From: Abrams, Jill
Sent: Wednesday, September 8, 2021 5:48 PM
To: sgreenspan@ktmc.com
Cc: Tully, Joshua <JTully@wc.com>
Subject: Information Request Under Vermont Public Records Law

Dear Stacey,

I write to follow up on our call regarding your public records request. As we discussed, with two exceptions, all the documents you requested are subject to the Protective Order entered in State of Vermont v. Cardinal Health, Inc., et al., a copy of which is attached, and 1 V.S.A. 317. Pursuant to the Protective Order, counsel for Cardinal is copied on this email.

It was nice to "meet" you by telephone.

Jill

Jill S. Abrams
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STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 279-3-19 Cncv

STATE OF VERMONT
Plaintiff,

v.

CARDINAL HEALTH, INC. and
MCKESSON CORPORATION
Defendants.

STIPULATED PROTECTIVE ORDER

I. Scope of Order

1. Disclosure and discovery activity in this proceeding may 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 proceeding, captioned as *State of Vermont v. Cardinal Health, Inc. & McKesson Corp.*, dkt. 279-3-19 Cncv ("the Litigation") would be warranted. Accordingly, the Parties hereby stipulate to this Stipulated Protective Order ("Protective Order" or "Order"). Unless otherwise noted, this Order is subject to the Vermont Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information produced or disclosed during the Litigation. All materials produced or adduced in the course of discovery, including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any Party to this Litigation (the "Producing

Party") to any other party or parties (the "Receiving Party") are also governed by this Protective Order. This Protective Order is binding upon all Parties to this Litigation, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, principals, agents, experts, consultants, representatives, directors, officers, and employees, and others as set forth in this Protective Order.

3. Third parties who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Producing Party for purposes of this Protective Order.

4. The entry of this Protective Order does not preclude any Party from seeking a further order of this Court as appropriate.

5. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

6. This Protective Order does not confer blanket protection on all disclosures or responses to discovery, and the protection it affords extends only to the specific information or items that are entitled to protection under the applicable legal principles for treatment as confidential.

II. Definitions

7. Competitor. "Competitor" means any company or individual, other than the Designating Party, engaged in the design, development, manufacture, regulatory review process, dispensing, marketing, distribution, creation, prosecution, pursuit, or other development of an interest in protecting intellectual property, or licensing of any product or services involving opioids; provided, however, that this section shall not be construed as limiting the disclosure of Discovery Material to an Expert in this Litigation, so long as no Discovery Material produced by

one Defendant is shown to any current employee or consultant of a different Defendant, except as provided in Paragraphs 31 through 33.

8. Confidential Information. "Confidential Information" is defined as Discovery Material that the Producing Party in good faith believes would be entitled to protection on a motion for a protective order under Rule 26 of the Vermont Rules of Civil Procedure on the basis that it should be protected from disclosure because it constitutes, reflects, discloses, or contains information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, medical or psychiatric information, personnel records, Confidential Protected Health Information under 45 C.F.R. § 160 ("HIPAA"), protected law enforcement materials (including investigative files, overdose records, records relating to naloxone or Narcan, coroner's records, court records, and prosecution files), research, technical, commercial or financial information that the Designating Party has maintained as confidential, or such other proprietary or sensitive business and commercial information that is not publicly available. In addition, to the extent that a Producing Party produces discovery materials in this Litigation that were produced and designated as "Confidential" in *In re National Prescription Opioids Litigation*, Case No. 17-MDL-2804 (N.D. Ohio), those discovery materials will be deemed to be designated as "Confidential Information" under this Protective Order. Public records and other information or documents that are publicly available may not be designated as Confidential Information. In designating discovery materials as Confidential Information, the Producing Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court. Nothing herein shall be construed to allow for global designations of all documents as "Confidential." Nothing herein shall be construed as limiting the Court's ability to determine the protection, if any, due to any production under Vermont law.

9. Counsel. "Counsel," without another qualifier, means Outside Counsel and In-House Counsel for the Parties.

10. Designating Party. "Designating Party" means a Party to this Litigation, including a Producing Party, that designates Discovery Material as Confidential, Highly Confidential, or Highly Confidential – Attorneys' Eyes Only.

