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The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DATANET LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 2:22-cv-01545-JNW

**STIPULATED  
PROTECTIVE ORDER**

**NOTE ON MOTION CALENDAR:  
SEPTEMBER 1, 2023**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). This agreement does not confer blanket protection on all disclosures or responses to discovery. This agreement affords protection from public disclosure and use that extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential material or information under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges any of the following under  
3 this Stipulated Protective Order: (1) the designation or non-designation of Disclosure or Discovery  
4 Material or (2) the amount of printed Source Code to be produced.

5 2.2 “CONFIDENTIAL” Protected Material: “Confidential” Protected Material is  
6 material or information (regardless of how it is generated, stored, or maintained) that qualifies for  
7 protection under Federal Rule of Civil Procedure 26(c) and shall include the following: non-public  
8 documents identifying actual or potential customers; research and development; non-public  
9 completed or ongoing projects; non-public responses to solicitations or requests for proposals;  
10 financial, cost, and pricing information; and information subject to non-disclosure or other  
11 confidentiality agreements with third-parties.

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
13 well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates Protected Material as  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
16 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

17 2.5 Disclosure or Discovery Material: all information and tangible things, regardless  
18 of the medium or manner in which it is generated, stored, or maintained (including, among other  
19 things, documents, testimony, and transcripts), that are produced, disclosed, or used in this matter.

20 2.6 Final Disposition: the later of (1) dismissal of all claims and defenses in this action,  
21 with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all  
22 appeals, re-hearings, remands, trials, or reviews of this action, including the time limits for filing  
23 any motions or applications for extension of time pursuant to applicable law.

24 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Protected Material:  
25 “Highly Confidential – Attorneys’ Eyes Only” Protected Material is material or information  
26 (regardless of how it is generated, stored, or maintained) that qualifies for protection under Federal

1 Rule of Civil Procedure 26(c), the disclosure of which to another Party or Non-Party would create  
2 a substantial risk of serious harm that could not be avoided by less restrictive means, and shall  
3 include the following: proprietary design and development materials for products and/or services;  
4 proprietary algorithms, software, designs, and trade secrets; sensitive products and/or services; and  
5 strategic decision-making information. Highly Confidential – Attorneys’ Eyes Only Protected  
6 Material includes any personal information that a Party or Non-Party reasonably believes to be  
7 subject to federal, state or foreign Data Protection Laws or other privacy obligations. Examples  
8 of such Data Protection Laws include, without limitation, The Gramm-Leach-Bliley Act, 15 U.S.C.  
9 § 6801, et seq. (financial information); The Health Insurance Portability and Accountability Act  
10 (“HIPAA”) and the regulations thereunder, 45 CFR Part 160 and Subparts A and E of Part 164  
11 (medical information); Regulation (EU) 2016/679 Of the European Parliament and of the Council  
12 of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal  
13 Data and on the Free Movement of Such Data, also known as the General Data Protection  
14 Regulation (“GDPR”), and the UK Data Protection Act (DPA) 2018.

15 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Protected Material: “Highly  
16 Confidential – Source Code” Protected Material is material or information (regardless of how it is  
17 generated, stored, or maintained) that qualifies for protection under Federal Rule of Civil  
18 Procedure 26(c) and shall include the following: material or information representing or consisting  
19 of Source Code as defined in section 2.18. A document that merely quotes or cites filenames, line  
20 numbers, directory names, module names, class names, parameter names, variable names, function  
21 names, method names, and/or procedure names (*e.g.*, for notetaking or identification purposes)  
22 without reproducing any lines of source code is not a Source Code Document and need not be  
23 designated “HIGHLY CONFIDENTIAL – SOURCE CODE” but should be designated “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

25 2.9 House Counsel: in-house counsel of a Party to this action and paralegals and other  
26 legal department employees working at the direction of such in-house counsel who have no

1 involvement in competitive decision-making, and to whom disclosure is reasonably necessary for  
2 this litigation. House Counsel does not include Outside Counsel of Record or any other outside  
3 counsel.

4 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
5 entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a Party to this  
7 action but are retained to represent or advise a Party to this action and who have appeared in this  
8 action or attorneys whose law firm has appeared in this action on behalf of that Party.

9 2.12 Party: Includes Datanet LLC (“Datanet”), and Microsoft Corporation  
10 (“Microsoft”).

11 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
12 Material in this action.

13 2.14 Professional Vendors: persons or entities that provide litigation support services  
14 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
15 organizing, storing, or retrieving data in any form or medium) and their employees and  
16 subcontractors.

17 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
18 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
19 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

20 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
21 Producing Party.

22 2.17 Retained Consultant: a person with specialized knowledge or experience in a  
23 matter pertinent to the litigation who (1) has been retained by a Party or its Counsel to serve as an  
24 expert witness or as a consultant in this action, (2) is not a current employee of a Party’s competitor,  
25 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s  
26 competitor.

1           2.18 Source Code: material that comprises, includes, or substantially discloses  
2 confidential, proprietary, or trade secret source code or algorithms. Such material may include,  
3 among other things, computer code, associated comments, and/or revision histories for computer  
4 code; and/or formulas, engineering specifications, or schematics that define or otherwise describe  
5 in detail the algorithms or structure of software designs.

6 3. SCOPE

7           The protections conferred by this Stipulated Protective Order cover not only Protected  
8 Material (as defined above), but also (1) any information copied or extracted from Protected  
9 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
10 testimony, conversations, or presentations by Parties or their Counsel that reveal Protected  
11 Material. However, the protections conferred by this Stipulated Protective Order do not cover the  
12 following information: (1) any information that is in the public domain at the time of disclosure  
13 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party  
14 as a result of publication not involving a violation of this Stipulated Protective Order, including  
15 becoming part of the public record through trial or otherwise; and (2) any information known to  
16 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure  
17 from a source who obtained the information lawfully and under no obligation of confidentiality to  
18 the Designating Party.

19           Any document produced before issuance of this Stipulated Protective Order with the  
20 designation “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” shall receive the same treatment as  
22 if designated under this Stipulated Protective Order, unless and until such document is  
23 redesignated to have a different classification under this Stipulated Protective Order.

