

Competition Tribunal



Tribunal de la Concurrence

Citation: *Canada (Commissioner of Competition) v Google Canada Corporation and Google LLC*,  
2025 Comp Trib 4  
File No.: CT-2024-010  
Registry Document No.: 74

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** certain conduct of Google Canada Corporation and Google LLC  
relating to the supply of online advertising technology services in Canada;

**AND IN THE MATTER OF** an application by the Commissioner of Competition for one or more  
orders pursuant to section 79 of the *Competition Act*.

BETWEEN:

**Commissioner of Competition**  
(applicant)

and

**Google Canada Corporation and  
Google LLC**  
(respondents)



Decided on the basis of the written record.  
Before: Mr Justice Andrew D. Little (Chairperson)  
Date of order: May 7<sup>th</sup>, 2025

**PROTECTIVE AND CONFIDENTIALITY ORDER**

[1] **FURTHER TO** an application filed by the Commissioner of Competition (the “Commissioner”) on November 28, 2024, against Google Canada Corporation and Google LLC (the “Respondents”) (collectively, the “Parties”) pursuant to section 79 of the *Competition Act*, RSC, c C-34, as amended (the “Application”);

[2] **AND CONSIDERING** that the Parties jointly provided a draft Confidentiality Order to be issued in this proceeding, which operates *inter alia* to enable the designation of records (as defined in the *Competition Act*) as confidential for the purposes of exchanging records during discovery in this proceeding;

[3] **AND CONSIDERING** that there is an ongoing proceeding in the United States District Court for the Eastern District of Virginia (Alexandria Division) between the United States *et al.* and Google LLC (Court File 1:23-cv-108 (LMB/JFA)) (the “US District Court Proceeding”), which the Parties confirmed raises issues that overlap with this proceeding;

[4] **AND CONSIDERING** that the US District Court Proceeding is bifurcated as between liability and remedy; that it has completed the first phase on liability (subject to appeal) as a result of the District Court’s Memorandum Opinion dated April 17, 2025, and now appears ready to proceed to a remedy phase;

[5] **AND CONSIDERING** that in the US District Court Proceeding, the Court issued a Modified Protective Order dated May 11, 2023 (the “US Protective Order”);

[6] **AND CONSIDERING** that the terms of this Order have been negotiated between the Parties to this proceeding and substantially reflect the terms of the US Protective Order;

[7] **AND CONSIDERING** that the parties to the US District Court Proceeding have produced documents and other records related to liability, including with confidentiality designations;

[8] **AND CONSIDERING** that the Commissioner and the Respondents wish to leverage the US production and designation processes and avoid the expense and delay of assessing and designating the same records for confidentiality for the discovery process in this proceeding;

[9] **AND CONSIDERING** that all Parties understand and agree that for the purposes of a public hearing in this proceeding, the possible confidentiality of all records will be governed by Canadian law, including (without limitation) Rules 29 and 30 of the *Competition Tribunal Rules*, SOR/2008-141;

[10] **AND CONSIDERING** that nothing in this Order displaces the legal requirements in the *Competition Tribunal Rules*, Rules 29, 30, and 67(a), or in Rule 62, but the obligations in this Order as negotiated and agreed by the Parties may supplement and refine those requirements as set out below;

[11] **AND CONSIDERING** that the Tribunal will concurrently issue a Bifurcation and Scheduling Order that contemplates confidentiality designations;

[12] **AND CONSIDERING** that the Bifurcation and Scheduling Order includes a “Confidentiality Day” before the hearing on liability, to determine any issues related to confidentiality and designations in advance of the hearing;

**THEREFORE THE TRIBUNAL ORDERS THAT:**

[13] For the purpose of this Order:

- (a) “**Act**” means the *Competition Act*, RSC 1985, c C-34, as amended;
- (b) “**Affiliate**” has the same meaning as in subsection 2(2) of the Act;
- (c) “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act or any person designated by the Commissioner to act on his behalf, including all of the Commissioner’s and/or the Competition Bureau’s employees, agents, and representatives;
- (d) “**Commissioner’s Counsel**” means any employee of or lawyer called to the Bar in a Province of Canada who is retained by the Department of Justice of Canada who is assigned to work on this Proceeding;
- (e) “**Competitive Decision-Making**” means the action or process of making a business decision or resolving a non-legal question relating to a competitor, potential competitor, customer, or distribution partner regarding contracts, marketing, pricing, product, service development or design, product, or service offering, research and development, mergers and acquisitions, or licensing, acquisition, funding, or enforcement of intellectual property. It does not include legal advice provided in connection with litigation, potential litigation, or regulatory matters, nor does it include work performed as part of a trial team or to keep management advised on the progress or status of litigation, potential litigation, or regulatory matters;
- (f) “**Confidential Information**” or “**Confidential**” means information (regardless of how it is generated, stored or maintained) or tangible things that constitute a trade secret or other non-public confidential financial, technical, research, sales, marketing, development, or commercial information and that have been so designated, or any Record, transcript, or other material containing such information that has not been published or otherwise made publicly available.<sup>1</sup> In addition, a Designating Party (as defined in paragraph 25 below) may designate as Confidential any information or items made publicly available in violation of a court order to keep such information confidential, that the Designating Party believes should receive Confidential treatment. Confidential Information includes (i) information copied or extracted, summarized or

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<sup>1</sup> For the avoidance of doubt, the Receiving Party’s belief that material designated as Confidential does not meet this standard shall not deprive such material of the protections afforded to Confidential Information. Any challenge to a designation is subject to paragraph 25.

compiled from Confidential Information, and (ii) testimony, conversations, or presentations by Parties or their Counsel that reveal Confidential Information;

- (g) “**Counsel**” shall mean Commissioner’s Counsel, In-House Counsel and/or Outside Counsel, as the context requires;
- (h) “**Designated In-House Counsel**” means In-House Counsel designated by a Respondent who may be authorized to access Highly Confidential Information pursuant to paragraph 31 of this Order;
- (i) “**Disclosed**” means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part;
- (j) “**ESI**” has the meaning set out in paragraph below;
- (k) “**Highly Confidential Information**” or “**Highly Confidential**”, as defined herein, is information that, if Disclosed publicly or to a Party, is likely to cause a Protected Person material and significant competitive or commercial harm, and that has been so designated.<sup>2</sup> Subject to the foregoing, Highly Confidential Information may include trade secrets, including algorithms and Source Code; non-public, commercially sensitive customer lists; non-public financial, marketing, or strategic business planning information; current or future non-public information regarding prices, costs, or margins; information relating to research, development testing of, or plans for existing or proposed future products; evaluation of the strengths and vulnerabilities of a Protected Person’s product offerings, including non-public pricing and cost information; Confidential contractual terms, proposed contractual terms, or negotiating positions (including internal deliberations about negotiating positions); information relating to pending or abandoned patent applications that have not been made available to the public; personnel files or sensitive personally identifiable information (other than the names, job titles, and contact information of non-senior executive employees of the Respondents); and communications that disclose any Highly Confidential Information. Highly Confidential Information includes (i) information copied or extracted, summarized or compiled from Highly Confidential Information, and (ii) testimony, conversations, or presentations by Parties or their Counsel that would reveal Highly Confidential Information. A Designating Party (as defined in paragraph 25 below) may designate as Highly Confidential any information or items made publicly available in violation of an Order or court order to keep such information confidential, that the Designating Party believes should receive Highly Confidential treatment. In addition, if a Protected Person (i) has produced Investigation Materials or (ii) is required by subpoena or Order to produce information that would cause it material and significant competitive or commercial harm, but that information does not specifically fall into one of the