11. Discovery Material. "Discovery Material" means any information, document, or tangible thing, response to discovery requests, deposition testimony or transcript, and any other similar materials, or portions thereof produced in this litigation.

12. Highly Confidential Information. "Highly Confidential Information" is defined as information which, if disclosed, disseminated, or used by or to a Competitor of the Producing Party or any other person not enumerated in Paragraph 32, could reasonably result in possible antitrust violations or commercial, financial, or business harm. In addition, to the extent that a Producing Party produces discovery materials in this Litigation that were produced and designated as "Highly Confidential" in *In re National Prescription Opioids Litigation*, Case No. 17-MDL-2804 (N.D. Ohio), those discovery materials will be deemed to be designated as "Highly Confidential Information" under this Protective Order. In designating discovery materials as Highly Confidential Information, the Producing Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court. Nothing herein shall be construed to allow for global designations of all documents as "Highly Confidential." Nothing herein shall be construed as limiting the Court's ability to determine the protection, if any, due to any production under Vermont law.

13. Highly Confidential – Attorneys' Eyes Only Information. "Highly Confidential – Attorneys' Eyes Only Information" is defined herein as information properly designated as

"Highly Confidential" and which, if disclosed, disseminated, or used by any person not enumerated in Paragraph 33 below, creates extraordinary risk of harm, including harm to non-parties; and infringing on the privacy interests of non-parties. In addition, to the extent that a Producing Party produces discovery materials in this Litigation that were produced and designated as "Highly Confidential – Attorneys' Eyes Only Information" in *In re National Prescription Opioids Litigation*, Case No. 17-MDL-2804 (N.D. Ohio), those discovery materials will be deemed to be designated as "Highly Confidential Information – Attorneys' Eyes Only Information" under this Protective Order. In designating discovery materials as Highly Confidential – Attorneys' Eyes Only Information, the Producing Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court. Nothing herein shall be construed to allow for global designations of all documents as "Highly Confidential – Attorneys' Eyes Only." Nothing herein shall be construed as limiting the Court's ability to determine the protection, if any, due to any production under Vermont law.

14. Expert. "Expert" means an expert or independent consultant formally retained or employed to advise or to assist Counsel in the preparation or trial of this Litigation, and their staff who are not employed by a Party to whom it is reasonably necessary to disclose Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information for the purpose of this Litigation.

15. In-House Counsel. "In-House Counsel" means attorney, paralegal, and legal administrative staff employees of any Party, including of the Office of the Vermont Attorney General ("State Counsel").

16. Law Enforcement Agency. "Law Enforcement Agency" means any local, state, or federal agency empowered to investigate matters or prosecute laws, regulations, or rules.

17. Outside Counsel. "Outside Counsel" means any law firm or attorney who represents any Party for purposes of this Litigation, including paralegal and administrative staff.

18. Party. "Party" means any of the parties to this Litigation at the time this Protective Order is entered, including officers and directors of such parties. If additional parties are added other than parents, subsidiaries or affiliates of current parties to this Litigation, then their ability to receive Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information as set forth in this Protective Order will be subject to them being bound, by agreement or Court Order, to this Protective Order.

19. Producing Party. "Producing Party" means a Party to this Litigation, and all directors, employees, and agents (other than Counsel) of the Party, or any third party that produces or otherwise makes available Discovery Material to a Receiving Party, subject to Paragraph 3.

20. Protected Material. "Protected Material" means any Discovery Material, and any copies, abstracts, summaries, or information derived from such Discovery Material, and any notes or other records regarding the contents of such Discovery Material, that is designated as "Confidential," "Highly Confidential," or "Highly Confidential – Attorneys' Eyes Only" in accordance with this Protective Order.

21. Receiving Party. "Receiving Party" means a Party to this Litigation, and all employees, agents, and directors (other than Counsel) of the Party, that receives Protected Material subject to this Protective Order.

