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The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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MICROSOFT CORPORATION,

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Plaintiff,

No. 16-cv-00538 - JLR

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v.

STIPULATED PROTECTIVE
ORDER

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THE UNITED STATES DEPARTMENT OF
JUSTICE, and JEFFERSON B. SESSIONS, III,
in his official capacity as Attorney General of the
United States,

Noted for Consideration:
June 22, 2017

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Defendants.

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Plaintiff Microsoft Corporation and Defendants United States Department of Justice and
Attorney General Jefferson B. Sessions, III (collectively, the "Federal Defendants") stipulate
and agree to the following protective order. Pursuant to Local Civil Rule 26(c)(2), all
departures from the model Protective Order are shown in tracked changes below.

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1. PURPOSES AND LIMITATIONS

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Discovery in this action is likely to involve production of confidential, proprietary, or
private information for which special protection may be warranted. Accordingly, the parties
hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer

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STIPULATED PROTECTIVE ORDER (16-cv-00538 - JLR) - 1

Davis Wright Tremaine LLP
LAW OFFICES
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 blanket protection on all disclosures or responses to discovery, the protection it affords from
2 public disclosure and use extends only to the limited information or items that are entitled to
3 confidential treatment under the applicable legal principles, and it does not presumptively
4 entitle parties to file confidential information under seal. The availability of protection
5 pursuant to this Protective Order does not preclude a party from withholding as privileged
6 information otherwise discoverable.

7 2. “CONFIDENTIAL” MATERIAL

8 “Confidential” material shall include the following documents and tangible things that
9 may be produced or otherwise exchanged:

- 10 A. Non-public information about Microsoft’s and the Federal Defendants’ policies and
11 practices with respect to (i) warrants, subpoenas, and orders pursuant to 18 U.S.C.
12 § 2703; (ii) non-disclosure orders pursuant to 18 U.S.C. § 2705; (iii) disclosure of
13 customer information in response to valid process; and (iv) other law enforcement
14 practices relating to the collection and/or preservation of evidence.
- 15 B. Non-public information concerning the economic consequences to Microsoft, if any,
16 of non-disclosure orders issued pursuant to 18 U.S.C. § 2705, as well as Microsoft’s
17 customer records and its proprietary information concerning the management,
18 security, and disclosure of customer records, including (but not limited to) both
19 account records and content.
- 20 C. Non-public information about Microsoft’s customer relationships and
21 communications with customers regarding disclosure of legal process
- 22 D. Court records, whether in this District or any other District, currently maintained
23 under seal and/or subject to non-disclosure orders.
- 24 E. Privacy Act information, as described in Paragraph 10 of this Order.
- 25 F. Information or documents subject to the law enforcement privilege under applicable
26 law, as well as information or documents in the possession or under the control of
27

1 the Federal Defendants that satisfy the standards set forth in Exemption 7 of the
2 Freedom of Information Act, 5 U.S.C. § 552(b)(7).

3 3. SCOPE

4 The protections conferred by this agreement cover not only confidential material (as
5 defined above) but also (1) any information copied or extracted from confidential material; (2)
6 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
7 conversations, or presentations by parties or their counsel that might reveal confidential
8 material. However, the protections conferred by this agreement do not cover information that is
9 in the public domain or becomes part of the public domain through trial or otherwise.

10 4. ACCESS TO AND USE OF "CONFIDENTIAL" MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential material that is
12 disclosed or produced by another party or by a non-party in connection with this case only
13 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
14 be disclosed only to the categories of persons and under the conditions described in this
15 agreement. Confidential material must be stored and maintained by a receiving party at a
16 location and in a secure manner that ensures that access is limited to the persons authorized
17 under this agreement.

