

Feel free to use as is or amend to suit your firm

Most standard Protective Orders (POs) are silent on AI, which creates a "gray area" that opposing counsel can exploit.

Adding this specific language helps satisfy the "Reasonable Steps" requirement of Federal Rule of Evidence 502 to prevent waiver.

---

## **Model Clause: AI-Assisted Review & Non-Waiver**

Drafting Note: This clause should be inserted into a standard Stipulated Protective Order or a Rule 502(d) Order.

### **Section [X]: Use of Artificial Intelligence and Automated Review Tools**

[X.1] Authorized Use of AI Tools. The parties may utilize Large Language Models (LLMs), Generative AI, or other automated technology (collectively, "AI Tools") to facilitate document review, categorization, and summarization. The use of such tools shall not, in itself, be deemed a failure to exercise reasonable care in the preservation of privilege.

[X.2] Non-Waiver via AI Processing. The input of "Protected Material" into a third-party AI Tool, or the generation of summaries thereof by an AI Tool, shall not constitute a waiver of the Attorney-Client Privilege or Work Product Protection, provided that:

- (a) The AI Tool utilized is governed by a written agreement providing for data privacy and non-use of uploaded data for model training; or
- (b) The party utilizing the tool has implemented internal protocols to prevent the public disclosure of such data.

[X.3] "No-Training" Requirement. Neither party shall utilize "Public" or "Open-Loop" AI tools (tools that ingest user data to improve global models) for the processing of documents designated as "Confidential" or "Highly Confidential" without the express written consent of the Producing Party.

[X.4] Inadvertent Disclosure via AI (Clawback). Pursuant to Federal Rule of Evidence 502(d), the inadvertent disclosure of Privileged Material via an AI Tool's output or through a vendor's platform shall not operate as a waiver in this or any other Federal or State proceeding. Upon discovery of such disclosure, the Receiving Party shall immediately sequester and/or destroy all AI-generated outputs derived from the Privileged Material upon notification by the Producing Party.

[X.5] Discovery of AI Prompts. Prompts, system instructions, and "chain-of-thought" reasoning provided to an AI Tool by counsel are deemed Protected Attorney Work Product and are not subject to discovery, unless the party seeking discovery can show a compelling need and an inability to obtain the substantial equivalent without undue hardship.