24 4. ACCESS TO AND USE OF PROTECTED MATERIAL

25 4.1 Basic Principles.

1 (a) A Receiving Party may use Protected Material only for prosecuting,  
2 defending, or attempting to settle this litigation and associated appeals.

3 (b) Protected Material may be disclosed only to the categories of persons and  
4 under the conditions described in this Stipulated Protective Order.

5 (c) A Receiving Party must comply with the provisions of Section 5 below  
6 (NON-TERMINATION AND RETURN OF DOCUMENTS) when the litigation has been  
7 terminated.

8 (d) A Receiving Party must store and maintain Protected Material at a location  
9 and in a secure manner that ensures that access is limited to the persons authorized under this  
10 Stipulated Protective Order.

11 (e) Nothing in this Stipulated Protective Order restricts a Producing Party's use  
12 of its own Protected Material.

13 4.2 Disclosure of "CONFIDENTIAL" Protected Material. Unless otherwise ordered  
14 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
15 Protected Material designated as "CONFIDENTIAL" that is not "HIGHLY CONFIDENTIAL –  
16 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
18 employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the  
19 information for this litigation;

20 (b) up to three House Counsel of the Receiving Party to whom disclosure is  
21 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
22 Agreement to Be Bound" (Exhibit A) provided that such signed "Acknowledgement and  
23 Agreement to be Bound" is provided to the Designating Party prior to the disclosure of any  
24 "CONFIDENTIAL" Protected Material to the House Counsel described in this paragraph;

25 (c) Retained Consultants (as defined in this Stipulated Protective Order) of the  
26 Receiving Party: (1) to whom disclosure is reasonably necessary for this litigation; (2) who have

1 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (3) as to whom the  
2 procedures set forth in paragraph 4.5(a), below, have been followed;

3 (d) the Court and its personnel;

4 (e) court reporters and videographers, and their staff;

5 (f) professional jury or trial consultants, including mock jurors who have  
6 signed the “Non-Disclosure Agreement” (Exhibit B);

7 (g) Professional Vendors to whom disclosure is reasonably necessary for this  
8 litigation;

9 (h) during their depositions, witnesses in the action to whom disclosure is  
10 reasonably necessary;

11 (i) the author or recipient of a document containing the Protected Material or a  
12 custodian or other person who otherwise possessed, knew, or reasonably may have known the  
13 Protected Material (*e.g.*, those identified in Section 11 regarding depositions); and

14 (j) any mediator who is assigned to this matter, and his or her staff, who have  
15 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A).

16 4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
17 Protected Material. Unless otherwise ordered by the Court or permitted in writing by the  
18 Designating Party, a Receiving Party may disclose any Disclosure or Discovery Material  
19 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
21 employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the  
22 information for this litigation;

23 (b) Retained Consultants (as defined in this Stipulated Protective Order) of the  
24 Receiving Party: (1) to whom disclosure is reasonably necessary for this litigation; (2) who have  
25 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (3) as to whom the  
26 procedures set forth in paragraph 4.5(a), below, have been followed;

1 (c) the Court and its personnel;

2 (d) court reporters and videographers, and their staff;

3 (e) professional jury or trial consultants including mock jurors who have signed  
4 the “Non-Disclosure Agreement” (Exhibit B);

5 (f) Professional Vendors to whom disclosure is reasonably necessary for this  
6 litigation and who have signed the “Acknowledgement and Agreement to be Bound” (Exhibit A);

7 (g) during their depositions, 30(b)(6) witnesses to whom disclosure is  
8 reasonably necessary;

9 (h) the author or recipient of a document containing the Protected Material or a  
10 custodian or other person who otherwise possessed knew, or reasonably may have known the  
11 Protected Material (*e.g.*, those identified in Section 11 regarding depositions); and

12 (i) any mediator who is assigned to this matter, and his or her staff, who have  
13 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A).

14 4.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Protected  
15 Material. Unless otherwise ordered by the Court or permitted in writing by the Designating Party,  
16 a Receiving Party may disclose any Disclosure or Discovery Material designated “HIGHLY  
17 CONFIDENTIAL – SOURCE CODE” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
19 employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the  
20 information for this litigation;

21 (b) Retained Consultants (as defined in this Stipulated Protective Order) of the  
22 Receiving Party: (1) to whom disclosure is reasonably necessary for this litigation; (2) who have  
23 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A), and (3) as to whom the  
24 procedures set forth in paragraph 4.5(a), below, have been followed without any unresolved  
25 objections.



1 The Receiving Party may only identify up to five Retained Consultants<sup>1</sup> to disclose the  
2 Protected Material designated “HIGHLY CONFIDENTIAL – SOURCE CODE”;

3 (c) the Court and its personnel;

4 (d) court reporters and videographers, and their staff;

5 (e) professional jury or trial consultants (but not mock jurors) who have signed  
6 the “Non-Disclosure Agreement” (Exhibit B);

7 (f) Professional Vendors to whom disclosure is reasonably necessary for this  
8 litigation and who have signed the “Acknowledgement and Agreement to be Bound” (Exhibit A);

9 (g) during their depositions, 30(b)(6) witnesses to whom disclosure is  
10 reasonably necessary;

11 (h) the author or recipient of a document containing the Protected Material or a  
12 custodian or other person who otherwise possessed knew, or reasonably may have known the  
13 Protected Material (*e.g.*, those identified in Section 11 regarding depositions) after disclosing the  
14 Protected Material to Designating Party; and

15 (i) any mediator who is assigned to this matter, and his or her staff, who have  
16 signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A).

17 4.5 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL,”  
18 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
19 – SOURCE CODE” Material to Retained Consultants.