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<sup>2</sup> For the avoidance of doubt, the Receiving Party’s belief that material designated as Highly Confidential does not meet this standard shall not deprive such material of the protections afforded to Highly Confidential Information. Any challenge to a designation is subject to paragraph 25.

categories of information listed in this paragraph, upon a compelling showing, it may seek a court order that such information is Highly Confidential. If a motion is made pursuant to this paragraph and is related to a subpoena or Order, it must be filed no later than the due date to respond to the subpoena or Order. If a Protected Person seeks additional protection pursuant to this paragraph from the Tribunal, the materials for which additional protection has been sought will not be provided to other Persons, aside from Outside Counsel, until the Tribunal has ruled. Highly Confidential Information may include information that has been designated Highly Confidential – Source Code;

- (l) **“In-House Counsel”** means any lawyer employed by a Respondent as well as paralegals, administrative assistants, and clerical and administrative personnel supervised by such lawyer and employed by a Respondent. In-House Counsel, however, does not include: (i) lawyers employed by the Commissioner; or (ii) Outside Counsel;
- (m) **“Inquiry”** means any investigation conducted by the Commissioner into potential anticompetitive conduct by either of the Respondents related to digital advertising prior to the filing of the Notice of Application of the Commissioner dated November 28, 2024;
- (n) **“Investigation Material”** means non-privileged documents, testimony or other materials that: (i) any Third Party provided to any Party, either voluntarily or under compulsory process, relating to the Inquiry; (ii) constitute any communication between any Party and any Third Party in connection with and during the Inquiry; (iii) any Party provided to any Third Party relating to the Inquiry; and/or (iv) a Respondent provided to the Commissioner relating to the Inquiry. For the avoidance of doubt, the Investigation Materials are governed by the terms of this Order. To the extent that any Investigation Materials are clawed back for any reason, the procedures set forth at paragraphs 22 and 23 of this Order shall apply and, as to the Commissioner, such procedures will supersede any other application clawback procedures governing the Investigation Materials. Investigation Materials produced by either Respondent to the Commissioner shall maintain the same confidentiality designations that they were assigned at the time they were produced by default;
- (o) **“Litigation Material”** means non-privileged documents, testimony, or other materials that: (i) any Third Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of the Proceeding; (ii) constitute any communications between any Party and any Third Party in connection with and during the pendency of the Proceeding; (iii) a Respondent provides to the Commissioner in connection with and during the pendency of the Proceeding; and (iv) the Commissioner provides to a Respondent in connection with and during the pendency of the Proceeding;
- (p) **“Objecting Party”** has the meaning set out in paragraph 25 below;

- (q) “**Order**” means an order of the Tribunal;
- (r) “**Outside Counsel**” means the lawyers employed by outside law firms who are retained to represent or advise a Party, as well as any paralegals, administrative assistants, and clerical and administrative personnel supervised by those lawyers and employed by those Outside Counsel;
- (s) “**Parties**” means the Commissioner and Respondents collectively, and “**Party**” means any one of them;
- (t) “**Person**” means any individual or corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (u) “**Proceeding**” means the application filed by the Commissioner against the Respondents (File Number CT-2024-010) for one or more orders pursuant to section 79 of the Act, including any related discovery, pre-trial, trial, post-trial, or appellate stages;
- (v) “**Producing Party**” means a Party who produced or produces Investigation Material, Litigation Material, or Source Code;
- (w) “**Protected Person**” means any Person (including a Party or a Third Party) that either voluntarily or under compulsory process, has provided or provides: (i) Investigation Material; (ii) Litigation Material; or (iii) Source Code;
- (x) “**Receiving Party**” means a Party who received Investigation Material, Litigation Material, or Source Code;
- (y) “**Record**” has the same meaning as in subsection 2(1) of the Act and, for greater certainty, includes any email or other correspondence, memorandum, pictorial or graphic work, spreadsheet or other machine readable record and any other documentary material, regardless of physical form or characteristics;
- (z) “**Respondents**” means Google Canada Corporation and Google LLC, and “**Respondent**” means either Google Canada Corporation or Google LLC;
- (aa) “**Source Code**” means extremely sensitive information or items representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Third Party would create a substantial risk of serious harm that could not be avoided by less restrictive means. To the extent production of Source Code becomes necessary in this case, a Party who produces Source Code may designate it as “Highly Confidential – Source Code.” The protocols for a Respondent’s production of Source Code, and the review of such Source Code, appear in Appendix “B” to this Order;

(bb) “**Third Party**” means any Person other than the Commissioner or the Respondents; and

(cc) “**Tribunal**” means the Competition Tribunal established pursuant to subsection 3(1) of the *Competition Tribunal Act*, RSC 1985, c 19 (2<sup>nd</sup> Supp), as amended.

***Designation of Highly Confidential Information and Confidential Information***

[14] To the extent a Party has already designated Investigation Materials as Confidential or Highly Confidential, those materials shall retain those existing designations subject to any later challenge by a Party. To the extent that Investigation Materials are reproduced in the Proceeding, all protections afforded to Litigation Materials pursuant to this Order shall apply.

[15] The identity of a Non-Party submitting Highly Confidential Information or Confidential Information shall also be treated as Highly Confidential Information or Confidential Information for the purposes of this Order where the submitter has requested such confidential treatment.

[16] Any production of documents or testimony not designated as Confidential or Highly Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning such information if it is subsequently designated as Confidential or Highly Confidential Information. If at any time before trial in this Proceeding, a Protected Person realizes that it should have designated as Confidential or Highly Confidential Information any Investigation Materials, Litigation Materials, or Source Code that Person previously produced, it may so designate such Records, testimony, or other materials by notifying the Parties in writing, and, to the extent the new designations relate to Records, an overlay file with the new designations shall also be provided in accordance with paragraph 17(f). The Parties shall thereafter treat the Investigation Materials, Litigation Materials, or Source Code pursuant to the Protected Person’s new designation under the terms of this Order. However, the disclosure of any information for which disclosure was proper when made will not be deemed improper regardless of any such subsequent confidentiality designation.

