal identifying information such as
26 Social Security numbers or birth dates.

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1 4. “Designating Party” is a Party or that designates information or items that it
2 produces in disclosures or in responses to discovery as “Confidential Information” or “Highly
3 Confidential Information – Attorneys’ Eyes Only.”

4 5. “Highly Confidential Information – Attorneys’ Eyes Only” means that subset of
5 “Confidential Information” as defined in paragraph 3 above that includes the most sensitive
6 information, disclosure of which to another Party or Non-Party would create a substantial risk of
7 serious harm that could not be avoided by less restrictive means including but not limited to the
8 following: (1) financial information such as pricing, costs, profits, and revenues; (2) strategic and
9 business plans, including but not limited to information relating to business acquisitions and
10 related due diligence materials; (3) contracts and licenses with third parties and all related
11 agreements and negotiation materials; and (4) such other documents, information, or materials
12 that the producing Party reasonably believes is of such nature and character that the unauthorized
13 disclosure of such information could irreparably injure the producing Party.

14 6. “Document” shall include any written, typed, or printed matter of any kind, sound
15 recordings, electronic data and other electronically-stored information, photographs, video, or
16 any other information contained in a fixed or electronic media.

17 7. “Party” shall mean, individually, T.R.P. Company, Inc., Similasan Corporation
18 and Similasan AG and any other person who specifically adopts this “Stipulation” with the
19 written consent of all other signatories to the Stipulation at the time of such adoption.

20 8. “Parties” shall mean collectively every “Party.”

21 9. “Person” means any natural person or entity other than a Party.

22 10. “Professional Vendors” shall mean 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 their
25 employees and subcontractors

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1 **III. Use and Disclosure of Confidential and Highly Confidential Information –**
2 **Attorneys’ Eyes Only**

3 11. Confidential and Highly Confidential Information – Attorneys’ Eyes Only shall
4 only be used for the instant litigation and any appeals thereof, as further restricted herein.
5 Confidential and Highly Confidential Information – Attorneys’ Eyes Only shall not be used for
6 any business or other purposes whatsoever by a recipient. Confidential and Highly Confidential
7 Information – Attorneys’ Eyes Only shall not be disclosed by the recipient to anyone other than
8 as permitted in this Stipulation.

9 12. This Stipulation does not apply to information that becomes generally available to
10 the public through voluntary disclosure by the Party or other person whose information is
11 disclosed or through other lawful and proper means. Nothing in this Stipulation shall restrict the
12 use or disclosure by a Party or other person of its own Confidential or Highly Confidential
13 Information – Attorneys’ Eyes Only or of Confidential or Highly Confidential Information –
14 Attorneys’ Eyes Only that has been designated as such only by the Party or other person using or
15 disclosing such Confidential or Highly Confidential Information – Attorneys’ Eyes Only.

16 **IV. Marking Confidential and Highly Confidential Information –**
17 **Attorneys’ Eyes Only**

18 13. Each Party that designates information or items for protection under this Order
19 must take care to limit any such designation to specific material that qualifies under the
20 appropriate standards. To the extent it is practical to do so, the Designating Party must designate
21 for protection only those parts of material, documents, items, or oral or written communications
22 that qualify – so that other portions of the material, documents, items, or communications for
23 which protection is not warranted are not swept unjustifiably within the ambit of this Order.
24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
25 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
26 encumber or retard the case development process or to impose unnecessary expenses and
27 burdens on other parties) may expose the Designating Party to sanctions.

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1 14. Documents and other media deemed by the disclosing Party in good faith as
2 containing, reflecting, or otherwise constituting Confidential or Highly Confidential Information
3 – Attorneys’ Eyes Only shall be identified as follows:

4 a. In the case of paginated Documents produced in discovery, designation
5 shall be made by placing the legend “Confidential” or “Highly Confidential – Attorneys’
6 Eyes Only” on the first page of the Document and each subsequent page.

7 b. In the case of responses to interrogatories or requests for admission, such
8 responses shall be separately marked “Confidential” or “Highly Confidential– Attorneys’
9 Eyes Only.”