20 (a) Unless otherwise ordered by the Court or agreed to in writing by the  
21 Designating Party, a Party that seeks to disclose to a Retained Consultant (as defined in this  
22 Stipulated Protective Order) any Protected Material, must first make a written request to the  
23 Designating Party that (1) sets forth the full name of the Retained Consultant and the city and state  
24 of his or her primary residence, (2) attaches a copy of the Retained Consultant’s current resume,

25 <sup>1</sup> For purposes of this paragraph, Retained Consultant is defined to include the Retained Consultant’s direct reports  
26 and support personnel, such that the disclosure to the Retained Consultant who employs others within his or her firm  
to help in his or her analysis shall count as a disclosure to a single Retained Consultant.

1 (3) identifies the Retained Consultant's current employer(s), (4) identifies each person or entity  
2 from whom the Expert has received compensation or funding for work in his or her area of  
3 expertise or to whom the Expert has provided professional services, including in connection with  
4 a litigation, at any time during the preceding five years, and the Party to the litigation for whom  
5 such work was done, (5) identifies (by name and number of the case, filing date, and location of  
6 court) any litigation in connection with which the Retained Consultant has offered expert  
7 testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
8 preceding five years, and (6) identifies any patents or patent applications in which the Retained  
9 Consultant is identified as an inventor or applicant, is involved in prosecuting or maintaining, or  
10 has any pecuniary interest. With regard to the disclosures sought through paragraph 4.5(a)(6), if  
11 the Retained Consultant believes disclosure of such information is subject to a confidentiality  
12 obligation to a Non-Party, then the Retained Consultant should provide whatever information the  
13 Retained Consultant believes can be disclosed without violating any confidentiality agreements,  
14 and the Party seeking to disclose Protected Material to the Retained Consultant must be available  
15 to meet and confer with the Designating Party regarding any such engagement prior to disclosing  
16 the Protected Material to the Retained Consultant.

17 (b) A Party that makes a request and provides the disclosures specified in  
18 Paragraph 4.5(a) may disclose the categories of Protected Material identified in Paragraph  
19 4.5(a)(1) to the identified Retained Consultant unless, within 10 calendar days of delivering the  
20 request, the Party receives a written objection from the Designating Party. Any such objection  
21 must set forth in detail all grounds on which it is based.

22 (c) A Party that receives a timely written objection must meet and confer with  
23 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
24 agreement within seven calendar days of the written objection. If no agreement is reached, either  
25 Party may file a "Motion For Teleconference To Resolve Discovery Dispute" (within seven  
26

1 calendar days of the meet and confer) and the Parties shall submit a joint submission in accordance  
2 with LCR 37(a)(2).

3 In any such proceeding, the Party opposing disclosure to the Retained Consultant bears the  
4 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
5 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Retained  
6 Consultant.

7 4.6 Filing Protected Material. Before filing Protected Material or discussing or  
8 referencing such material in court filings, the filing party shall confer with the designating party,  
9 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
10 remove the corresponding designation, whether the document can be redacted, or whether a motion  
11 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
12 Designating Party must identify the basis for sealing the specific confidential information at issue,  
13 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
14 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
15 the standards that will be applied when a party seeks permission from the court to file material  
16 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
17 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
18 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
19 the strong presumption of public access to the Court's files.

20 4.7 Prosecution Bar. Any attorney representing a Party, whether in-house or outside  
21 counsel, and any person associated with a Party and permitted to receive the other Party's Protected  
22 Material that is designated CONFIDENTIAL - ATTORNEYS' EYES ONLY and/or HIGHLY  
23 CONFIDENTIAL - SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who  
24 obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party's HIGHLY  
25 SENSITIVE MATERIAL under this Order shall not prepare, prosecute, supervise, or assist in the  
26 preparation or prosecution of any patent application pertaining to the field of the invention of the

1 patents-in-suit during the pendency of this Action and for two years after its conclusion, including  
2 any appeals. To ensure compliance with the purpose of this provision, each Party shall create an  
3 “Ethical Wall” between those persons with access to HIGHLY SENSITIVE MATERIAL and any  
4 individuals who prepare, prosecute, supervise or assist in the preparation or prosecution of any  
5 patent application pertaining to the field of invention of the patent-in-suit. Nothing in this Order  
6 shall prevent a person with access to HIGHLY SENSITIVE MATERIAL from participating in a  
7 PTO proceeding, *e.g.*, IPR or PGR, except for that person shall not participate—directly or  
8 indirectly—in the amendment of any claim(s). This Prosecution Bar shall begin when access to  
9 the material designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
10 “HIGHLY CONFIDENTIAL – SOURCE CODE” is first received by the affected individual and  
11 shall end two years after final termination of this action, including all appeals. This restriction does  
12 not apply generally to the law firms involved in this action, but applies only to the specified  
13 individuals who have actually reviewed material designated “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” in  
15 connection with this action.

16 5. NON-TERMINATION AND RETURN OF DOCUMENTS

17 Within 60 calendar days after the Final Disposition of this action, as defined in paragraph  
18 2.6, each Receiving Party must return all Protected Material to the Producing Party or destroy such  
19 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
20 compilations, summaries, and any other format reproducing or capturing any of the Protected  
21 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
22 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
23 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
24 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
25 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
26 capturing any of the Protected Material.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
2 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,  
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
4 product, even if such materials contain Protected Material.

5 Even after Final Disposition of this litigation, the confidentiality obligations imposed by  
6 this Stipulated Protective Order remain in effect until a Designating Party agrees otherwise in  
7 writing or a court order otherwise directs.

8 6. DESIGNATING PROTECTED MATERIAL

9 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
10 or Non-Party that designates Disclosure or Discovery Material for protection under this Stipulated  
11 Protective Order must take care to limit any such designation to specific material that qualifies  
12 under the appropriate standards.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
14 shown to be clearly unjustified or that are shown to have been made for an improper purpose (e.g.,  
15 to unnecessarily encumber or retard the case development process or to impose unnecessary  
16 expenses and burdens on other parties) may expose the Designating Party to sanctions at the  
17 discretion of the Court.

18 If it comes to a Designating Party's attention that Disclosure or Discovery Material that it  
19 designated for protection does not qualify for protection at all or does not qualify for the level of  
20 protection initially asserted, that Designating Party must promptly notify all other Parties that it is  
21 withdrawing the mistaken designation.