[17] The following procedures govern the process for Parties to designate as Highly Confidential or Confidential any information that they disclose in this Proceeding, including, but not limited to, information and Records Disclosed in response to Inquiries conducted by the Commissioner:

(a) Indiscriminate designations are prohibited.

(b) **Testimony**. All transcripts of oral examinations for discovery taken in the Proceeding after entry of this Order will be treated as Highly Confidential Information in their entirety for 45 days after the date of the examination, or until 45 days before trial, whichever date is earlier. The Parties will be responsible for obtaining the examination transcript for any representatives of the Parties they examined for discovery. To the extent representatives of Third Parties are examined for discovery, if requested by the Third Party, the Party who served the notice of examination for discovery upon the Third Party shall, within 45 business days of being provided a final transcript (subject to any errata) of the

examination for discovery (or as soon as reasonably possible after the request is made), provide the final transcript (subject to any errata) to the Third Party representative examined for discovery (or the Third Party's counsel, if applicable).

Within 45 days following the date of the examination for discovery or 45 days before trial, whichever is earlier, the representative examined for discovery, whether on behalf of a Third Party or Party, may designate, subject to the provisions of this Order, Highly Confidential Information or Confidential Information any portion of the transcript of the examination for discovery, by page(s) and line(s), and any exhibits marked during the examination for discovery provided by the representative examined for discovery or the representative's employer or the employer's Affiliates. To be effective, such designations must be provided in writing to all Parties. All transcripts of examinations for discovery produced in this Proceeding after the entry of this Order will be treated as Highly Confidential Information in their entirety until the deadline for the discovery representative to designate portions of the transcript as Highly Confidential Information has expired. Further, to the extent that a Party's Highly Confidential or Confidential Records were used in the examination for discovery, that Producing Party also has 45 days following the date of the examination for discovery to designate any portion of the transcript of the examination for discovery as Highly Confidential or Confidential to the extent the transcript of the examination for discovery discloses or relates to Highly Confidential or Confidential Information. To be effective, such designations must be provided in writing to all Parties' counsel.

- (c) **Documents**. A Party who designates as Highly Confidential Information on behalf of any Protected Person any Record that it produced in this Proceeding must stamp or otherwise mark each Record containing said information with the designation "HIGHLY CONFIDENTIAL" in a manner that will not interfere with legibility, including page numbering, or audibility unless such Record is produced in native electronic format. A Party who designates as Confidential Information on behalf of any Protected Person any Record that it produced in this Proceeding must stamp or otherwise mark each Record containing said information with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility, including page numbering, or audibility unless such Record is produced in native electronic format. Any Record that contains Confidential Information or Highly Confidential Information may be so designated in its entirety. To the extent a Record is produced in native form, such Records shall be produced in accordance with paragraph 17(d) below.
- (d) **Electronic Documents and Data**. Where a Party produces Confidential or Highly Confidential Information contained in electronic files and Records in native electronic format, such electronic files and Records shall be designated by the Party for protection under this Order by appending to the file names or designators' information indicating whether the file contains Highly Confidential Information or Confidential Information, or by any other reasonable method for



appropriately designating such information produced in electronic format, including by including a slip sheet associated with the electronic file or by making such designations in reasonable accessible metadata associated with the files. Where Highly Confidential Information or Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” designation may be placed on the disk or other medium. When electronic files or Records in native form are printed for use at an examination for discovery, at a hearing in the Proceeding, or for provision in printed form to any Person who may receive such files in accordance with this Order, the Party printing the electronic files or Records shall include a slip sheet identifying the electronic file or Record as “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” along with the production number or Bates number and designation associated with the native file, or shall affix a legend to the printed Record saying “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” and include the production number or Bates number and designation associated with the native file.

- (e) **Upward Designation of Litigation Materials Produced by Third Parties or the Parties**. A Party may upward designate (i.e., change any Litigation Materials produced without a designation to a designation of “Confidential” or “Highly Confidential” or designate any Litigation Materials produced as “Confidential” to a designation of “Highly Confidential”) any Litigation Materials produced by another Party by providing written notice thereof, provided that said Litigation Materials contains the upward designating Party’s own Confidential Information or Highly Confidential Information, or in the case of the Commissioner, the Confidential Information or Highly Confidential Information of a Protected Person other than the Respondents. Such notice must identify (by Bates number, or in the event there is no Bates number, by other individually identifiable information) each Record the Party wishes to upward designate, and include an explanation as to why the Party wishes to upward designate such Records, and why the existing confidentiality designation is insufficient. The Party shall also provide an overlay file reflecting the new designations in accordance with paragraph 17(f). Any Party may object to the upward designation of Litigation Materials pursuant to the procedures set forth in paragraph 25 regarding challenging designations.
- (f) **Overlay Files**. To the extent this Order requires a Party to provide an overlay file in connection with a new or altered confidentiality designation, that Party shall have 5 business days from the date of the changed designation to produce an overlay file. In the interim, the Parties shall take care to treat the Records at issue as if the new designation applies. For the avoidance of doubt, a Party does not violate this provision where it in good faith attempts to comply with the new designation

[18] In the event of a disclosure of any Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code to any Person(s) not authorized to receive such

disclosure under this Order, the Party who discovers such unauthorized disclosure shall: (a) promptly notify the Protected Person whose material has been Disclosed and the Commissioner, and provide to such Protected Person and the Commissioner all known relevant information concerning the nature and circumstances of the disclosure. If it is readily discernible which Party is responsible for the disclosure, the disclosing Party shall also promptly take all reasonable measures to retrieve the improperly Disclosed material and to ensure that no further unauthorized disclosure and/or use thereof is made; (b) inform the Person(s) to whom unauthorized disclosure was made of all the terms of this Order; and (c) request such Person(s) execute the Agreement Concerning Confidentiality in the form of Appendix “A” attached hereto. If it is not readily discernible which Party is responsible for the disclosure, the Parties shall work together to: (a) promptly take all reasonable measures to retrieve the improperly Disclosed material and to ensure that no further unauthorized disclosure and/or use of thereof is made; (b) inform the Person(s) to whom unauthorized disclosure was made of all the terms of this Order; and (c) request such Person(s) execute the Agreement Concerning Confidentiality in the form of Appendix “A” attached hereto.

[19] Unauthorized or inadvertent disclosure shall not change the Confidential status of any Disclosed material or waive the Producing Party’s right to maintain the Disclosed material as containing Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code.

#### ***Privileged Investigation Materials and Litigation Materials***

[20] The production of privileged Records, electronically stored information (“ESI”), or information, whether inadvertent or otherwise, is not a waiver of privilege in this Proceeding.

[21] Nothing contained herein is intended to or shall serve to limit a Party’s right to conduct a review of Records, ESI (including metadata), or information for relevance, responsiveness, confidentiality, and/or privilege before production.