III. Designation and Redaction of Confidential Information

22. For each document produced by the Producing Party that contains or constitutes Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys'

Eyes Only Information pursuant to this Protective Order, each page shall be marked "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or with comparable notices. To the extent Defendants are reproducing to the State materials that they have produced in any other investigation or litigation, those materials shall retain their original Bates labels.

23. Specific discovery responses produced by the Producing Party shall, if appropriate, be designated as Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information by marking the pages of the document that contain such information with the notation "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or with comparable notices.

24. To the extent that matter stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, Internet sites, discs, networks, or tapes) ("Computerized Material") is produced by any Party in such form, the Producing Party may designate such matters as confidential by a designation of "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on the media. Whenever any Party to whom Computerized Material designated as CONFIDENTIAL, or HIGHLY CONFIDENTIAL, or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY is produced reduces such material to hardcopy form, that Party shall mark the hardcopy form with the corresponding "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation.

25. Information disclosed through testimony at a deposition taken in connection with this Litigation may be designated as Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information by designating the portions of the transcript in a letter to be served on the court reporter and opposing Counsel within thirty (30) calendar days of the Producing Party's receipt of the certified transcript of a deposition. The court reporter will indicate the portions designated as Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information and segregate them as appropriate. Designations of transcripts will apply to audio, video, or other recordings of the testimony. The court reporter shall clearly mark any transcript released prior to the expiration of the 30-day period as "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY—SUBJECT TO FURTHER CONFIDENTIALITY REVIEW." Such transcripts will be treated as Highly Confidential – Attorneys' Eyes Only Information until the expiration of the 30-day period. If the Producing Party does not serve a designation letter within the 30-day period, then the entire transcript will be deemed not to contain Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information and the "HIGHLY CONFIDENTIAL—SUBJECT TO FURTHER CONFIDENTIALITY REVIEW" legend shall be removed.

26. In accordance with this Protective Order, only the persons identified under Paragraphs 31 through 33, along with the witness's Counsel may be present if any questions regarding Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information are asked. This paragraph shall not be deemed to authorize disclosure of any document or information to any person to whom disclosure is prohibited under this Protective Order.

27. A Party to this Litigation may designate as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," OR "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" any document, material, or other information produced by, or testimony given by, any other person or entity that the Designating Party reasonably believes qualifies as the Designating Party's Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information pursuant to this Protective Order. The Party claiming confidentiality shall designate the information as such within thirty (30) days of its receipt of such information. Any Party receiving information from a third party shall treat such information as Highly Confidential – Attorneys' Eyes Only during this thirty (30) day period while all Parties have an opportunity to review the information and determine whether it should be designated as confidential. Any Party designating third party information as Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information shall have the same rights as a Producing Party under this Protective Order with respect to such information.

28. This Protective Order shall not be construed to protect from production or to permit the "Confidential Information," "Highly Confidential Information," or "Highly Confidential – Attorneys' Eyes Only Information" designation of any document that (a) the party has not made reasonable efforts to keep confidential; or (b) is at the time of production or disclosure, or subsequently becomes, through no wrongful act on the part of the Receiving Party or the individual or individuals who caused the information to become public, generally available to the public through publication or otherwise.

29. In order to protect against unauthorized disclosure of Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information, a

Producing Party may redact certain Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information from produced documents, materials or other things. The basis for any such redaction shall be stated in the redaction field of the metadata produced or, in the event that such metadata is not technologically feasible, a log of the redactions. Specifically, the Producing Party may redact:

i. Personal Identifying Information. The names, home addresses, personal email addresses, home telephone numbers, Social Security or tax identification numbers, and other private information protected by law of (a) current and former employees (other than employees' names and business contact information), (b) individuals in clinical studies or adverse event reports whose identity is protected by law, (c) undercover law enforcement personnel and confidential informants, (d) patient identified information that is protected by 42 CFR 2.12 and associated regulations, or (e) any personal identifying information whose disclosure is prohibited by law or regulation.