22 6.2 Manner and Timing of Designations. Except as otherwise provided in this  
23 Stipulated Protective Order (*see, e.g.*, Section 6.2(b) below), or as otherwise stipulated or ordered,  
24 Disclosure or Discovery Material that qualifies for protection under this Stipulated Protective  
25 Order must be clearly so designated before the material is disclosed or produced.

1 (a) Information in documentary form (e.g., paper or electronic documents, but  
2 excluding transcripts of depositions or other pretrial or trial proceedings), the Producing Party must  
3 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
4 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains Protected  
5 Material. For Protected Material that is produced in native electronic format, the designation must  
6 be included in the file name (with the original file name intact in metadata) and on any slipsheets  
7 when produced, and any Party when printing such Protected Material must affix the designated  
8 legend to each page of the printed copy and on any slipsheet.

9 (b) Testimony given in deposition or other pretrial proceedings: the  
10 Designating Party shall either (1) identify on the record or (2) identify, in writing, within 21  
11 calendar days of the deposition, that the transcript must be treated as “CONFIDENTIAL,”  
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL  
13 – SOURCE CODE.” Notwithstanding the previous provision and other provisions of this  
14 Stipulated Protective Order, if requested by a Receiving Party at or after a deposition, a  
15 Designating Party has seven calendar days from the request, or until 21 calendar days from the  
16 deposition has passed, whichever is sooner, to designate the pages of the deposition transcript  
17 which are to be treated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL–ATTORNEYS’  
18 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” To the extent a deponent  
19 gives testimony regarding Protected Material, unless the Parties agree otherwise, that testimony  
20 must be treated in accordance with the level the Protected Material was designated regardless of  
21 whether the testimony itself receives express designation at or after the deposition.

22 Parties shall give the other Parties notice if they reasonably expect a pretrial proceeding (in  
23 court) to include Protected Material so that the other Parties can ensure that only authorized  
24 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are  
25 present at those proceedings if and when such Protected Material is discussed. The use of  
26 Protected Material as an exhibit at a deposition or other pretrial proceedings will not in any way

1 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

3 Transcripts containing Protected Material must have an obvious legend on the title page  
4 that the transcript contains Protected Material. If a Party inadvertently fails to make a designation  
5 at the deposition or pretrial proceeding, the Parties shall treat any transcript that was not designated  
6 on the record pursuant to paragraph 6.2(b) as if it had been designated “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After  
8 the expiration of that 21-day period or of such earlier time that such transcript is designated, the  
9 transcript will be treated only as actually designated.

10 (c) For Protected Material produced in some form other than documentary and  
11 for any tangible things: the Producing Party must affix in a prominent place on the exterior of the  
12 container or containers in which the Protected Material is produced or disclosed the legend  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
14 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

15 6.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
16 Disclosure or Discovery Material does not waive the Designating Party’s right to secure protection  
17 under this Stipulated Protective Order for such material. Upon correction of a designation, the  
18 Receiving Party must make all reasonable efforts to ensure that the material is treated in  
19 accordance with the provisions of this Stipulated Protective Order, which may require a Party to  
20 withdraw access to Protected Material that was given to a person who is not authorized to have  
21 access under the new designation.

22 In the event that a Producing Party inadvertently fails to designate Protected Material, the  
23 Producing Party shall give written notice of such inadvertent production (the “Inadvertent  
24 Production Notice”) and shall reproduce copies of the Protected Material that are labeled with the  
25 appropriate confidentiality designation. Upon receipt of an Inadvertent Production Notice and  
26 properly labeled Protected Material, the Receiving Party shall promptly destroy the inadvertently

1 produced Protected Material and all copies thereof or return such together with all copies of such  
2 Protected Material to counsel for the Producing Party. Should the Receiving Party choose to  
3 destroy such inadvertently produced Protected Material, the Receiving Party shall notify the  
4 Producing Party in writing of such destruction within 14 calendar days of receipt of written notice  
5 of the Inadvertent Production Notice and properly labeled Protected Material. This provision is  
6 not intended to apply to any inadvertent production of any document, material, or testimony  
7 protected by attorney-client or work product privileges.

8 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 **7.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
14 original designation is disclosed.

15 **7.2 Meet and Confer.** The parties must make every attempt to resolve any dispute  
16 regarding confidential designations without court involvement. Any motion regarding  
17 confidential designations or for a protective order must include a certification, in the motion or in  
18 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
19 with other affected parties in an effort to resolve the dispute without court action. The certification  
20 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
21 a face-to-face meeting or a telephone conference.

22 **7.3 Judicial Intervention.**

23 If the Parties cannot resolve a challenge without court intervention, the Designating Party  
24 may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance  
25 with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be  
26 on the Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to



1 harass or impose unnecessary expenses and burdens on other parties) may expose the challenging  
2 party to sanctions. All parties shall continue to maintain the material in question as confidential  
3 until the court rules on the challenge.

4 8. EXPERT MATERIALS

5 For Retained Consultants retained in anticipation of or in connection with this action,  
6 documents constituting drafts of expert reports and declarations, and documents constituting notes  
7 created by or for an expert in connection with preparation of his or her expert report or declaration,  
8 shall not be discoverable and need not be preserved unless a testifying expert relies upon such  
9 drafts and/or notes. Work product materials, including communications, generated in connection  
10 with non-testifying experts and consultants who are retained solely in anticipation of or in  
11 connection with the above-captioned litigation, shall not be discoverable absent an order by the  
12 Court. Conversations or communications between House Counsel and/or Outside Counsel of  
13 Record and any testifying expert or consultant shall not be discoverable absent an order by the  
14 Court, except to the extent such conversations or communications are relied upon by the testifying  
15 expert.

