22 NYCRR § 202.70

This document reflects those changes received from the NY Bill Drafting Commission through August 1, 2025

NY - New York

Codes, Rules and Regulations >

TITLE 22. JUDICIARY >

SUBTITLE A. JUDICIAL ADMINISTRATION >

CHAPTER II. UNIFORM RULES FOR THE NEW YORK STATE TRIAL COURTS >

PART 202. UNIFORM CIVIL RULES FOR THE SUPREME COURT AND THE COUNTY COURT

§ 202.70 Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds. Except as set forth in subdivision (b), the monetary thresholds of the Commercial Division, exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed, are established as follows:

Albany County	$ 50,000
Bronx County	$ 75,000
Eighth Judicial District	$ 100,000
Kings County	$ 150,000
Nassau County	$ 200,000
New York County	$ 500,000
Onondaga County	$ 50,000
Queens County	$ 100,000
Seventh Judicial District	$ 50,000
Suffolk County	$ 100,000
Westchester County	$ 100,000

(b) Commercial cases. Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

(1) breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; technology transactions and/or commercial disputes involving or arising out of technology; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

(2) transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);

(3) transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;

(4) shareholder derivative actions -- without consideration of the monetary threshold;

(5) commercial class actions -- without consideration of the monetary threshold;

(6) business transactions involving or arising out of dealings with commercial banks and other financial institutions;

(7) internal affairs of business organizations;

(8) malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;

(9) environmental insurance coverage;

(10) commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage);

(11) dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures -- without consideration of the monetary threshold; and

(12) applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues. Where the applicable arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold set forth in section 202.70(a) shall not apply.

(c) Non-commercial cases. The following will not be heard in the Commercial Division even if the monetary threshold is met:

(1) suits to collect professional fees;

(2) cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;

(4) home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units;

(5) proceedings to enforce a judgment regardless of the nature of the underlying case;

(6) first-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and

(7) attorney malpractice actions except as otherwise provided in paragraph (b)(8) of this section.

(d) Assignment to the Commercial Division.

(1) Within 90 days following service of the complaint, any party may seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention (RJI) that attaches a completed Commercial Division RJI Addendum certifying that the case meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section. Except as provided in subdivision (e) of this section, failure to file an RJI pursuant to this subdivision precludes a party from seeking assignment of the case to the Commercial Division.

(2) Subject to meeting the jurisdictional requirements of subdivisions (a), (b) and (c) of this section and filing an RJI in compliance with paragraph (1) of this subdivision, the parties to a contract may consent to the exclusive jurisdiction of the Commercial Division of the Supreme Court by including such consent in their contract. A sample choice of forum provision can be found at Appendix C to these Rules of the Commercial Division. Alternatively, subject to meeting the jurisdictional and procedural requirements applicable to the Commercial Division and the Federal courts, the parties to a contract may consent to the exclusive jurisdiction of either the Commercial Division of the Supreme Court or the Federal courts in New York State by including such consent in their contract. An alternative sample choice of forum provision to that effect can also be found at Appendix C to these Rules of the Commercial Division. In addition, the parties to a contract may consent to having New York law apply to their contract, or any dispute under the contract. A sample choice of law provisions can be found at Appendix D to these Rules of the Commercial Division.

(e) Transfer into the Commercial Division. If an RJI is filed within the 90-day period following service of the complaint and the case is assigned to a non-commercial part because the filing party did not designate the case as "commercial" on the RJI, any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. Further, notwithstanding the time periods set forth in subdivisions (d) and (e) of this section, for good cause shown for the delay a party may seek the

transfer of a case to the Commercial Division by letter application (with a copy to all parties) to the Administrative Judge. In addition, a non-Commercial Division justice to whom a case is assigned may sua sponte request the Administrative Judge to transfer a case that meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section to the Commercial Division. The determinations of the Administrative Judge with respect to any letter applications or requests under this subdivision shall be final and subject to no further administrative review or appeal.

(f) Transfer from the Commercial Division.

(1) In the discretion of the Commercial Division justice assigned, if a case does not fall within the jurisdiction of the Commercial Division as set forth in this section, it shall be transferred to a non-commercial part of the court.

(2) Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the Administrative Judge within ten days of receipt of the designation of the case to a non-commercial part. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal.

(g) Rules of practice for the Commercial Division. Unless these rules of practice for the Commercial Division provide specifically to the contrary, the rules of this Part also shall apply to the Commercial Division, except that Rules 7 through 15 shall supersede section 202.12 (Preliminary Conference) and Rules 16 through 24 shall supersede section 202.8 (Motion Procedure) of this Part. Preamble Created in 1995, today's Commercial Division of the New York State Supreme Court is an efficient, sophisticated, up? to? date court dealing with challenging commercial cases. From its inception, the Commercial Division has had as its primary goal the cost? effective, predictable and fair adjudication of complex commercial cases. By virtue of its specialized subject matter jurisdiction, exceptional judicial expertise, rules and procedures dedicated to commercial practice, and commitment to high standards of attorney professionalism, the Division has

established itself at the forefront of worldwide commercial litigation in the twenty-first century.

(1) Jurisdiction and Judiciary

The subject matter jurisdiction of the Commercial Division - including both substantial monetary thresholds and carefully chosen case types (see § 202.70(a) and (b)) - is designed to ensure that it is the forum of resolution of the most complex and consequential commercial matters commenced in New York's courts. Accordingly, the Division's judges are chosen for their extensive experience in resolving sophisticated commercial disputes. Unlike jurists in other civil parts in New York's courts system, Commercial Division justices devote themselves almost exclusively to these complex commercial matters.

(2) Rules and Procedures Since its inception, the Commercial Division has implemented rules, procedures and forms especially designed to address the unique problems of commercial practice. Such rules have addressed a wide range of matters such as proportionality in discovery, optional accelerated adjudication, robust expert disclosure, limits on depositions and interrogatories, streamlined privilege logs, special rules concerning entity depositions, model forms to facilitate discovery, expedited resolution of discovery disputes, simplification of bench trials, time limits on all trials, streamlined presentation of evidence at trials, and a strong commitment to early case disposition through the Division's alternative dispute resolution program. Equally important, through the work of the Commercial Division Advisory Council - a committee of commercial practitioners, corporate in-house counsel and jurists devoted to the Division's excellence - the Commercial Division has become a recognized leader in court system innovation, demonstrating an unparalleled creativity and flexibility in development of rules and practices.

(3) The commercial Division Bar

Finally, the work of the Commercial Division has prospered through the strong cooperative spirit of the bar practicing before it. The subject matter jurisdiction of the court, the pace of high-stakes commercial practice, the sophistication of the judiciary and the specialized rules of the Division require that the practicing bar be held rigorously to a standard of commitment and professionalism of the highest caliber. For example, the failure to appear (or the appearance without proper preparation) at scheduled court dates, depositions or hearing is generally viewed as highly improper in the Commercial Division, and can readily result in the imposition of sanctions and penalties as permitted under statute and court rule (see, e.g., CPLR 3126; see also 22 NYCRR Part 130). At the same time, the Commercial Division's judiciary is strongly committed to the ongoing development of New York's commercial bar and, in that spirit, has instituted practices encouraging the participation of less experienced members of that bar in substantive and meaningful ways (including presentation of motions or examination of witnesses) in matters before it. In this manner, the Division seeks to ensure the continued development of the highest quality of commercial bar in New York State.

(4) Conclusion

"New York is the center of world commerce, the headquarters of international finance, the home of America's leading businesses. As such, it strongly needs a modern well-staffed, properly equipped forum for the swift, fair and expert resolution of significant commercial disputes." In 1995, those words introduced the New York State Bar Association's report proposing the creation of the Commercial Division (N.Y. St. Bar Ass'n, A Commercial Court For New York (Jan. 1995)). Since then, they have served as the central rationale for the Division's commitment to excellence in the administration of the rule of law in business in New York. The practice rules of the Commercial Division, set forth below, are a crucial component of that commitment, and are designed to be a dynamic counterpart to the innovative and efficient business practices which are so essential to the economic health of our State and nation.

Rule 1. Appearance by Counsel with Knowledge and Authority. (a) Counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately. See Rule 12 of this subdivision.

(b) Consistent with the requirements of Rule 11-c of this subdivision, counsel for all parties who appear at the preliminary conference shall be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery. Counsel may bring a client representative or outside expert to assist in such discussions.

(c) It is important that counsel be on time for all scheduled appearances.

(d) Counsel may request the court's permission to participate in court conferences and oral arguments of motions from remote locations through the use of videoconferencing or other technologies. Such requests will be granted in the court's discretion for good cause shown; however, nothing contained in this subdivision (d) is intended to limit any rights which counsel may otherwise have to participate in court proceedings by appearing in person.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by e-filing of a copy of the stipulation and by a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk. The parties need not reveal the terms of a settlement, but must notify the court that a resolution has been reached and that both sides have agreed to discontinue the case. In addition to notifying the court of a settlement or discontinuance, counsel shall withdraw any pending motions and any pending appeals.

Rule 3. Alternative Dispute Resolution (ADR): Settlement Conference Before a Justice Other Than the Justice Assigned to the Case. (a) At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation. Counsel are encouraged to work together to select a mediator that is mutually acceptable and may wish to consult any list of approved neutrals in the county where the case is pending. Additionally, counsel for all parties may stipulate to having the case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

(b) Should counsel wish to proceed with a settlement conference before a justice other than the justice assigned to the case, counsel may jointly request that the assigned justice grant such a separate settlement conference. This request may be made at any time in the litigation. Such request will be granted in the discretion of the justice assigned to the case upon finding that such a separate settlement conference would be beneficial to the parties and the court and would further the interests of justice. If the request is granted, the assigned justice shall make appropriate arrangements for the designation of a "settlement judge."

Rule 4. Electronic Submission of Papers. (a) Papers and correspondence by fax. Papers and correspondence filed by fax should comply with the requirements of section 202.5(a) of this Part except that papers shall not be submitted to the court by fax without advance approval of the justice assigned. Correspondence sent by fax should not be followed by hard copy unless requested.

(b) Papers submitted in digital format. In cases not pending in the court's Filing by Electronic Means System, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to submit memoranda of law by e-mail or on a computer disk along with an original and courtesy copy.

Rule 5. Information on Cases. Information on future court appearances and case developments can be found at the court system's eCourts site (www.nycourts.gov/ecourts). Neither the court nor the court clerk will be responsible for notifying the parties of scheduled court appearances, although the court or the court clerk may do so at their discretion.

Rule 6. Form of Papers. (a) All papers submitted to the Commercial Division shall not be inconsistent with CPLR 2101 and section 202.5(a). Papers shall be double-spaced and contain print no smaller than twelve-point, or 8 1/2 x 11 inch paper, bearing margins no smaller than one inch. Unless otherwise directed by the Court or provided in the Court's individual rules, all text in briefs and affidavits, including footnotes, shall use proportionally spaced 12-point serif typeface. The print size of footnotes shall be no smaller than ten-point. Papers also shall comply with Part 130 of the Rules of the Chief Administrator. Each electronically-submitted memorandum of law and, where appropriate, affidavit and affirmation shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.

(b) For purposes of this Rule, a hyperlink means an electronic link between one document and another, and a bookmark means an electronic link permitting navigation among different parts of a single document. Material made accessible by hyperlinking does not thereby become part of the record, and citations to authorities shall appear in standard citation form, even if also hyperlinked.

(c) Each electronically submitted memorandum of law or other document that cites to another document previously filed with NYSCEF shall include a hyperlink to the NYSCEF docket entry for the cited document enabling access to the cited document through the hyperlink. Hyperlinks may not provide access to documents filed under seal or otherwise not in the public record. Cited documents filed with NYSCEF that are accessible through bookmarks in the electronically submitted document need not also be hyperlinked.

(1) The Court may require that electronically submitted memoranda of law include hyperlinks to cited court decisions, statutes, rules, regulations, treatises, and other legal authorities in either legal research databases to which the Court has access or in state or federal government websites. If the Court does not require such hyperlinking, parties are nonetheless encouraged to hyperlink such citations unless otherwise directed by the Court.

(2) If a party certifies in good faith that it cannot include hyperlinks as required by this Rule or the Court without undue burden, due to limitations in its office technology or other showing of good cause, the Court may excuse the party from any otherwise applicable hyperlinking requirement.

(d) Interlineation of Responsive Pleadings.

(1) For every responsive pleading, the party preparing the responsive pleading shall interlineate each allegation of the pleading to which it is responding with the party's response to that allegation, and in doing so, shall preserve the content and numbering of the allegation.

(2) The party who prepared a pleading to which a responsive pleading is required shall, upon request, promptly provide a copy of its pleading in the same word processing software application in which the pleading was prepared to the party preparing the responsive pleading.