ii. Privileged Information. Information protected from disclosure by the attorney-client privilege, work-product doctrine, or other such legal privilege protecting information from discovery in this Litigation. The obligation to provide, form of, and timing of privilege logs is governed by the Court's Case Management Order of August 13, 2020. To the extent Defendants are reproducing documents or other discovery responses from other litigation, Defendants shall notify Plaintiff if (1) another court overrules or modifies the designation, redaction, or withholding of any document or information or other discovery response, and (2) Defendants decide not to apply the other court's ruling in this case. The notification shall include the relevant court order.

iii. Third Party Confidential Information. If agreed to by the Parties or ordered by the Court, information that is protected pursuant to confidentiality agreements between Designating Parties and third parties, as long as the agreements require Designating Parties to redact such information in order to produce such documents in litigation.

IV. Access to Confidential Discovery Material

30. General. The Receiving Party and Counsel for the Receiving Party shall not disclose or permit the disclosure of any Confidential or Highly Confidential Information to any third person or entity except as set forth in Paragraphs 31 through 33.

31. In the absence of written permission from the Producing Party or an order of the Court, any Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for purposes of this Litigation and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

i. Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such Counsel;

ii. Vendor agents retained by the Parties or Counsel for the Parties, provided that the vendor agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

iii. Parties;

iv. Present or former officers, directors, and employees of a Party, provided that former officers, directors, or employees of the Designating Party may be shown Confidential Information prepared or received after the date of their departure only to the extent Counsel for the Receiving Party determines in good faith that the employee's assistance is reasonably necessary to the conduct of this Litigation and provided that such persons have completed the

certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Nothing in this paragraph shall be deemed to permit the showing of one defendant's Confidential Information to an officer, director, or employee of another defendant, except to the extent otherwise authorized by this Order;

v. Court reporters and other personnel engaged for recording or transcribing testimony in this Litigation;

vi. The Court, any Special Master, Arbitrator, or Mediator appointed by the Court or jointly agreed to by the Parties, and any members of their staffs to whom it is necessary to disclose the information;

vii. Experts, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

viii. Any individual(s) who authored, prepared, or previously reviewed or received the information;

ix. Those liability insurance companies from which any defendant has sought or may seek insurance coverage to (a) provide or reimburse for the defense of the Litigation; or (b) satisfy all or part of any liability in the Litigation, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

x. Law Enforcement Agencies and their counsel, but only after such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Disclosure pursuant to this subparagraph will be made only after the Designating Party has been given ten (10) days' notice of the Receiving Party's intent to disclose and a description

of the materials the Receiving Party intends to disclose. If the Designating Party objects to disclosure, the Designating Party may request a meet and confer and may seek a protective order from a court; or

xi. Witnesses during deposition, who may be shown, but shall not be permitted to retain, Confidential Information; provided, however, that, unless otherwise agreed by the relevant Parties or ordered by the Court, no Confidential Information of one Defendant may be shown to any witness who is a current employee of another Defendant who is not otherwise authorized to receive the information under this Order.

32. In the absence of written permission from the Producing Party or an order of the Court, any Highly Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for purposes of this Litigation and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

i. Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such Counsel. Information designated as Highly Confidential by any Defendant may not be disclosed to In-House Counsel of another Defendant, unless such In-House Counsel (a) has regular involvement in the Litigation; (b) disclosure to the individual is reasonably necessary to this Litigation; and (c) the individual completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Except as otherwise provided in this Order or any other Order in this Litigation, no other employees of a Defendant may receive the Highly Confidential Information of another;

ii. Vendor agents retained by the Parties or Counsel for the Parties, provided that the vendor agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

iii. Parties that have produced the designated information;

iv. Court reporters and other personnel engaged for recording or transcribing testimony in this Litigation;

v. The Court, any Special Master, Arbitrator, or Mediator appointed by the Court or jointly agreed to by the Parties, and any members of their staffs to whom it is necessary to disclose the information;

vi. Experts, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

vii. Any individual(s) who authored, prepared or previously reviewed or received the information;

viii. Law Enforcement Agencies and their counsel, but only after such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Disclosure pursuant to this subparagraph will be made only after the Designating Party has been given ten (10) days' notice of the Receiving Party's intent to disclose and a description of the materials the Receiving Party intends to disclose. If the Designating Party objects to disclosure, the Designating Party may request a meet and confer and may seek a protective order from a court; or

ix. Witnesses during deposition, who may be shown, but shall not be permitted to retain, Highly Confidential Information; provided, however, that, unless otherwise agreed by the relevant Parties or ordered by the Court, no Highly Confidential Information of one Defendant may be shown to any witness who is a current employee of another Defendant who is not otherwise authorized to receive the information under this Order.