[22] If the Producing Party becomes aware that it has produced privileged Records, ESI, or information, the Producing Party will promptly notify each Receiving Party in writing of the production and the basis of the privilege being asserted. After being notified, a Party must promptly return, sequester,<sup>3</sup> or destroy the specified Records, ESI, or information and any copies or summaries of the Records, ESI, or information; must not use or disclose the Records, ESI, or information until the claim of privilege is resolved; must take reasonable steps to retrieve the Records, ESI, or information if the Receiving Party Disclosed it before being notified of the claim of privilege; and may promptly present the Records, ESI, or information to the Tribunal under seal for a determination of the claim of privilege. Any challenge to a claim of privilege contemplated by this paragraph 22 must be made promptly. The Producing Party must preserve the Records, ESI, and information until any challenge to the claim of privilege is resolved.

[23] If a Receiving Party becomes aware that it is in receipt of information or material that it knows or reasonably should know is privileged, counsel for the Receiving Party shall immediately

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<sup>3</sup> For the avoidance of doubt, sequestration prohibits the Party in possession from further review of the material once a claim of privilege is made except as otherwise provided in this paragraph.

take steps to: (i) stop reading such information or material; (ii) notify counsel for the Producing Party of such information or material; (iii) collect all copies of such information and material; and (iv) return to the Producing Party and/or destroy such information or material (and, in the case of destruction, certify that fact to the Producing Party if requested to do so). Any notes or summaries referring or relating to such material shall be destroyed simultaneously therewith.

[24] This Order is without prejudice to any Protected Person's right to assert that any Investigation Materials or Litigation Materials are subject to any applicable claim of privilege, and is without prejudice to any Party's right to contest such claim of privilege.

### ***Objections to Confidentiality Designations***

[25] Any Party who objects to any confidentiality designation, or part thereof, (the "**Objecting Party**") may, until 30 days before the trial in the Proceeding, provide a written notice to the Party that made such designation (the "**Designating Party**") stating with particularity the grounds for the objection. All materials objected to shall continue to be treated as Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code pending the resolution of the dispute. Within 10 days of the Objecting Party's written notice, the Objecting Party and the Designating Party shall attempt to confer to discuss their respective positions. If the Objecting Party and Designating Party cannot reach an agreement on the objection within 10 days of the Objecting Party's written notice (or another deadline agreed to by the Objecting Party and the Designating Party), the Objecting Party may bring a motion before the Tribunal. If the Tribunal determines that the designation of Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code is inappropriate, the challenged designation shall be considered rescinded, and the Designating Party shall reproduce the Records with the revised designations, along with an overlay file in accordance with paragraph 17(f). Nothing in this Order shall affect the right or ability of a Party to seek to appeal any determination of the Tribunal in respect of confidentiality designations, or to seek a stay pending appeal of such a determination by the Tribunal.

### ***Disclosure of Highly Confidential Information or Confidential Information***

[26] Highly Confidential Information may be Disclosed only to the following Persons:

- (a) the Tribunal and all Persons assisting the Tribunal in the Proceeding, including legal counsel, law clerks, court reporters, stenographic or clerical personnel and Tribunal experts;
- (b) Outside Counsel for a Respondent, except that access by non-lawyers shall be limited to personnel assigned to work on the Proceeding, whose functions require access to the information. Such personnel shall not include any employee of a Party;
- (c) the Commissioner and Commissioner's Counsel, except that access by non-lawyers shall be limited to personnel assigned to work on the Proceeding, whose functions require access to the information;

- (d) outside vendors or service providers (such as copy-service providers, outside court reporters retained for out-of-court examinations, document-management consultants, or lawyers or law firms for document review other than Outside Counsel) and agents or independent contractors retained by a Party to assist that Party in the Proceeding provided that they shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix “A” attached hereto;
- (e) any mediator, arbitrator, or special adjudicator that the Parties engage in this Proceeding (other than a judicial member appointed by the Tribunal) provided that they shall first execute an Agreement Concerning Confidentiality to be bound by the terms of this Order in the form of Appendix “A” attached hereto;
- (f) any Person who the Highly Confidential Information itself indicates, or who the Receiving Party has a good-faith basis to believe, was the author, addressee, recipient, custodian, or source of the Record or Highly Confidential Information;
- (g) any Person who the Highly Confidential Information itself indicates, or who the Receiving Party has a good-faith basis to believe, had lawful access to the Record or the Highly Confidential Information;
- (h) during an examination for discovery, any Person who the Highly Confidential Information itself indicates, or who the Receiving Party has a good-faith basis to believe, had knowledge of the Highly Confidential Information;
- (i) during an examination for discovery, any current employee of the Designating Party;
- (j) any Person retained by a Party to serve as a testifying or consulting expert in this Proceeding,<sup>4</sup> including any employees of the firm with which the expert or consultant is associated and independent contractors who assist the expert’s work in the Proceeding, provided that they shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix “A” attached hereto;
- (k) outside trial consultants (including but not limited to graphics consultants) provided that they shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix “A” attached hereto; and
- (l) any Person as may be authorized by written agreement of the Designating Party, by verbal agreement of the Designating Party on the record at an examination for discovery or Tribunal hearing, or by order of the Tribunal.

**[27]** Confidential Information may be Disclosed only to the following Persons:

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<sup>4</sup> This provision does not apply to any Person retained by a Party to serve as a testifying or consulting expert, where such Person is also an employee of a Party.

- (a) the Tribunal and all Persons assisting the Tribunal in the Proceeding, including law clerks, court reporters, and stenographic or clerical personnel;
- (b) Outside Counsel for a Respondent, except that access by non-lawyers shall be limited to personnel assigned to work on the Proceeding, whose functions require access to the information. Such personnel shall not include any employee of a Party;
- (c) the Commissioner and Commissioner's Counsel, except that access by non-lawyers shall be limited to personnel assigned to work on the Proceeding, whose functions require access to the information;
- (d) the officers, directors, and employees (including In-House Counsel) of a Respondent to whom disclosure is reasonably necessary for this litigation and who have signed the Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix "A" attached hereto;
- (e) outside vendors or service providers (such as copy-service providers, outside court reporters retained for out-of-court examinations, document-management consultants, or lawyers or law firms for document review other than Outside Counsel) and agents or independent contractors retained by a Party to assist that Party in the Proceeding provided that they shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix "A" attached hereto;
- (f) any mediator, arbitrator, or special adjudicator that the Parties engage in this Proceeding (other than a judicial member appointed by the Tribunal) provided that they shall first execute an Agreement Concerning Confidentiality to be bound by the terms of this Order in the form of Appendix "A" attached hereto;
- (g) any Person who the Confidential Information itself indicates, or who the Receiving Party has a good-faith basis to believe, was the author, addressee, recipient, custodian, or source of the Record or Confidential Information;
- (h) any Person who the Confidential Information itself indicates, or who the Receiving Party has a good faith basis to believe, had lawful access to the Record or the Confidential Information;
- (i) during an examination for discovery, any Person who the Confidential Information itself indicates, or who the Receiving Party has a good-faith basis to believe, had knowledge of the Confidential Information;
- (j) any Person whose statements or communications are quoted, recounted, or summarized in a Party's or Third Party's Records or Confidential Information, except that only those portions of the Records or Confidential Information quoting, recounting, or summarizing a Person's statements or communications may be Disclosed to that Person;

- (k) during an examination for discovery, any current employee of the Designating Party;
- (l) any Person retained by a Party to serve as a testifying or consulting expert in this Proceeding,<sup>5</sup> including any employees of the firm with which the expert or consultant is associated and independent contractors who assist the expert's work in the Proceeding, provided that they shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix "A" attached hereto;
- (m) outside trial consultants (including but not limited to graphics consultants) provided that they shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix "A" attached hereto; and
- (n) any Person as may be authorized by written agreement of the Designating Party, by verbal agreement of the Designating Party on the record at an examination for discovery or Tribunal hearing, or by order of the Tribunal.