Rule 7. Preliminary Conference; Request. A preliminary conference shall be held within 45 days of assignment of the case to a Commercial Division justice, or as soon thereafter as is practicable. Except for good cause shown, no preliminary conference shall be adjourned more than once or for more than 30 days. If a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the justice presiding. Notice of the preliminary conference date will be sent by the court at least five days prior thereto.

Rule 8. Consultation Prior to Preliminary and Compliance Conferences.

(a) Counsel for all parties shall consult prior to a preliminary or compliance conference about: (i) resolution of the case, in whole or in part; (ii) discovery and any other topics to be discussed at the conference, including electronic discovery, as set forth in Rule 11-c, and the timing and scope of expert disclosure under Rule 13(c); (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

Rule 9. Accelerated Adjudication Actions.

(a) This rule is applicable to all actions, except to class actions brought under Article 9 of the CPLR, in which the court by written consent of the parties is authorized to apply the accelerated adjudication procedures of the Commercial Division of the Supreme Court. One way for parties to express their consent to this accelerated adjudication process is by using specific language in a contract, such as: "Subject to the requirements for a case to be heard in the Commercial Division, the parties agree to submit to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court and to the application of the Court's accelerated procedures, in connection with any dispute, claim or controversy arising out of or relating to this agreement, or the breach, termination, enforcement or validity thereof."

(b) In any matter proceeding through the accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions and mandatory mediation, shall be completed and the parties shall be ready for trial within nine (9) months from the date of filing of a Request of Judicial Intervention (RJI).

(c) In any accelerated action, the court shall deem the parties to have irrevocably waived:

(1) any objection based on lack of personal jurisdiction or the doctrine of forum non conveniens;

(2) the right to trial by jury;

(3) the right to recover punitive or exemplary damages;

(4) the right to any interlocutory appeal; and

(5) the right to discovery, except to such discovery as the parties might otherwise agree or as follows:

(i) there shall be no more than seven (7) interrogatories and five (5) requests to admit;

(ii) absent a showing of good cause, there shall be no more than seven (7) discovery depositions per side with no deposition to exceed seven (7) hours in length. Such depositions can be done either in person at the location of the deponent, a party or their counselor in real time by any electronic video device; and

(iii) documents requested by the parties shall be limited to those relevant to a claim or defense in the action and shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain.

(d) In any accelerated action, the description of custodians shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute. In other respects, electronic discovery shall proceed as set forth in Rule 11-c.

Rule 9-a. Immediate Trial or Pre-Trial Evidentiary Hearing. Subject to meeting the requirements of CPLR 2218, 3211(c) or 3212(c), parties are encouraged to demonstrate on a motion to the court when a pre-trial evidentiary hearing or immediate trial may be effective in resolving a factual issue sufficient to effect the disposition of a material part of

the case. Motions where a hearing or trial on a material factual issue may be particularly useful in disposition of a material part of a case, include, but are not limited to:

(a) dispositive motions to dismiss or motions for summary judgment;

(b) preliminary injunction motions, including but not limited to those instances where the parties are willing to consent to the hearing being on the merits;

(c) spoliation of evidence motions where the issue of spoliation impacts the ultimate outcome of the action;

(d) jurisdictional motions where issues, including application of long arm jurisdiction, may be dispositive;

(e) statute of limitations motions; and

(f) class action certification motions.

In advance of an immediate trial or evidentiary hearing, the parties may request, if necessary, that the court direct limited expedited discovery targeting the factual issue to be tried. Rule 9-b. Referees. Counsel should be aware that in accordance with CPLR sections 4301 and 4317(a), on consent of the parties, and with the agreement of the court, any person may be appointed by the court to act in place of the assigned Supreme Court Justice, to determine any or all issues or to perform any act, with all the powers of the Supreme Court.

Rule 10. Submission of Information; Certification Relating to Alternative Dispute Resolution. At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone number, e-mail address and fax number of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are anticipated; and (v) copies of any decisions previously rendered in the case. Counsel for each party shall also submit to the court at the preliminary conference and each subsequent compliance or status conference, and separately serve and file, a statement,

in a form prescribed by the Office of Court Administration, certifying that counsel has discussed with the party the availability of alternative dispute resolution mechanisms provided by the Commercial Division and/or private ADR providers, and stating whether the party is presently willing to pursue mediation at some point during the litigation. In addition, the statement to be submitted by counsel shall contain categories of information about the case prescribed by the Office of Court Administration which may assist the court, counsel and the parties in considering the role mediation might play in the resolution of the case.

Further pursuant to the authority vested in me, I hereby prescribe a revised Alternative Dispute Resolution ("ADR") Attorney Certification form, and repeal the former version of that form, effective July 1, 2019 (Exh. A).

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

---------- X

Part:_____

_____ Index No.:___

Plaintiff -against- ALTERNATIVE DISPUTE

RESOLUTION ("ADR")

ATTORNEY CERTIFICATION

Defendant _____

---------- X

Pursuant to Rule 10 of the Commercial Division Rules, I certify that I have discussed with my client any Alternative Dispute Resolution options available through the Commercial Division and those offered by private entities. My client:

() presently wishes to jointly engage a mediator at an appropriate time to aid settlement.

() does not presently wish to jointly engage a mediator at am appropriate time to aid settlement. This case involves the following (check all that are applicable): [] an ongoing business or personal relationship among the parties

[] an employment agreement

[] a business transaction involving a commercial bank or other financial institution

[] commercial insurance coverage or environmental insurance coverage

[] construction litigation

[] the amount in issue is less than double the jurisdictional threshold amount for the Commercial Division in this County or Judicial District

[] issues that appear to require creative or flexible solutions Dated: _____

Signature:

_____

Attorney Name and Address:

_____

ATTORNEY FOR:

_____

Note: This certification must be served and filed pursuant to Rule 10 of the Commercial Division Rules, with a copy submitted to the court at the time of the Preliminary Conference and each subsequent Compliance or Status Conference. A separate certification is required for each party represented.

Preamble to Rule 11. Acknowledging that discovery is one of the most expensive, time-consuming aspects of litigating a commercial case, the Commercial Division aims to provide practitioners with a mechanism for streamlining the discovery process to lessen

the amount of time required to complete discovery and to reduce the cost of conducting discovery. It is important that counsel's discovery requests, including depositions, are both proportional and reasonable in light of the complexity of the case and the amount of proof that is required for the cause of action.

Rule 11. Discovery.

(a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. If there are counterclaims, the court may direct the party asserting such counterclaims to produce a document stating clearly and concisely the issues asserted in the counterclaims. The court may also direct plaintiff and counter claim plaintiff to each produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.

(b) The court may further direct, if a defendant filed a motion to dismiss and the court dismissed some but not all of the causes of action, plaintiff and counterclaim plaintiff to revisit the documents to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case.

(c) Any written description of a party's claims/defenses provided under this Rule is not binding and does not limit the scope of a party's pleadings.

(d) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as: (i) directions for submission to the alternative dispute resolution program, including, in all cases in which the parties certify their willingness to pursue mediation pursuant to Rule 10, provision of a specific date by which a mediator shall be identified by the parties for assistance with resolution of the action; (ii) a schedule of limited-issue discovery in aid of early

dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.

I further promulgate the attached form statement certifying counsel's discussion of the availability of alternative dispute resolution mechanisms (Exh. A).

EXHIBIT A SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF _____

----------X

Plaintiff(s), Part:_____

Index No.:___

-against-

ALTERNATIVE DISPUTE RESOLUTION

("ADR") ATTORNEY CERTIFICATION

Defendant(s).

----------X

Pursuant to Rule 10 of the Commercial Division Rules, I certify that I have discussed with my client any Alternative Dispute Resolution options available through the Commercial Division and those offered by private entities.

My client:

( ) presently wishes to jointly engage a mediator at an appropriate time to aid settlement.

( ) does not presently wish to jointly engage a mediator at an appropriate time to aid settlement.

Dated:_____ Signature:_____

Attorney Name and Address:

_____

ATTORNEY FOR:

_____

Note: This certification must be served and filed pursuant to Rule 10 of the Commercial Division Rules, with a copy submitted to the court at the time of the Preliminary Conference and each subsequent Compliance or Status Conference. Unless otherwise indicated by the Court, a separate certification is required for each party represented.

(e) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

(f) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case. Additionally, the court should consider the appropriateness of altering prospectively the presumptive limitations on depositions set forth in Rule 11-d.

(g) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.

Rule 11-a. Interrogatories.

(a) Interrogatories are limited to 25 in number, including subparts, unless another limit is specified in the preliminary conference order. This limit applies to consolidated actions as well.

(b) Unless otherwise ordered by the court, interrogatories are limited to the following topics: name of witnesses with knowledge of information material and necessary to

the subject matter of the action, computation of each category of damage alleged, and the existence, custodian, location and general description of material and necessary documents, including pertinent insurance agreements, and other physical evidence.

(c) During discovery, interrogatories other than those seeking information described in paragraph (b) above may only be served:

(1) if the parties consent; or

(2) if ordered by the court for good cause shown.

(d) At the conclusion of other discovery, and at least 30 days prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served unless the Court has ordered otherwise.

Rule 11-b. Privilege logs.

(a) Meet and confer: general. Parties shall meet and confer at the outset of the case, and from time to time thereafter, to discuss the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate non-waiver order. To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.

(b) Categorical approach or document-by-document review.

(1) The preference in the Commercial Division is for the parties to use categorical designations, where appropriate, to reduce the time and costs associated with preparing privilege logs. The parties are expected to address such considerations in good faith as part of the meet and confer process (see paragraph (a) above) and to agree, where possible, to employ a categorical approach to privilege designations. The parties are encouraged to utilize any reasoned method of

organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that may be established, the producing party shall provide a certification, pursuant to 22 NYCRR section 130-1.1a, setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including but not limited to whether each document was reviewed or some form of sampling was employed, and if the latter, how the sampling was conducted. The certification shall be signed by the Responsible Attorney, as defined below, or by the party, through an authorized and knowledgeable representative.

(2) In the event the requesting party refuses to permit a categorical approach, and instead insists on a document-by-document listing on the privilege log, then unless the Court deems it appropriate to issue a protective order pursuant to CPLR 3103 based upon the facts and circumstances before it, the requirements set forth in CPLR 3122 shall be followed. In that circumstance, however, the producing party, upon a showing of good cause, may apply to the court for the allocation of costs, including attorneys' fees, incurred with respect to preparing the document-by-document log. Upon good cause shown, the court may allocate the costs to the requesting party.

(3) To the extent that a party insists upon a document-by-document privilege log as contemplated by CPLR 3122, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include the following:

(i) an indication that the e-mails represent an uninterrupted dialogue;

(ii) the beginning and ending dates and times (as noted on the e-mails) of the dialogue;

(iii) the number of e-mails within the dialogue; and

(iv) the names of all authors and recipients -- together with sufficient identifying information about each person (e.g., name of employer, job title, role in the case) to allow for a considered assessment of privilege issues.

(c) Special master. In complex matters likely to raise significant issues regarding privileged and protected material, parties are encouraged to hire a Special Master to help the parties efficiently generate privilege logs, with costs to be shared.

(d) Responsible attorney. The attorney having supervisory responsibility over the privilege review shall be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that reasonable, good faith efforts are undertaken to ensure that responsive, non-privileged documents are timely produced.

(e) Court order. Agreements and protocols agreed upon by parties should be memorialized in a court order.

Rule 11-c. Discovery of Electronically Stored Information.

(a) Parties and nonparties should consult to the Commercial Division's Guidelines for Discovery of Electronically Stored Information (ESI) (the ESI Guidelines), which can be found in Appendix A to these Rules of the Commercial Division. The ESI Guidelines are advisory and should be applied to the extent appropriate under the circumstances.

(b) Prior to the preliminary conference, counsel shall confer with regard to electronic discovery topics, including those set forth in the ESI Guidelines. Topics on which the parties cannot agree shall be addressed with the court at the preliminary conference.

(c) Requests for the production of ESI may specify the format in which ESI shall be produced, to which the responding party may object. In the absence of such specification, or agreement among the parties or court order, the production of

electronic documents shall be in the form in which it is ordinarily maintained, or in a searchable format that is usable by the party receiving the ESI.

(d) The costs and burdens of discovery of ESI shall be proportionate to its benefits, considering the nature of the dispute, the amount in controversy, and the importance of the materials requested to resolving the dispute. A court may deny or modify disproportionate requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final judgment.

(e) The requesting party shall promptly defray the reasonable expenses associated with a nonparty's production of ESI, in accordance with sections 3111 and 3122(d).

(f) The parties are encouraged to use efficient means to identify ESI for production, which may including technology-assisted review in appropriate cases. The parties shall confer, at the outset of discovery and as needed throughout the discovery period, about technology-assisted review mechanisms they propose to use in document review and production.

