

other form or format), as well as any copies, excerpts, abstracts, analyses, summaries, paraphrases, recaptulations, edited versions, descriptions, or other forms of recorded information that might reveal a portion of the Source Code contents, and the portion of any pleading, motion, brief or other filing in this action that contains, reflects, evidences or discloses such information. Source Code shall be designated as “HIGHLY CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER.”

3. All knowledge and information gained or developed from viewing the Source Code shall be used solely and exclusively for the limited purpose of prosecuting or defending the claims in this action and shall not, under any circumstances, be used for any other purpose whatsoever (including, but not limited to, business, commercial, competitive, educational, instructional or personal purposes).

4. Source Code furnished by HDR in connection with this action may not be viewed, copied, transmitted, altered, used, downloaded or accessed by any party or person except as expressly stated in this Protective Order. HDR will furnish Source Code by providing it to a third party vendor (“Escrow Vendor”) who is mutually agreed upon by HDR and the Parties to this action (defined as the State of South Carolina, the State of North Carolina, the Catawba River Water Supply Project, and Duke Energy of the Carolinas, LLC) and who signs the Agreement attached hereto as Exhibit A. The Escrow Vendor shall copy Source Code into the hard drive or into the RAM of one (1) stand-alone (e.g., neither networked nor connected to the Internet) computer with access to a secure portal, the location of which will be disclosed to HDR (the “Escrow Computer”). No one, other than the Escrow Vendor, shall have physical access to the Escrow Computer. The Escrow Vendor shall establish and use a system (the “Escrow System”) that (i) ensures the Source Code may be viewed only by those persons who are

authorized under this Protective Order to do so and comply with all requirements hereunder to view it; (ii) provides remote access to the Source Code to the persons authorized under this Order to view it; (iii) monitors and records the identity of the persons accessing the Escrow System to view the Source Code and the time, date and duration of each such viewing, (“Access Records”); (iv) keeps confidential Access Records so that each designated viewer is not informed of the viewing activities of other designated viewers; (v) prevents copying, altering, editing, transmitting, downloading or printing of the Source Code; and (vi) prevents any and all other activities with regard to the Source Code except in strict compliance with this Protective Order. Source Code shall be subject to the following further conditions:

(a) Regardless of whether so marked, Source Code shall be treated as if designated “**HIGHLY CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER.**”

(b) Each Party to this action may designate the following persons to receive remote access to the Source Code via the Escrow System for Source Code viewing: (i) no more than four (4) persons who are counsel of record in this action or members of such counsel’s office assigned to work on this action and (ii) no more than six (6) persons who are outside consulting and/or trial experts or members of such expert’s support staff assigned to work on this action, which experts have been engaged by counsel of record to assist in the prosecution or defense of claims in this action and who, in the good faith judgment of counsel of record, have a legitimate need for such access in order to do so. No Party shall have more than a total of ten (10) authorized persons to view the Source Code via the Escrow System; provided that any Party may, for good cause, obtain additional designations under section 4(b)(i) or (ii) above with the advance written consent of HDR, or, if such consent is denied, by application to and further order of the Special Master and/or Court. All designations shall be made in the form attached as

Exhibit B hereto and shall be submitted to the Escrow Vendor and to counsel for HDR, and shall be treated as confidential Access Records.

Additionally, the Escrow Vendor shall provide remote access to the Source Code to persons designated in writing by HDR, whose access shall be subject to the provisions of Paragraph 4 of this Protective Order. Although HDR is in no way required to undertake any level of review of the Source Code and shall not be responsible for monitoring the Source Code after it is given to the Escrow Vendor, in the event HDR becomes aware of a problem with the copy of Source Code contained in the Escrow System, HDR will use reasonable efforts to promptly notify the Escrow Vendor and counsel of record for the Parties.

(c) Before being provided access by the Escrow Vendor, each person (and, if employed by a corporation or other business entity, his or her employer as well) authorized to receive access to Source Code hereunder shall (i) read this Order; (ii) sign the undertaking attached as Exhibit A hereto; (iii) provide a signed copy of Exhibit A to the Escrow Vendor and to counsel for HDR (provided that persons designated by HDR need not sign Exhibit A); and (iv) provide the Escrow Vendor and counsel for HDR with a current resume or curriculum vitae of all persons identified in Exhibit B and asked to execute Exhibit A.

(d) Designated experts under section 4(b)(ii) and designated counsel under section 4(b)(i) shall be permitted to view the Source Code as their analysis reasonably requires. Some Parties have disagreed with HDR as to whether a Party's experts should, in addition to viewing the Source Code via the Escrow System as provided herein, also be able to edit Source Code, and create and use any executable version(s) of CHEOPS from such edited Source Code. Nothing in this Protective Order precludes any Party from seeking further Order from the Special

Master and/or Court to authorize such a use of Source Code, nor does it preclude HDR or any Party from opposing such efforts.