18 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the designating party, a receiving party may
20 disclose any confidential material only to:

21 (a) the receiving party's counsel of record in this action, as well as
22 employees of counsel to whom it is reasonably necessary to disclose the information for this
23 litigation, including contract review attorneys, law clerks, paralegals, legal secretaries, and
24 other categories of employees regarding which the parties may subsequently agree;

25 (b) the officers, directors, and employees (including in house counsel) of
26 the receiving party to whom disclosure is reasonably necessary for this litigation;

1 (c) experts and consultants to whom disclosure is reasonably necessary for
2 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
3 (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) document management or electronic discovery services retained by
6 counsel to assist in the management of confidential material, provided that counsel for the
7 party retaining the document management or electronic discovery service instructs the service
8 not to disclose any confidential material to third parties and to immediately return all originals
9 and copies of any confidential material and to destroy all electronic copies upon completion of
10 the service;

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
13 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
14 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
15 material must be separately bound by the court reporter and may not be disclosed to anyone
16 except as permitted under this agreement; and

17 (g) on a case-by-case basis to be agreed on by the parties, any mediator
18 retained by the parties or appointed by the Court in this action and employees of such mediator
19 who are assisting in the conduct of the mediation.

20 4.3 Filing Confidential Material. Before filing confidential material or discussing
21 or referencing such material in court filings, the filing party shall confer with the designating
22 party to determine whether the designating party will remove the confidential designation,
23 whether the document can be redacted, or whether a motion to seal or stipulation and
24 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
25 followed and the standards that will be applied when a party seeks permission from the court
26 to file material under seal. Court records of this District or any other District that are
27 currently maintained under seal and/or subject to nondisclosure orders and/or subject to the

1 restrictions of Fed. R. Crim. P. 6(e) may be filed with this Court under seal, and no further
2 order of this Court is required to allow the filing under seal of court records currently
3 maintained under seal and/or subject to nondisclosure orders and/or subject to Fed. R. Crim.
4 P. 6(e) in other proceedings. This provision shall not be construed to otherwise affect the
5 sealing of any material pursuant to Fed. R. Crim. P. 6(e).

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 party or non-party that designates information or items for protection under this agreement
9 must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards. The designating party must designate for protection only those parts
11 of material, documents, items, or oral or written communications that qualify, so that other
12 portions of the material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
16 unnecessarily encumber or delay the case development process or to impose unnecessary
17 expenses and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it designated
19 for protection do not qualify for protection, the designating party must promptly notify all other
20 parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 agreement (see, e.g., section 5.2(b) below), or as otherwise stipulated or ordered, disclosure
23 or discovery material that qualifies for protection under this agreement must be clearly so
24 designated before or when the material is disclosed or produced.

25 (a) Information in documentary form: (e.g., paper or electronic documents
26 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that

1 contains confidential material. If only a portion or portions of the material on a page qualifies
2 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
3 making appropriate markings in the margins).

4 (b) Testimony given in deposition or in other pretrial or trial proceedings:
5 the parties must identify on the record, during the deposition, hearing, or other proceeding, all
6 protected testimony, without prejudice to their right to so designate other testimony after
7 reviewing the transcript. Any party or non-party may, within thirty days after receiving a
8 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.
9 Until such time as this thirty (30) day period has concluded, the entirety of the deposition
10 transcript shall be presumptively treated by the receiving party as having been designated by
11 the producing party as "Confidential" during the deposition.

12 (c) Other tangible items: the producing party must affix in a prominent
13 place on the exterior of the container or containers in which the information or item is stored
14 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
15 protection, the producing party, to the extent practicable, shall identify the protected
16 portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
18 to designate qualified information or items does not, standing alone, waive the designating
19 party's right to secure protection under this agreement for such material. Upon timely
20 correction of a designation, the receiving party must make reasonable efforts to ensure that
21 the material is treated in accordance with the provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a designating party's
25 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
26 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
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1 does not waive its right to challenge a confidentiality designation by electing not to mount a
2 challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding confidential designations without court involvement. Any motion regarding
5 confidential designations or for a protective order must include a certification, in the motion
6 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
7 conference with other affected parties in an effort to resolve the dispute without court action.
8 The certification must list the date, manner, and participants to the conference. A good faith
9 effort to confer requires a face-to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention, the designating party may file and serve a motion to retain confidentiality under
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
13 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
14 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
15 burdens on other parties) may expose the challenging party to sanctions. All parties shall
16 continue to maintain the material in question as confidential until the court rules on the
17 challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
19 LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation that
21 compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that party must:

23 (a) promptly notify the designating party in writing and include a copy of
24 the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order
26 to issue in the other litigation that some or all of the material covered by the subpoena or order
27 is subject to this agreement. Such notification shall include a copy of this agreement; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the designating party whose confidential material may be affected.