(g) Inadvertent or unintentional production of ESI or documents containing information that is subject to the attorney-client privilege, work production protection, or other generally recognized privilege shall not be deemed a waiver in whole or in part of such privilege if the producing party:

(i) took reasonable precautions to prevent disclosure; and

(ii) after learning of the inadvertent disclosure, promptly gave notice either in writing, or later confirmed in writing, to the receiving party or parties that such information was inadvertently produced and requests that the receiving party or parties return or destroy the produced ESI. Upon such notice, or as otherwise required, the receiving party or parties shall promptly return or destroy all such material, including copies, except as may be necessary to bring a challenge before the Court. The parties may extend or modify the protections and duties of this

provision by written agreement, as provided in Rule 11-g(c), which shall be submitted to the Court to be ordered. Nothing in this rule shall abridge a lawyer's obligations under Rule 4.4(b) of the New York Rules of Professional Conduct concerning a lawyer's receipt of documents that appear to have been inadvertently sent.

(h) Consistent with section 3126, a party should take reasonable steps to preserve ESI that it has a duty to preserve.

Rule 11-d. Limitations on Depositions.

(a) Unless otherwise stipulated to by the parties or ordered by the court:

(1) the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and

(2) depositions shall be limited to 7 hours per deponent.

(b) Notwithstanding subsection (a)(1) of this Rule, the propriety of and timing for depositions of non-parties shall be subject to any restrictions imposed by applicable law.

(c) For the purposes of subsection (a)(1) of this Rule, the deposition of an entity through one or more representatives shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf.

(d) For the purposes of this Rule, each deposition of an officer, director, principal or employee of an entity who is also a fact witness, as opposed to an entity representative shall constitute a separate deposition.

(e) For the purposes of subsection (a)(2) of this Rule, the deposition of an entity shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf. Notwithstanding the foregoing, the cumulative presumptive durational limit may be enlarged by agreement of the parties or upon application for leave of Court, which shall be freely granted.

(f) For good cause shown, the court may alter the limits on the number of depositions or the duration of an examination.

(g) Nothing in this Rule shall be construed to alter the right of any party to seek any relief that it deems appropriate under the CPLR or other applicable law.

Rule 11-e. Responses and Objections to Document Requests.

(a) For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the "Responses"), either:

(i) state that the production will be made as requested; or

(ii) state with reasonable particularity the grounds for any objection to production.

(b) By a date agreed to by the parties or at such time set by the Court, the responding party shall serve the Responses contemplated by Rule 11-e(a)(ii), which shall set forth specifically: (i) whether the objection(s) interposed pertains to all or part of the request being challenged; (ii) whether any documents or categories of documents are being withheld, and if so, which of the stated objections forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents; and (iii) the manner in which the responding party intends to limit the scope of its production.

(c) By agreement of the parties to a date no later than the date set for the commencement of depositions, or at such time set by the Court, a date certain shall be fixed for the completion of document production by the responding party.

(d) By agreement of the parties to a date no later than one (1) month prior to the close of fact discovery, or at such time set by the Court, the responding party shall state, for each individual request: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is complete; or (ii) that there are no documents in its

possession, custody or control that are responsive to the individual request as propounded or modified.

(e) Nothing contained herein is intended to conflict with a party's obligation to supplement its disclosure obligations pursuant to CPLR 3101(h).

Rule 11-f. Depositions of Entities; Identification of Matters.

(a) A notice or subpoena may name as a deponent a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.

(c) If the notice or subpoena to an entity does not identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then no later than ten days prior to the scheduled deposition:

(1) the named entity must designate one or more officers, directors, members or employees, or other individual(s) who consent to testify on its behalf;

(2) such designation must include the identity, description or title of such individual(s); and

(3) if the named entity designates more than one individual, it must set out the matters on which each individual will testify.

(d) If the notice or subpoena to an entity does identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then:

(1) pursuant to CPLR 3106(d), the named entity shall produce the individual so designated unless it shall have, no later than 10 days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced;

(2) pursuant to CPLR 3016(d), a notice or subpoena that names a particular officer, director, member, or employee of the entity shall include in the notice or subpoena served upon such entity the identity, description or title of such individual; and

(3) if the named entity, pursuant to subsection (d)(1) of this Rule, cross-designates more than one individual, it must set out the matters on which each individual will testify.

(e) A subpoena must advise a nonparty entity of its duty to make the designations discussed in this Rule.

(f) The individual(s) designated must testify about information known or reasonably available to the entity.

(g) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent provided in CPLR 3117(2) and the applicable rules of evidence.

(h) This Rule does not preclude a deposition by any other procedure allowed by the CPLR.

Rule 11-g. Proposed Form of Confidentiality Order.

The following procedure shall apply in those parts of the Commercial Division where the justice presiding so elects:

(a) For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix B to these Rules of the Commercial Division.

(b) In the event the parties wish to deviate from the form set forth in Appendix B, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(c) In the event the parties wish to incorporate a privilege clawback provision into either:

(1) the confidentiality order to be utilized in their commercial case; or

(2) another form of order utilized by the Justice presiding over the matter, they shall utilize the text set forth in Appendix B, paragraph 18 to these Rules of the Commercial Division. In the event the parties wish to deviate from the language in Appendix B, paragraph 18, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(d) In the event the parties wish to incorporate Attorney's Eyes-Only protection, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix F to these Rules of the Commercial Division. Appendix F provides both a clean form of order as well as a redline, which illustrates how it differs from the confidentiality order without Attorney's Eyes-Only protection and referenced in Rule 11-g(a) above. In the event the parties wish to deviate from the Attorney's Eyes-Only form set forth in Appendix F, they shall submit to the Court a redline of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(e) Nothing in this rule shall preclude a party from seeking any form of relief otherwise permitted under the Civil Practice Law and Rules.

Rule 12. Non-Appearance at Conference. The failure of counsel to appear for a conference may result in a sanction authorized by section 130.2.1 of the Rules of the Chief Administrator or section 202.27 of this Part, including dismissal, the striking of an answer, an inquest or direction for judgement, or other appropriate sanction.

Rule 13. Adherence to Discovery Schedule, Expert Disclosure.

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Such deadlines, however, may be modified upon the consent of all parties, provided that all discovery shall be completed by the discovery cutoff date set forth in the preliminary conference order. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the court to preclude the non-producing party from introducing such demanded documents at trial.

(c) If any party intends to introduce expert testimony at trial, no later than thirty days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure -- including the identification of experts, exchange of reports, and depositions of testifying experts -- all of which shall be completed no later than four months after the completion of fact discovery. In the event that a party objects to this procedure or timetable, the parties shall request a conference to discuss the objection with the court.

Unless otherwise stipulated or ordered by the court, expert disclosure must be accompanied by a written report, prepared and signed by the witness, if either (1) the witness is retained or specially employed to provide expert testimony in the case, or

(2) the witness is a party's employee whose duties regularly involve giving expert testimony. The report must contain:

(A) a complete statement of all opinions the witness will express and the basis and the reasons for them;

(B) the data or other information considered by the witness in forming the opinion(s);

(C) any exhibits that will be used to summarize or support the opinion(s);

(D) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) a list of all other cases at which the witness testified as an expert at trial or by deposition during the previous four years; and

(F) a statement of the compensation to be paid to the witness for the study and testimony in the case.

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure. Expert disclosure provided after these dates without good cause will be precluded from use at trial.

Rule 14. Disclosure Disputes. If the court's Part Rules address discovery disputes, those Part Rules will govern discovery disputes in a pending case. If the court's Part Rules are silent with respect to discovery disputes, the following Rule will apply. Discovery disputes are preferred to be resolved through court conference as opposed to motion practice. Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See section 202.7. If counsel are unable to resolve any disclosure dispute in this fashion, counsel for the moving party shall submit a letter to the court not exceeding three single-spaced pages outlining the nature of the dispute and requesting a telephone conference. Such a letter must include a representation that the party has conferred with opposing counsel in a good faith effort to resolve the issue raised in the letter or shall

indicate good cause why no such consultation occurred. Not later than four business days after receiving such a letter, any affected opposing party or non-party shall submit a responsive letter not exceeding three single-spaced pages. After the submission of letters, the court will schedule a telephone or in-court conference with counsel. The court or the court's law clerks will attempt to address the matter through a telephone conference where possible. The failure of counsel to comply with this rule may result in a motion being held in abeyance until the court has an opportunity to conference the matter. If the parties need to make a record, they will still have the opportunity to submit a formal motion.

Rule 14-a. Rulings at Disclosure Conferences. The following procedures shall govern all disclosure conferences conducted by non-judicial personnel.

(a) At the request of any party

(1) prior to the conclusion of the conference, the parties shall prepare a writing setting forth the resolutions reached and submit the writing th the court for approval and signature by the presiding justice; or

(2) prior to the conclusion of the conference, all resolutions shall be dictated into the record, and either the transcript shall be submitted to the court to be "so ordered," or the court shall otherwise enter an order incorporating the resolutions reached.

(b) With respect to telephone conferences, upon request of a party and if the court so directs, the parties shall agree upon and jointly submit to the court within one (1) business day of the telephone conference a stipulated proposed order, memorializing the resolution of their discovery dispute. If the parties are unable to agree upon an appropriate form of proposed order, they shall so advise the court so that the court can direct an alternative course of action.

Rule 15. Adjournments of Conferences. By leave of court as provided by Rule 1(d), attorneys are encouraged to use remote appearance technology in order to avoid

adjournments of conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

Rule 16. Motions in General.

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should clearly separate exhibits from each other by using divider pages with the exhibit number. Counsel shall follow Rule 6 with respect to hyperlinking. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, the court may direct counsel to submit a copy and counsel shall otherwise follow Rule 6 with respect to hyperlinking.

(b) Proposed orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) Adjournment of motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

Rule 17. Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 7,000 words each; (ii) reply memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 7,000 words each. The word count shall exclude the caption, table of contents, table of authorities, and signature block. Every brief, memorandum, affirmation, and affidavit shall include, on a page attached to the end of the applicable document, a certification by the counsel who has filed the document describing the number of words in the document. That certification by counsel certifies that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document.

Rule 18. Sur-Reply and Post-Submission Papers. Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this rule shall not respond in kind.

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. Absent advance permission, reply papers shall not be submitted on orders to show cause.

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts.

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered statement responding to each numbered paragraph in the statement of the moving party. In the response to the material statement of facts, the respondent shall recite the movant's paragraphs and then provide a response to that paragraph so the court has all the materials in one document. The movant shall, upon request, promptly provide the respondent with a copy of the material statement of facts in the same word processing software application in which the statement was prepared. The respondent may also include additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b) of this rule, including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion. Rule 20. Temporary Restraining Orders. Unless the moving party can demonstrate that there will be significant prejudice by reason of giving notice, a temporary restraining order will not be issued ex parte. The applicant must give notice, including copies of all supporting papers, to the opposing parties sufficient to permit them an opportunity to appear and contest the application. Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's Filing by Electronic Means System. Rule 22. Oral Argument. Any party may request oral argument on the face of its papers or in an accompanying letter. Except in cases before justices who require oral argument on all motions, the court will determine, on a case-by-case basis, whether

oral argument will be heard and, if so, when counsel shall appear. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing. Rule 22-a. 60-Day Rule. If 60 days have elapsed after a motion has been finally submitted or oral argument held, whichever was later, and no decision has been issued by the court, counsel for the movant shall send the court a letter alerting it to this fact with copies to all parties to the motion.

Rule 23. Amicus curiae relief. Any non-party seeking to file an amicus brief in the Commercial Division must first obtain permission by motion.

(a) Motions for amicus curiae relief.

(i) Motions to be brought on by order to show cause. Any motion for amicus curiae relief shall be brought by an order to show cause unless the court orders otherwise.

(ii) Motion papers. Movant shall file its proposed amicus brief with its motion papers. The court shall set the matter for hearing as soon as practicable so as not to delay the proceedings to which it relates.

(iii) Criteria. Movant shall:

(1) demonstrate that the parties are not capable of a full and adequate presentation and that movant could remedy this deficiency; movant could identify law or arguments that might otherwise escape the court's consideration; or the proposed amicus brief otherwise would be of assistance to the court;

(2) include a statement of the identity of the movant and its interest in the matter; and

(3) include a statement indicating whether:

(A) a party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner;

(B) a party or a party's counsel contributed money that was intended to fund preparation or submission of the brief; and

(C) a person or entity, other than movant or movant's counsel, contributed money that was intended to fund preparation or submission of the brief and, if so, identifying each such person or entity.

(iv) Responding papers. Any party may serve and file papers in response to or in opposition to the motion to file an amicus brief as directed by the court in its order to show cause.

(v) A motion for leave to file an amicus brief will be denied where granting it would cause recusal of the assigned justice or undue delay.

(vi) The court shall direct in any order granting leave for an amicus brief the time and manner of submission of any responsive briefs.

(vii) Except as ordered otherwise by the court, amicus briefs are subject to the length limitations for reply briefs and to the requirements of a word-count certification set forth in Commercial Division Rule 17.