**[28]** The Parties shall have the right to seek redress from the Tribunal to enforce the provisions of the Agreement Concerning Confidentiality set forth in Appendix "A" with respect to any Person bound by this Order.

**[29]** Each Person described in paragraphs 26 and 27 of this Order to whom information designated as Highly Confidential Information or Confidential Information is Disclosed must not Disclose that Highly Confidential Information or Confidential Information to any other Person, except as permitted in this Order.

**[30]** Nothing in this Order:

- (a) limits a Protected Person's use or disclosure of its own information designated as Highly Confidential Information or Confidential Information;
- (b) prevents disclosure of Highly Confidential Information or Confidential Information with the consent of the Party that designated the material as Confidential or Highly Confidential;
- (c) prevents disclosure by a Party of Highly Confidential Information or Confidential Information: (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Inquiry or in discovery in the Proceeding; (iii) previously produced, Disclosed, and/or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to an order of the Tribunal or a court, or as may be required by regulation;

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<sup>5</sup> This provision does not apply to any Person retained by a Party to serve as a testifying or consulting expert, where such Person is also an employee of a Party.

- (d) prevents counsel from rendering advice to the client with respect to this matter or from generally referring to or relying upon Confidential Information or Highly Confidential Information in rendering such advice so long as counsel does not specifically disclose the substance of the Confidential Information or Highly Confidential Information; or
- (e) prevents the Commissioner's retention, use, or disclosure of Investigation Materials outside the context of the Proceeding to the extent permitted by applicable law or regulation, for law enforcement purposes, as required by law, court order, or regulation, or for the purpose of securing compliance with a final Order in this Proceeding. Any such disclosures shall be limited to those permitted by applicable law or regulation. The Commissioner will not disclose any Litigation Materials produced only during the pendency of the Proceeding to any Third Party, except as ordered by the Tribunal or as may be required by law or regulation and subject to paragraph 38. If Investigation Materials or Litigation Materials are requested for disclosure under the *Access to Information Act*, RSC 1985, c A-1 or the equivalent, this Order prohibits disclosure to the extent the Access to Information Act or the equivalent provides an exception for disclosure of information protected by this Order.

***Use of Information Designated Highly Confidential or Confidential in this Proceeding***

[31] A Party may at any time before the trial of the Proceeding request disclosure of Highly Confidential Information to Designated In-House Counsel by consent of the Designating Party or motion with the Tribunal. Unless otherwise ordered by the Tribunal or agreed to in writing by the Designating Party, a Party seeking to disclose Highly Confidential Information to Designated In-House Counsel must submit in writing to the other Party a written statement that: (1) describes with particularity the Highly Confidential Information the Party seeks to disclose to Designated In-House Counsel; (2) sets forth the full name of each Designated In-House Counsel and the city and state/province of his or her residence, and (3) describes each Designated In-House Counsel's primary job duties and responsibilities in sufficient detail to determine if each Designated In-House Counsel is involved in Competitive Decision-Making. The Party must meet and confer with the Designating Party to try to resolve the matter by agreement within seven days of the written notice. If no agreement is reached, a Respondent may file a motion with the Tribunal. The other Parties and/or the Designating Party will have seven days to respond to such motion. The Party will not disclose any Highly Confidential Information to Designated In-House Counsel pending resolution of the dispute.

[32] In the event that any Highly Confidential Information, Highly Confidential – Source Code, or Confidential Information is contained in any pleading, motion, exhibit, or other Record filed or to be filed with the Tribunal, the Party filing the Record containing Highly Confidential Information or Confidential Information shall file three versions of the Record: (i) a "HIGHLY CONFIDENTIAL" version that shall be labelled "LEVEL A" that contains no redactions; (ii) a "CONFIDENTIAL" version that shall be labelled "LEVEL B" that contains redactions that remove Highly Confidential Information and Highly Confidential – Source Code; and (iii) a public version that shall be labelled "PUBLIC" that contains redactions that remove Highly Confidential Information, Highly Confidential – Source Code, and Confidential Information. To the extent that

the Record to be filed or to be filed with the Tribunal does not contain Highly Confidential Information, Highly Confidential – Source Code, or Confidential Information, the Party filing such a Record is only required to file one “PUBLIC” version of the Record. The Parties agree to act in good faith to limit the number of redactions required.

***Use of Highly Confidential Information or Confidential Information at Trial***

[33] The Parties shall meet and confer in respect of proposed re-designations of Highly Confidential Information, Highly Confidential – Source Code, and Confidential Information at least 45 days before the first day of trial in the Proceeding. The Parties agree to act in good faith to limit the need to seal Records filed with the Tribunal. The Parties shall then attend before the Tribunal (or the judicial member of the Tribunal) at least 30 days before the first day of trial in the Proceeding to request that the Tribunal issue an order sealing the information agreed upon by the Parties or provide directions as to whether Records containing Highly Confidential Information, Highly Confidential – Source Code, or Confidential Information must be re-designated if they are to be filed with the Tribunal for use at trial. Nothing in this Order shall abrogate or derogate any legal onus, burden or requirement applicable to a sealing order arising under Canadian law, or abrogate or derogate in any way from the rights of the Parties during the course of the hearing.

[34] Unless otherwise provided for in this Order, Highly Confidential Information and Confidential Information produced by a Party or a Third Party in the Proceeding shall be used solely for the conduct of the Proceeding and shall not be used by a Party, Third Party, or any Person subject to this Order, including counsel for a Party or Third Party, for any business, commercial, competitive, personal, or other purpose. Such Highly Confidential Information and Confidential Information may only be Disclosed under the conditions described in this Order.