10 c. In the case of depositions, designation of any portion of any transcript
11 (including exhibits not previously marked for confidentiality) deemed to contain
12 Confidential or Highly Confidential Information – Attorneys’ Eyes Only shall be made
13 by placing on the record during the course of the deposition the appropriate designation
14 or by notifying the Parties in writing within (30) days (or such other period as the Parties
15 may agree to on the record or in writing) after the receipt of a final written transcript,
16 specifying the pages and lines on which Confidential or Highly Confidential Information
17 – Attorneys’ Eyes Only is contained and designating such Confidential Information as
18 “Confidential” or Highly Confidential Information – Attorneys’ Eyes Only as “Highly
19 Confidential – Attorneys’ Eyes Only.” **The use of a document as an exhibit at a**
20 **deposition shall not in any way affect its designation as** “Confidential” or “Highly
21 Confidential – Attorneys’ Eyes Only.”

22 d. Where information deemed “Confidential” or “Highly Confidential” is
23 produced in a format where labeling of pages is not practical (e.g., native formats,
24 databases, and the like), the file names shall be changed to include the applicable but
25 shortened confidentiality designation, “Conf.,” or “Highly Conf.,” along with the name of
26 the file. Additionally, a label shall also be applied to the exterior of any media used in
27 producing the information (such as DVDs or drives) bearing the full designation
28 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

1 e. Any filing or submission (or part thereof) in this litigation that includes,
2 discloses, or excerpts Confidential or Highly Confidential Information – Attorneys’ Eyes
3 Only shall be made under seal. The Party making such filing or submission shall comply
4 with the applicable federal and local rules, including L.R. IA 10-5, pertaining to filing
5 under seal (including meeting the applicable burden for same) before making such filing.
6 All information filed under seal shall be treated as Confidential or Highly Confidential
7 Information – Attorneys’ Eyes Only.

8 f. If the court refuses to allow the filing under seal of any filing or
9 submission (or part thereof) that includes, discloses, or excerpts Confidential or Highly
10 Confidential Information – Attorneys’ Eyes Only, then the Party may file/refile as the
11 court directs. A Party whose Confidential or Highly Confidential Information –
12 Attorneys’ Eyes Only is being filed then bears the burden to promptly take the steps it
13 believes are necessary to protect such information (e.g., appeal, motion, etc.).

14 15. Confidential Information may only be disclosed to the following specifically
15 identified Parties or other persons:

16 a. any Party, or any officers, directors, and employees of a Party, to the
17 extent that counsel for such Party has a good faith basis to believe that the disclosure of
18 such information to such officer, director, or employee is reasonably necessary to the
19 Party’s prosecution or defense of claims in this litigation and only after such person(s)
20 signs the Agreement to Access Protected Information attached hereto as Exhibit A;

21 b. counsel to the Parties, including any in-house counsel and paralegal,
22 clerical, and other personnel working under the supervision of the foregoing counsel;

23 c. retained independent experts whose expertise and training is required by
24 the counsel to a Party to assist in this litigation and employees of such retained
25 independent experts and only after such person(s) signs the Agreement to Access
26 Protected Information attached hereto as Exhibit A;

27 d. deponents, trial witnesses, and any other person whom a Party’s counsel in
28 good faith determines may be a potential witness at deposition or trial, but only to the



1 extent reasonably necessary for that deponent's or witness's testimony. Confidential
2 Information disclosed under this subparagraph 15(d) may not to be retained by such
3 deponent or witness and may only be disclosed so long as such deponent or witness signs
4 the Agreement to Access Protected Information attached hereto as Exhibit A. Counsel
5 providing Confidential Information to a person under this subparagraph 15(d) shall do so
6 only in good faith. If a producing Party believes that counsel has provided Confidential
7 Information under this subparagraph 15(d) in bad faith, such Party may file a motion with
8 the court seeking appropriate relief;

9 e. the court and court personnel, including, without limitation, court reporters
10 in open court and jurors/alternates (on terms the court may direct to preserve
11 confidentiality);

12 f. any representative of any insurer of a Party, indemnitor of a Party, or
13 indemnitee of a Party for purposes of making decisions regarding coverage or settlement
14 of claims asserted in this litigation but only after such person signs the Agreement to
15 Access Protected Information attached hereto as Exhibit A; and,

16 g. any other person as to whom counsel for the Party or other person that
17 produced or provided the Confidential Information agrees in writing or whom the court
18 directs shall have access to such Confidential Information.