Rule 24. Advance Notice of Motions. (a) Nothing in this rule shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, in order to permit the court the opportunity to resolve issues before motion practice ensues, and to control its calendar in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this rule may result in the motion being held in abeyance until the court has an opportunity to conference the matter.

(b) This rule shall not apply to disclosure disputes covered by Rule 14 of this subdivision nor to dispositive motions pursuant to CPLR 3211, 3212 or 3213 made at

the time of the filing of the Request for Judicial Intervention or after discovery is complete. Nor shall the rule apply to motions to be relieved as counsel, for pro hac vice admission, for reargument or in limine.

(c) Prior to the making or filing of a motion, counsel for the moving party shall advise the court in writing (no more than two pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a telephone conference. If a cross-motion is contemplated, a similar motion notice letter shall be forwarded to the court and counsel. Such correspondence shall not be considered by the court in reaching its decision on the merits of the motion.

(d) Upon review of the motion notice letter, the court will schedule a telephone or in-court conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(e) If the matter can be resolved during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered." At the discretion of the court, the conference may be held on the record.

(f) If the matter cannot be resolved, the parties shall set a briefing schedule for the motion which shall be approved by the court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(g) On the face of all notices of motion and orders to show cause, there shall be a statement that there has been compliance with this rule.

(h) Where a motion must be made within a certain time pursuant to the CPLR, the submission of a motion notice letter, as provided in subdivision (a) of this rule, within

the prescribed time shall be deemed the timely making of the motion. This subdivision shall not be construed to extend any jurisdictional limitations period.

Rule 25. Trial Schedule. Counsel are expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled trial date. Once a trial date is set, counsel shall immediately determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within 10 days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that trials proceed without interruption. Trials shall commence each court day promptly at such times as the court directs. Failure of counsel to attend the trial at the time scheduled without good cause shall constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to trials scheduled more than 60 days in advance, section 125.1(g) of the Rules of the Chief Administrator shall apply and the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial. Rule 26. Length of Trial. At least 10 days prior to trial or such other time as the court may set, the parties, after considering the expected testimony of and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial. If requested by Court, the estimate shall also contain a request by each party for the total number of hours which each party believes will be necessary for its direct examination, cross examination, redirect examination, and argument during the trial. The court may rule on the total number of trial hours which the court will permit for each party. The court in its discretion may extend the total number of trial hours as justice may require. Rule 27. Motions in Limine. The parties shall make all motions in limine no later than 10 days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial

conference, unless otherwise directed by the court. Opposition papers, if any, shall be served and filed not later than two days before the return date of the motion, unless otherwise directed by the court. Objections to the admissibility of specific exhibits or specific deposition testimony based on basic threshold issues such as lack of foundation or hearsay shall be made under Rule 28 and Rule 29, respectively. Motions in limine should be used to address broader issues concerning, for example, (1) the receipt or exclusion of evidence, testimony, or arguments of a particular kind or concerning a particular subject matter, (2) challenges to the competence of a particular witness, or (3) challenges to the qualifications of experts or to the receipt of expert testimony on a particular subject matter. Motions in limine should not be used as vehicles for summary judgment motions.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to the pre-trial conference and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked. Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered by it as to which objection has not been made and, identified separately, a list of deposition testimony as to which objection has been made. At least 10 days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of the

deposition testimony as to which objection has been made. The court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Settlement and Pre-Trial Conferences. (a) Settlement Conference. At the time of certification of the matter as ready for trial or at any time after the discovery cut-off date, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss the settlement of the matter.

(b) Mandatory settlement conference. Unless exempted as set forth herein, the parties in every case pending in the Commercial Division must participate in a court-ordered mandatory settlement conference (MSC) following the filing of a Note of Issue.

(1) Referral to MSC. Following the filing of a Note of Issue, the parties must confer and file a request to proceed to a MSC pursuant to one of the following four tracks. If all parties have agreed upon the settlement conference track that they prefer, they may file a joint request with a statement of preferred procedure for MSC. If the parties do not agree, they must file separate requests with statements as to their preference for a MSC track. The court will select the settlement conference track after considering the parties' preferences, the available judical and other resources, and any other factors the court deems appropriate. The four possible settlement conference tracks are as follows:

(A) The parties may agree to have a settlement conference before the assigned justice or another judge pursuant to Commercial Division Rule 3(b).

(B) The court may refer the case to the Judicial Hearing Officer/Special Referee office for assignment of a Judicial Hearing Officer or Special Referee to conduct the MSC.

(C) The court may refer the case to the ADR coordinator or other designated court official in the judicial district where the case is pending for assignment, at

no charge to the parties, of a neutral selected from the roster of neutrals or mediators under Part 146 of the Rules of the Chief Administrative Judge. If the parties wish to continue talks with the neutral beyond the initial conference an arrangement will have to be made to retain such neutral at terms agreed to by the neutral and the parties.

(D) The parties may agree to engage a private neutral.

(2) Attendance at MSC. The MSC shall be attended by a person with knowledge of the case and authority to settle the case.

(3) Submissions to the neutral conducting the MSC. The neutral shall determine whether a submission should be provided to the neutral and the service thereof.

(4) Exemptions from MSC. MSC is mandatory for all cases in the Commercial Division unless the assigned justice to the case, for good cause shown, exempts the case from MSC under this Rule.

(5) Confidentiality. All attendees of the MSC, including the assigned neutral, shall treat as confidential information any settlement submission created expressly for use in the MSC, anything that happened or was said during the course of or pursuant to the MSC, and any positions taken or offers made during the MSC. Such material cannot be disclosed to anyone not involved in the litigation or to the court, and may not be used in any fashion in the litigation of the case.

(6) Report. Following the MSC, the parties will advise the assigned justice whether a settlement was reached, and if a settlement was reached, a date by which the parties expect to complete documentation of the settlement. The parties shall not discuss any reasons why a settlement was not reached.

(7) Scheduling and procedures. Any scheduling and procedural issues shall be determined by the justice assigned to the case. If it is determined that the MSC is

to be held before a neutral other than the assigned justice, scheduling and procedural issues with respect to the MSC shall be determined by the neutral.

(8) Non-exclusive. Nothing in the Rule shall preclude or replace any settlement practices used by the court, by any individual justice, or as agreed to by the parties and the assigned justice shall retain ultimate authority with respect to each aspect of the MSC.

(c) Pre-trial conference. Prior to the pre-trial conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At the pre-trial conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29 of this subdivision, and settlement of the matter. At or before the pre-trial conference, the court may require the parties to prepare a written stipulation of undisputed facts.

(d) Consultation regarding expert testimony. The court may direct that prior to the pre-trial conference, counsel for the parties consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute. The court may further direct that any agreements reached in this regard shall be reduced to a written stipulation. Rule 31. Pre-Trial Memoranda, Trial Exhibits and Requests for Jury Instructions.

(a) If requested by the court, counsel shall submit pre-trial memoranda at such time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum of no more than 7,000 words shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall submit a copy of trial exhibits for each attorney's and the court's use. Unless otherwise directed in the court's individual part rules, plaintiff's exhibits shall be tabbed numerically, and defendant's exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions - Civil, a reference to the PJI number will suffice.

(d) In cases brought before paperless commercial parts, counsel shall submit the pre-trial memoranda, copy of trial exhibits and requests to charge on a USB flash drive. In all other commercial parts, counsel shall submit the pre-trial memoranda and requests to charge in a Word document, 12-point type, and submit the copy of trial exhibits in an indexed binder or notebook. Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

Rule 32-a. Direct Testimony by Affidavit.

The court may require that direct testimony of a party's own witness in a non-jury trial or evidentiary hearing shall be submitted in affidavit form, provided, however, that the court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering the testimony. The submission of direct testimony in affidavit form shall not affect any right to conduct cross examination or re-direct examination of the witness.

Rule 33. Preclusion. Failure to comply with Rules 28, 29, 31 and 32 of this subdivision may result in preclusion pursuant to CPLR 3126.

Rule 34. Staggered Court Appearances.

Staggered court appearances are a mechanism to increase efficiency in the courts and to decrease lawyers' time waiting for a matter to be called by the courts. While this rule is intended to streamline the litigation process in the Commercial Division, it will be ineffectual without the cooperation and participation of litigants. Improving the process of litigating in the Commercial Division by instituting staggered court appearances of matters before the court, for example, requires not only the promulgation of rules such as this one, but also, and more importantly, the proactive and earnest adherence to such rules by parties and their counsel.

(a) Each court appearance before a Commercial Division Justice for oral argument on a motion shall be assigned a time slot. The length of the time slot allotted to each matter is solely in the discretion of the court.

(b) In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding ex parte communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time assigned by the court unless specifically excused by the court. However, if an individual is appearing as a self-represented person, that individual must appear at each and every scheduled court appearance regardless of whether he or she anticipates being heard.

(c) Since the court is setting aside a specific time slot for the case to be heard and since there are occasions when the court's electronic or other notification system fails or occasions when a party fails to receive the court-generated notification, each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be head on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-

mail addresses current, in order to facilitate notification by the person(s) receiving the court notification.

(d) Requests for adjournments or to appear telephonically must be e-filed and received in writing by the court by no later than 48 hours before the hearing.

Rule 35. Disclosure Statement.

(A) Who Must File: Contents. A non-governmental corporate party and a non-governmental corporation that seeks to intervene must file a disclosure statement that:

(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or

(2) states that there is no such corporation.

(B) Time to File: Supplemental Filing. A party or a proposed intervenor must:

(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.

Rule 37. Remote Depositions.

(a) The court may, upon the consent of the parties or upon a motion showing good cause, order oral depositions by remote electronic means, subject to the limitations of this Rule.

(b) Considerations upon such a motion, and in support of a showing of good cause, shall include but not be limited to:

(1) The distance between the parties and the witness, including time and costs of travel by counsel and litigants and the witness to the proposed location for the deposition; and

(2) The safety of the parties and the witness, including whether counsel and litigants and the witness may safely convene in one location for the deposition; and

(3) Whether the witness is a party to the litigation; and

(4) The likely importance or significance of the testimony of the witness to the claims and defenses at issue in the litigation. For avoidance of doubt, the safety of the parties and the witness shall take priority over all other criteria.

(c) Remote depositions shall replicate, insofar as practical, in-person depositions and parties shall endeavor to eliminate any potential for prejudice that may arise as a result of the remote format of the deposition. To that end, parties are encouraged to utilize the form protocol for remote deposition, which is reproduced as Appendix G to these rules, as a basis for reaching the parties' agreed protocol.

(d) No party shall challenge the validity of any oath or affirmation administered during a remote deposition on the grounds that:

(1) the court reporter or officer is or might not be a notary public in the state where the witness is located; or

(2) the court reporter or officer might not be physically present with the witness during the examination.

(e) Witnesses and defending attorneys shall have the right to review exhibits at the deposition independently to the same degree as if they were given paper copies.

(f) No waiver shall be inferred as to any testimony if the defending attorney was prohibited by technical problems from interposing a timely objection or instruction not to answer.

(g) Nothing in this Rule is intended to: (i) address whether a remote witness is deemed "unavailable," within the meaning of CPLR 3117 and its interpretive case law, for the purposes of utilizing that witness' deposition at trial; or (ii) alter the Court's authority to compel testimony of non-party witnesses in accordance with New York

law. APPENDIX ACommercial Division Guidelines for Discovery of ELECTRONICALLY STORED INFORMATION ("ESI")

The purpose of these Guidelines for Discovery of ESI (the "Guidelines") is to: * Provide efficient discovery of ESI (a.k.a., e-discovery) in civil cases;

* Assist counsel in identifying ESI issues to be considered and addressed with its client;

* Encourage the early assessment and discussion of the costs of preserving, retrieving, reviewing and producing ESI given the nature of the litigation and the amount in controversy;

* Facilitate an early evaluation of the significance of and/or need for ESI in light of the parties' claims or defenses;

* Assist parties in resolving disputes regarding ESI informally and without Court supervision or intervention whenever possible; * Encourage meaningful discussions and cooperation between parties; and

* Ensure a productive Preliminary Conference by, among other things, identifying terms and issues that will be addressed at the Preliminary Conference and/or in the Preliminary Conference Stipulation and Order.

The Guidelines are advisory only and intended to facilitate compliance with the CPLR, the Uniform Civil Rules for the Supreme Court, and the Rules of the Commercial Division of the Supreme Court. In the case of any conflict between the Guidelines and these rules, the relevant rules should control.

The Guidelines apply to discovery from parties and nonparties alike, and the term "parties", as used in these Guidelines, should be read to include nonparties to the extent applicable. Parties are encouraged to review the Guidelines at or before the commencement of proceedings.

I. CONDUCT OF THE E-DISCOVERY PROCESS A. Parties are encouraged to share information relating to the e-discovery process, and to attempt in good faith to resolve disputes about ESI through the informal meet and confer process where possible, rather than through formal discovery or motion practice. Such informal discussions are strongly encouraged at the earliest reasonable stage of the discovery process. An attorney's advocacy for a client is not compromised by conducting discovery in a cooperative manner, which tends to reduce litigation costs and delay, and facilitate the cost-effective, predictable and fair adjudication of cases.

