

**Source Code Provision to be inserted in  
Model Commission APO**

[Para. #]. Source Code. A supplier may designate documents, information, or things as "CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION," which shall mean Litigation Material of a supplier or of any non-parties that a supplier is permitted to produce in this Investigation that constitutes or contains non-public Source Code.

A. "Source Code" shall mean source code and object code (*i.e.*, computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator). For avoidance of doubt, this includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files.

B. Materials designated as "CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION," shall only be reviewable by SOURCE CODE QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the following: (1) Outside Litigation Counsel as necessarily incident to the litigation of this Investigation; (2) personnel at document duplication, coding imaging or scanning service establishments retained by, but not regularly employed by, Outside Litigation Counsel as necessarily incident to the litigation of this Investigation; (3) the Commission, the Administrative Law Judge, the Commission Investigative Staff, Commission personnel and contract personnel who are acting in the capacity of Commission employees as indicated in paragraph 3 of this Protective Order; (4) court reporters, stenographers and videographers transcribing or recording testimony at depositions, hearings or trial in this Investigation; and (5) Qualified Consultants and/or Qualified Experts in this Investigation (under paragraph 11 of this Protective Order in this Investigation). However, Qualified Consultants and/or Qualified Experts may only review CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION after being expressly identified to the supplier as seeking access to CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION. If the receiving party wishes an already identified Qualified Consultant or Qualified Expert to receive CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION it must re-comply with the provisions of paragraph 11 of this Protective Order in this Investigation, including allowing the supplier an opportunity to object to this Qualified Consultant or Qualified Expert receiving CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION, and identify the proposed Qualified Consultant or Qualified Expert as seeking access to CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION.

C. Source Code shall be provided with the following additional protections:

(i) Nothing in this Protective Order shall obligate the parties to produce any Source Code, nor act as an admission that any particular Source Code is discoverable.

- (ii) Access to Source Code will be given only to SOURCE CODE QUALIFIED PERSONS.
- (iii) Access to Source Code shall be provided on at least two "stand-alone" computers (that is, the computers may not be linked to any network, including a local area network ("LAN"), an intranet, or the Internet and may not be connected to any printer or storage device other than the internal hard disk drive of the computer). The stand-alone computers shall be kept in a secure location at the offices of the supplier's Outside Litigation Counsel, or at such other location as the supplier and receiving party mutually agree. Each stand-alone secure computer may be password protected and shall have the Source Code stored on a hard drive contained inside the computer. The supplier shall produce Source Code in computer searchable format on the stand-alone computer. Each stand-alone computer shall, at the receiving party's request, include reasonable analysis tools appropriate for the type of Source Code. The receiving party shall be responsible for providing the tools or licenses to the tools that it wishes to use to the supplier so that the supplier may install such tools on the stand-alone computers.
- (iv) The receiving party shall make reasonable efforts to restrict its requests for access to the stand-alone secure computers to normal business hours, which for purposes of this Paragraph shall be 9:00 a.m. through 6:00 p.m. local time at the reviewing location. Upon reasonable notice from the receiving party, which shall not be less than three (3) business days in advance, the supplier shall make reasonable efforts to accommodate the receiving party's request for access to the computers outside of normal business hours. Such an expanded review period shall not begin earlier than 8:00 a.m. and shall not end later than 8:00 p.m. local time at the reviewing location. The parties agree to cooperate in good faith such that maintaining the Source Code at the offices of the supplier's Outside Litigation Counsel shall not unreasonably hinder the receiving party's ability to efficiently conduct the prosecution or defense in this Investigation. The parties reserve their rights to request access to the Source Code at the site of any hearing or trial. Proper identification of all SOURCE CODE QUALIFIED PERSONS shall be provided prior to any access to the stand alone secure computers.
- (v) All SOURCE CODE QUALIFIED PERSONS who will review Source Code on behalf of a receiving party shall be identified in writing to the supplier at least seven (7) business days in advance of the first time that such person reviews such Source Code. Such identification shall be in addition to any disclosure required under paragraph 18(B) of this Protective Order. The supplier shall provide these individuals with information explaining how to start, log on to, and operate the stand-alone computers in order to access the produced Source Code on the stand-alone secure computers. For subsequent reviews by SOURCE CODE QUALIFIED PERSONS, the receiving party shall give at least one business day (and at least 24 hours) notice to the supplier of such review.
- (vi) No person other than the supplier may alter, dismantle, disassemble or modify the stand-alone computers in any way, or attempt to circumvent any security feature of the computers.
- (vii) No copies shall be made of Source Code, whether physical, electronic, or otherwise, other than volatile copies necessarily made in the normal course of accessing the Source Code on

the stand-alone computers, except for: (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the Administrative Law Judge or the Commission may order. No outside electronic devices, including but not limited to laptop computers, USB flash drives, zip drives, or devices with camera functionalities shall be permitted in the same room as the stand-alone computers. The supplier may exercise personal supervision from outside the review room over the receiving party when the receiving party is in the Source Code review room. Such supervision, however, shall not entail review of any work product generated by the receiving party, *e.g.*, monitoring the screens of the stand-alone computers, monitoring any surface reflecting any notes or work product of the receiving party, or monitoring the key strokes of the receiving party. There will be no video supervision by any supplier.