(e) Any documents (regardless of form or format) that refer to Source Code shall be created and used for the sole and exclusive purpose of, and only to the extent necessary for, this litigation including but not limited to gaining an understanding of the Source Code, creating submissions under seal to the Special Master and/or Court, as deemed necessary by any Party to this action, or for presentation to the Special Master and/or Court at hearings or at trial. Any person creating or generating any document that references Source Code, in a way that might reveal a portion of its contents, shall immediately upon its creation mark each page of it as **“HIGHLY CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER”** at the top and bottom of each page or other conspicuous location, shall only be filed under seal and shall not be made public or used or disclosed outside of the express terms of this Order.

(f) The protocol for filing documents produced pursuant to this protective order shall be as set forth below. The parties understand and agree that this protocol may be incorporated, modified, or superseded by future case management orders or case management plans entered in this litigation. Under the terms of this Protective Order, the Parties and Special Master have already agreed that any page marked **“HIGHLY CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER”** shall be filed under seal and shall not be made public or used or disclosed outside of the express terms of this Order and no additional motion requesting permission to file such material under seal is required prior to filing such material. If any Party believes that a document or information should not be filed under seal that Party may file a motion providing good cause for why a document or information should be unsealed. A Party filing such a motion must provide notice of the motion to Producing Party HDR’s counsel. To

file a pleading, attachments to a pleading, a document, and/or other form of information marked **“HIGHLY CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER”** under seal, the Party shall follow the following procedure: (i) When submitting something in whole or in part under seal to the Special Master, the submitting Party shall file a *redacted* public version of the pleading or document electronically and by U.S. Mail according to the requirements of the case management orders. The redacted public version will be included on the electronic docket maintained by the Special Master’s staff on the MTO website; (ii) one copy of the complete unredacted pleading or document, including the portion of the pleading or attachments to be filed under seal, shall be mailed to all Parties *but shall not be submitted electronically*. The Special Master shall receive two copies of the complete unredacted pleading or document including the portion filed under seal; (iii) each document filed under seal shall be submitted in a sealed manila envelope to which a coversheet is affixed. The coversheet shall include the caption, the title of the document being filed, the notation: **““HIGHLY CONFIDENTIAL MATERIAL ENCLOSED -- Filed under Seal – [date]”**”, and the signature of counsel for the party filing the document. In the event a filing does not comply with the foregoing requirements, the Party making such filing shall immediately take steps to rectify the non-compliance. In the event sealed filings are at issue in any exceptions taken to the Supreme Court, the Parties shall take steps to maintain the sealed status of such filings. Additionally, at the conclusion of this case, the Parties shall take steps to ensure that documents filed under seal are either maintained as such by the Parties, Special Master and/or Court or destroyed.

(g) Within 60 days of the conclusion of this action, (i) counsel for the State of South Carolina shall notify the Escrow Vendor, in writing and with a copy to counsel for the other Parties and counsel for HDR, of such conclusion and the Escrow Vendor shall promptly

thereafter (A) terminate all remote access to the Source Code, (B) permanently and completely erase and obliterate all Source Code from the Escrow Computer, (C) certify such termination and deletion to HDR, and (D) maintain the complete Access Records subject to section 4(h); and (ii) each person having access to Source Code hereunder must verify in writing to HDR that he/she has at all times complied fully with the provisions of this Order (including but not limited to section 3) and that all Source Code, and any abstracts, analyses, summaries, paraphrases, recapitulations, edited versions, and descriptions thereof, have been permanently and completely erased and obliterated; provided that persons designated by HDR need not provide such verification.

(h) The Escrow Vendor shall be chosen by agreement of the Parties and HDR, after consideration of factors including but not limited to cost and its qualifications to maintain the confidential Escrow System contemplated by this Protective Order. If the above Parties are unable to agree on an Escrow Vendor, the Special Master shall select the Escrow Vendor after receiving letter briefs from any and all interested Parties and HDR. The Parties shall pay the Escrow Vendor's fees and charges as set forth in the written Secure Discovery Agreement entered among HDR, the Parties and the Escrow Vendor ("Escrow Agreement"). After the Source Code is set up on the secure hard drive or computer each Party shall bear the reasonable costs and expense charged by the Escrow Vendor for providing remote access to persons designated by that Party.