B. Parties should tailor requests for ESI to what is reasonable and proportionate, considering the burdens of the requested discovery, the nature of the dispute, the amount in controversy, and the importance of the materials requested to resolving those issues. Parties should not use discovery of ESI for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

C. Consistent with New York Rule of Professional Conduct 1.1, counsel should be familiar with the legal and technical aspects of e-discovery in the matter so that it may appropriately advise its client how to conduct discovery in an efficient and legally defensible manner. This should include legal knowledge and skill with respect to the rules and case law related to e-discovery; its client's storage, organization, and format of ESI; and relevant information retrieval technology. Where appropriate (e.g., in cases where there will likely be significant ESI

discovery), and in order to assist with competent representation

with respect to ESI issues, the parties should consider each designating an ESI Liaison, a person with particular knowledge and expertise about the parties' electronic systems and the e-discovery process, who can be prepared to participate in informal resolution of ESI disputes between the parties and presentation of issues to the Court should the need arise.

II. PRELIMINARY CONFERENCE A. Consistent with Rule 11-c(b), the parties should confer with the client with regard to anticipated electronic discovery issues prior to the Rule 7 Preliminary Conference. The Parties should

consider a written stipulation for the preservation, collection,

review and production of ESI, and consider submitting that agreement to the court to be ordered. A number of such ESI stipulations have been entered in the Commercial Division and there are published models available from other courts (e.g., federal courts in the Northern District of California, the District of Maryland, and the Eastern District of Michigan), which may be consulted. Issues that cannot be resolved between

the parties should be presented to the Court for resolution prior

to or at the Preliminary Conference.

B. Matters related to ESI that should be discussed prior to the

Preliminary Conference should generally include:

1. the extent to which e-discovery is likely to be necessary for

the just and efficient resolution of the dispute;

2. the appropriate scope of preservation, including any sources

of ESI that do not need to be preserved because they are not

reasonably accessible;

3. any potential conflicts between a party's discovery obligations and state, federal, and foreign laws governing the use and disclosure of protected personal, health, financial, trade secret and other information;

4. the identification of custodians, time frame, and sources of ES1 to be searched, including the identification of ESI sources that are not reasonably accessible;

5. the method for searching and reviewing ESI, including the use of search terms, the exclusion of certain types of documents and other non-discoverable information from discovery, the use of de-duplication and email thread suppression, and the use of technology assisted review ("TAR").

6. the appropriate format for production of ESI;

7. identification, redaction, labeling, and logging of privileged and other ESI protected from discovery or disclosure, including agreement on the clawback of inadvertently produced materials;

8. the anticipated cost and burden of ESI discovery and whether cost-sharing or cost-shifting is appropriate;

9. opportunities to reduce costs and increase efficiency and speed of e-discovery, such as through the phasing of discovery so as to prioritize searches that are most likely to be relevant, the use of sampling to test the likely relevance of

searches, alternative methods for logging privilege information, and/or sharing expenses like those related to litigation document repositories.

III. PRESERVATION AND COLLECTION OF ESI A. Counsel should take an active role in assisting its client in the preservation and collection of ESI. This should include becoming knowledgeable about relevant ESI in its client's possession, custody, or control, and how such information is generated, maintained, retained, and disposed. Counsel should assist its client in all stages of the preservation and collection process, including the implementation of an effective legal hold, reasonable monitoring of compliance with that legal hold, identification of sources of relevant ESI, and defensible collection of that ESI.

B. Counsel should be knowledgeable of the sources where a client's discoverable ESI may exist, including workstations, email systems, instant messaging systems, document management systems (e.g., Google Drive, Sharepoint, Confluence), collaboration tools (e.g., Microsoft Teams, Slack), social media, mobile devices and apps, cloud-based storage, back-up systems, and structured databases, so that it may advise its client as to whether such sources need to be collected and searched. Where counsel is not itself knowledgeable with respect to such sources, it should consult with persons with appropriate subject-matter expertise, knowledge, and competence.

C. A party should take reasonable steps to identify and to preserve relevant data in its possession, custody, or control once litigation is pending or is reasonably anticipated. Factors to consider in formulating such steps should include, but are not limited to:

1. the claims, defenses, and relevant facts in dispute;

2. relevant time frames, geographic locations, and individuals;

3. the types of ESI that may be relevant to the claims and defenses and the current repositories and custodians of that data;

4. whether legacy, archived, or offline ESI sources are reasonably likely to contain relevant, non-duplicative information;

5. whether there are third-party sources that have relevant information that falls within the preservation obligation and, if so, what actions should be taken to preserve that ESI;

6. whether any automatic or routine document retention or destruction policies should be suspended or modified; and

7. the circumstances and information known or reasonably available to counsel and the parties at the time the preservation efforts at issue are or were undertaken. D. Reasonable preservation steps should include a written litigation hold(s) to be distributed to relevant individuals as soon as litigation is reasonably anticipated and/or has commenced. Reasonable preservation may also require affirmative action in order to ensure relevant ESI is not lost through the operation of

processes that may automatically delete ESI. Parties should also consider the preservation risks associated with the use of "ephemeral" messaging systems (e.g., Snapchat, Telegram) that facilitate the disappearance of messages after they have been read by a recipient.

E. The parties should discuss preservation, including the implementation of litigation holds, in order to ensure that the scope of preservation is reasonably tailored and not unduly burdensome. Such a discussion should occur at the onset of the case and periodically throughout the case as issues evolve.

Preservation letters are not required to notify an opposing party of its preservation obligation. If a party does send a preservation letter, the letter should not be overbroad but rather should provide reasonable detail to allow informed decisions about the scope of the preservation obligation, such as the names of parties, a description of claims, potential witnesses, the relevant time period, sources of ESI the party knows or believes are likely to contain relevant information, and any other information that might assist the responding party in determining what information to preserve. A party has a duty to preserve relevant ESI, consistent with its common law, statutory, regulatory, or other duties, regardless of a preservation letter from an opposing party.

F. For some sources of ESI, the burden of preserving them outweighs the potential benefit of unique, relevant ESI they may contain.

The parties should discuss whether such sources need to be preserved beyond what may be preserved pursuant to normal business retention practices.

IV. ESI NOT REASONABLY ACCESSIBLE A. As the term is used herein, ESI should not be deemed "not reasonably accessible" based solely on its source or type of storage media. Inaccessibility is based on the burden and expense of recovering and producing the ESI and the relative need for the data. Whether data are not reasonably accessible due to undue burden or cost will depend on the facts of the case. B. No party should object to the discovery of ESI on the basis that it is not reasonably accessible unless the objection has been stated with particularity, and not in conclusory or boilerplate language. The party asserting that ESI is not reasonably accessible should be prepared to specify facts that support its contention, including submitting an appropriate and detailed analysis in the form of an affidavit.

C. If the requesting party intends to seek discovery of ESI from sources identified as not reasonably accessible, the parties should discuss the burdens and costs of accessing and retrieving the information, and consider conditions on obtaining this information, such as limits as to the scope, and allocation of costs between the requesting party and the producing party, as set forth in Rule 11-c(d) and in accordance with Section VIII of the Guidelines.

V. SEARCHING, FILTERING AND REVIEWING ESI A. Ordinarily, the producing party is best situated to evaluate the procedures, methodologies, and technologies for producing their

own ESI, though a producing party should engage in a good faith exchange of information about its process and attempt to resolve any disputes regarding the process to be employed.

B. Counsel should take an active role in assisting its client in the search and review of ESI. Counsel should assist its client in all stages of the search and review process, including, as appropriate, use of search terms and other methods for filtering ESI, review of ESI to determine what is responsive and/or privileged, and the production of responsive ESI.

C. A search methodology need not be perfect but it should be reasonable under the circumstances. A reasonable methodology may include steps to reduce the volume of data by removing ESI that is duplicative, cumulative, or not reasonably likely to contain information within the scope of discovery.

D. The parties should exchange reasonable information about a party's process for searching and reviewing ESI, including search terms to be used, filtering out of certain file types, date filters, de-duplication, email thread suppression, and the use of technology assisted review (TAR) to aid in the review process. E. Consistent with Rule 1 l-c(f), the parties are encouraged to use efficient means to identify ESI for production. The parties should tailor searches of ESI to (a) apply to

custodians whose ESI may reasonably be expected to contain evidence that is material to the dispute and (b) employ search terms and other search methodologies (e.g., TAR) reasonably designed to identify evidence that is material to the dispute. So that use of TAR is not unjustifiably discouraged, its use should not be held to a higher standard than the use of search term keywords or manual review. Counsel employing TAR should ensure that it is sufficiently knowledgeable regarding its use and/or associate with persons with appropriate subject-matter expertise, knowledge, and competence.

VI. FORM OF PRODUCTION OF ESI A. As set forth in Rule 11-c(c), a party requesting ESI may specify the format in which ESI shall be produced. The party responding to that request may object to the requested format to the extent it is burdensome or for any other valid reason, and if it does so, it should specify with particularity the format in which it proposes to produce ESI, about which the parties should meet and confer, consistent with Rule 11-c(c). The parties are encouraged to reach agreement on a format for the production of ESI to avoid unnecessary expense and the risk of costly re-productions. B. Agreement on the form of production of ESI should address, among other issues, the following:

1. whether documents should be produced as images (e.g., TIFF, JPG) or as native files;

2. how searchable text associated with documents should be provided;

3. what metadata fields should be provided;

4. how documents should be labeled (e.g., by bates number) and how confidentiality designations and privilege redactions should be applied;

5. production formats for non-document forms of ESI, such as multimedia, text messages, instant messages, social media, and structured databases.

C. Ordinarily, absent agreement or court order to the contrary, a party should be permitted to produce ESI in the form in which it is ordinarily maintained, i.e., its native format. Where the native format would be unusable to the requesting party, the parties should meet and confer on a reasonable format. D. The producing party should not reformat, scrub or alter the ESI to intentionally downgrade the usability of the data.

VII. PRIVILEGE AND OTHER PROTECTIONS FROM DISCOVERY A. Parties should take reasonable steps to safeguard ESI subject to the attorney client privilege or other protections from disclosure. That said, pursuant to Rule 11-c(g), the inadvertent or unintentional production of ESI containing protected information should not be deemed a waiver if reasonable precautions were taken to prevent disclosure and prompt notice is given of the inadvertent disclosure. The use of search terms or other technology processes rather than wholesale manual review may be considered reasonable precautions to identify privileged

material provided that they were appropriately employed. B. The parties may extend or modify the protections and duties of

Rule 11-c(g) by written agreement.

C. Counsel are reminded of their obligations under Rule 4.4(b) of the New York Rules of Professional Conduct concerning their

receipt of documents that appear to have been inadvertently sent

to them.

D. Parties should be aware of and give due regard to state, federal, and foreign laws governing the use and disclosure of protected

personal, health, financial, trade secret and other information,

consistent with their New York discovery obligations.

VIII. COSTS A. As a general matter, the producing party should bear the cost of searching for, retrieving, and producing ESI However, where the

court determines the request constitutes an undue burden or

expense on the responding party, the court may exercise its broad

discretion to permit the shifting of costs between the parties.

When evaluating whether costs should be shifted, courts should

consider:

1. the extent to which the request is specifically tailored to

discover relevant information;

2. the availability of such information from other sources; 3. the total cost of production, compared to the amount in

controversy;

4. the total cost of production, compared to the resources

available to each party;

5. the relative ability of each party to control costs and its incentive to do so;

6. the importance of the issues at stake in the litigation; and

7. the relative benefits to the parties of obtaining the information.

B. Where a party seeks production of ESI from a non-party, the party seeking discovery shall promptly defray the reasonable expenses associated with the non-party's production of ESI, in accordance with Rules 3111 and 3122(d) of the CPLR. Such reasonable production expenses may include the following:

1. Reasonable fees charged by outside counsel and e-discovery consultants;

2. The reasonable costs incurred in connection with the identification, preservation, collection, processing, hosting, use of advanced analytical software applications and other technologies, review for relevance and privilege, preparation of a privilege log (to the extent one is requested), and production;

3. The reasonable cost of disruption to the nonparty's normal business operations to the extent such cost is quantifiable and warranted by the facts and circumstances; and

4. Other costs as may be reasonably identified by the nonparty.

APPENDIX BSUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____ ----------x

Index No. _____

_____, Plaintiff,

STIPULATION AND

ORDER FOR THE

PRODUCTION AND

-against- EXCHANGE OF

CONFIDENTIAL

INFORMATION

_____, Defendant,

----------x

This matter having come before the Court by stipulation of plaintiff, _____, and defendant _____, (individually "Party and collectively "Parties") for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below; and the parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (hereinafter the "Documents" or "Testimony").