3 (d) This provision shall not be construed to affect any other obligations
4 pertaining to the confidentiality of information or items designated as "CONFIDENTIAL" that
5 a party may have.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
8 confidential material to any person or in any circumstance not authorized under this agreement,
9 the receiving party must immediately (a) notify in writing the designating party of the
10 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
11 protected material, (c) inform the person or persons to whom unauthorized disclosures were
12 made of all the terms of this agreement, and (d) request that such person or persons execute the
13 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order or agreement that provides for production without prior privilege review. Pursuant to
21 Rules 16(b) and 26(c) of the Federal Rules of Civil Procedure, and Rule 502 of the Federal
22 Rules of Evidence, this Order invokes the protections afforded by Rule 502(d) of the Federal
23 Rules of Evidence. Namely, disclosure of privileged material in connection with this litigation
24 will be deemed unintentional and inadvertent.

25 10. PRIVACY ACT INFORMATION

26 Pursuant to 5 U.S.C. § 552a(b)(11), Federal Defendants are authorized to release to
27 Microsoft's counsel, the Court, and those persons defined in Paragraph 4.2 of this Order,

1 records or information containing Privacy Act-protected information, without redaction of such
2 information, without obtaining prior written consent of the individuals whose names, addresses,
3 and other identifying information may be present in such documents. Such disclosure is
4 subject to the conditions set forth in this Order.

5 So long as counsel for Federal Defendants exercise reasonable efforts to prevent the
6 disclosure of information protected from disclosure by the Privacy Act, 5 U.S.C. § 552a, other
7 than as permitted under this Order, disclosures under this Order, including inadvertent
8 disclosures of such information, shall not be construed as a violation of the Privacy Act.

9 11. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must destroy or return all confidential material to the producing party, including all
12 copies, extracts and summaries thereof.

13 Notwithstanding this provision, except as may be agreed in the future, counsel are
14 entitled to retain one archival copy of all documents filed with the court, trial, deposition, and
15 hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work
16 product, and consultant and expert work product, even if such materials contain confidential
17 material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 designating party agrees otherwise in writing or a court orders otherwise.

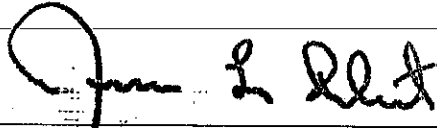
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 DATED: 06/22/17 _____ /s/ Ambika K. Doran _____
22 Attorneys for Plaintiff

23
24 DATED: 6/22/17 _____ /s/ Jennie L. Kneedler [with consent] _____
25 Attorneys for Defendant

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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DATED: June 23, 2017



[Name of Judge] James L. Robart
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Western District of Washington on [date] in the case of *Microsoft
Corporation v. United States Department of Justice et al.*, No. 16-cv-00538 - JLR. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

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

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____

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The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

~~[DEFENDANT],~~

~~Defendant.~~

THE UNITED STATES DEPARTMENT OF
JUSTICE, and JEFFERSON B. SESSIONS, III,
in his official capacity as Attorney General of the
United States,

 Defendants.

CASE NO. [CASE #]

~~MODEL~~

No. 16-cv-00538 - JLR

STIPULATED PROTECTIVE
ORDER

Noted for Consideration:
June 22, 2017

1. Plaintiff Microsoft Corporation and Defendants United States Department of
Justice and Attorney General Jefferson B. Sessions, III (collectively, the "Federal Defendants")
stipulate and agree to the following protective order. Pursuant to Local Civil Rule 26(c)(2), all
departures from the model Protective Order are shown in tracked changes below.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The

1 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer
2 blanket protection on all disclosures or responses to discovery, the protection it affords from
3 public disclosure and use extends only to the limited information or items that are entitled to
4 confidential treatment under the applicable legal principles, and it does not presumptively
5 entitle parties to file confidential information under seal. The availability of protection
6 pursuant to this Protective Order does not preclude a party from withholding as privileged
7 information otherwise discoverable.