16 9. DISCLOSURE AND INSPECTION OF SOURCE CODE

17 (a) To the extent Source Code is disclosed or produced in this case, a Producing  
18 Party may permit inspection of Source Code in a manner that maintains the security and  
19 confidentiality of the requested Source Code. Any Source Code that is offered for inspection must  
20 be given all protections of “HIGHLY CONFIDENTIAL - SOURCE CODE” and only individuals  
21 to whom “HIGHLY CONFIDENTIAL – SOURCE CODE” Protected Material may be disclosed,  
22 as set forth in Paragraphs 4.4 and 4.5 may inspect the Source Code.

23 (b) Subject to the other provisions in this Stipulated Protective Order, any  
24 Source Code to be produced or disclosed in discovery will be made available for inspection upon  
25 reasonable notice to the Producing Party, which must not be less than five (5) business days in  
26 advance of the first requested inspection and three (3) business days in advance for every requested

1 inspection thereafter. However, the Producing Party shall make exceptions and permit less notice  
2 for later inspections when reasonably possible. Except as provided herein, one secured computer  
3 that is unable to connect to external drives and that is without Internet or network access containing  
4 the Source Code in a format allowing it to be reasonably reviewed and searched (“Source Code  
5 Computer”),<sup>2</sup> will be made available during normal business hours (9:00 am to 6:00 pm local time)  
6 or at other mutually agreeable times, at an office of the Producing Party’s Counsel selected by the  
7 Producing Party, or at another mutually agreed upon location. Upon reasonable notice from the  
8 Receiving Party, the Designating Party shall make reasonable efforts to accommodate the  
9 Receiving Party’s request for access to the Source Code Computer outside of normal business  
10 hours. Except as provided herein, the Source Code inspection must occur in a room without  
11 Internet access or network access to other computers, and the Receiving Party shall not copy,  
12 remove, or otherwise transfer any portion of the Source Code onto any recordable media or  
13 recordable device. The Producing Party may visually monitor the activities of the Receiving  
14 Party’s representatives during any Source Code review, but only to ensure that there is no  
15 unauthorized recording, copying, or transmission of the Source Code. All persons entering the  
16 inspection room where the Source Code is being viewed shall sign a log that includes the names  
17 of persons who enter the room and the dates and times when they enter and depart.

18         The Producing Party shall install tools that are sufficient for viewing and searching the  
19 Source Code produced for inspection on the Source Code Computer.

20         The Producing Party shall load its Source Code on the Source Code Computer in a text-  
21 searchable file format if the Producing Party has available to it a version of said Source Code in a  
22 text-searchable file format as part of its ordinary course of business, and in the format in which it  
23 is kept in the ordinary course of business (*e.g.*, with the file and folder structure preserved and

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24 <sup>2</sup> If a Receiving Party believes that it needs an additional Source Code Computer, and the parties are unable to reach  
25 agreement with respect to the additional Source Code Computer, the Receiving Party may seek relief from the  
26 Court. If a Receiving Party believes that it needs a Source Code Computer to be available at trial, and the Parties are  
unable to reach agreement with respect to the additional Source Code Computer, the Receiving Party may seek relief  
from the Court.

1 including any version control systems used by the Producing Party).

2       The Receiving Party's Outside Counsel and/or experts/consultants may request that  
3 additional commercially available software tools for viewing and searching Source Code be  
4 installed on the Source Code Computer, provided, however, that (a) the Receiving Party possesses  
5 an appropriate license to such software tools; (b) the Producing Party approves such software tools;  
6 and (c) such other software tools are reasonable for the Receiving Party to perform its review of  
7 the Source Code consistent with all of the protections herein. The Receiving Party must provide  
8 the Producing Party with the CD, DVD, file path, or Advanced Package Tool package containing  
9 such licensed software tool(s) at least fourteen (14) business days in advance of the date upon  
10 which the Receiving Party wishes to have the additional software tools available for use on the  
11 Source Code Computer. The Producing Party shall make reasonable attempts to install the  
12 requested software but will not be held responsible for the proper setup, functioning, or support of  
13 any software requested by the Receiving Party. By way of example, the Producing Party will not  
14 compile or debug software for installation.

15           (c)     The Receiving Party may request paper copies of limited portions of Source  
16 Code that are reasonably necessary to attach to filings, pleadings, expert reports, or other papers,  
17 or for use as an exhibit at deposition or trial. The Parties agree that up to 400 pages total and 35  
18 continuous pages is reasonable. The Parties also reserve the right to seek additional pages of  
19 printed source code, whether by agreement of the Parties or through the Court, should they be  
20 reasonably necessary. Under no circumstances will a Receiving Party be provided paper copies  
21 for the purposes of reviewing the Source Code in the first instance. Using the software available  
22 on the Source Code Computer, the Receiving Party shall create PDFs of the printed copies the  
23 Receiving Party is requesting and save them in a folder on the desktop named "Print Requests"  
24 with a subfolder identifying the date of the request. The PDF printouts must include identifying  
25 information including the full file path and file name, page number, line numbers, and date. The  
26 request for printed Source Code must be served via an email request identifying the subfolders of

1 the “Print Requests” folder that the Receiving Party is requesting. Within three (3) business days  
2 of such request, the Producing Party shall provide five copies of all such Source Code on  
3 non-copyable paper including bates numbers and the label “HIGHLY  
4 CONFIDENTIAL - SOURCE CODE.” The Parties agree not to challenge the Source Code  
5 printouts on the basis of authenticity or hearsay. If the request is served after 5:30 p.m. local time,  
6 it will be deemed served the following business day. The Producing Party may challenge the  
7 amount of Source Code to be provided in hard copy form pursuant to the dispute resolution  
8 procedure set forth below.

9           1.     Timing of Challenges. The Receiving Party may challenge the  
10 Producing Party’s refusal to provide a requested amount of printed Source Code. Unless a prompt  
11 challenge to a Producing Party’s refusal is necessary to avoid foreseeable, substantial unfairness,  
12 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Receiving  
13 Party does not waive its right to challenge a Producing Party’s refusal to provide requested printed  
14 Source Code by electing not to mount a challenge promptly after the Producing Party has refused  
15 to provide the printed Source Code.

