



**USING LOCAL RULES TO PROMOTE
BEST PRACTICES FOR e-DISCOVERY**

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5.0 DISCOVERY

5.1 General Provisions.

(a) Cooperation. Parties and their counsel are expected to reach agreements cooperatively on how to conduct discovery under Rules 26-37 of the Rules of Civil Procedure. Counsel have a professional responsibility to deal with each other and opposing parties fairly and in full compliance with the letter and spirit of the Rules of Civil Procedure, the Rules of Professional Conduct, and the General Rules of Practice. Parties and their counsel are reminded that Rule 8 of the General Rules of Practice requires the parties to begin discovery promptly so that it does not delay the adjudication of a case.

(b) Proportionality. Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information. This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, date ranges for discovery and other parameters to limit and guide preservation and discovery issues. Discovery requests that do not comply with Rules 26(b)(1a) and 26(g) of the Rules of Civil Procedure are beyond the scope of proper discovery and are considered an impediment to the proper administration of justice.

(c) Preservation of Discoverable Information. Parties have an obligation to take reasonable and proportional steps to preserve potentially responsive information within their possession, custody, or control.

(1) Document Retention. Absent a showing of good cause by the requesting party, parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data unless such modification is necessary to preserve potentially responsive information.

(2) Exempted Categories of Electronically Stored Information. Absent a showing of good cause by the requesting party, the categories of electronically stored information identified in Schedule A to these Local Rules need not be preserved.

(d) Privilege.

(1) Privilege Logs.

(A) Parties are encouraged to confer on the nature and scope of privilege logs for the case, including whether categories of information (such as work product) may be excluded from any logging requirements and whether alternatives to document-by-document logs (such as identifying documents by category) can be exchanged.

(B) Unless the parties agree or the court orders otherwise, parties are not required to include in privilege logs any information involving communication with litigation counsel that was generated after the filing of the complaint.

(2) Inadvertent Disclosure. Parties should be familiar with, and should consider submitting for the court's approval, an Order providing for the Non-Waiver of Attorney-Client Privilege and Work Product Protection (the Forms hereto include such a provision). Parties are cautioned that Rule 26(b)(5) of the Rules of Civil Procedure only provides for the return, sequestration, or destruction of such information. Rule 26(b)(5) does not address whether and to what extent there has been a waiver of privilege or work product protection.

(e) Electronic Service. Parties may agree to electronically serve discovery requests and written responses. Unless the parties agree or the court orders otherwise, service of an electronically transmitted request or written response shall be deemed to occur when sent; provided, however, that a request or written response sent after 5 p.m. shall be deemed sent at 8 a.m. the following day. If the parties agree to electronic service of requests and written responses, then the sender must make reasonable efforts to confirm receipt.

* * *

5.7. Electronic Discovery.

(a) Discovery Conference. Pursuant to Rule 26(f)(1) of the Rules of Civil Procedure, any party may request a conference regarding the discovery of electronically stored information. Pursuant to Rule 26(f)(2), the parties shall submit to the court a discovery plan following their conference. In addition to the subjects referenced in Rule 26(f)(3), the discovery plan shall include the following: the likely (1) custodians, (2) non-custodial data sources (i.e., sources that are not organized, managed, or maintained by custodians, such as an enterprise system or database), (3) relevant date ranges, and (4) search methodologies (including search terms, if applicable), for discoverable documents. The parties are encouraged to discuss the technical specifications regarding formatting and metadata of electronically stored information.

(b) Default Disclosures for Electronic Discovery. If no party requests a Discovery Conference, and a producing party produces documents in an electronic format or uses electronic means to identify potentially responsive documents, such party shall disclose without request the following information at the time of production:

(1) Custodians. The custodians (10 or fewer) whose electronic documents were searched because they were most likely to have potentially responsive documents in their possession, custody or control. The custodians shall be identified by name, title, role in the dispute, and the general subject matter of the information.

(2) Non-Custodial Data Sources. A list of the non-custodial data sources that were searched because they were most likely to contain non-duplicative potentially responsive documents.

(3) Date Ranges. The date ranges searched for each custodian and non-custodial data source.

(4) Search Methodology for Electronically Stored Information. A description and identification of the search methodology (such as date ranges, predictive coding and/or search terms), if any, used to locate potentially responsive documents. The description must be in sufficient detail so as to enable the requesting party and the court, if necessary, to determine the adequacy of the methodology.