2. Any Party, or as appropriate, non-party, may designate Documents produced, or Testimony given, in connection with this action as "confidential," either by notation on each page of the Document so designated, statement on the record of the disposition, or written advice to the respective undersigned counsel for the Parties hereto, or by other appropriate means.

3. As used herein:

(a) "Confidential Information" shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients.

(b) "Producing Party" shall mean the Parties to this action and any non-parties producing "Confidential Information" in connection with depositions, document production or otherwise, or the Party or non-party asserting the confidentiality privilege, as the case may be.

(c) "Receiving Party" shall mean the Parties to this action and/or any non-party receiving "Confidential Information" in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. If the

Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential Information. If such motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.

5. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

(a) personnel of the Parties actually engaged in assisting in the preparation of this action for trial or other proceeding herein and who have been advised of their obligations hereunder;

(b) counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(c) expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding

herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

(d) the Court and court personnel;

(e) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such office;

(f) trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof; and

(g) any other person agreed to by the Producing Party.

6. Confidential Information shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes. 7. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 5(c) hereof, counsel for the Receiving Party making such disclosure shall provide to the expert witness or consultant a copy of this Stipulation and obtain the expert's or consultant's written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any certificate signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied. 8. All depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the

Parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.

9. Should the need arise for any Party or, as appropriate, non-party, to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such Party or, as appropriate, non-party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information.

10. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as "Confidential Information" under the terms hereof. Any deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute a written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other Parties and, as appropriate, a non-party that is a Producing Party. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness's compliance with the Stipulation.

11. A Party may designate as Confidential Information subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof. In the case of Documents, produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time up to fifteen (15) days after actual receipt of copies of those

documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate, non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

In Counties WITH Electronic Filing

12.

(a) A Party or, as appropriate, non-party, who seeks to file with the Court (i) any deposition transcripts, exhibits, answers to interrogatories, or other documents which have previously been designated as comprising or containing Confidential Information, or (ii) any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information shall file the document, pleading, brief, or memorandum on the NYSCEF system in redacted form until the Court renders a decision on any motion to seal (the "Redacted Filing"). If the Producing Party fails to move to seal within seven (7) days of the Redacted Filing, the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(b) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information produced by a Producing Party that is a non-party, the filing Party shall so notify that

Producing Party within twenty-four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant Producing Party's Confidential Information unredacted.

(c) If the Producing Party makes a timely motion to seal, and the motion is granted, the filing Party (or, as appropriate, non-party) shall ensure that all documents (or, if directed by the court, portions of documents) that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system. If the Producing Party's timely motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) Any Party filing a Redacted Filing in accordance with the procedure set forth in this paragraph 12 shall, contemporaneously with or prior to making the Redacted Filing, provide the other Parties and the Court with a complete and unredacted version of the filing.

(e) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any materials which have previously been designated by a party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time of production.

In Counties WITHOUT Electronic Filing

13.

(a) A Party or, as appropriate, non-party, who seeks to file with the Court any deposition transcripts, exhibits, answers to interrogatories, and other documents which have previously been designated as comprising or containing Confidential Information, or any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information, shall (i) serve upon the other Parties (and, as appropriate, non-parties) a Redacted Filing and a complete and unredacted version of the filing; (ii) file a Redacted Filing with the court; and (iii) transmit the Redacted Filing and a complete unredacted version of the filing to chambers. Within three (3) days thereafter, the Producing Party may file a motion to seal such Confidential Information.

(b) If the Producing Party does not file a motion to seal within the aforementioned three (3) day period, the Party (or, as appropriate, non-party) that seeks to file the Confidential Information shall take steps to file an unredacted version of the material.

(c) In the event the motion to seal is granted, all (or, if directed by the court, portions of) deposition transcripts, exhibits, answers to interrogatories, and other documents which have previously been designated by a Party (or, as appropriate, non-party) as comprising or containing Confidential Information, and any pleading, brief or memorandum which reproduces, paraphrases or discloses such material, shall be filed in sealed envelopes or other appropriate sealed container on which shall be endorsed the caption of this litigation, the words "CONFIDENTIAL MATERIAL-SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL

INFORMATION" as well as an indication of the nature of the contents and a statement in substantially the following form:

"This envelope, containing documents which are filed in this case by (name of Party or as appropriate, non-party), is not to be opened nor are the contents thereof to be displayed or revealed other than to the Court, the parties and their counsel of record, except by order of the Court or consent of the parties. Violation hereof may be regarded as contempt of the Court." In the event the motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information produced by a Producing Party that is non-party, the Party (or, as appropriate, non-party) making the filing shall so notify the Producing Party within twenty-four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant non-party's Confidential Information unredacted.

(e) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any documents which have previously been designated by a party as comprising or containing Confidential Information shall identify such documents by the production number ascribed to them at the time of production.

14. Any person receiving Confidential Information shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof and shall use reasonable

measures to store and maintain the Confidential Information so as to prevent unauthorized disclosure.

15. Any document or information that may contain Confidential Information that has been inadvertently produced without identification as to its "confidential" nature as provided in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as "confidential" within a reasonable time following the discovery that the document or information has been produced without such designation

16. Extracts and summaries of Confidential Information shall also be treated as confidential in accordance with the provisions of this Stipulation.

17. The production or disclosure of Confidential Information shall in no way constitute a waiver of each Producing Party's right to object to the production or disclosure of other information in this action or in any other action. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential. Failure to challenge a Confidential Information designation shall not preclude a subsequent challenge thereto.

18. In connection with their review of electronically stored information and hard copy documents for production (the "Documents Reviewed") the Parties agree as follows:

(a) to implement and adhere to reasonable procedures to ensure Documents Reviewed that are protected from disclosure pursuant

to CPLR 3101(c), 3101(d)(2) and 4503 ("Protected Information") are identified and withheld from production.

(b) if Protected Information is inadvertently produced, the Producing Party shall take reasonable steps to correct the error, including a request to the Receiving Party for its return.

(c) upon request by the Producing Party for the return of Protected Information inadvertently produced the Receiving Party shall promptly return the Protected Information and destroy all copies thereof. Furthermore, the Receiving Party shall not challenge either the adequacy of the Producing Party's document review procedure or its efforts to rectify the error, and the Receiving Party shall not assert that its return of the inadvertently produced Protected Information has caused it to suffer prejudice.

19. This Stipulation is entered into without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

20. This Stipulations shall continue to be binding after the conclusion of this litigation except that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Stipulation. The provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action.

21. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

22. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential Information produced or designated and all reproductions thereof shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any any applicable rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter.

23. If a Receiving Party is called upon to produce Confidential Information in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information is sought

shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential Information, if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body. 24. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

25. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original, and electronic signatures shall be deemed original signatures.

[FIRM] [FIRM]

By: _____ By: _____

_____ _____

New York, New York New York, New York

Tel: _____ Tel: _____

Attorneys for Plaintiff Attorneys for Defendant

Date: _____ SO ORDERED _____ J.S.C

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF _____ x

: Index No. ___

_____, AGREEMENT WITH

Plaintiff, : RESPECT TO CONFIDENTIAL

- against - : MATERIAL

_____, :

Defendant. :

..... x

I, _____, state that:

1. My address is _____.

2. My present occupation or job description is _____. 3. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the "Stipulation") entered in the above-entitled action on

---

4. I have carefully read and understand the provisions of the Stipulation.

5. I will comply with all of the provisions of the Stipulation.

6. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential Information that is disclosed to me.

7. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Information.

8. I hereby submit to this jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: _____

_____

APPENDIX C

COMMERCIAL DIVISION SAMPLE CHOICE OF FORUM CLAUSES

Purpose. The purpose of these sample forum-selection provisions is to offer contracting parties streamlined, convenient tools in expressing their consent to confer jurisdiction on the Commercial Division or to proceed in the federal courts in New York State.

These sample provisions are not intended to modify governing case law or to replace any parts of the Rules of the Commercial Division of the Supreme Court (the "Commercial Division Rules"), the Uniform Civil Rules for the Supreme Court (the "Uniform Civil Rules"), the New York Civil Practice Law and Rules (the "CPLR"), the Federal Rules of Civil Procedure, or any other applicable rules or regulations pertaining to the New York State Unified Court System or the federal courts in New York. These sample provisions should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, the Federal Rules of Civil Procedure, and any other applicable rules and

regulations. Parties which use these sample provisions must satisfy all jurisdictional, procedural, and other requirements of the courts specified in the provisions.

The Sample Forum Selection Provision.

To express their consent to the exclusive jurisdiction of the Commercial Division, parties may include specific language in their contract, such as: "THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION, NEW YORK STATE SUPREME COURT, WHICH SHALL HEAR ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE VALIDITY, BREACH, ENFORCEMENT OR TERMINATION THEREOF."

Alternatively, in the event that parties wish to express their consent to the exclusive jurisdiction of either the Commercial Division or the federal courts in New York State, the parties may include specific language in their contract, such as: "THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION, NEW YORK STATE SUPREME COURT, OR THE FEDERAL COURTS IN NEW YORK STATE, WHICH SHALL HEAR ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE VALIDITY, BREACH, ENFORCEMENT OR TERMINATION THEREOF."

APPENDIX D

COMMERCIAL DIVISION SAMPLE CHOICE OF LAW PROVISION

Purpose.

The purpose of this sample choice of law provision is to offer contracting parties a streamlined, convenient tool in expressing their consent to having New York law apply to their contract, or any dispute under the contract.

This sample provision is not intended to modify governing case law or to replace any parts of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, or any other applicable rules or regulations. This sample provision should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, and any other applicable rules and regulations. Parties which use this sample provision must meet any requirements of applicable law.

The Sample Choice of Law Provisions. To express their consent to have New York law apply to the contract between them, or any disputes under such contract, the parties may include specific language in their contract, such as: "THIS AGREEMENT AND ITS ENFORCEMENT, AND ANY CONTROVERSY ARISING OUT OF OR RELATING TO THE MAKING OR PERFORMANCE OF THIS AGREEMENT, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO NEW YORK'S PRINCIPLES OF CONFLICTS OF LAW." APPENDIX E(Reserved) APPENDIX F

STANDARD FORM OF CONFIDENTIALITY ORDER WITH ATTORNEY'S EYES-ONLY

DESIGNATED SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF _____

----------x

Index No. _____

_____, Plaintiff,

STIPULATION AND

ORDER FOR THE

PRODUCTION AND

-against- EXCHANGE OF

CONFIDENTIAL

INFORMATION

_____, Defendant,

----------x

This matter having come before the Court by stipulation of plaintiff, _____, and defendant, _____, (individually "Party" and collectively "Parties") for the entry of a protective order pursuant to CPLR 3103(a), limiting the review, copying, dissemination and filing of confidential and/or proprietary documents and information to be produced by either party and their respective counsel or by any non-party in the course of discovery in this matter to the extent set forth below; and the parties, by, between and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. This Stipulation is being entered into to facilitate the production, exchange and discovery of documents and information that the Parties and, as appropriate, non-parties, agree merit confidential treatment (hereinafter the "Documents" or "Testimony").

2. Any Party, or, as appropriate, non-party, may designate Documents produced, or Testimony given, in connection with this action as "confidential" or "Highly Confidential- Attorney's Eyes-Only" either by notation on each page of the Document so designated, statement on the record of the disposition, or written advice to the respective undersigned counsel for the Parties hereto, or by other appropriate means.

3. As used herein:

(a) "Confidential Information" shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients.

(b) "Highly Confidential - Attorney's Eyes-Only Information" shall mean any "Confidential Information" that is of such a private, sensitive, competitive or proprietary nature that present disclosure to persons other than those identified in paragraph 5.1 below would reasonably be expected to cause irreparable harm or materially impair the legitimate competitive position or interests of the Producing Party. A designation of Confidential Information as Attorney's Eyes-Only Information constitutes a representation that such Confidential Information has been reviewed by an

attorney for the Producing Party and that there is a valid basis for such a designation.

(c) "Producing Party" shall mean the parties to this action and any non-parties producing "Confidential Information" or "Highly Confidential - Attorney's Eyes-Only Information" in connection with depositions, document production or otherwise, or the Party or non-party asserting the confidentiality privilege, as the case may be.

(d) "Receiving Party" shall mean the Parties to this action and/or any non-party receiving "Confidential Information" or "Highly Confidential Attorney's Eyes-Only Information" in connection with depositions, document production, subpoenas or otherwise.

4. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Information or "Highly Confidential - Attorney's Eyes-Only Information." If the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential Information or Highly Confidential - Attorney's Eyes-Only information. if such motion is filed, the documents or other materials shall be deemed as designated by the Producing Party unless and until the Court rules otherwise. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information or Highly Confidential - Attorney's Eyes-Only Information.