***Investigation Materials or Litigation Materials Subpoenaed or Ordered Produced in Other Litigation***

[35] If a Party is served with a lawful subpoena or an order issued by a court, arbitral, administrative, or legislative body, or with an order issued in other litigation that compels disclosure of any information or items designated in the Proceeding as Confidential or Highly Confidential that Party must:

- (a) promptly notify in writing the Designating Party (such notification shall include a copy of the subpoena or court order);
- (b) promptly notify in writing the Person or entity who issued the subpoena or caused the 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 (such notification shall include a copy of this Order); and



- (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Highly Confidential Information, Highly Confidential – Source Code, or Confidential Information may be affected.<sup>6</sup>

[36] If the Designating Party timely<sup>7</sup> seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Proceeding as Confidential or Highly Confidential before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its Confidential Information or Highly Confidential Information—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in the Action to disobey a lawful directive from another court.

[37] If, under any public records or other relevant law, any Investigation Materials or Litigation Materials in the power, possession, or control of the Commissioner become subject to a request for disclosure, the Commissioner shall notify the Respondents at least 10 business days before producing Investigation Materials or Litigation Materials, unless the laws of Canada, or court order or other public adjudicatory body requires the Commissioner to produce the Investigation Materials or Litigation Materials in a shorter time frame. The Commissioner shall not produce the Investigation Materials or Litigation Materials in response to such compulsory process or records request unless the Commissioner deems that s/he is required by law to do so and provides 10 business days' notice of its intent to do so to the Designating Party, unless the laws of Canada, or court order or other public adjudicatory body requires the Commissioner to produce the Investigation Materials or Litigation Materials in a shorter time frame. However, if the Commissioner denies a records or similar request and the denial is not successfully challenged or overruled, the Commissioner does not need to provide notice pursuant to this paragraph. If Investigation Materials or Litigation Materials are requested for disclosure under the access to information or privacy laws of Canada or the equivalent, this Order prohibits disclosure to the extent the laws of Canada provide an exception for disclosure of information protected by court order. Nothing contained herein shall alter or limit the obligations of the Commissioner that may be imposed by statute or court order regarding the disclosure of Records and information supplied to the Commissioner.

### ***Procedures Upon Termination of the Proceeding***

[38] The obligations imposed by this Order survive the termination of the Proceeding unless the Tribunal, which shall retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise. Except as otherwise provided by paragraph 30, within 90 days after the expiration of the time for appeal of an order, judgment, or declaration terminating the Proceeding, all Persons having received information designated as Confidential Information, Highly Confidential

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<sup>6</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court or other tribunal from which the subpoena or order issued.

<sup>7</sup> The Designating Party shall have at least 14 days from the service of the notification pursuant to paragraph 35(a) to seek a protective order, unless the subpoena or order requires a response within a period of time shorter than 14 days, or unless a shorter period applies under the rules of the court or other tribunal from which the subpoena or order issued, in which case such rules shall apply.

Information, or Highly Confidential – Source Code in this Proceeding must return all copies thereof to the Protected Person (or the Protected Person’s counsel) that produced it or destroy or delete all copies of such Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code. Within 90 days after the expiration of time for appealing an order, judgment, or declaration terminating this Proceeding, all Persons having received Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code must, to the extent permitted by the Commissioner’s retention schedules, either make a good-faith effort to return all copies thereof to the Designating Party or destroy or delete all copies of such Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code and certify compliance with this paragraph 38 in writing to the Designating Party.

[39] Counsel for the Parties will be entitled to retain court papers and exhibits, transcripts of out-of-court examinations and exhibits, transcripts of examinations for discovery and exhibit, hearing transcripts and exhibits, trial transcripts and exhibits, correspondence (including internal correspondence and email), and work product, provided that the Parties and their counsel do not disclose the portions of these materials containing information designated as Highly Confidential Information or Confidential Information to any Person, except pursuant to court order or agreement with the Protected Person that produced the Highly Confidential Information or Confidential Information or as otherwise permitted herein. All Highly Confidential Information and Confidential Information returned to the Parties or their counsel by the Tribunal likewise must be disposed of in accordance with this paragraph. Nothing in this paragraph, however, restricts the rights of the Parties under paragraphs 26 and 27 of this Order.

#### ***New Parties to the Proceeding***

[40] In the event that additional Persons become parties to the Proceeding, such new parties shall not have access to Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code produced by or obtained from any Protected Person until an authorized Person executes, on behalf of the new party, an Agreement Concerning Confidentiality agreeing to be bound by the terms of this Order in the form of Appendix “A” attached hereto.

#### ***Reservation of Rights***

[41] Nothing contained in this Order or any designation of confidentiality hereunder, or any failure to make such designation, shall be used or characterized by any Party as an acknowledgement or admission by a Party, or a determination by the Tribunal. Nothing in this Order shall be deemed an acknowledgement, admission, or determination that any particular information designated as Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code is entitled to protection under the Order or any other law. Nothing in this Order shall be construed as granting any Person a right to receive specific Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code where another court or tribunal has issued an order precluding that Person from obtaining access to that information. The Parties specifically reserve the right to challenge the designation of any particular information as Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code and agree that no Party waives any right it otherwise would have to object to disclosing or producing any information or Record on any ground not addressed in this Order.

Similarly, no Party waives any right to object on any ground to the admissibility or use as evidence of any of the Investigation Materials or Litigation Materials covered by this Order.

### ***Standard of Care***

[42] The recipient of any Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code shall maintain such material in a secure and safe area and shall exercise a standard of due and proper care with respect to the storage, custody, use, and/or dissemination of such material sufficient to safeguard against unauthorized or inadvertent disclosure of such material. Confidential Information, Highly Confidential Information, or Highly Confidential – Source Code shall not be copied, reproduced, extracted or abstracted, except for the purpose of the conduct of the Proceeding or as otherwise provided for in this Order. All such copies, reproductions, extractions, and abstractions shall be subject to the terms of this Order.

### ***Right to Seek Modification***

[43] Nothing in this Order limits any Person, including members of the public, a Party or a Protected Person, from seeking: (i) further or additional protections of any of its materials; or (ii) modification of this Order upon motion duly made pursuant to the Tribunal's Rules of Procedure.

### ***Persons Bound by this Order***

[44] This Order shall be binding on the Parties to the Proceeding, their lawyers, and their successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, Affiliates, employees, agents, retained consultants and experts, and any Persons over which they have direct control, as well as any Third Party to the extent such Third Party has agreed to be bound by this Order.

[45] The Parties shall bear their own costs associated with the request for and issuance of this Order.

[46] The Tribunal shall retain jurisdiction to deal with any issues relating to this Order, including, without limitation, the enforcement of this Order and any undertakings executed pursuant to this Order. This Order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal

DATED at Ottawa, this 7<sup>th</sup> day of May 2025.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little

## **COUNSEL OF RECORD:**

For the applicant:

### **Commissioner of Competition**

Alexander M. Gay  
Donald Houston  
John Syme  
Derek Leschinsky  
Katherine Rydel  
Sanjay Kumbhare

For the respondents:

### **Google Canada Corporation and Google LLC**

Kent. E. Thomson  
Elisa K. Kearney  
Chantelle T.M. Cseh  
Chanakya A. Sethi  
Chenyang Li

**APPENDIX “A” – AGREEMENT CONCERNING CONFIDENTIALITY**

CT-2024-010

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** certain conduct of Google Canada Corporation and Google LLC relating to the supply of online advertising technology services in Canada;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for one or more orders pursuant to section 79 of the *Competition Act*.