8 2. 2. "CONFIDENTIAL" MATERIAL

9 "Confidential" material shall include the following documents and tangible things
10 ~~produced or otherwise exchanged: [The parties must include a list of specific documents such~~
11 ~~as "company's customer list" or "plaintiff's medical records;" do not list broad categories of~~
12 ~~documents such as "sensitive business material"]~~ that may be produced or otherwise
13 exchanged:

14 A. 3. Non-public information about Microsoft's and the Federal Defendants' policies
15 and practices with respect to (i) warrants, subpoenas, and orders pursuant to 18
16 U.S.C. § 2703; (ii) non-disclosure orders pursuant to 18 U.S.C. § 2705;
17 (iii) disclosure of customer information in response to valid process; and (iv) other
18 law enforcement practices relating to the collection and/or preservation of evidence.

19 B. Non-public information concerning the economic consequences to Microsoft, if any,
20 of non-disclosure orders issued pursuant to 18 U.S.C. § 2705, as well as Microsoft's
21 customer records and its proprietary information concerning the management,
22 security, and disclosure of customer records, including (but not limited to) both
23 account records and content.

24 C. Non-public information about Microsoft's customer relationships and
25 communications with customers regarding disclosure of legal process

26 D. Court records, whether in this District or any other District, currently maintained
under seal and/or subject to non-disclosure orders.

1 E. Privacy Act information, as described in Paragraph 10 of this Order.

2 F. Information or documents subject to the law enforcement privilege under applicable
3 law, as well as information or documents in the possession or under the control of
4 the Federal Defendants that satisfy the standards set forth in Exemption 7 of the
5 Freedom of Information Act, 5 U.S.C. § 552(b)(7).

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential material (as
8 defined above), but also (1) any information copied or extracted from confidential material; (2)
9 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
10 conversations, or presentations by parties or their counsel that might reveal confidential
11 material.

12 However, the protections conferred by this agreement do not cover information that is
13 in the public domain or becomes part of the public domain through trial or otherwise.

14 4. ~~4.~~ ACCESS TO AND USE OF "CONFIDENTIAL" MATERIAL

15 4.1 ~~4.1~~ Basic Principles. A receiving party may use confidential material that is
16 disclosed or produced by another party or by a non-party in connection with this case only
17 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
18 be disclosed only to the categories of persons and under the conditions described in this
19 agreement. Confidential material must be stored and maintained by a receiving party at a
20 location and in a secure manner that ensures that access is limited to the persons authorized
21 under this agreement.

22 4.2 ~~4.2~~ Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the designating party, a receiving
24 party may disclose any confidential material only to:

25 (a) ~~(a)~~ —the receiving party's counsel of record in this action, as well as
26 employees of counsel to whom it is reasonably necessary to disclose the information for this

1 litigation, including contract review attorneys, law clerks, paralegals, legal secretaries, and
2 other categories of employees regarding which the parties may subsequently agree;

3 (b) ~~(b)~~—the officers, directors, and employees (including in house
4 counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation,
5 ~~unless the parties agree that a particular document or material produced is for Attorney’s Eyes~~
6 ~~Only and is so designated;~~

7 (c) ~~(c)~~—experts and consultants to whom disclosure is reasonably
8 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
9 Bound” (Exhibit A);

10 (d) ~~(d)~~—the court, court personnel, and court reporters and their staff;

11 (e) ~~(e)~~—copydocument management or imagingelectronic discovery
12 services retained by counsel to assist in the duplicationmanagement of confidential material,
13 provided that counsel for the party retaining the copydocument management or
14 imagingelectronic discovery service instructs the service not to disclose any confidential
15 material to third parties and to immediately return all originals and copies of any confidential
16 material and to destroy all electronic copies upon completion of the service;

17 (f) ~~(f)~~—during their depositions, witnesses in the action to whom
18 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement
19 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
20 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 confidential material must be separately bound by the court reporter and may not be disclosed
22 to anyone except as permitted under this agreement; and

23 ~~(g) —the author or recipient of a document containing the information or a~~
24 ~~custodian or other person who otherwise possessed or knew the information.~~

25 (g) 4.3—on a case-by-case basis to be agreed on by the parties, any
26 mediator retained by the parties or appointed by the Court in this action and employees of such
mediator who are assisting in the conduct of the mediation.