33. In the absence of written permission from the Producing Party or an order of the Court, any Highly Confidential – Attorneys' Eyes Only Information produced in accordance with the provisions of this Protective Order shall be used solely for purposes of this Litigation and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

i. Counsel and employees employed by the Office of the Attorney General of the State of Vermont;

ii. Outside Counsel for the Parties and the attorneys, paralegals, stenographic, and clerical staff employed by such Counsel;

iii. Vendor agents retained by the Parties or Counsel for the Parties, provided that the vendor agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

iv. Court reporters and other personnel engaged for recording or transcribing testimony in this Litigation;

v. The Court, any Special Master, Arbitrator, or Mediator appointed by the Court or jointly agreed to by the Parties, and any members of their staffs to whom it is necessary to disclose the information;

vi. Experts, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

vii. Any individual(s) who authored, prepared, or previously reviewed or received the information;

viii. Law Enforcement Agencies and their counsel, but only after such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Disclosure pursuant to this subparagraph will be made only after the Designating Party has been given ten (10) days' notice of the Receiving Party's intent to disclose and a description of the materials the Receiving Party intends to disclose. If the Designating Party objects to disclosure, the Designating Party may request a meet and confer and may seek a protective order from a court; or

34. In the event that In-House Counsel of another Defendant or current employees of any Competitor of the Producing Party is present at the deposition of an employee or former employee of the Producing Party, prior to a document designated as Highly Confidential or Highly Confidential – Attorneys' Eyes Only being used in the examination, such In-House Counsel or current employees of any Competitor of the Producing Party shall excuse himself or herself from the deposition room without delaying or disrupting the deposition.

V. Confidentiality Acknowledgment

35. Counsel for the Parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information. Counsel to the Party employing, examining, or interviewing witnesses shall be responsible for obtaining the executed certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound.

36. Each person required under this Order to complete the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound, shall be provided with a copy of this Protective Order, which he or she shall read, and, upon reading this Protective Order, shall sign an Acknowledgment, in the form annexed hereto as Exhibit A, acknowledging that he or she has

read this Protective Order and shall abide by its terms. All signed Acknowledgments and Agreements to Be Bound ("Acknowledgments") are strictly confidential. Unless otherwise provided in this Order, Counsel for each Party shall maintain the Acknowledgments without giving copies to the other side. The Parties expressly agree, and it is hereby ordered that, except in the event of a violation of this Protective Order, there will be no attempt to seek copies of the Acknowledgments or to determine the identities of persons signing them. If the Court finds that any disclosure is necessary to investigate a violation of this Protective Order, such disclosure will be pursuant to separate court order. Persons who come into contact with Confidential Information or Highly Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Acknowledgements, but must comply with the terms of this Protective Order.

VI. Litigation Experts and Consultants.

37. Experts. Subject to the provisions of this Protective Order, all Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information may be provided to Experts assisting Counsel to the Parties in this Litigation who have agreed in writing pursuant to Paragraph 31 through 33 or on the record of a deposition to be bound by this Protective Order, including the limitation that such information may be used by the Expert only for purposes of this Litigation.

VII. Protection and Use of Confidential and Highly Confidential Information

38. Persons receiving or having knowledge of Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information by virtue of their participation in this Litigation, or by virtue of obtaining any documents or other Protected Material produced or disclosed pursuant to this Protective Order, shall use that

Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information only as permitted by this Protective Order. Counsel shall take reasonable steps to assure the security of any Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information and will limit access to such material to those persons authorized by this Protective Order.