BETWEEN:

**COMMISSIONER OF COMPETITION**

Applicant

-and-

**GOOGLE CANADA CORPORATION AND GOOGLE LLC**

Respondents

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**AGREEMENT CONCERNING CONFIDENTIALITY**

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I, \_\_\_\_\_, am employed by \_\_\_\_\_

as \_\_\_\_\_.

I hereby certify that:

1. I have read the Confidentiality Order (“**Order**”) issued in the above-noted proceeding (the “**Proceeding**”) and understand its terms.
2. I agree to be bound by the terms of the Order issued in the Proceeding.
3. I agree to use the information provided to me only as permitted in the Order.
4. I understand that my failure to abide by the terms of the Order issued in this Proceeding may subject me to civil and criminal penalties for contempt of court.

5. I submit to the jurisdiction of the Competition Tribunal solely for the purpose of enforcing the terms of the Order issued in the Proceeding and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of the Competition Tribunal.

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Signature

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Name

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Date

**APPENDIX “B” – CONFIDENTIALITY ORDER: SOURCE CODE PROTOCOL**

CT-2024-010

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34, as amended;

**AND IN THE MATTER OF** certain conduct of Google Canada Corporation and Google LLC relating to the supply of online advertising technology services in Canada;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for one or more orders pursuant to section 79 of the *Competition Act*.

BETWEEN:

**COMMISSIONER OF COMPETITION**

Applicant

-and-

**GOOGLE CANADA CORPORATION AND GOOGLE LLC**

Respondents

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**SOURCE CODE PROTOCOL**

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***Restrictions On Who May View Source Code***

[1] Capitalized terms used herein have the meanings ascribed to them in the Confidentiality Order of the Tribunal issued \_\_\_\_\_ (the “**Order**”);

[2] Unless otherwise ordered by the Tribunal or permitted in writing by the Designating Party, a Receiving Party may only disclose information or Records that have been designated Highly Confidential – Source Code to:

- (a) the Receiving Party’s Outside Counsel of Record in this Proceeding, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement Concerning Confidentiality” that is attached to the Order as Appendix “A”;

- (b) Commissioner's Counsel, except that access by non-lawyers shall be limited to personnel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement Concerning Confidentiality" that is attached to the Order as Appendix "A";
- (c) up to 5 Experts<sup>8</sup> (for the avoidance of doubt, the Parties can agree to allow such disclosure to more than 5 Experts of the Receiving Party) of the Receiving Party (i) to whom disclosure is reasonably necessary for this litigation, (ii) who have signed the "Agreement Concerning Confidentiality" that is attached to the Order as Appendix "A", and (iii) as to whom the procedures set forth in paragraph 3 below and specifically identified as eligible to access Highly Confidential – Source Code have been followed;
- (d) the Tribunal and its personnel covered by this Order;
- (e) stenographic reporters and their respective staff who have signed the "Agreement Concerning Confidentiality" that is attached to the Order as Appendix "A" and are transcribing an examination for discovery, out-of-court examination, or hearing wherein statements or communications referring to Highly Confidential – Source Code are being made, provided that such reporters shall not retain or be given copies of any portions of the Source Code, which if used during any further examination or hearing, will not be attached as an exhibit and instead shall only be identified by a production number; and
- (f) while testifying at an examination or trial in this Proceeding, (i) any current officer, director, or employee of the Producing Party or original source of the information, (ii) any person designated by the Producing Party to be the representative on an examination for discovery, and/or (iii) any person who authored, previously received (other than in connection with this Proceeding), or was directly involved in creating, modifying, or editing the Source Code, as evidence from the face of information containing Highly Confidential – Source Code. Persons authorized to view information containing Highly Confidential – Source Code pursuant to this sub-paragraph shall not retain or be given copies of the Highly Confidential – Source Code except while testifying.

### ***Process for Requesting to Disclose Source Code***

**[3]** Unless otherwise ordered by the Tribunal or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Source Code Protocol) any information or Record that has been designated as Highly Confidential – Source Code pursuant to paragraph

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<sup>8</sup> "Expert" means any Person retained by a Party to serve as a testifying or consulting expert in this Proceeding, including any employees of the firm with which the expert or consultant is associated and independent contractors who assist the expert's work in the Proceeding, provided that any such testifying expert, consulting expert, employee, or independent contractor shall first execute an Agreement Concerning Confidentiality agreeing to be bound by the terms of the Order in the form of Appendix A of the Order and comply with all provisions of this Source Code Protocol including by supplying the information needed for compliance with the Process for Requesting To Disclose Source Code set forth below.



2(c) first must make a written request to the Designating Party that (i) identifies the general categories of Highly Confidential – Source Code information that the Receiving Party seeks permission to disclose to the Expert, (ii) sets forth the full name of the Expert and the city and state/province of his or her primary residence, (iii) attaches a copy of the Expert’s current résumé, (iv) identifies the Expert’s current employer(s); (v) identifies each Person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the Expert has provided professional services, including in connection with a litigation, at any time during the preceding 5 years, and (vi) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert evidence, including through a declaration, report, affidavit, written statement, or testimony during an examination or at a hearing, during the preceding 5 years.

[4] A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Highly Confidential – Source Code to the identified Expert unless, within 21 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

[5] A Party that receives a timely written objection must meet and confer with the Designating Party to try to resolve the matter by agreement within 7 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may bring a motion before the Tribunal to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the Parties’ efforts to resolve the matter by agreement and set forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

#### ***Restrictions on Those Who May See The Source Code (Patent and Acquisition Bars)***

[6] Absent written consent from the Producing Party, any individual who receives access to information designated as Highly Confidential – Source Code by the Producing Party shall not be involved in the prosecution of patents or patent applications relating to the subject matter of this Proceeding, including without limitation any patent or application claiming priority to the patents related to the subject matter of this Proceeding, before any foreign or domestic agency, including the Canadian Intellectual Property Office (the “**CIPO**”), during the pendency of this Proceeding and for a further 2 years after the termination of this Proceeding. For the purposes of this paragraph, “prosecution” means directly or indirectly drafting, amending, or advising others as to the drafting or amending of patent claims.

[7] Absent written consent from the Producing Party, any individual who receives access to information designated Highly Confidential – Source Code by the Producing Party shall not (i) participate in the acquisition of patents or patent applications relating to the subject matter of this Proceeding for the purposes of assertion against either of the Respondents, or (ii) advise or counsel clients regarding the same, during the pendency of this Proceeding and for a further 2 years after the termination of this Proceeding.