(c) Format. Unless the parties agree or the court orders otherwise, Rule 34(b) of the Rules of Civil Procedure requires a party to produce documents as they are kept in the usual course of business, or organize and label them to correspond to the requests, and to produce those documents in a reasonably usable form or forms. Text-searchable image files (e.g., “PDF” or “TIFF”) with the metadata referenced in Rule 26(b)(1) shall be deemed to satisfy the requirements of Rule 34(b). The only documents that must be produced in their native format are those that are not in a reasonably usable form or forms when produced as PDF or TIFF files (such as Excel spreadsheets).

SCHEDULE A

1. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
2. On-line access data such as temporary Internet files, history, cache, cookies, and the like.
3. Data in metadata fields that are frequently updated automatically, such as last-opened dates.
4. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
5. Voice messages.
6. Instant messages that are not ordinarily printed or maintained on a server dedicated to instant messaging. (NOTE: Text messages are not exempt from a party's preservation obligation.)
7. Electronic mail or pin-to-pin messages sent to or from mobile devices (*e.g.*, iPhone and Blackberry devices), provided that a copy of such mail is routinely saved elsewhere.
8. Other electronic data stored on a mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere.
9. Logs of calls made from mobile devices.
10. Server, system or network logs.
11. Electronic data temporarily stored by laboratory equipment or attached electronic equipment, provided that such data is not ordinarily preserved as part of a laboratory report.
12. Data remaining from systems no longer in use that is unintelligible on the systems in use.

__._ **Forms.**¹

The following forms are intended only to provide guidance for, and promote cooperation among, the members of the Bar practicing in this Court.

- __._.1 Sample Litigation Hold
- __._.2 Sample Preparation Form for Rule 26(f) Conference
- __._.3 Sample Consent Case Management and Discovery Scheduling Order
- __._.4 Sample Protocol for Discovery of Electronically Stored Information
- __._.5 Sample Provision for the Non-Waiver of Attorney-Client Privilege and Work Product Protection

¹ These Forms are for informational purposes only.

___.1 Sample Litigation Hold

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION AND ATTORNEY WORK PRODUCT**

Memorandum

TO: Distribution List

FROM: [Inside Counsel/Responsible Person/Law Firm]

DATE []

RE: Legal Hold Notice related to [brief description of matter]

I. ATTENTION PLEASE: This Legal Hold Notice (“Notice”) contains important legal information regarding the need to save and preserve certain documents and information related to [potential lawsuit(s) or other legal action(s) that may result] from [brief description]. All employees have a duty to ensure that [Company] is preserving all appropriate records and information as described below. As discussed in more detail below, document preservation encompasses a number of different obligations. First and foremost, do not delete, alter or destroy any Potentially Relevant Documents (as defined below). Any routine or *ad hoc* deletion of electronically-stored information should be suspended and should not occur, even as to electronically-stored information on back-up tapes.

Please understand that document preservation is both a company and an individual responsibility, and we require your full attention and cooperation in this matter. **Any failure** to follow these procedures **may result in severe penalties** against [Company] and could form the basis of legal claims for destroying evidence. Therefore, please review this memorandum carefully and adhere to the mandatory document retention policy outlined below.

II. REASON FOR THE NOTICE: Following [description of cause for sending Litigation Hold Notice with enough detail to permit recipients to discern which documents are potentially relevant].

III. OBLIGATION TO PRESERVE: It is imperative that you immediately take every reasonable step necessary to preserve, and to not lose, alter, or destroy, any Potentially Relevant Documents (as defined below). This means that you must save and preserve every paper and electronic document and any and all data now in existence or that may be created in the future that is related in any way to the subject of this dispute. The obligation to preserve and retain documents extends to all recipients of this Notice.

IV. CONFIDENTIALITY; NOTIFICATION REGARDING DISTRIBUTION LIST:

The fact that a lawsuit has been filed, and any communication regarding it, including this litigation hold Notice, should be kept strictly confidential and should not be discussed with anyone except **[Inside Counsel/Responsible Person]** or with counsel at **[Law Firm]**. If you are aware of anyone else (whether or not he or she is currently an employee) who may possess documents concerning this matter and who does not appear on the attached distribution list, please immediately inform **[Inside Counsel/Responsible Person]** or counsel at **[Law Firm]**.

V. POTENTIALLY RELEVANT DOCUMENTS: Potentially Relevant Documents are defined to mean Documents or physical things in your possession or under your control – whether located on your work or home computer, personal electronic device, cell phone, or any other device over which you have control; whether in your office or elsewhere – concerning **[list/categories]**. Potentially Relevant Documents must be saved and preserved because they may be relevant to the litigation.