16           2.     Meet and Confer. The parties must make every attempt to resolve  
17 any dispute regarding requests for printed Source Code without court involvement. Any motion  
18 regarding a request for printed Source Code must include a certification, in the motion or in a  
19 declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
20 with other affected parties in an effort to resolve the dispute without court action. The certification  
21 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
22 a face-to-face meeting or a telephone conference.

23           3.     Judicial Intervention. The Receiving Party has the burden to seek  
24 relief from the Court unless superseded by the applicable discovery dispute resolution procedures  
25 of any Judge or Magistrate Judge presiding over such dispute.

1                   4.     Burden of Persuasion. The burden of persuasion in any such  
2 challenge is on the Receiving Party. Frivolous challenges and those made for an improper purpose  
3 (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may expose the  
4 Challenging Party to sanctions.

5                   (d)     The Receiving Party shall maintain a log of all paper copies of the Source  
6 Code. The log must include the names of all reviewers and recipients of paper copies and locations  
7 where each paper copy is stored. Upon three (3) business day's advance written notice to the  
8 Receiving Party by the Producing Party, the Receiving Party shall provide a copy of this log to the  
9 Producing Party. The Receiving Party shall securely maintain and store any paper copies of the  
10 Source Code and any notes taken that reveal the substance or content of the Source Code at their  
11 offices (which may be in their homes) in a manner that prevents duplication of or unauthorized  
12 access to the Source Code, including, without limitation, storing the Source Code in a locked room  
13 or cabinet at all times when it is not in use. Except as set forth in this paragraph, the Receiving  
14 Party is prohibited from creating any electronic or other images or making electronic copies of the  
15 Source Code from any paper copy of the Source Code for use in any manner (including by way of  
16 example only, the Receiving Party may not scan the Source Code to a PDF or photograph the  
17 code), and must not convert any of the Protected Material contained in the paper copies into any  
18 electronic format. Except as set forth in this paragraph, images or copies of Source Code must not  
19 be included in correspondence, including between the Parties (references to production numbers,  
20 file paths, and/or line numbers must be used instead) and must be omitted from the body of  
21 pleadings and other papers. To the extent Source Code is included in an expert report, the  
22 Receiving Party may create an electronic copy or image of limited excerpts of Source Code for  
23 use in the expert report. The Receiving Party may create an electronic image of a selected portion  
24 of the Source Code only when the electronic file containing such image ("Source Code File") has  
25 been encrypted using commercially reasonable software (specifically Microsoft Word Document  
26 Protect, 7Zip, or other software agreed upon by the Parties in writing) provided, however, that

1 transitory images, such as images temporarily saved to the clipboard during copy/paste operations,  
2 do not need to be so encrypted. The Receiving Party shall not transmit any Source Code Files  
3 using email (though they may email the passwords to encrypted files which are sent via SFTP or  
4 other secure file transfer), nor shall the Receiving Party store any Source Code Files on any  
5 handheld devices, such as smartphones. Any transmission of Source Code Files shall be via secure  
6 FTP or password-protected media. Copies of Source Code Files shall be deleted immediately from  
7 any media used for purposes of transfer after transfer is complete. The Receiving Party shall  
8 maintain a log of all such electronic copies of any portion of Source Code in its possession or in  
9 the possession of its retained consultants, including the names of the senders and recipients of any  
10 such electronic copies and the locations and manner in which the electronic copies are stored, to  
11 the extent any electronic copies are stored outside of the law offices of Outside Counsel of Record  
12 for the Receiving Party. Such log need not include the names of any attorneys or staff of Outside  
13 Counsel of Record for the Receiving Party. The communication and/or disclosure of electronic  
14 files containing any portion of Source Code shall at all times be limited to individuals who are  
15 expressly authorized to view Source Code under the provisions of this Stipulated Protective Order.  
16 Any electronic copies of any portions of source code (or documents containing said portions of  
17 source code) must be designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE  
18 CODE” as provided for in this Stipulated Protective Order. The designation must be included in  
19 the file name of each Source Code file.

20           The Receiving Party may request additional paper copies, for example, if such  
21 additional copies are (1) necessary to attach to court filings, pleadings, or other papers (including  
22 a testifying expert’s report), (2) necessary for deposition, or (3) necessary for trial. The Receiving  
23 Party shall not request paper copies for the purposes of reviewing the Source Code other than  
24 electronically as set forth in paragraph 10(b) in the first instance.

25           To the extent a deposition is likely to involve Source Code, the Party taking the  
26 deposition shall provide at least five (5) calendar days written notice of that fact. The Parties are

1 aware of the limited availability of Source Code Computers and thus will endeavor to not schedule  
2 multiple depositions on the same day in order to help ensure the availability of Source Code  
3 Computers at depositions. Any paper copies used during a deposition will be retrieved by the  
4 Producing Party at the end of each day and must not be given to or left with a court reporter or any  
5 other unauthorized individual.

6 (e) Other than a note taking computer discussed below, no recordable media or  
7 recordable devices, including, without limitation, sound recorders, computers, cellular telephones,  
8 peripheral equipment, cameras, CDs, DVDs, or drives of any kind, will be permitted into the  
9 Source Code review room. For avoidance of doubt, use or possession of any input/output device  
10 (*e.g.*, USB memory stick, mobile phone or tablet, camera or any camera-enabled device, CD,  
11 floppy disk, portable hard drive, laptop, or any device that can access the Internet or any other  
12 network or external system, etc.) is prohibited while accessing the computer containing the Source  
13 Code. The Producing Party shall make best efforts to provide a secure location with WiFi access  
14 near the Source Code review room for inspecting individuals to store such media or recording  
15 devices (*e.g.*, their cellular telephones), their other electronic and non-electronic possessions, and  
16 to otherwise break out during Source Code inspections.

17 (f) The Receiving Party's Outside Counsel and/or Retained Consultants will be  
18 entitled to take hand-written and/or electronic notes relating to the Source Code (including file  
19 paths, file names, line numbers, and identifier names) but may not copy the Source Code into the  
20 notes and may not take such notes electronically on the Source Code Computer itself or any other  
21 computer. When reviewing Source Code, the Receiving Party's Outside Counsel and/or Retained  
22 Consultants are entitled to bring a note taking computer into the Source Code review room to take  
23 electronic notes.