19 16. Highly Confidential Information – Attorneys' Eyes Only may only be disclosed to
20 the following specifically identified persons:

21 a. Outside counsel of record in this action, including their associated
22 attorneys, paralegals, clerical staff, and other personnel at their law firms working under
23 the supervision of the foregoing counsel;

24 b. retained independent experts not employed by the Party whose expertise
25 and training is required by the counsel to a Party to assist in this litigation and employees
26 of such retained independent experts and only after such person(s) signs the Agreement
27 to Access Protected Information attached hereto as Exhibit A;

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1 c. the court and court personnel, including, without limitation, court reporters
2 in open court and jurors/alternates (on terms the court may direct to preserve
3 confidentiality);

4 d. Professional Vendors to whom disclosure is reasonably necessary for this
5 litigation and who have signed the Agreement to Access Protected Information attached
6 hereto as Exhibit A; any other person as to whom counsel for the Party or other person
7 that produced or provided the Highly Confidential Information – Attorneys’ Eyes Only
8 agrees in writing or whom the court directs shall have access to such Highly Confidential
9 Information – Attorneys’ Eyes Only.

10 17. The Parties agree that if it is determined or learned that there has been an
11 unauthorized disclosure of Confidential or Highly Confidential Information – Attorneys’ Eyes
12 Only, the Party who so learns shall immediately inform the other Party in writing of such
13 unauthorized disclosure, including to whom the material was disclosed, and the Party who made
14 the unauthorized disclosure shall take all necessary steps to retrieve as soon as possible each and
15 every copy of all such Confidential or Highly Confidential Information – Attorneys’ Eyes Only
16 from the unauthorized person and any person to whom the unauthorized person disclosed such
17 Information. Each recipient of any Confidential or Highly Confidential Information – Attorneys’
18 Eyes Only produced in this litigation hereby agrees to be subject to the jurisdiction of the court
19 for the purposes of the implementation and enforcement of this Stipulation.

20 18. The Parties agree that if it is determined or learned that information or documents
21 that may be considered protected discovery has or have been inadvertently produced or disclosed
22 without marking or labeling them Confidential or Highly Confidential – Attorneys’ Eyes Only,
23 the producing Party may, within thirty (30) days after determining or learning of the inadvertent
24 disclosure or production, declare that the produced information or documents shall be considered
25 protected discovery by notifying the designated counsel of all Parties in writing of the
26 inadvertent failure to mark or label the documents or information as protected discovery and
27 shall reproduce the documents or information with the proper mark or label of Confidential or
28 Highly Confidential– Attorneys’ Eyes Only. In the event that the information or documents are



1 declared to be protected discovery after such information or documents have been produced, the
2 Parties agree to take all reasonable steps to protect that information or documents in accordance
3 with this Stipulation, including seeking the return of the protected discovery and/or requiring the
4 execution of a Confidentiality Agreement as appropriate. Within (30) days of the execution of
5 this Stipulation, the Parties may designate any document produced before the date of this
6 Stipulation in accordance with this paragraph.

7 19. If a Party obtains documents in this litigation independent from production by a
8 Party to this litigation (e.g., documents received by way of subpoena issued to a non-party), upon
9 receipt of said documents, any Party may request and direct that all Parties mark all copies of
10 such documents as Confidential or Highly Confidential– Attorneys’ Eyes Only. In the event that
11 a Party receives documents in this litigation from a non-party and shares them with experts prior
12 to a request for designation and then subsequently another Party requests that the documents be
13 marked as Confidential or Highly Confidential– Attorneys’ Eyes Only, the Party who previously
14 shared the documents shall then inform the experts of this Stipulation and have the experts agree
15 in writing to be subject to the provisions of this Stipulation.