V. DEFINITION OF DOCUMENTS: “Documents” are more than just paper records. The term “Documents” is used in this Notice in its broadest possible context and covers all computer files and written, recorded, or graphic materials of every kind. It means all documents and **all forms of information** of any type, and all other preserved data, regardless of whether it is hard copy or electronic and regardless of the storage medium. All Potentially Relevant Documents must be preserved, including any “personal” copies you have saved separately from any “official” or “firm” file.

VI. PRESERVATION IN PLACE AND IN CURRENT FORM: **[Company]** has a legal obligation to preserve all relevant paper and electronic documents and all relevant physical things in the form in which they were created and maintained in the normal course of business.

- For example, if the document is paper clipped, leave the paper clip on it. If the document has post-it notes on it, leave the post-it notes on it. Documents should be filed as you normally maintain them.
- Do not copy electronic files and delete the originals, and do not change the format of electronic files (e.g., from .doc to .pdf).

All files containing Potentially Responsive Documents must be retained, including any files that have been sent to storage or to other individuals, or any files kept by you or your assistant. Your preservation obligation extends to the preservation of relevant data on external media, including hard drives, DVDs, CDs, flash drives, personal home computers, laptops and mobile devices, including PDAs, cell phones and tablets. If you have any doubt about whether a document falls within a category listed above, please retain it. For any potentially relevant documents, you should preserve the original and all non-identical copies and drafts of the same documents. You should preserve the documents in the files in which they would be normally stored and should not segregate them in response to this memorandum.

You need not — and should not — create any records that do not currently exist to respond to this request. You must simply preserve all documents in the categories described

above that have already been created or that are created in the future as part of your normal business activities.

This Notice is intended to preserve Potentially Relevant Documents. **As a follow-up to this Notice, counsel for [Company] will be involved in the company's process of searching for, collecting and duplicating your Potentially Relevant Documents for possible use in the court litigation.**

VII. CONTINUING OBLIGATION TO PRESERVE DOCUMENTS: Even after your Potentially Responsive Documents have been collected, you must continue to preserve your responsive documents until instructed otherwise. Your preservation obligations are ongoing requirements. Any responsive documents that you receive or create after your documents have been collected also must be preserved. This Notice and the directions it contains supplements any other litigation hold policies, memoranda or instructions. You must continue to apply the directions contained in this notice until you receive written notice from **[Inside Counsel/Responsible Person/Law Firm]** that it is no longer in effect.

VIII. IF YOU HAVE ANY QUESTIONS OR NEED HELP: Please call if you have questions concerning this litigation hold or preserving Potentially Relevant Documents. Your discussions about the matter should be directed solely to **[Inside Counsel/Responsible Person/Law Firm]**.

IX. ACKNOWLEDGEMENT. Within five (5) days of receipt of this Notice, please email **[Inside Counsel/Responsible Person/Law Firm]** acknowledging that you have read and understood the preservation obligations it imposes on you.

X. DISTRIBUTION LIST:

__._.2

Sample Preparation Form for Rule 26(f) Conference

Prepare for a Meet and Confer

Counsel should consider the areas where consensus may be possible.

Be prepared to offer a concrete protocol and schedule.

Be prepared to discuss:

- 1. Relevant facts.**
- 2. Document preservation issues.**
- 3. Relevant media and technology involved in data collection.**
- 4. Search terms and search methodology.**
- 5. Format of data production.**
- 6. Privilege.**
- 7. Disclosure procedures / costs.**
- 8. Scheduling and discovery limitation.**

1. Relevant Facts

- Who are the key players?
- What are the issues?
- What events are relevant?
- What are the relevant time frames?

2. Preservation Issues

- Who are the persons most knowledgeable about ESI systems?
- What events and time frames are relevant?
- What data are at greatest risk of alteration or destruction?
- Are any electronic systems slated for replacement or disposal?
- What steps have been or will be taken to preserve ESI?
- What third parties hold information that must be preserved?
 - How will they be notified?
 - How will compliance be ensured?
- What data, if any, require forensically sound preservation?
- Are there unique chain of custody needs to be met?
- What metadata are relevant, and how will it be preserved, extracted and produced?
- Are there data retention policies and practices in place?
- What are the backup practices? What tape archives exist?
- Are there legacy systems to be addressed?
- How will the parties handle portable devices, social networking content, cloud storage, voicemail, instant messaging and other challenging ESI?
- Is there a preservation duty going forward and, if so, how will it be met?
- Is a protective order needed?

3. Media and Technology

- What e-mail applications are used currently?
- What e-mail applications were used in the relevant past?
- Are personal e-mail accounts and computer systems involved?
- What principal applications are used in the business?
- What principal applications were used in the business in the relevant past?
- What electronic formats are common, and in what anticipated volumes?
- Is there a document or messaging archival system?
- What relevant databases, if any, exist?

