

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

|                                    |   |                     |
|------------------------------------|---|---------------------|
| ROBERT L. SCHULZ and JOHN LIGGETT, | ) | CASE NO. 07-cv-0943 |
|                                    | ) |                     |
| Plaintiffs,                        | ) | LEK-DRH             |
|                                    | ) |                     |
| v.                                 | ) |                     |
|                                    | ) |                     |
| NEIL KELLEHER, et al.,             | ) |                     |
|                                    | ) |                     |
| Defendants.                        | ) |                     |

**CONFIDENTIALITY AGREEMENT AND  
STIPULATED DOCUMENT PROTECTIVE ORDER**

Plaintiffs, Robert L. Schulz and John Liggett (the "Plaintiffs") and Defendants, Neil Kelleher, et al. (the "Defendants"), hereby enter into, agree, stipulate and submit for the Court's approval and enter this Confidentiality Agreement and Stipulated Document Protective Order ("Document Protective Order") for the protection of confidential documents produced during discovery in this matter.

The materials that the Defendants are requested to turn over to the Plaintiffs pertaining to the various voting systems are detailed in Plaintiffs' First Request for Production of Documents that were served by the Plaintiffs on or about October 6, 2009.

Upon negotiation of the parties,

IT IS AGREED THAT:

1. Subject to any non-confidentiality and non-trade secret objections they may otherwise raise or raised by any third-party vendor, Defendants shall produce responsive documents subject to this Order.

2. Documents or other materials which Defendants assert are confidential trade secrets or confidential proprietary information shall be marked "CONFIDENTIAL" when provided. Discovery information marked "CONFIDENTIAL" shall be referred to hereinafter as "Protected Material." Defendants may mark highly confidential documents "HIGHLY CONFIDENTIAL—ATTORNEYS' (OR PRO SE PLAINTIFFS') EYES ONLY;" such documents or other materials shall be referred to hereinafter as "Highly Protected Material."

3. Protected Material, or information derived solely therefrom, may only be disclosed or made available during discovery by the party receiving such information to "Qualified Persons," who, in the case of documents designated as "CONFIDENTIAL" are defined to consist solely of:

- a. The Court (in the manner provided by ¶ 14 hereof);
- b. Counsel for the parties or the parties if pro se and the paralegals, clerical, and secretarial staff employed by such counsel;
- c. Court reporters and other outside litigation-support services;
- d. Any witness who counsel believes in good faith should be shown the document in order properly to prepare for his or her deposition or trial testimony. Before being shown any "CONFIDENTIAL" documents, said witness shall first agree to be bound by the terms of this Order and to submit to the jurisdiction of this Court regarding enforcement of this Order.
- e. Any other person as to whom the producing party agrees in writing prior to or subsequent to disclosure.

Highly Protected Material may only be disclosed to the Court; Counsel or pro se parties and their paralegals, clerical, and secretarial staff, and any other person as to whom the producing party agrees in writing prior to or subsequent to disclosure.

4. No individual defined in ¶ 3 shall provide Protected or Highly Protected Material to persons or entities that they know or reasonably should know are present employees, consultants, agents or representatives of competitors of any vendor. In particular, Protected or

Highly Protected Material produced by one vendor may not be shown to present employees, consultants, agents or representatives of competitors of any other vendor.

5. Before any consultant or expert engaged by any party is given access to Protected or Highly Protected Material, each such consultant or expert shall be provided a copy of this Document Protective Order and sign an undertaking in the form attached hereto as Appendix A, the signed original of which will be retained in the file of counsel retaining the consultant or expert.

6. Protected or Highly Protected Material may be quoted or paraphrased in documents or communications transmitted between the parties to this litigation and in notes prepared for any hearing or conference before the Court. All such filings and notes, including retained drafts, shall also constitute Protected or Highly Protected Material. Protected or Highly Protected Material contained or reproduced in electronic media shall be password-coded or, in the case of diskettes, tapes, or other removable media, marked with an appropriate legend and kept in a secure location.

7. Documents that quote, paraphrase, or otherwise disclose Protected or Highly Protected Material shall be labeled, "Contains Information Subject To Document Protective Order: Do Not Disclose To Unauthorized Persons," or with substantially similar language, on each page. All such filings shall be Protected or Highly Protected Material and shall be made under seal.

8. Upon termination of this action, including all appeals, the parties and any Qualified Persons identified in ¶ 3 shall return to counsel for the producing party all Protected or Highly Protected Material unless said documents have lost their protection under this Order, except that litigation counsel for each party may maintain in its files pleadings, briefs and other

documents filed with the Court, deposition transcripts and deposition exhibits, and proposed trial exhibits, whether used or not, provided that all such, documents otherwise remain subject to the terms of this Document Protective Order, unless said documents have lost their protected nature as indicated above.

9. Unless otherwise expressly provided in this Document Protective Order, any violation or breach of the Terms and Conditions set forth in this Document Protective Order will be grounds for court contempt action, after a hearing where the accused will be afforded due process.

10. The Plaintiffs, Plaintiffs' counsel and any authorized representative of the Plaintiffs or Plaintiffs' counsel shall not disseminate or communicate any Protected or Highly Protected Material to person, persons, parties or entities who are not enumerated in ¶ 3, except for the preparation of reports, as required by Court Rules, for the giving of deposition and trial testimony in this case, for use in court filings, and for the limited circulation of transcripts of said testimony to the Court and to counsel for the parties to this litigation and their consultants, experts, agents and representatives.