1 4.3 Filing Confidential Material. Before filing confidential material or discussing
2 or referencing such material in court filings, the filing party shall confer with the designating
3 party to determine whether the designating party will remove the confidential designation,
4 whether the document can be redacted, or whether a motion to seal or stipulation and
5 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
6 followed and the standards that will be applied when a party seeks permission from the court
7 to file material under seal. Court records of this District or any other District that are
8 currently maintained under seal and/or subject to nondisclosure orders and/or subject to the
9 restrictions of Fed. R. Crim. P. 6(e) may be filed with this Court under seal, and no further
10 order of this Court is required to allow the filing under seal of court records currently
11 maintained under seal and/or subject to nondisclosure orders and/or subject to Fed. R. Crim.
12 P. 6(e) in other proceedings. This provision shall not be construed to otherwise affect the
13 sealing of any material pursuant to Fed. R. Crim. P. 6(e).

14 5. ~~5.~~ DESIGNATING PROTECTED MATERIAL

15 5.1 ~~5.1~~ Exercise of Restraint and Care in Designating Material for Protection.
16 Each party or non-party that designates information or items for protection under this
17 agreement must take care to limit any such designation to specific material that qualifies
18 under the appropriate standards. The designating party must designate for protection only
19 those parts of material, documents, items, or oral or written communications that qualify, so
20 that other portions of the material, documents, items, or communications for which
21 protection is not warranted are not swept unjustifiably within the ambit of this agreement.

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

1 If it comes to a designating party's attention that information or items that it designated
2 for protection do not qualify for protection, the designating party must promptly notify all other
3 parties that it is withdrawing the mistaken designation.

4 5.2 ~~5.2~~ Manner and Timing of Designations. Except as otherwise provided in
5 this agreement (see, *e.g.*, ~~second paragraph~~ of section 5.2~~(a)~~ below), or as otherwise
6 stipulated or ordered, disclosure or discovery material that qualifies for protection under this
7 agreement must be clearly so designated before or when the material is disclosed or
8 produced.

9 (a) ~~(a)~~ Information in documentary form: (*e.g.*, paper or electronic
10 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or
11 trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page
12 that contains confidential material. If only a portion or portions of the material on a page
13 qualifies for protection, the producing party also must clearly identify the protected portion(s)
14 (*e.g.*, by making appropriate markings in the margins).

15 (b) ~~(b)~~ Testimony given in deposition or in other pretrial or trial
16 proceedings: the parties and any participating non-parties must identify on the record, during
17 the deposition, hearing, or other pretrial proceeding, all protected testimony, without prejudice
18 to their right to so designate other testimony after reviewing the transcript. Any party or non-
19 party may, within ~~fifteen~~thirty days after receiving the transcript of the a deposition or other
20 pretrial proceeding transcript, designate portions of the transcript, or exhibits thereto, as
21 confidential. ~~If a~~ Until such time as this thirty (30) day period has concluded, the entirety of
22 the deposition transcript shall be presumptively treated by the receiving party or non-as having
23 been designated by the producing party desires to protect confidential information at trial, the
24 issue should be addressed as "Confidential" during the pre-trial conference deposition.

25 (c) ~~(c)~~ Other tangible items: the producing party must affix in a
26 prominent place on the exterior of the container or containers in which the information or item
is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item

1 warrant protection, the producing party, to the extent practicable, shall identify the protected
2 portion(s).

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18 the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet
19 and confer conference with other affected parties in an effort to resolve the dispute without
20 court action. The certification must list the date, manner, and participants to the conference.
21 A good faith effort to confer requires a face-to-face meeting or a telephone conference.

22 6.3 ~~6.3~~ Judicial Intervention. If the parties cannot resolve a challenge without
23 court intervention, the designating party may file and serve a motion to retain confidentiality
24 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
25 burden of persuasion in any such motion shall be on the designating party. Frivolous
26 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
expenses and burdens on other parties) may expose the challenging party to sanctions. All

1 parties shall continue to maintain the material in question as confidential until the court rules
2 on the challenge.