(viii) Nothing may be removed from the stand-alone computers, either by the receiving party or at the request of the receiving party, except for (1) print outs of reasonable portions of the Source Code in accordance with the provisions of paragraphs 18(C)(ix)-(x) of this Protective Order; and (2) such other uses to which the parties may agree or that the Administrative Law Judge or the Commission may order.

(ix) At the request of the receiving party, the supplier shall within three (3) business days provide one (1) hard copy print out of the specific lines, pages, or files of the Source Code that the receiving party believes in good faith are necessary to understand a relevant feature of an accused product. During the review of Source Code, if a receiving party believes in good faith that contemporaneous access to print-outs of particular pages of the Source Code are necessary to further the Source Code review, the receiving party may request and the supplier shall promptly provide one (1) hard copy print out of such pages. The receiving party shall limit its requests for contemporaneous access to print outs to those pages actually necessary to conduct the Source Code review. If the supplier objects in any manner to the production of the requested source code (*e.g.*, the request is too voluminous), it shall state its objection within the allotted five (5) business days pursuant to this paragraph. In the event of a dispute, the parties will meet and confer within five (5) business days of the objection being raised and if they cannot resolve it the parties will raise it with the ALJ.

(x) Hard copy print outs of Source Code shall be provided on bates numbered and watermarked or colored paper clearly labeled CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION on each page and shall be maintained by the receiving party's Outside Litigation Counsel or SOURCE CODE QUALIFIED PERSONS in a secured locked area. The receiving party may also temporarily keep the print outs at: (a) the Commission for any proceedings(s) relating to the Source Code, for the dates associated with the proceeding(s); (b) the sites where any deposition(s) relating to the Source Code are taken, for the dates associated with the deposition(s); and (c) any intermediate location reasonably necessary to transport the print outs (*e.g.*, a hotel prior to a Commission proceeding or deposition). The

receiving party shall exercise due care in maintaining the security of the print outs at these temporary locations. No further hard copies of such Source Code shall be made and the Source Code shall not be transferred into any electronic format or onto any electronic media except that:

1. The receiving party is permitted to make up to five (5) additional hard copies for use at a deposition.
  2. The receiving party is permitted to make up to five (5) additional hard copies for the Commission in connection with a Commission filing, hearing, or trial, and of only the specific pages directly relevant to and necessary for deciding the issue for which the portions of the Source Code are being filed or offered. To the extent portions of Source Code are quoted in a Commission filing, either (1) the entire document will be stamped and treated as CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION; or (2) those pages containing quoted Source Code will be separately stamped and treated as CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION.
  3. Electronic copies of Source Code may only be made to be included in documents which, pursuant to the Commission's rules, procedures and order(s), cannot be filed or served in hard copy form and must be filed or served electronically. Only the necessary amount of electronic copies to effectuate such filing or service may be stored on any receiving party server, hard drive, thumb drive, or other electronic storage device at any given time. After any such electronic filing or service, the receiving party shall delete all electronic copies from all receiving party electronic storage devices.
  4. The receiving party is permitted to make up to six (6) identical CD-ROMs or DVDs that contain an electronic copy of the hard copy print-outs of Source Code provided by the supplier. The receiving party may provide these CD-ROMs or DVDs to Qualified Consultants or Qualified Experts, who may use such CD-ROMs solely for active review of the Source Code. The receiving party is also permitted to make temporary copies necessarily made in the production of these CD-ROMs or DVDs, provided any such copies are immediately deleted once the temporary copies are no longer required for the production of the CD-ROMs or DVDs.
  5. The supplier shall, on request, make a searchable electronic copy of the Source Code available on a stand-alone computer during depositions of witnesses who would otherwise be permitted access to such Source Code. The receiving party shall make such request at the time of the notice for deposition.
- (xi) Nothing in this Protective Order shall be construed to limit how a supplier may maintain material designated as CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION.
- (xii) Outside Litigation Counsel for the receiving party with custody of CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION shall maintain a source code

log containing the following information: (1) the identify of each person granted access to the CONFIDENTIAL SOURCE CODE—ATTORNEY'S EYES ONLY INFORMATION; and (2) the first date on which such access was granted. Outside Litigation Counsel for the receiving party will produce, upon request, each such source code log to the supplier within twenty (20) days of the final determination of the Investigation.

[Para. #]. No prejudice. The private parties agree that entering into this Protective Order Addendum is without prejudice to any party's rights to propose, request or otherwise move for different provisions relating to Source Code production in the Investigation or any other investigation, action or proceeding.