16 20. This Stipulation shall not be deemed a waiver of:

- 17 a. any Party’s right to object to any discovery requests on any grounds;
- 18 b. any Party’s right to seek an order compelling discovery with respect to any
19 discovery request;
- 20 c. any Party’s right in any proceeding in this litigation to object to the
21 admission of any evidence on any ground;
- 22 d. any Party’s right to use and disclose its own documents and its own
23 Confidential and Highly Confidential Information – Attorneys’ Eyes Only in its sole and
24 complete discretion;
- 25 e. the status of any information as a trade secret or other confidential
26 information; or
- 27 f. any Party’s right to seek the return of any privileged or protected material
28 inadvertently produced.



1 21. Each Party agrees that in the event it is served by a non-party with a subpoena or
2 request for production of Confidential or Highly Confidential Information – Attorneys’ Eyes
3 Only received from another Party, it will give sufficient notice to allow the Designating Party a
4 reasonable opportunity to intervene to oppose such production.

5 **V. Challenging Confidential Designations**

6 22. Unless a prompt challenge to a Designating Party's confidentiality designation is
7 necessary to avoid foreseeable substantial unfairness, foreseeable avoidable burdens, or a later-
8 occurring foreseeable significant disruption or delay of the litigation, a challenging Party does
9 not waive its right to challenge a confidentiality designation by electing not to mount a challenge
10 promptly after the original designation is disclosed.

11 23. A challenging Party may make a challenge only in good faith and after conferring
12 in good faith with the Designating Party. In conferring, the challenging Party must explain the
13 basis for its belief that the confidentiality designation is not proper and must give the
14 Designating Party an opportunity to review the designated material, to consider the
15 circumstances, and, if no change in the designation is offered, to explain the basis for the chosen
16 designation.

17 24. If an agreement is not reached after meeting and conferring, the challenging Party
18 may file a notice with the court, stating that an impasse has been reached concerning
19 confidentiality designations under this Order. If the Designating Party persists in its designations,
20 the Designating Party may file a motion within (10) days after the notice is filed, seeking a
21 declaration that confidentiality designations are valid. Such a motion may not assert a basis for a
22 confidentiality designation on any ground that was not substantively discussed in the meet and
23 confer process. The motion must specifically identify the designated material for which the
24 Designating Party wishes to maintain the confidentiality designations and set forth the basis for
25 each designation. The Designating Party will have the burden of persuasion in any challenge. If
26 such a motion is filed, then until the court rules on the motion, all Parties must continue to treat
27 the material in question with the level of protection for which it was designated.

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1 **VI. Final Disposition**

2 25. This Stipulation shall be valid throughout the course of this litigation (defined to
3 include all proceedings herein, appeals, and/or remands) and shall survive the termination of this
4 litigation. Within sixty (60) days of the final termination of this litigation, all documents and
5 copies of documents (including any copies created by optical scanning) produced by the Parties
6 or by nonparties designated as containing Confidential or Highly Confidential Information –
7 Attorneys’ Eyes Only shall be returned to the Designating Party or destroyed (including by the
8 Clerk of the Court), except that outside counsel for the Parties may keep pleadings and work
9 product as maintained in the ordinary course of business. If destroyed pursuant to this provision,
10 the person or persons who destroy such Confidential or Highly Confidential Information –
11 Attorneys’ Eyes Only shall provide written certification to the Designating Party that such
12 information has been properly destroyed. The terms of this Stipulation shall survive and remain
13 in full force after the termination of this lawsuit and the Parties hereto agree that the court shall
14 have jurisdiction over the Parties, their attorneys, and all persons to whom Confidential or
15 Highly Confidential Information – Attorneys’ Eyes Only has been disclosed for the purpose of
16 enforcing the terms of this Stipulation and/or redressing any violation thereof.

17 26. The terms of this Stipulation may be applied to the documents, information and
18 things received from any person who is not a Party to this litigation at the election of such
19 person.