3 7. ~~7.~~ PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
4 OTHER LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as
7 “CONFIDENTIAL,” that party must:

8 (a) ~~(a)~~—promptly notify the designating party in writing and include a
9 copy of the subpoena or court order;

10 (b) ~~(b)~~—promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered by the subpoena or
12 order is subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) ~~(c)~~—cooperate with respect to all reasonable procedures sought to be
14 pursued by the designating party whose confidential material may be affected.

15 (d) This provision shall not be construed to affect any other obligations
16 pertaining to the confidentiality of information or items designated as “CONFIDENTIAL” that
17 a party may have.

18 8. ~~8.~~ UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 confidential material to any person or in any circumstance not authorized under this agreement,
21 the receiving party must immediately (a) notify in writing the designating party of the
22 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
23 protected material, (c) inform the person or persons to whom unauthorized disclosures were
24 made of all the terms of this agreement, and (d) request that such person or persons execute the
25 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. ~~The parties~~
8 ~~agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein~~ Pursuant
9 ~~to Rules 16(b) and 26(c) of the Federal Rules of Civil Procedure, and Rule 502 of the Federal~~
10 ~~Rules of Evidence, this Order invokes the protections afforded by Rule 502(d) of the Federal~~
11 ~~Rules of Evidence. Namely, disclosure of privileged material in connection with this litigation~~
12 ~~will be deemed unintentional and inadvertent.~~

13 10. 10. PRIVACY ACT INFORMATION

14 Pursuant to 5 U.S.C. § 552a(b)(11), Federal Defendants are authorized to release to
15 Microsoft's counsel, the Court, and those persons defined in Paragraph 4.2 of this Order,
16 records or information containing Privacy Act-protected information, without redaction of such
17 information, without obtaining prior written consent of the individuals whose names, addresses,
18 and other identifying information may be present in such documents. Such disclosure is
19 subject to the conditions set forth in this Order.

20 So long as counsel for Federal Defendants exercise reasonable efforts to prevent the
21 disclosure of information protected from disclosure by the Privacy Act, 5 U.S.C. § 552a, other
22 than as permitted under this Order, disclosures under this Order, including inadvertent
23 disclosures of such information, shall not be construed as a violation of the Privacy Act.

24 ~~10.11. NON TERMINATION AND RETURN OF DOCUMENTS~~

25 Within 60 days after the termination of this action, including all appeals, each receiving
26 party must destroy or return all confidential material to the producing party, including all
copies, extracts and summaries thereof. ~~Alternatively, the parties may agree upon appropriate
methods of destruction.~~

1 Notwithstanding this provision, except as may be agreed in the future, counsel are
2 entitled to retain one archival copy of all documents filed with the court, trial, deposition, and
3 hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work
4 product, and consultant and expert work product, even if such materials contain confidential
5 material.

6 The confidentiality obligations imposed by this agreement shall remain in effect until a
7 designating party agrees otherwise in writing or a court orders otherwise.
8

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
10

11 DATED: 06/22/17 /s/Ambika K. Doran
12 Attorneys for Plaintiff

13 DATED: 6/22/17 /s/Jennie L. Kneedler [with consent]
14 Attorneys for Defendant

15 PURSUANT TO STIPULATION, IT IS SO ORDERED:
16

17 ~~IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of~~
18 ~~any documents in this proceeding shall not, for the purposes of this proceeding or any other~~
19 ~~proceeding in any other court, constitute a waiver by the producing party of any privilege~~
20 ~~applicable to those documents, including the attorney-client privilege, attorney work product~~
21 ~~protection, or any other privilege or protection recognized by law.~~
22

23 DATED: _____
24

25 _____
[Name of Judge]
United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____

[print or type full name], of _____

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of _____ [insert

~~formal name of the case and the number and initials assigned to it by the court] Microsoft~~

Corporation v. United States Department of Justice et al., No. 16-cv-00538 - JLR. I agree to

comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____