24 (g) The Receiving Party's Outside Counsel and any person receiving a copy of  
25 any Source Code, as authorized under Paragraph 4.4, shall maintain and store any paper copies of  
26 the Source Code and any notes taken during the inspection of the Source Code that reveal the

1 substance or content of the Source Code at their offices (which may be in their homes) in a manner  
2 that prevents duplication of or unauthorized access to the Source Code, including, without  
3 limitation, storing the Source Code in a locked room or cabinet at all times when it is not in use.

4 (h) A Producing Party's Source Code may only be transported by the Receiving  
5 Party at the direction of a person authorized under this Stipulated Protective Order to another  
6 person authorized under this Stipulated Protective Order via hand carry, Federal Express, or other  
7 similarly reliable courier.

8 10. PROTECTED MATERIAL IN DEPOSITIONS

9 Nothing contained herein shall be construed to prejudice any Party's right to use any  
10 Protected Material in taking testimony at any deposition or hearing provided that the Protected  
11 Material is only disclosed to a person(s) who is: (1) eligible to have access to the Protected  
12 Material by virtue of his or her employment with the Producing Party, (2) identified in the  
13 Protected Material as an author, addressee, or copy recipient of such information, (3) although not  
14 identified as an author, addressee, or copy recipient of such Protected Material, has, in the ordinary  
15 course of business, seen such Protected Material, (4) a current or former officer, director or  
16 employee of the Producing Party or a current or former officer, director or employee of a company  
17 affiliated with the Producing Party; or (5) otherwise eligible to have access to Protected Material  
18 by the terms of this Stipulated Protective Order. Protected Material shall not be disclosed to any  
19 other persons unless prior authorization is obtained from Outside Counsel representing the  
20 Producing Party or from the Court.

21 11. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
22 LITIGATION

23 11.1 If a Party is served with a subpoena or a court order issued in other litigation that  
24 compels disclosure of any Protected Material designated in this action as "CONFIDENTIAL,"  
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL  
26 – SOURCE CODE" that Party must:



1 (a) promptly notify in writing the Designating Party. Such notification must  
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the Party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or order is  
5 subject to this Stipulated Protective Order. Such notification must include a copy of this Stipulated  
6 Protective Order; and

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

9 If the Designating Party timely seeks a protective order or seeks to quash the  
10 subpoena, the Party served with the subpoena or court order must not produce any Disclosure or  
11 Discovery Material designated in this action as “CONFIDENTIAL,” “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – SOURCE  
13 CODE” before a determination by the court from which the subpoena or order issued, unless the  
14 Party has obtained the Designating Party’s permission to produce the subpoenaed Protected  
15 Material. The Designating Party bears the burden and expense of seeking protection in that court  
16 of its confidential material – and nothing in these provisions should be construed as authorizing or  
17 encouraging a Receiving Party in this action to disobey a lawful directive from another court. Any  
18 agreement by a Designating Party that Protected Material may be produced in response to a  
19 subpoena does not in any way waive the protections this Stipulated Protected Order provides  
20 against disclosure in any other litigation.

21 11.2 The provisions set forth herein are not intended to, and do not, restrict in any way  
22 the procedures set forth in Federal Rule of Civil Procedure 45(d)(3) or (f).

23 12. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
24 LITIGATION

25 (a) Any discovery requests, including subpoena and deposition notices,  
26 propounded to Non-Parties must be accompanied by a copy of this Stipulated Protective Order.

1 (b) The terms, remedies, and relief provided by this Stipulated Protective Order  
2 are applicable to Disclosure of Discovery Material produced by a Non-Party in this action and  
3 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
4 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Nothing in these provisions should  
5 be construed as prohibiting a Non-Party from seeking additional protections.

6 (c) In the event that a Party is required, by a valid discovery request, to produce  
7 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
8 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

9 1. promptly notify in writing the Requesting Party and the Non-Party  
10 that some or all of the information requested is subject to a confidentiality agreement with a  
11 Non-Party, including an identification of withheld material sufficient to reasonably permit the  
12 Requesting Party to understand the nature of the information being withheld;

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

16 3. pursuant to any procedures in an agreement between the Producing  
17 Party and the Non-Party, promptly follow those procedures in order to get authorization to produce  
18 the information requested.

19 (d) If the Non-Party fails to object or seek a protective order from this Court  
20 within any mandated notice period (*e.g.*, notice period listed in any contract) or fourteen (14)  
21 calendar days, whichever is longer, of receiving the notice and accompanying information, the  
22 Receiving Party may produce the Non-Party’s confidential information responsive to the discovery  
23 request. For avoidance of doubt, if the agreement between the Producing Party and the Non-Party  
24 does not permit the production of the requested information without authorization from the  
25 Non-Party even if the Non-Party fails to seek a protective order from this Court, then the Producing  
26 Party shall not be required to produce any information in its possession or control that is subject

1 to the confidentiality agreement with the Non-Party before a determination by the Court. If the  
2 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
3 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
4 before a determination by the Court.

5 13. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 14. 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 provision  
19 is not intended to modify whatever procedure may be established in an e-discovery order or  
20 agreement that provides for production without prior privilege review. The parties agree to the  
21 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

22 15. MISCELLANEOUS

23 15.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the  
24 right of any person to seek its modification by the Court in the future.

25 15.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated  
26 Protective Order, no Party waives any right it otherwise would have to object to disclosing or

1 producing any Disclosure or Discovery Material on any ground not addressed in this Stipulated  
2 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence  
3 of any of the material covered by this Stipulated Protective Order.

4 15.3 Export Control. The Protected Material disclosed by the Producing Party may  
5 contain technical data subject to export control laws and therefore the release of such technical  
6 data to foreign persons or nationals may be restricted. The Receiving Party shall take measures  
7 necessary to ensure compliance with applicable export control laws, including confirming that no  
8 unauthorized foreign person has access to such technical data.