39. Nothing herein shall restrict a person qualified to receive Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information pursuant to this Protective Order from making working copies, abstracts, digests and analyses of such information for use in connection with this Litigation and such working copies, abstracts, digests and analyses shall be deemed to have the same level of protection under the terms of this Protective Order. Further, nothing herein shall restrict a qualified recipient from converting or translating such information into machine-readable form for incorporation in a data retrieval system used in connection with this Litigation, provided that access to such information, in whatever form stored or reproduced, shall be deemed to have the same level of protection under the terms of this Protective Order.

40. All persons qualified to receive Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information pursuant to this Protective Order shall at all times keep all notes, abstractions, or other work product derived from or containing Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information in a manner to protect it from disclosure not in accordance with this Protective Order, and shall be obligated to maintain the confidentiality of such work product and shall not disclose or reveal the contents of said notes, abstractions or other work product after the documents, materials, or other thing, or portions thereof (and the

information contained therein) are destroyed or returned and surrendered pursuant to Paragraph 82. Nothing in this Protective Order requires the Receiving Party's Counsel to disclose work product at the conclusion of the case.

41. Notwithstanding any other provisions hereof, nothing herein shall restrict any Party's Counsel from rendering advice to that Counsel's clients with respect to this proceeding or a related action in which the Receiving Party is permitted by this Protective Order to use Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information and, in the course thereof, relying upon such information, provided that in rendering such advice, Counsel shall not disclose any other Party's Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information other than in a manner provided for in this Protective Order.

42. Nothing contained in this Protective Order shall prejudice in any way the rights of any Party to object to the relevancy, authenticity, or admissibility into evidence of any document or other information subject to this Protective Order, or otherwise constitute or operate as an admission by any Party that any particular document or other information is or is not relevant, authentic, or admissible into evidence at any deposition, at trial, or in a hearing.

43. Nothing contained in this Protective Order shall preclude any Party from using its own Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information in any manner it sees fit, without prior consent of any Party or the Court.

44. To the extent that a Producing Party uses or discloses to a third party its designated Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information in a manner that causes the information to lose its confidential

status, the Receiving Party is entitled to notice of the Producing Party's use of the confidential information in such a manner that the information has lost its confidentiality, and the Receiving Party may also use the information in the same manner as the Producing Party.

45. If a Receiving Party learns of any unauthorized disclosure of Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information, it shall immediately (a) inform the Producing Party in writing of all pertinent facts relating to such disclosure; (b) make its best effort to retrieve all copies of the Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order; and (d) request such person or persons execute the Acknowledgment that is attached hereto as Exhibit A.

VIII. Changes in Designation of Information

46. An inadvertent failure to designate or correctly designate Discovery Material as Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information does not, standing alone, waive the right to designate or redesignate the Discovery Material or constitute a waiver of a claim of confidentiality.

47. The Producing Party may correct a failure to designate or correctly designate Discovery Material by giving written notice to the Receiving Party that the document or thing produced is deemed "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and should be treated as such in accordance with the provisions of this Protective Order, and providing replacement media, images, and any associated production information to conform the document to the appropriate designation and facilitate use of the revised designation in the production. The Receiving Party must treat such

documents and things with the noticed level of protection from the date such notice is received. Disclosure, prior to the receipt of such notice of such information, to persons not authorized to receive such information shall not be deemed a violation of this Protective Order.

48. Any Producing Party may designate as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or withdraw a "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation from any material that it has produced consistent with this Protective Order, provided, however, that such redesignation shall be effective only as of the date of such redesignation. Such redesignation shall be accomplished by notifying Counsel for each Party in writing of such redesignation and providing replacement images bearing the appropriate description, along with the replacement media, images, and associated production information referenced above. Upon receipt of any redesignation and replacement image that designates material as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party shall (a) treat such material in accordance with this Protective Order; (b) take reasonable steps to notify any persons known to have possession of any such material of such redesignation under this Protective Order; and (c) promptly endeavor to procure all copies of such material from any persons known to have possession of such material who are not entitled to receipt under this Protective Order. It is understood that the Receiving Party's good faith efforts to procure all copies may not result in the actual return of all copies of such materials.