5. Except with the prior written consent of the Producing Party or by Order of the Court, Confidential Information shall not be furnished, shown or disclosed to any person or entity except to:

(a) personnel of the Parties actually engaged in assisting in the preparation of this action of or trial or other proceeding herein and who have been advised of their obligations hereunder;

(b) counsel for the Parties to this action and their associated attorneys, paralegals and other professional and non-professional personnel (including support staff and outside copying services) who are directly assisting such counsel in the preparation of this action for trial or other proceeding herein, are under the supervision or control of such counsel, and who have been advised by such counsel of their obligations hereunder;

(c) expert witnesses or consultants retained by the Parties or their counsel to furnish technical or expert services in connection with this action or to give testimony with respect to the subject matter of this action at the trial of this action or other proceeding herein; provided, however, that such Confidential Information is furnished, shown or disclosed in accordance with paragraph 7 hereof;

(d) the Court and court personnel;

(e) an officer before whom a deposition is taken, including stenographic reporters and any necessary secretarial, clerical or other personnel of such officer;

(f) trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof; and

(g) any other person agreed to by the Producing Party.

5.1 Except with the prior written consent of the Producing Party or by Order of the Court, Highly Confidential-Attorney's Eyes-Only Information shall not be furnished, shown or disclosed to any person or entity except to those identified in paragraph 5(b)-5(g).

6. Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall be utilized by the Receiving Party and its counsel only for purposes of this litigation and for no other purposes.

7. Before any disclosure of Confidential Information is made to an expert witness or consultant pursuant to paragraph 5(c) hereof, counsel for the Receiving Party making such disclosure shall provide to the expert witness or consultant a copy of this Stipulation and obtain the expert's or consultant's written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Receiving Party obtaining the certificate shall supply a copy to counsel for the other Parties at the time designated for expert disclosure, except that any certificate signed by an expert or consultant who is not expected to be called as a witness at trial is not required to be supplied.

8. Unless otherwise designated during the deposition, all depositions shall presumptively be treated as Confidential Information and subject to this Stipulation during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the Parties. At or before the end of such fifteen day period, the deposition shall be classified appropriately.

9. Should the need arise for any Party or, as appropriate, non-party, to disclose Confidential Information or "Highly Confidential-Attorney's

Eyes-Only Information" during any hearing or trail before the Court, including through argument or the presentation of evidence, such Party or, as appropriate, non-party may do so only after taking such steps as the Court, upon motion of the Producing Party, shall deem necessary to preserve the confidentiality of such Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information." 10. This Stipulation shall not preclude counsel for any Party from using during any deposition in this action any Documents or Testimony which has been designated as "Confidential Information" or "Highly Confidential-Attorney's Eyes-Only Information" under the terms hereof. Any deposition witness who is given access to Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall, prior thereto, be provided with a copy of this Stipulation and shall execute a written agreement, in the form of Exhibit A attached hereto, to comply with and be bound by its terms. Counsel for the Party obtaining the certificate shall supply a copy to counsel for the other Parties and, as appropriate, a non-party that is a Producing Party. In the event that, upon being presented with a copy of the Stipulation, a witness refuses to execute the agreement to be bound by this Stipulation, the Court shall, upon application, enter an order directing the witness's compliance with the Stipulation. 11. A Party may designate as Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" subject to this Stipulation any document, information, or deposition testimony produced or given by any non-party to this case, or any portion thereof. In the case of Documents, produced by a non-party, designation shall be made by notifying all counsel in writing of those documents which are to be stamped and treated as such at any time

up to fifteen (15) days after actual receipt of copies of those documents by counsel for the Party asserting the confidentiality privilege. In the case of deposition Testimony, designation shall be made by notifying all counsel in writing of those portions which are to be stamped or otherwise treated as such at any time up to fifteen (15) days after the transcript is received by counsel for the Party (or, as appropriate-non-party) asserting the confidentiality. Prior to the expiration of such fifteen (15) day period (or until a designation is made by counsel, if such a designation is made in a shorter period of time), all such Documents and Testimony shall be treated as Confidential Information.

In Counties WITH Electronic Filing

12.

(a) A Party or, as appropriate, non-party, who seeks to file with the Court (i) any deposition transcripts, exhibits, answers to interrogatories, or other documents which have previously been designated as comprising or containing Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information," or (ii) any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall file the document, pleading, brief, or memorandum on the NYSCEF system in redacted form until the Court renders a decision on any motion to seal (the "Redacted Filing"). If the Producing Party fails to move to seal within seven (7) days of the Redacted Filing, the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(b) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" produced by a Producing Party that is a non-party, the filing Party shall so notify that Producing Party within twenty-four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant Producing Party's Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" unredacted.

(c) If the Producing Party makes a timely motion to seal, and the motion is granted, the filing Party (or, as appropriate, non-party) shall ensure that all documents (or, if directed by the court, portions of documents) that are the subject of the order to seal are filed in accordance with the procedures that govern the filing of sealed documents on the NYSCEF system. If the Producing Party's timely motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) Any Party filing a Redacted Filing in accordance with the procedure set forth in this paragraph 12 shall, contemporaneously with or prior to making the Redacted Filing, provide the other parties and the Court with a complete and unredacted version of the filing.

(e) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any materials which have previously been designated by a party as comprising or containing Confidential

Information or "Highly Confidential-Attorney's Eyes-Only Information" shall identify such documents by the production number ascribed to them at the time of production.

In Counties WITHOUT Electronic Filing

13.

(a) A Party or, as appropriate, non-party, who seeks to file with the Court any deposition transcripts, exhibits, answers to interrogatories, and other documents which have previously been designated as comprising or containing Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information," or any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information," shall (i) serve upon the other Parties (and, as appropriate, non-parties) a Redacted Filing and a complete and unredacted version of the filing; (ii) file a Redacted Filing with the court; and (iii) transmit the Redacted Filing and a complete unredacted version of the filing to chambers. Within seven (7) days thereafter, the Producing Party may file a motion to seal such Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information."

(b) If the Producing Party does not file a motion to seal within the aforementioned seven (7) day period, the Party (or, as appropriate non-party) that seeks to file the Confidential information or "Highly Confidential-Attorney's Eyes-Only Information" shall take steps to file an unredacted version of the material.

(c) In the event the motion to seal is granted, all (or, if directed by the court, portions of) deposition transcripts, exhibits, answers to

interrogatories, and other documents which have previously been designated by a Party (or, as appropriate, non-party) as comprising or containing Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" and any pleading, brief or memorandum which reproduces, paraphrases or discloses such material, shall be filed in sealed envelopes or other appropriate sealed container on which shall be endorsed the caption of this litigation, the words "CONFIDENTIAL MATERIAL-SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION" or "HIGHLY CONFIDENTIAL MATERIAL-ATTORNEY'S EYES-ONLY-SUBJECT TO STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION," as well as an indication of the nature of the contents and a statement in substantially the following form:

"This envelope, containing documents which are filed in this case by (name of Party or as appropriate, non-party), is not to be opened nor are the contents thereof to be displayed or revealed other than to the Court, the parties and their counsel of record, except by order of the Court or consent of the parties. Violation hereof may be regarded as contempt of the Court." In the event the motion to seal is denied, then the Party (or, as appropriate, non-party) making the filing shall take steps to replace the Redacted Filing with its corresponding unredacted version.

(d) In the event that the Party's (or, as appropriate, non-party's) filing includes Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" produced by a Producing Party

that is non-party, the Party (or, as appropriate, non-party) making the filing shall so notify the Producing Party within twenty-four (24) hours after the Redacted Filing by providing the Producing Party with a copy of the Redacted Filing as well as a version of the filing with the relevant non-party's Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" unredacted.

(e) All pleadings, briefs or memoranda which reproduce, paraphrase or disclose any documents which have previously been designated by a party as comprising or containing Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall identify such documents by the production number ascribed to them at the time of production.

14. Any person receiving Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall not reveal or discuss such information to or with any person not entitled to receive such information under the terms hereof and shall use reasonable measures to store and maintain the Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" so as to prevent unauthorized disclosure.

15. Any document or information that may contain Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" that has been inadvertently produced without identification as to its "confidential" nature as provided in paragraphs 2 and/or 11 of this Stipulation, may be so designated by the party asserting the confidentiality privilege by written notice to the undersigned counsel for the Receiving Party identifying the document or information as "confidential" within a reasonable time following the discovery that the document or information has been produced without such designation.

16. Extracts and summaries of Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall also be treated with the same level of confidentiality as the designated information from which it was derived.

17. The production or disclosure of Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" shall in no way constitute a waiver of each Producing Party's right to object to the production or disclosure of other information in this action or in any other action. Nothing in this Stipulation shall operate as an admission by any Party or non-party that any particular document or information is, or is not, confidential or "Highly Confidential-Attorney's Eyes-Only Information." Failure to challenge a Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" designation shall not preclude a subsequent challenge thereto.

18. This Stipulation is entered into without prejudice to the right of any Party or non-party to seek relief from, or modification of, this Stipulation or any provisions thereof by properly noticed motion to the Court or to challenge any designation of confidentiality as inappropriate under the Civil Practice Law and Rules or other applicable law.

19. This Stipulations shall continue to be binding after the conclusion of this litigation except that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were filed under seal); and (b) that a Receiving Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of the Stipulation. The

provisions of this Stipulation shall, absent prior written consent of the parties, continue to be binding after the conclusion of this action.

20. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

21. Within sixty (60) days after the final termination of this litigation by settlement or exhaustion of all appeals, all Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" produced or designated and all reproductions thereof shall be returned to the Producing Party or, at the Receiving Party's option, shall be destroyed. In the event that any Receiving Party chooses to destroy physical objects and documents, such Party shall certify in writing within sixty (60) days of the final termination of this litigation that it has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of its knowledge. Notwithstanding anything to the contrary, counsel of record for the Parties may retain one copy of documents constituting work product, a copy of pleadings, motion papers, discovery responses, deposition transcripts and deposition and trial exhibits. This Stipulation shall not be interpreted in a manner that would violate any any applicable rules of professional conduct. Nothing in this Stipulation shall prohibit or interfere with the ability of counsel for any Receiving Party, or of experts specially retained for this case, to represent any individual, corporation or other entity adverse to any Party or non-party or their affiliate(s) in connection with any other matter.

22. If a Receiving Party is called upon to produce Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" in order to comply with a court order, subpoena, or other direction by a court, administrative agency, or legislative body, the Receiving Party from which the Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" is sought shall (a) give written notice by overnight mail and either email or facsimile to the counsel for the Producing Party within five (5) business days of receipt of such order, subpoena, or direction, and (b) give the Producing Party five (5) business days to object to the production of such Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" if the Producing Party so desires. Notwithstanding the foregoing, nothing in this paragraph shall be construed as requiring any party to this Stipulation to subject itself to any penalties for noncompliance with any court order, subpoena, or other direction by a court, administrative agency, or legislative body. 23. This Stipulation may be changed by further order of this Court, and is without prejudice to the rights of a Party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

24. This Stipulation may be signed in counterparts, which, when fully executed, shall constitute a single original, and electronic signatures shall be deemed original signatures.

[FIRM]	[FIRM]
By: _____	By: _____
_____	_____
New York, New York	New York, New York

Tel: _____ Tel: _____

Attorneys for Plaintiff Attorneys for Defendant

Date: _____ SO ORDERED _____ J.S.C

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF _____ x

: Index No. ___

_____, AGREEMENT WITH

Plaintiff, : RESPECT TO CONFIDENTIAL

- against - : MATERIAL

_____, :

Defendant. :

..... x

I, _____, state that:

1. My address is _____.

2. My present occupation or job description is _____. 3. I have received a copy of the Stipulation for the Production and Exchange of Confidential Information (the "Stipulation") entered in the above-entitled action on

_____.

4. I have carefully read and understand the provisions of the Stipulation.

5. I will comply with all of the provisions of the Stipulation.

6. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation, and will use only for purposes of this action, any Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" that is disclosed to me.

7. I will return all Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information" that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Information or "Highly Confidential-Attorney's Eyes-Only Information."

8. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: _____ _____

APPENDIX G FORM REMOTE DEPOSITION PROTOCOLSUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK XXXX,

Index No. _____/____

Plaintiff(s),

-against-

XXXX, Defendant(s).

STIPULATION AND [PROPOSED] ORDER CONCERNING

PROTOCOL FOR CONDUCTING REMOTE DEPOSITIONS

The Plaintiff(s) and Defendant(s) (collectively, the "Parties") jointly stipulate to the following protocol for conducting depositions via remote means in the above-captioned manner:

1. All depositions shall be conducted remotely using videoconference technology, and each deposition shall be recorded, either by stenographic or video means.

2. Insofar as practicable, the remote deposition shall be similar to an in-person deposition.

3. The Party that notices the deposition shall contract with a court reporting service for court reporting, videoconference, and remote depositions services. An employee or employees of the service provider shall attend or be available at each remote deposition to record the deposition, troubleshoot any technological issues that may arise, and administer the virtual breakout rooms. 4. The Parties agree that these recorded remote depositions may be used at a trial or hearing to the same extent that an in-person deposition may be used at trial or hearing, and the Parties agree not to object to the use of these recordings on the basis that the deposition was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at trial.