(i) It is agreed that the Access Records maintained by the Escrow Vendor are the work product of the Parties and/or their respective counsel and experts. Accordingly, the Access Records will be kept confidential and the Escrow Vendor shall not disclose the Access Records to anyone; provided, however, HDR or a Party may obtain the Access Records by order

of the Special Master and/or Court upon a showing of good cause that the Access Records are reasonably anticipated to lead to the discovery of a claim in connection with HDR's rights in the Source Code or a claim that this Protective Order might have been violated.

5. Source Code, as well as materials produced by HDR and marked "Confidential," (collectively "HDR Source Code and Confidential Documents") shall also be protected from disclosure as set out in the CMP. To the extent that conflicts or discrepancies are found to exist between the terms of this Order, the CMP and the Escrow Agreement with regard to access to and security of HDR Source Code and Confidential Documents, the most restrictive and protective provisions shall control. The provisions of section 10 apply to HDR Source Code and Confidential Documents.

6. This Order shall remain in full force and effect after the termination of this action, or until canceled or otherwise modified by Order of the Special Master and/or Court, or by written agreement of the Parties and HDR. This Order shall be enforceable by this Court or in any court of competent jurisdiction, except that this Order shall not operate as a waiver of objections to personal jurisdiction that may be available to a defendant in such an enforcement action.

7. Violation of any provisions of this Protective Order may subject the violating Party and/or its counsel of record, consultant/expert or employee to sanctions for contempt of court; provided, however, that HDR is in no way precluded or restricted from seeking any and all other available remedies or relief under applicable law, if any, for a violation of this Protective Order, the CMP or the Escrow Agreement in addition to enforcing this Protective Order.

8. Nothing in this Protective Order, the CMP or the Escrow Agreement shall prevent HDR from disclosing its own materials and information (including, but not limited to, Source

Code) to any person or otherwise using such materials or information. Additionally, nothing in this Order shall prevent HDR from seeking a further Order modifying or terminating access to Source Code via the Escrow Vendor. HDR shall have the right to instruct the Escrow Vendor to disable and discontinue access immediately upon receiving written instruction from HDR; provided, however, that HDR must, within three (3) business days of giving such instruction, petition the Special Master and/or Court to modify the Protective Order or for such other and further relief in connection with the instruction. Nothing in this Protective Order, the CMP or the Escrow Agreement shall prohibit HDR from seeking further protections from the Special Master or additional security protocols from the Escrow Vendor and the Parties.

9. If any of the Parties, or their respective counsel or experts, or the Escrow Vendor receives a discovery request, subpoena or any other order, judgment, subpoena, search warrant, decree or compulsory process of whatever kind that calls for disclosure of HDR Source Code or Confidential Documents, or any portion thereof, or if any action is brought to compel such person to disclose such materials, such person shall promptly notify counsel for HDR, shall oppose such disclosure and shall reasonably cooperate with HDR's own efforts to oppose such disclosure.

10. HDR Source Code and Confidential Documents, and any documents referring to, reflecting or disclosing HDR Source Code and Confidential Documents, or any portion thereof, are protected from any public disclosure under the North Carolina Public Records Act, the South Carolina Freedom of Information Act, the Federal Freedom of Information Act, and any other statute, regulation, rule or law that may otherwise require the disclosure of such material in a manner other than in strict compliance with the terms of this Order. In support of the foregoing, the Special Master enters the following findings:

a. HDR Source Code and Confidential Documents are being provided to the Parties under a special procedure as a consequence of the Subpoena being served upon HDR, and shall be used by the Parties only for the limited purposes of this case.

b. The Parties acknowledge that they do not have control of the HDR Source Code and Confidential Documents. As a result, HDR Source Code and Confidential Documents, and any documents referring to the foregoing, do not qualify as “agency records” and/or “public records” under the Federal Freedom of Information Act, the North Carolina Public Records Act and/or the South Carolina Freedom of Information Act. A purpose of this Protective Order is to preclude any Source Code from being treated as a public record under N.C. Gen. Stat. § 132-1 *et seq.*, S.C. Code Ann. § 30-4-10 *et seq.* or otherwise.

c. The Source Code constitutes business or technical information, pursuant to N.C.G.S. § 66-152(3), that derives independent, actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

d. The Source Code constitutes unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information pursuant to S.C. Code Ann. § 30-4-40.

e. Accordingly, the Source Code is a confidential trade secret of HDR’s, and is entitled to qualification and protection as confidential information under N.C.G.S. § 132-1 *et seq.*

and/or S.C. Code Ann. § 30-4-10 *et seq.* or other similar classification under any other public records statute or law.