49. A Receiving 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. If the Receiving Party believes that portion(s) of a document are not properly

designated as Confidential Information, Highly Confidential Information, or Highly Confidential – Attorneys' Eyes Only Information, the Receiving Party will identify the specific information that it believes is improperly designated and notify the Designating Party, in writing or voice-to-voice dialogue, of its good faith 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, in writing within fourteen (14) days of notification, the basis of the chosen designation. If a Receiving Party elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party, it shall notify the Designating Party and the Receiving Party shall have fourteen (14) days from such notification to challenge the designation by commencing a discovery dispute under appropriate procedures. The ultimate burden of persuasion in any such challenge proceeding shall be on the Designating Party as if the Producing Party were seeking a protective order in the first instance. Until the Court rules on the challenge, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation. In the event that a designation is changed by the Designating Party or by Court Order, the Designating Party shall provide replacement media, images, and associated production information as provided above.

IX. Inadvertent Production

50. Non-Waiver of Privilege. Any inadvertent disclosure of Discovery Material subject to a claim of attorney-client privilege, attorney work product protection, common interest privilege, or any other privilege, immunity or protection from production or disclosure ("Privileged Information") will not in any way prejudice or otherwise constitute a waiver of, or estoppel as to, such Privileged Information or generally of such privilege. If a Producing Party

discloses Privileged Information, such disclosure shall be deemed inadvertent without need of further showing under Vt. R. Evid. 510 and shall not constitute or be deemed a waiver or forfeiture of the privilege or protection from discovery in this case or in any other federal or state proceeding by that party (the "Disclosing Party"). This Section shall be interpreted to provide the maximum protection allowed by Vt. R. Evid. 510.

51. Notice of Production of Privileged Information. If a Party or non-Party discovers that it has produced Privileged Information, it shall promptly notify the Receiving Party of the inadvertent production in writing, shall identify the produced Privileged Information by Bates range where possible, and may demand that the Receiving Party return or destroy the Privileged Information. In the event that a Receiving Party receives information that it believes is subject to a good faith claim of privilege by the Disclosing Party, the Receiving Party shall immediately refrain from examining the information and shall promptly notify the Disclosing Party in writing that the Receiving Party possesses potentially Privileged Information. The Disclosing Party shall have seven (7) days to assert privilege over the identified information. If the Disclosing Party does not assert a claim of privilege within the seven-day period, the information in question shall be deemed non-privileged.

52. Clawback of Privileged Information. If the Disclosing Party has notified the Receiving Party of inadvertent production of Privileged Information, or has confirmed the production of Privileged Information called to its attention by the Receiving Party, the Receiving Party shall within fourteen (14) days of receiving such notification or confirmation: (1) destroy or return to the Disclosing Party all copies or versions of the inadvertently produced Privileged Information requested to be returned or destroyed; (2) delete from its work product or other materials any quoted or paraphrased portions of the produced Privileged Information that can be

located using a reasonable search, as well as any other such portions that are subsequently discovered or identified; and (3) ensure that produced Privileged Information is not disclosed in any manner to any Party or non-Party. The following procedures shall be followed to ensure all copies of such ESI are appropriately removed from the Receiving Party's system:

i. Locate each recalled document in the document review/production database and delete the record from the database;

ii. If there is a native file link to the recalled document, remove the native file from the network path;

iii. If the database has an image load file, locate the document image(s) loaded into the viewing software and delete the image file(s) corresponding to the recalled documents. Remove the line(s) corresponding to the document image(s) from the image load file;

iv. Apply the same process to any additional copies of the document or database, where possible;

v. Using a reasonable search, locate and destroy all other copies of the document, whether in electronic or hardcopy form. To the extent that copies of the document are contained on write-protected media, such as CDs or DVDs, these media shall be discarded, with the exception of production media received from the recalling party, which shall be treated as described herein;

vi. Delete from its work product or other materials any quoted or paraphrased portions of the inadvertently produced Privileged Information that can be located using a reasonable search, as well as any other such portions that are subsequently discovered or identified; and