5. The deponent, court reporter, and counsel for the Parties may each participate in the videoconference deposition remotely and separately. Each person attending a deposition shall be clearly visible to all other participants, their statements shall be audible to all participants, and they should each use best efforts to ensure their environment is free from noise and distractions. 6. No counsel shall privately communicate with any deponent during questioning on the record, except for the purpose of determining whether a privilege should be asserted, and only after the witness has stated on the record that he or she needs to consult counsel regarding a question of privilege. Deponents shall shut off electronic devices, other than the devices that the deponent is using for the videoconferencing software and to display and access the exhibits, and shall refrain from all private communication during questioning on the record.

7. During breaks in the deposition, the Parties may use a breakout-room feature, which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by the court reporting service prior to the deposition and controlled by the remote deposition or relevant service provider.

8. Remote depositions shall be recorded by stenographic means, and may also be video-recorded; but, the court reporter might not be physically present with the witness whose deposition is being taken. The Parties agree not to challenge the validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the state where the deponent resides.

9. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record. If the deposition is to be video recorded, the videographer will record the audio and video of the deposition and preserve the recording. The court reporter may be given a copy of the video recording and may review the recording to improve the accuracy of any written transcript. The court reporter shall mark and preserve exhibits used at the deposition. 10. The Parties agree that the court reporter is an "Officer" as defined by CPLR 3113(b) and shall be permitted to administer the oath to the witness via the videoconference. The deponent will be required to provide government-issued identification satisfactory to the court reporter and this identification must be legible on the video record, if the deposition is to be video recorded. 11. The Party that noticed the deposition shall be responsible for procuring a written transcript and any video record of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition or any real-time transcript functionality. 12. The Party that noticed the deposition shall provide the remote deposition or relevant service provider with a copy of this Stipulation and Order at least twenty-four hours in advance of the deposition.

13. At the beginning of each deposition, consistent with CPLR 3113(b), the videographer or stenographer shall "put the witness on oath" (CPLR 3113(b)) and begin the deposition with a statement on the record, consistent with 22 NYCRR 202.15(d), that shall include: (i) the officer's name and address; (ii) the name and address of the officer's employer; (iii) the date, time, and place (or method) of the deposition; (iv) the party on whose behalf the deposition is being taken; and (v) the identity of all persons present. 14. At the beginning of each segment of the deposition, consistent with 22 NYCRR 202.15(d), the videographer or stenographer shall begin that segment of the remote deposition by announcing the beginning and end of each segment of the remote deposition.

15. If the deposition is being video recorded, the videographer shall monitor the audio and video transmission and shall stop the record if he or she determines that any participant has been dropped from the remote deposition or is otherwise incapable of participating by reason of technical problems. If a videographer is not present, the monitor and/or court reporter shall stop the record as soon as he or she becomes aware that a participant has been dropped from the remote deposition or cannot participate by reason of technical problems.

16. The defending attorney shall make objections and interpose instructions not to answer in substantially the same manner as he or she would at an in-person deposition. If the defending attorney is unable to make objections and interpose instructions not to answer by reason of technical difficulties, such a failure to object or to instruct shall not be construed as waiver and the defending attorney shall have an opportunity to object or to instruct as soon as the technical problem has been remedied. Objections and instructions not to answer shall be regarded as timely if made as soon as practicable.

17. The Parties agree to work collaboratively and in good faith with the court reporting agency to assess each deponent's technological abilities and to troubleshoot any

issues at least 48 hours in advance of the deposition so any adjustments can be made. Counsel and deponents may test remote deposition software before any remote deposition. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition where the deponent cannot hear or understand the other participants or where the participants cannot hear or understand the deponent. Any period on the record during which a deponent or questioner could not hear or understand the questions or answers due to technical difficulties shall not count toward time limitation under CPLR 3113(b).

18. Counsel shall use best efforts to ensure that they have sufficient technology to participate in a videoconference deposition (e.g., a webcam and computer or telephone audio and sufficient internet bandwidth to sustain the remote deposition). Counsel for the deponent shall likewise use best efforts to ensure that the deponent has such sufficient technology. In the case of non-party witnesses, counsel noticing the deposition shall supply any necessary technology that the deponent does not have. 19. The Parties agree that this Stipulation and Order applies to remote depositions of non-parties under CPLR 3101 and shall work in a collaborative manner in attempting to schedule remote depositions of non-parties. The Party noticing any non-party deposition shall provide this Stipulation and Order to counsel for any non-party under CPLR 3101 a reasonable time before the date of the deposition.

20. The Parties agree that any of the following methods for administering exhibits may be employed during a remote deposition, or a combination of one or more methods:

(i) Counsel noticing the deposition may choose to mail printed copies of documents that may be used during the deposition to the deponent, the

deponent's counsel, counsel for other parties that will appear on the record, and the court reporter. In that event, noticing counsel shall so inform the recipients prior to mailing the documents and shall provide tracking information for the package. Such documents shall be delivered by noon (local-time) the day before the deposition. Recipients shall confirm receipt of the package by electronic mail to Counsel noticing the deposition. If printed copies are mailed, every recipient of a mailed package shall keep the package sealed until the deposition begins and shall only unseal the package on the record, on video, and during the deposition when directed to do so by the counsel taking the deposition. Recipients shall proceed to open the documents and review the documents only upon the instruction of the noticing attorney. This same procedure shall apply to any physical copies of documents any other counsel intends to use for examining the witness.

(ii) Counsel noticing the deposition may share exhibits digitally, such as by e-mailing a compressed zip folder or sharing a link. The exhibits shall be shared to the deponent, the deponent's counsel, the other Party's counsel, and the court reporter, and any other attorneys who have appeared on the record at the deposition. Every recipient of a digital exhibit shall not open the digital exhibit until directed to do so by the counsel taking the deposition. If sending documents digitally, counsel will be mindful of file size limitations, which presumptively should be less than MB. Such file transfers shall be password-protected.

(iii) If the software for the videoconference supports uploading and sharing digital files in real time (e.g., such as the, Chat feature on Zoom), then such function may be equivalently used to distribute exhibits to the deponent and participants in real time. Counsel appearing on the record at the deposition and the court reporter shall confirm receipt of the documents to Counsel noticing the deposition. The method of transferring the documents shall be password-protected, and counsel

taking the deposition shall supply the password immediately prior to the commencement of the deposition.

(iii) Regardless which method of document-sharing is used, the witness and the defending counsel shall have the right to private copies of the exhibits that allow the witness and defending counsel to independently and fully navigate the exhibit while the deposition is on the record.

Dated:

SO ORDERED: _____

[_____, J.]

Justice of the Supreme Court of the State of New York

Stipulated to: [ATTORNEY SIGNATURE BLOCKS]

Statutory Authority

Section statutory authority:

Civil Practice Law & Rules, § A75. Section statutory authority: Civil Practice Law & Rules, § 3126. Section statutory authority: Civil Practice Law & Rules, § 2101. Section statutory authority: Civil Practice Law & Rules, § 3211. Section statutory authority: Civil Practice Law & Rules, § 3212. Section statutory authority: Civil Practice Law & Rules, § 3213. Section statutory authority: Civil Practice Law & Rules, § 2103. Section statutory authority: Civil Practice Law & Rules, § A9. Section statutory authority: Civil Practice Law & Rules, § 3214. Section statutory authority: Civil Practice Law & Rules, § 3101. Section statutory authority: Civil Practice Law & Rules, § 3103. Section statutory authority: Civil Practice Law & Rules, § 3122. Section statutory authority: Civil Practice Law & Rules, § 3111. Section statutory authority: Civil Practice Law & Rules, § 3106. Section statutory authority: Civil Practice Law & Rules, § 3016. Section statutory authority: Civil Practice Law & Rules, § 3117

History

Added 202.70 on 1/25/06; amended 202.70(a) on 4/18/07; amended 202.70(a) on 8/29/07; amended 202.70(a) on 12/19/07; amended 202.70(a) on 1/28/09; amended 202.70(a) on 7/08/09; amended 202.70(a) on 8/04/10; amended 202.70(a) on 2/26/14; amended 202.70(a)(effective 09/02/14) on 8/06/14; amended 202.70(b)(12) on 2/24/16; amended 202.70(c) on 2/24/16; amended 202.70(d) on 6/15/11; amended 202.70(d)(effective 09/02/14) on 7/30/14; amended 202.70(d) on 7/26/17; amended 202.70(d)(2) and Appendix D on 1/17/18; amended 202.70(e)(effective 09/02/14) on 7/30/14; amended 202.70(g) on 8/18/10; amended 202.70(g) added Preamble on 4/29/15; amended 202.70(g) Preamble on 12/23/15; amended 202.70(g) Preamble(effective 01/01/19) on 12/12/18; added 202.70(g) Rule 1(d) on 7/29/20; amended 202.70(g) Rule 3 on 12/23/15; amended 202.70(g) Rule 3(heading .)(effective 07/01/16) on 6/22/16; amended 202.70(g) Rule 3(a) on 1/09/19; added 202.70(g) Rule 3(b)(effective 07/01/16) on 6/22/16; amended 202.70(g) Rule 6 on 12/23/15; amended 202.70(g) Rule 6(effective 11/16/20) on 10/28/20; amended 202.70(g) Rule 8 on 10/30/13; amended 202.70(g) Rule 8(a)(effective 09/02/14) on 8/06/14; amended 202.70(g) Rule 8(b) on 1/28/15; amended 202.70(g) Rule 8(c) on 1/28/15; added 202.70(g) Rule 9 on 5/07/14; added 202.70(g) Rule 9-a on 8/22/18; amended 202.70(g) Rule 10 on 1/17/18; amended 202.70(g) Rule 10(effective 07/01/19) on 5/08/19; amended 202.70(g) Rule 11(a) on 1/17/18; added 202.70(g) Rule 11-a on 7/09/14; added 202.70(g) Rule 11-b(effective 09/02/14) on 7/30/14; added 202.70(g) Rule 11-c and Appendix A on 9/03/14; added 202.70(g) Rule 11-d on 1/28/15; amended 202.70(g) Rule 11-d on 12/23/15; added 202.70(g) Rule 11-e on 4/29/15; added 202.70(g) Rule 11-e(f) on 8/22/18; added 202.70(g) Rule 11-f on 12/23/15; added 202.70(g) Rule 11-g and Appendix B on 7/20/16; amended 202.70(g) Rule 11-g(c) on 8/08/18; added 202.70(g) Rule 11-g(d) on 10/14/20; added 202.70(g) Rule 11-g Appendix E on 8/08/18; added 202.70(g) Rule 11-g Appendix F on 10/14/20; added 202.70(g) Rule 13(c) on 10/30/13; amended 202.70(g) Rule 14 on 4/29/15; added 202.70(g) Rule 14-a on 7/20/16; amended 202.70(g) Rule 17 on 8/22/18; amended 202.70(g) Rule 20 on 4/26/17; amended 202.70(g) Rule 23 on 7/15/20; amended 202.70(g) Rule 26 on 4/26/17; added 202.70(g) Rule 30(c) on 4/19/17; added 202.70(g) Rule 32-a on 11/23/16; added 202.70(g) Rule 34 on 9/03/14; added 202.70(g)

Rule 34 Appendix C on 7/26/17; amended 202.70 Appendix A, section V on 2/10/21; amended 202.70(g) Rule 31(effective 03/01/21) on 3/24/21; amended 202.70(a) on 4/14/21; added 202.70(g) Rule 35(effective 12/01/21) on 10/27/21; added 202.70(g) Rule 37(effective 12/15/21) on 12/29/21; added 202.70(g) Rule 37 Appendix G on 12/29/21; amended 202.70(g) Rule 30(effective 02/01/22) on 2/02/22; amended 202.70(g) Rule 1,8,9,11-e,11-g,Appx A,B on 4/13/22; repealed 202.70(g) Appendix E on 4/13/22; amended 202.70(g) Rule 19-a(b) on 5/18/22; amended 202.70(g) Rule 11 on 6/08/22; amended 202.70(g) Rule 15 on 8/03/22; amended 202.70(g) Rule 19 on 8/03/22; added 202.70(g) Rule 6(d)(effective 09/12/22) on 9/28/22; amended 202.70(g) Rule 16(effective 01/03/23) on 1/11/23; amended 202.70(g) Rule 2(effective 01/03/23) on 1/25/23; amended 202.70(g) Rule 5(effective 01/03/23) on 1/25/23; amended 202.70(g) Rule 30 on 5/17/23; amended 202.70(g) Rule 27(effective 06/05/23) on 6/05/23; amended 202.70(b) on 3/13/24; added 202.70(g) Rule 9-b on 3/13/24; added 202.70(g) Rule 23(effective 07/07/25) on 6/04/25.

NEW YORK CODES, RULES AND REGULATIONS