Based on a review of the record, the Special Master HEREBY ORDERS:

(i) the Source Code constitutes a confidential “trade secret” as defined in N.C.G.S. § 66-152(3) and S.C. Code. Ann. § 30-4-40;

(ii) the Source Code is the commercially valuable property of HDR (a private “person” as defined by N.C.G.S. § 66-152(2) and S.C. Code. Ann. § 30-4-20(b));

(iii) to the extent that the HDR Source Code and Confidential Documents are being disclosed to the designated Parties in this case, including North Carolina and South Carolina public agencies, this disclosure is in compliance with Rule 17 of the Rules of the Supreme Court of the United States and Rule 45 of the Federal Rules of Procedure as adopted by Case Management Order No. 7 of Special Master Kristin Linsley Myles, dated September 18, 2008;

(iv) HDR Source Code and Confidential Documents have been and will continue to be designated “confidential” (or other similar designation) from the time of initial disclosure to the designated Parties in this case, including North Carolina and South Carolina public agencies;

(v) HDR Source Code and Confidential Documents fall within the statutory exemptions for public disclosure, including but not limited to, Exemption 4 of the Federal Freedom of Information Act, N.C.G.S. § 132-1.2 and S.C. Code. Ann. § 30-4-40; and

(vi) HDR Source Code and Confidential Documents are not public records nor shall they be treated as public records under N.C.G.S. § 132-1 *et seq.* and/or S.C. Code Ann. § 30-4-10 *et seq.* or other similar classification under any other public records statute or law. Any public disclosure of HDR Source Code and Confidential Documents under the North Carolina Public

Records Act, the South Carolina Freedom of Information Act and/or the Federal Freedom of Information Act is strictly prohibited.

SO ORDERED:



Kristen Linsley Myles
Special Master



Date

SO STIPULATED AND AGREED:

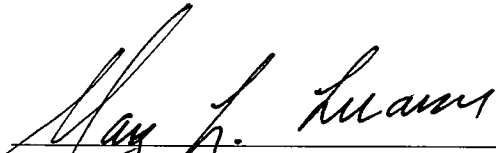


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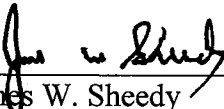
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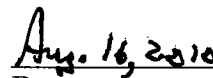
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EXHIBIT A
ACKNOWLEDGEMENT, AGREEMENT AND DECLARATION

I, the undersigned, hereby acknowledge, agree and declare that:

1. I have received and fully read and understand the Stipulated Protective Order Concerning HDR Source Code and Confidential Documents entered ____, __, ____, in the case of *South Carolina v. North Carolina*, No. 138, Original, pending in the Supreme Court of the United States (the "Protective Order"). I hereby agree to be bound thereby and to comply therewith.

2. I have received and/or expect to receive material or information furnished by HDR, Inc., ("HDR") including certain portions or all of which has been designated as "HIGHLY CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL" pursuant to the terms and restrictions of the Protective Order. I shall maintain all such material as confidential and will not disclose it to anyone except in strict compliance with the Protective Order.

3. I shall retain control of all such material or information, as well as any copies thereof. Upon completion of my assigned duties, I shall be responsible for the identification and disposition of all such material, including any copies thereof, pursuant to the terms of the Protective Order. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Protective Order. If I am provided remote access to Source Code via the Escrow Vendor, I shall keep the password assigned to me confidential and shall not allow any other person to use my password, nor shall I make any effort to copy, download or print the Source Code. If I have reason to believe that another person (other than the Escrow Vendor) has obtained my password, I shall immediately notify the Escrow Vendor.

4. I shall not, under any circumstances, use any material or information furnished by HDR pursuant to the Protective Order, or any knowledge I gain from reviewing such material or information, for any purpose whatsoever (including, but not limited to, business, commercial,

competitive, educational, instructional or personal purposes), other than for the limited purpose of prosecuting or defending the claims in this action. I shall not, under any circumstances, access, view or use any HDR Source Code or Confidential Documents, or any portion thereof, or any documents referring to, reflecting or disclosing HDR Source Code and Confidential Documents, except in strict compliance with the Protective Order.

Witness: _____

Signed: _____

Printed Name:

Date:

Employer:

Party Affiliation:

EXHIBIT B

PARTY DESIGNATION CONCERNING ACCESS TO SOURCE CODE

Pursuant to ¶ 4(b)(i)-(ii) of the Stipulated Protective Order Concerning HDR Source Code and Confidential Documents, entered _____, __, _____, in the case of South Carolina v. North Carolina, No. 138, Original, pending in the Supreme Court of the United States, _____ hereby designates the following persons (whose current curriculum vitae and/or resumes are attached hereto) to have access to Source Code under the conditions set out in the Protective Order:

[Name]
Counsel for the [Party]