20 **VII. Inadvertent Disclosure of Privileged Information Safe Harbor Provisions**

21 27. If any Party determines that a document or information is subject to the attorney-
22 client privilege, the work-product doctrine, or otherwise protected from discovery and was
23 inadvertently disclosed, the producing Party may request that all receiving Parties return said
24 materials. Except in the event that the requesting Party disputes the claim of privilege, the
25 document or information shall not be further reviewed and promptly returned to the producing
26 Party, or destroyed, at that Party’s option. If the claim is disputed, a single copy of the materials
27 may be retained by the disputing Party for the exclusive purpose of seeking judicial
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1 determination of the matter. The disputing Party must specifically state that the claim is being
2 disputed and that a copy of the document has been retained for that purpose.

3 DICKINSON WRIGHT PLLC

4 /s/ Michael N. Feder

5 MICHAEL N. FEDER (NV Bar No. 7332)
6 Email: mfeder@dickinson-wright.com
7 8363 West Sunset Road, Suite 200
8 Las Vegas, Nevada 89113-2210

9 **VENABLE LLP**

10 Daniel S. Silverman (*Pro Hac Vice*)
11 Email: dssilverman@venable.com
12 2049 Century Park East, Suite 2300
13 Los Angeles, California 90067
14 Tel: (310) 229-0373
15 Fax: (310) 229-9901

16 **VENABLE LLP**

17 Meaghan H. Kent (*Pro Hac Vice*)
18 600 Massachusetts Avenue., NW
19 Washington, D.C. 20001
20 Tel: (202) 344-4000
21 Fax: (202) 344-8300

22 *Attorneys for Plaintiff T.R.P. Company, Inc.*

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

/s/ Michael D. Rounds

Michael D. Rounds (NV Bar No. 4734)
Ryan Cudnik (NV Bar No. 12948)
5371 Kietzke Lane
Reno, NV 89511
Telephone: (775) 324-4100
Facsimile: (775) 333-8171
Email: mrounds@bhfs.com
rcudnik@bhfs.com

Emily Ellis (NV Bar No. 11956)
100 North City Parkway
Las Vegas, Nevada 89106-4614
Telephone: (702) 382-2101
Facsimile: (702) 382-8135
Email: eellis@bhfs.com

CROWELL & MORING LLP
Michelle Gillette (*Pro Hac Vice*)
3 Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Facsimile: (415) 986-2827
Email: mgillette@crowell.com

CROWELL & MORING LLP
Christopher Cole (*Pro Hac Vice*)
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
Email: ccole@crowell.com

*Counsel for Defendants SIMILASAN
CORPORATION AND SIMILASAN AG*

23 **ORDER**

24 IT IS SO ORDERED.

25
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27 UNITED STATES MAGISTRATE JUDGE

28 DATED: January 11, 2018

1 **EXHIBIT A**

2 **AGREEMENT FOR ACCESS TO PROTECTED INFORMATION**

3 I, _____, am employed by _____, and
4 seek access to Confidential Information protected by the *STIPULATED PROTECTIVE*
5 *ORDER* (“Stipulation”) and agree and stipulate as follows:

6 1. I have read a copy of the Stipulation, and I will comply in all respects with all
7 terms and conditions of that Stipulation in handling any Confidential or Highly
8 Confidential Information – Attorneys’ Eyes Only filed or produced in connection with
9 the litigation.

10 2. I will not disclose any Confidential or Highly Confidential Information –
11 Attorneys’ Eyes Only to any individual other than those individuals admitted under the
12 Stipulation or the producing Party.

13 3. I acknowledge that any violation of the terms of the Stipulation may result in the
14 imposition of such sanctions as the court deems appropriate, including but not limited to
15 referral of the violation to appropriate disciplinary bodies or professional associations. I
16 further acknowledge that a party whose Confidential or Highly Confidential Information
17 – Attorneys’ Eyes Only is improperly disclosed shall be entitled to all remedies under law
18 or equity, including breach of contract. I consent to the jurisdiction of the court (United
19 States District Court for the District of Nevada) for the enforcement of such Stipulation.

20 4. By my signature, I certify under penalty of perjury that, to the best of my
21 knowledge, the representations set forth above (including attached statements) are true
22 and correct.

23 _____
24 Signature

25 _____
26 Printed/Typed Name and Title

27 _____
28 Date Executed

Email Address

