

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

| | | |
|------------------------|---|--------------------------|
| 3SHAPE A/S, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | C.A. No. 18-0697-LPS-CJB |
| ALIGN TECHNOLOGY, INC. |) | |
| |) | |
| Defendant. |) | |
| |) | |

STIPULATED PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and subject to the approval of the Court, by and between the parties and by their respective undersigned counsel, that this Stipulation and Order shall govern the handling of documents, depositions, deposition exhibits, interrogatory responses, admissions, and any other information produced, given, or exchanged by and among the parties and any non-parties in the above-captioned action.

Accordingly, based upon the agreement of the parties, IT IS HEREBY ORDERED pursuant to Rule 26(c) of the Federal Rules of Civil Procedure that the following Procedures shall be adopted for the protection of confidential and proprietary information:

**PROCEDURES FOR PROTECTION OF CONFIDENTIAL
AND PROPRIETARY INFORMATION**

1. DEFINITIONS

1.1. Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

1.2. “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

1.3. Counsel (without qualifier): Outside Counsel of Record (as well as their support staff).

1.4. Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE–ATTORNEYS’ EYES ONLY.”

1.5. Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in the above-captioned action.

1.6. Expert: a person with specialized knowledge or experience in a matter pertinent to the instant litigation who: (1) has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in the above-captioned action; (2) is not a current employee of a Party or of a Party’s competitor; and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

1.7. “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “CONFIDENTIAL Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

1.8. “HIGHLY CONFIDENTIAL SOURCE CODE-ATTORNEYS’ EYES ONLY”

Information or Items: material of a Designating Party or of any Non-Party that a Producing Party is permitted to produce in this litigation that constitutes or contains non-public Source Code.

1.9. In-House Counsel: attorneys who are employees of a Party to the above-captioned action. In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

1.10. Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to the above-captioned action.

1.11. Outside Counsel of Record: attorneys of a law firm which has appeared on behalf of that Party in this instant litigation and their support staffs.

1.12. Party: a party to the above-captioned action, including all of its officers, directors, and employees.

1.13. Producing Party: a Party or Non-Party, that produces Disclosure or Discovery Material in the above-captioned action.

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

1.15. Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL SOURCE CODE-ATTORNEYS’ EYES ONLY.”

1.16. Receiving Party: a Party or Non-Party that receives Disclosure or Discovery Material from a Producing Party.

1.17. Source Code: source code, object code (*i.e.*, computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), any text written in any high-level programming language defining firmware and/or software functionalities implemented on an integrated circuit, microcode, register transfer language (“RTL”), firmware, and hardware description language (“HDL”), as well as any and all notes, annotations, and other comments of any type related thereto and accompanying the code. 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.

2. COMPUTATION OF TIME

The computation of any period of time prescribed or allowed by this Order shall be governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party, provided such information enters the public domain by means not involving a violation of this Order or other duty of confidentiality; and (b) any information known to the Receiving Party prior to the disclosure that the Receiving Party can demonstrate was already known prior to the

time of disclosure, was obtained lawfully, and was obtained by means not involving a violation of this Order or any other duty of confidentiality.

Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

The confidentiality obligations imposed by this Order shall remain in effect even after final disposition of the above-captioned action unless otherwise provided herein. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in an action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of that action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Designating Party that designates information or items for protection under this Order must take care to limit any such designation to material that qualifies under the appropriate standards. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties in its respective action that it is withdrawing the mistaken designation.

5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*, subsection 5.2.1 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated at the time the material is disclosed or produced. Designation in conformity with this Order requires:

5.2.1. For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing

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