11. The following information shall not be considered Protected or Highly Protected Material for the purposes of this Agreement: information that was already known to the Plaintiffs, other than under an obligation of confidentiality, at the time of disclosure; information that became known to the Plaintiffs or their experts from a third party imposing no obligation of confidentiality and who did not acquire such information subject to an obligation of confidentiality, or information that is now or hereafter becomes publicly known by other than a breach of the nondisclosure agreements associated with this litigation.

12. Objections made to any designation of “CONFIDENTIAL” under this Document Protective Order shall be made in good faith. Any party objecting to a designation of “CONFIDENTIAL” including objections to portions of designation of multi-page documents, shall notify the producing party in writing, specifically identifying each document that the objecting party in good faith believes should not be designated as “CONFIDENTIAL” and providing a brief statement of the grounds for such belief. The objecting and producing parties thereafter shall confer in an attempt to resolve the disputed issue(s) of confidentiality. To the extent the Parties are unable to reach an agreement as to the designation, the Party asserting the disputed confidentiality designation may make an appropriate application to this Court – with confidential portions being filed in accordance with ¶ 14 - requesting that specifically identified documents, information, and/or deposition testimony be included within the provisions of this Stipulation and Document Protective Order. All documents that are the subject of such an application shall be treated in accordance with their initial “CONFIDENTIAL” designation and this Order unless and until the Court rules otherwise.

13. In the event any Protected or Highly Protected Material is contained in any pleadings and/or other papers filed with the Court, such filing shall be marked as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ (OR PRO SE PLAINTIFFS’) EYES ONLY” and placed in a sealed envelope marked with the caption of the case and held by the Court under seal. The parties shall attach to the outside of the envelope a copy of the notice of motion, or other appropriate papers, and this Document Protective Order. Where there are disputed issues of confidentiality related to the information contained in such filings, the parties shall follow the procedure outlined in paragraph 12 for resolving such disputes.

14. Subject to the exception below, only the individuals enumerated in ¶ 3 are permitted to attend depositions where Protected or Highly Protected Material will be discussed or used at exhibits. If Plaintiffs wish to have one or more individuals in attendance who are not enumerated in ¶ 3, they may seek advance consent from the Defendants whose Protected or Highly Protected Material is to be discussed or used, up to ten days prior to a deposition. Plaintiffs may petition the Court no less than three days before the deposition date if they believe such consent is unreasonably being withheld.

15. If Plaintiffs receive a subpoena or other legal requests from third parties (e.g., parties to unrelated litigation) for Protected or Highly Protected Material, they must provide at least 30-days notice to the Defendants that marked the documents as such. If the Defendants objects to the production of any of the requested Protected or Highly Protected Material, Plaintiffs have the burden to move the Court for permission before it is produced.

16. At the Pre-Trial Conference, the Court will enter a separate order relating to the treatment of Protected or Highly Protected Material at trial. Such an order may not be inconsistent with this order.

17. Defendants' inadvertent failure to designate information as CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS' (OR PRO SE PLAINTIFFS') EYES ONLY does not necessarily waive the Defendants' ability to designate it as CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS' (OR PRO SE PLAINTIFFS') EYES ONLY later in the litigation. If a document is later designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS' (OR PRO SE PLAINTIFFS') EYES ONLY information is disclosed without a confidentiality designation and it is later designated as confidential (subject to ¶¶ 3 and 12), the receiving party must treat it as such going forward.

18. Complying with the terms of this Document Protective Order by the non-producing party shall not: (a) operate as an admission by any party that any particular document contains or reflects currently valuable proprietary or commercial information; or (b) prejudice in any way the right of a party at any time: (i) to seek a determination by the Court of whether any particular document should be subject to the terms of this Document Protective Order; or (ii) to seek relief on appropriate notice from any provision(s) of this Document Protective Order, either generally or as to any particular document. However, designating a document as "CONFIDENTIAL" shall operate as a representation by the producing party that the document contains or reflects currently valuable proprietary or commercial information

19. The terms and restrictions of the Document Protective Order shall survive until such time as the Protected or Highly Protected Material falls into the public domain, or upon agreement of the Parties and Court approval, whichever occurs first.

20. This Document Protective Order shall not be modified or terminated except by an Order entered by this Court or another Court of competent jurisdiction. Any agreements or understandings of any or all of the parties designated herein as to the terms of the Document Protective Order have been included herein and to the extent that they have not been so integrated, they are not a part of this Document Protective Order.

21. The illegality, invalidity or unenforceability of any particular provision of this Document Protective Order shall not affect the other provisions hereof, and this Document Protective Order shall be construed in all respects as if such illegal, invalid, or unenforceable provision was omitted.

22. Any party becoming aware of any unauthorized disclosure or unauthorized use of the Protected or Highly Protected Material or any part thereof shall immediately report the same in writing to this Court and to the affected Defendants.

23. Neither the Protected or Highly Protected Material or any information, materials or knowledge derived therefrom (or any other information provided by the Defendants) shall be used for, or be permitted to be used for, (i) purposes of "patent mining" or (ii) preparation or development of any derivative or competing products or technologies or (iii) review or analysis of the Protected or Highly Protected Material for any reason other than in connection with this litigation, other than as enumerated in ¶ 11. For purposes of this Agreement, patent mining shall mean (x) the determination of whether any features, functions or processes are protected by any existing patent or patent application; or (y) use, with or without such intent, to modify, alter, or continue, in part or whole, any existing patent or patent application.

SO ORDERED:

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Honorable \_\_\_\_\_, Judge