#### ***Process for Reviewing Source Code***

[8] To the extent the production of Source Code becomes necessary in this Proceeding, a Producing Party may designate information and Records as Highly Confidential – Source Code if it comprises, consists of, includes, or substantially discloses Confidential, proprietary or trade secret Source Code or algorithms. This material may include, among other things, technical design documentation that comprises, consists of, includes, or substantially discloses Source Code or algorithms.

[9] Information and Records designated as Highly Confidential – Source Code shall be subject to all of the protections of Highly Confidential Information under the Order as well as the protections in this Source Code Protocol and may only be Disclosed as set forth in this Source Code Protocol.

[10] Any Source Code produced in discovery shall only be made available for inspection and shall not be produced except as set forth below, in a format allowing it to reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at (i) an office of the Producing Party or the office of the Producing Party’s primary Outside Counsel of record, or (ii) another mutually agreed upon location. The Source Code shall be made available for inspection on a secured computer (the “**Source Code Computer**”) in secured, locked room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the Source Code onto any recordable media or recordable device. The Producing Party will make a good faith effort to provide legitimate review tools to the Source Code Computer as requested by the Receiving Party. The Receiving Party shall provide a licence to the requested review tools should the Producing Party not already have one. The Source Code Computer shall have disk encryption and be password protected. Use or possession of any input/output device (*e.g.*, a USB memory stick, mobile phone or tablet, camera or any camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can access the Internet or any other network or external system, etc.) is prohibited while accessing the Source Code Computer. All Persons entering the locked room containing the Source Code Computer must agree to submit to reasonable security measures to ensure they are not carrying any prohibited items before they will be given access to the Source Code Computer. The Source Code Computer will be made available for inspection during regular business hours (*i.e.*, from 9:00AM to 5:00PM local time), upon reasonable notice to the Producing Party, which shall not be less than 3 business days in advance of the requested inspection. The Producing Party may visually monitor the activities of the Receiving Party’s representatives during their use of the Source Code Computer, but only to ensure that there is no unauthorized recording, copying, or transmission of the Source Code.

[11] The Receiving Party may request paper copies of limited portions of the Source Code, but only if and to the extent reasonably necessary for the preparation of filings, pleadings, expert reports, or other papers, or for examinations for discovery or trial and except to the extent permitted in paragraph 16 of this Source Code Protocol. The Receiving Party shall not request paper copies for the purposes of reviewing the Source Code other than electronically as set forth in paragraph 10 of this Source Code Protocol in the first instance. The Producing Party shall undertake to produce the requested material as soon as possible after it is requested, but in no event more than 5 business days after the request, and the Producing Party will provide the requested material on watermark or coloured paper (which shall not prevent the creation of legible copies made only as authorized herein) bearing Bates numbers and the legend Highly Confidential – Source Code

unless objected to as discussed below. At the inspecting Party's request or the request of an Expert retained by the inspecting Party to whom disclosure of material designated Highly Confidential – Source Code is permitted, additional sets (or subsets) of printed Source Code may be requested and provided by the Producing Party within 5 business days of the request. The Producing Party may challenge the amount of Source Code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set forth in paragraph 25 of the Order, whereby the Producing Party is the “**Challenging Party**” and the Receiving Party is the “**Designating Party**” for the purposes of dispute resolution. Contested printouts do not need to be produced to the Receiving Party until the matter is resolved by the Tribunal.

[12] The Receiving Party shall maintain a record of any individual who has inspected any portion of the Source Code in electronic or paper form. The Receiving Party shall maintain all printed portions of the Source Code in a secured, locked area under the direct control of counsel (or outside experts or consultants who have been approved to access Source Code) responsible for maintaining the security and confidentiality of the information designated Highly Confidential – Source Code. Any paper copies designated Highly Confidential – Source Code shall be stored or viewed only at (i) the offices or working locations of counsel for the Receiving Party, (ii) the offices or working locations of outside experts or consultants who have been approved to access Source Code, (iii) the site where any deposition is taken, (iv) the Tribunal, or (v) any intermediate location necessary to transport the information to a hearing, trial, or examination for discovery. Except as provided in paragraph 16 of this Appendix, the Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. Any printed pages of Source Code, and any other documents or things reflecting Source Code that have been designated by the producing party as Highly Confidential – Source Code may not be copied, digitally imaged, or otherwise duplicated, except the Receiving Party may make additional paper copies if such additional copies are necessary to prepare Tribunal filings, pleadings, or other papers (including a testifying expert's expert report) or necessary for examination for discovery, or as provided below in paragraph 16 of this Appendix. Any paper copies used during an examination for discovery shall be retrieved by the Receiving Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.

[13] The Receiving Party's counsel shall be entitled to take notes relating to the Source Code but may not copy any portion of the Source Code into his or her notes. No copies of all or any portion of the Source Code may leave the Source Code Computer room except as otherwise provided herein. Further, no other written or electronic record of the Source Code is permitted except as otherwise provided herein.

[14] A list of names of Persons who will view the Source Code will be provided to the Producing Party in conjunction with any written notice requesting inspection of the Source Code. The Producing Party shall maintain a daily log of the names of Persons who enter the locked room containing the Source Code Computer, including when they enter and depart. The Receiving Party shall be entitled to a copy of the log.

[15] The Receiving Party's counsel shall maintain a log of all copies of the Source Code in its possession or in the possession of its retained consultants. The log shall include the names of the recipients and reviewers of the Source Code in its possession and where that Source Code is stored.

Upon request by the Producing Party, the Receiving Party shall provide reasonable assurances and/or descriptions of the security measures employed by the Receiving Party and/or Person that receives a copy of any portion of the Source Code. The Producing Party shall be entitled to a copy of the log.

[16] Except as provided for in this paragraph, the Receiving Party may not create electronic images, or any other images, of the Source Code from a paper copy of the Source Code for use on a computer (e.g., may not scan the source code to a PDF, or photograph the code). The Receiving Party may create an electronic copy or image of limited excerpts of Source Code only to the extent necessary in a pleading, exhibit, expert report, discovery document, transcript of an examination for discovery, other Tribunal document, or any drafts of these documents (the “**Source Code Documents**”). The Receiving Party shall only include such excerpts as are reasonably necessary for the purposes for which such part of the Source Code is used. Images or copies of Source Code shall not be included in correspondence between the Parties (instead, references to production numbers will be used) and shall be omitted from pleadings and other filings with the Tribunal to the extent possible. The Receiving Party may create an electronic image of a selected portion of the Source Code only when the electronic file containing such image has been encrypted using commercially reasonable encryption software including password protection. The communication and/or disclosure of electronic files containing any portion of Source Code shall at all times be limited to individuals who are authorized to view the Source Code under the provisions of the Order. Additionally, all electronic copies must be labelled Highly Confidential – Source Code.

[17] To the extent portions of Source Code are quoted in a Source Code Document, either (i) the entire document will be designated Highly Confidential – Source Code, or (ii) those pages containing Source Code will be separately bound or filed, and designated Highly Confidential – Source Code.