9 No Protected Material may leave the territorial boundaries of the United States of America.  
10 Without limitation, this prohibition extends to Protected Material (including copies) in physical  
11 and electronic form. The viewing of Protected Material through electronic means outside the  
12 territorial limits of the United States of America is similarly prohibited. The restrictions contained  
13 within this paragraph may be amended through the express written consent of the Parties to the  
14 extent that such agreed to procedures conform with applicable export control laws and regulations.  
15 Nothing in this paragraph is intended to remove any obligation that may otherwise exist to produce  
16 documents currently located in a foreign country.

17 Notwithstanding this prohibition, Protected Material, exclusive of material designated  
18 HIGHLY CONFIDENTIAL - SOURCE CODE, and to the extent otherwise permitted by law, may  
19 be taken outside the territorial limits of the United States if it is reasonably necessary for a  
20 deposition taken in a foreign country.

21 If a deposition of a Producing Party's employee or 30(b)(6) designee occurs outside the  
22 United States, the Parties agree that Outside Counsel may share the Producing Party's Protected  
23 Materials with foreign counsel in that jurisdiction for purposes of the deposition. Nothing in this  
24 provision shall prevent House Counsel or Outside Counsel of Record from travelling outside the  
25 territorial limits of the United States with their personal electronic devices, including laptops  
26 and/or cellphones, or reviewing their electronic mail while traveling abroad.

1 The prohibitions contained within this section may be amended through the express written  
2 consent of the Parties to the extent that such agreed to procedures conform with applicable export  
3 control laws and regulations. Nothing in this section is intended to remove any obligation that  
4 may otherwise exist to produce documents currently located in a foreign country.

5 15.4 Privilege Logs. No Party is required to identify on its respective privilege log any  
6 document or communication dated after the filing of the Complaint. The Parties will exchange  
7 their respective privilege logs at a time and in a format to be agreed upon by the Parties following  
8 the production of documents or as otherwise ordered by the Court.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

10 Respectfully submitted September 1, 2023.

11 BYRNES KELLER CROMWELL LLP

MORGAN, LEWIS & BOCKIUS LLP

12  
13 By /s/ Bradley S. Keller  
Bradley S. Keller WSBA #10665  
14 By /s/ Jofrey M. McWilliam  
Jofrey M. McWilliam, WSBA #28441  
15 1000 Second Avenue, 38th Floor  
Seattle, WA 98104  
16 (206) 622-2000  
bkeller@byrnesceller.com

By /s/ Patty Eakes  
Patty Eakes, WSBA #18888  
By /s/ Molly A. Terwilliger  
Molly A. Terwilliger, WSBA #28449  
1301 Second Avenue, Suite 2800  
Seattle, WA 98101  
(206) 274-6400  
patty.eakes@morganlewis.com  
molly.terwilliger@morganlewis.com

17  
18 MESSNER REEVES LLP  
Gregory P. Sitrick (*pro hac vice*)  
19 Isaac S. Crum (*pro hac vice*)  
Sharif Ahmed (*pro hac vice*)  
20 7250 N. 16th Street, Suite 410  
Phoenix, AZ 85020  
21 gsitrick@messner.com  
22 icrum@messner.com  
sahmed@messner.com

Andrew V. Devkar (*admitted pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
2049 Century Park East, Suite 700  
Los Angeles, CA 90067-3109  
(310) 907-1000  
andrew.devkar@morganlewis.com

23 ***Attorneys for Plaintiff Datanet LLC***

Natalie A. Bennett (*admitted pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2541  
(202) 739-3000  
natalie.bennett@morganlewis.com

1 Karon N. Fowler (admitted *pro hac vice*)  
2 MORGAN, LEWIS & BOCKIUS LLP  
3 110 North Wacker Drive, Suite 2800  
Chicago, IL 60606-1511  
karon.fowler@morganlewis.com

4 Austin L. Zuck (admitted *pro hac vice*)  
5 Katerina Hora Jacobson (admitted *pro hac*  
6 *vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
7 1400 Page Mill Road  
Palo Alto, CA 94304  
8 (650) 843-4000  
austin.zuck@morganlewis.com  
katerina.horajacobson@morganlewis.com  
9 ***Attorneys for Defendant Microsoft***  
***Corporation***

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11 IT IS FURTHER ORDERED that pursuant to Federal Rule of Evidence 502(d), the  
12 production of any documents in this proceeding shall not, for the purposes of this proceeding or  
13 any other federal or state proceeding, constitute a waiver by the producing party of any privilege  
14 applicable to those documents, including the attorney-client privilege, attorney work-product  
15 protection, or any other privilege or protection recognized by law.

16  
17 DATED: September 14, 2023.

18  
19 

20 \_\_\_\_\_  
Jamal N. Whitehead  
21 United States District Judge  
22  
23  
24  
25  
26

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1  
2  
3 I, \_\_\_\_\_ [print or type full name],  
4 of \_\_\_\_\_ [print or type full address], declare  
5 under penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
6 Order that was issued by the United States District Court for the Western District of Washington  
7 on [MONTH/DAY/YEAR] in the case of *DATANET LLC, v. MICROSOFT CORPORATION*, No.  
8 2:22-cv-01545-JNW (W.D. Wash.). I agree to comply with and to be bound by all the terms of  
9 this Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
11 not disclose in any manner any information or item that is subject to this Stipulated Protective  
12 Order to any person or entity except in strict compliance with the provisions of this Stipulated  
13 Protective Order.

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

17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_

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EXHIBIT B

NON-DISCLOSURE AGREEMENT

I, \_\_\_\_\_[print or type full name],  
of \_\_\_\_\_ [print or type full address], hereby  
acknowledge:

1. I affirm that I am not a past or present officer, director, or employee (including  
in-house counsel) of any party to this case.

2. I understand that the focus group study in which I have been requested to participate  
will result in the receipt by me of information considered by third parties to be confidential and  
proprietary.

3. In consideration of my selection to participate in the focus group and my receipt of  
compensation for my participation in that study, I agree to keep all information disclosed to me  
during the course of such study as confidential, and I will not disclose such information to any  
other person.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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