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ACCESSDATA CORPORATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ACCESSDATA CORPORATION, a Utah
corporation,

Plaintiff,

v.

ALSTE TECHNOLOGIES GmbH, a
German limited liability company,
Defendant.

AND RELATED COUNTERCLAIMS.

Case No. 2:08-cv-569-TC-PMW

STIPULATED PROTECTIVE ORDER

Chief District Judge Tena Campbell

Magistrate Paul M. Warner

1. PURPOSES AND LIMITATIONS

Discovery in the above-captioned 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 the above-captioned action is warranted. This Order is made to facilitate the disclosure of such information by providing suitable protections therefor. This Order does not confer blanket protections on all disclosures or responses to discovery. This Order is intended to protect only information or items that are entitled to protection under the applicable legal principles.

2. DEFINITIONS

2.1 “Party”: any party to the above-captioned action, including their respective officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 “Disclosure Material”: all documents and information produced in discovery in the above-captioned action.

2.3 “Confidential Material”: Disclosure Material that qualifies for protection under standards developed under Fed. R. Civ. P. 26(c).

2.4 “Receiving Party”: a Party that receives Disclosure Material from a Producing Party.

2.5 “Producing Party”: a Party or non-party that produces Disclosure Material to a Party.

2.7. “Designating Party”: a Party or non-party that designates Disclosure Material for protection under this Order.

2.8 “Protected Material”: any Disclosure or Discovery Material that is designated for protection under this Order, together with: any information copied or extracted therefrom; copies, excerpts, summaries, or compilations thereof; and testimony, conversations,

or presentations by parties or counsel to or in court or in other settings that reveal Protected Material.

2.9 “Outside Counsel”: attorneys who are not employees of a Party but who are retained to represent or advise a Party in the above-captioned action.

2.10 “House Counsel”: attorneys who are employees of a Party.

2.11 “Counsel” (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 “Expert”: a person with specialized knowledge or experience in a matter pertinent to the above-captioned action who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in the above-captioned action and who is not a past or a current employee of a Party or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s; including, without limitation, professional jury or trial consultant(s) retained in connection with the above-captioned action.

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

3. DURATION

Even after the termination of the above-captioned action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

4. DESIGNATING PROTECTED MATERIAL

4.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or non-party that designates information or items for protection under this Order must

take care to limit any such designation to specific material that qualifies under the appropriate standards. If an item of Discovery Material comprises both Confidential Material and material that does not qualify as Confidential Material, then any designation for protection under this Order should be limited to whatever portion(s) of that item comprise Confidential Material, if and to the extent practicable.

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

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

4.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Discovery Material for which protection is sought under this Order must be designated in conformity with this Order before it is disclosed or produced. Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" at the top of each page that contains protected material. A Party or non-party that makes original documents available for inspection need not designate them until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the documents made available for inspection shall be deemed Protected Material. After the inspecting Party has selected the documents it wants copied and produced, the Producing Party must, before producing the selected documents,

the Producing Party must affix the legend “CONFIDENTIAL” at the top of each page that contains Protected Material.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all testimony to be protected under protected under this Order. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought. Prior to the expiration of that 20-day period, all of the testimony shall be deemed Protected Material. After the expiration of the 20-day period, only those portions of the testimony that are designated for protection shall be Protected Material. Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL.”

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions and exclude the others from its designation.

4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified Discovery Material for protection under this Order does not, standing alone, waive the Designating Party’s right to secure protection under this Order therefor. If Discovery Material is appropriately designated after its initial production, the

Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

5.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

5.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion that identifies the challenged designation and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity any justification for the designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the Discovery Material in question the protections afforded by this Order.

6. ACCESS TO AND USE OF PROTECTED MATERIAL

6.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party only for prosecuting, defending, or attempting to settle the above-captioned action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the above-captioned action has been terminated, a Receiving Party must comply with the provisions of section 10, below (FINAL DISPOSITION).

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

6.2 Disclosure of Confidential Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose Protected Material only to:

- (a) the Receiving Party's Outside Counsel of record in the above-captioned action, as well as employees of said Counsel;
- (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
- (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);
- (d) the Court and its personnel;

(e) court reporters, their staffs, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions in the above-captioned action, the author(s) and/or recipient(s) identified on the face of any document comprising Protected Material;

(g) during their depositions in the above-captioned action, the original source(s) of confidential information comprising Protected Material;

(h) during their depositions, witnesses in the above-captioned action whose knowledge of confidential information comprising Protected Material has already been established; and

(i) during their depositions, witnesses in the above-captioned action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

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

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Protected Material, the Receiving Party must so notify the Designating Party, in writing (by email or fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. In addition, the Receiving Party must deliver a copy of this Order promptly to the party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Order and to afford the Designating Party an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material. This Order does not prohibit or relieve the Receiving Party from complying with any lawful directive from another court.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9. FILING PROTECTED MATERIAL. In accordance with Rule DUCivR 5-2(d) of the Local Rules of this Court, pleadings or other papers which contain or annex Protected Material shall be filed in sealed envelopes on which shall be endorsed the title and case number of the above-captioned action, with a copy of the cover page of the document affixed to the outside of the envelope, the word “CONFIDENTIAL” or its equivalent, and the following statement: “Filed Under Seal Pursuant To Protective Order.” The pleading caption on the cover page must also include a notation that the document is being filed under court seal. The sealed document, together with a judge’s copy prepared in the same manner, must be filed manually with the clerk and served manually on all parties or other persons entitled to service thereof, and shall not be filed or served electronically. Any such pleading or other paper shall remain sealed

during the pendency of the above-captioned action, and at the final disposition of the above-captioned action shall be returned by the Clerk of the Court to the party who filed same.

Any Court hearing that refers to or describes Protected Material shall in the Court's discretion be held in camera. The party seeking to use Protected Material shall have the burden of requesting an in camera hearing.

10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return or destroy all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. The Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty-day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 3 (DURATION), above.

12. MISCELLANEOUS

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

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any

right to object on any ground to use in evidence of any of the Discovery Material covered by this Protective Order.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: October 27, 2009



Honorable Paul M. Warner
United States Magistrate Judge

Approved as to Form:

Samuel A. Wong, Esq.
AEGIS LAW FIRM, PC

/s/ Samuel A. Wong
Samuel A. Wong

Sterling A. Brennan
L. Rex Sears
WORKMAN | NYDEGGER A PROFESSIONAL CORPORATION

/s/ L. Rex Sears
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