4. Search Terms and Methodology

- If keyword searching is contemplated, can the parties agree on keywords?
 - What are the key search terms for both sides, based on the facts as known?
- Can supplementary keyword searches be pursued?
- Should a follow up meeting be scheduled specifically on search terms and search methodology?

5. Production Formats

- Will paper documents need be scanned and OCR'ed, or produced in hard copy?
- How will data de-duplication be handled?
- What forms of production are offered or sought?
- Will single or multipage TIFFs, PDFs or other image formats be produced?
- Will load files accompany document images and, if so, how will they be structured and populated?
- Will bates numbering be used?
- Will there be a need for native file production?
- On what media will ESI be delivered?

6. Privilege

- What procedure should be used in case of inadvertent disclosure of privileged documents?
- Will a non-waiver agreement be used?
- Will the scope of the privilege log be narrowed (e.g., no entries for communications between client and litigation counsel after date of filing of Complaint; work product exclusion)?

7. Disclosure Procedures and Costs

- How much time is required to identify, collect, process, review, redact and produce ESI?

- How will the parties handle inadvertent production of privileged ESI?
- How will the parties protect trade secrets and other confidential information in the ESI?
- Do regulatory prohibitions on disclosure, foreign privacy laws or export restrictions apply?
- How can production be structured to accommodate depositions and deadlines?
- How will the parties handle the authentication of native ESI used in a deposition or at trial?
- What ESI, if any, will be claimed as being unreasonably accessible, and on what basis?
- Will a person be appointed to serve as liaison or coordinator for each side on ESI issues?
- Will technical assistants be permitted to communicate directly with each other?
- Is there a need for an e-discovery special master or neutral?
- Can any costs be shared or shifted by agreement?
- Can cost savings be realized using shared vendors, repositories or neutral experts?
- When is the next conference under Rule 26(f) of the NCRCP (if more than one conference is necessary)?

8. Scheduling and limits on discovery

Be prepared to offer options and negotiate the following:

- Date for completion of discovery.
- Date for completion of fact and expert depositions.
- Date for designation of experts.
- Limit on number of interrogatories, depositions or other discovery device.
- Limit on time for single deposition.
- Date for dispositive motions.
- Date for trial.

___.3

Sample Consent Case Management and Discovery Scheduling Order

_____. Discovery requests and deposition notices shall be served in a timely manner such that responses are due no later than this date. A party may serve Requests for Admission regarding the authenticity of documentary evidence at any time, provided that the responses are due no later than one week before the scheduled trial date.

2. The scope of discovery in this case shall be consistent with the North Carolina Rules of Civil Procedure.

3. The parties shall be free to use any discovery method authorized by the North Carolina Rules of Civil Procedure. Each side shall take no more than 5 depositions, excluding expert depositions. A deposition conducted pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure shall constitute one (1) deposition, regardless of how many representatives are designated to testify pursuant that Rule.

4. With respect to electronically stored information (“ESI”), the parties agree to Joint Stipulated Protocol for Discovery of Electronically Stored Information attached hereto as **Exhibit A**.

5. On or before _____, the plaintiff shall designate all expert witnesses who may be called to testify at trial and shall make said witnesses available to the defendant for the taking of discovery depositions as soon as reasonably possible thereafter, but in any event, no later than _____.

6. On or before _____ (or 30 days after the date of discovery deposition of the last of plaintiff’s expert witnesses, whichever is later), the defendant shall designate all expert witnesses who may be called to testify at trial, and shall make said witnesses available to the plaintiff for the taking of discovery depositions as soon as reasonably possible thereafter, but

in any event, no later than _____ (or 60 days after the date of the designation of the defendants' expert witnesses, whichever is later).

7. As used in this Order, the term "designate," when used in the context of expert witnesses, shall mean the furnishing of the following information about each such expert.

- (a) Name and address;
- (b) Training and qualifications in field of expertise (or current curriculum vitae);
- (c) Subject matter upon which the expert is expected to testify;
- (d) A summary of the facts and opinions to which the expert is expected to testify; and
- (e) A summary of the grounds for each opinion to which the expert is expected to testify.

8. Any party may apply to the Court for permission to designate rebuttal or surrebuttal expert witnesses, based on any new theories of liability causation or damages raised after that party's initial designation. The parties may also agree to the designation of rebuttal or surrebuttal expert witnesses by consent.

9. Any expert witness not designated in conformity with this Order shall not be permitted to testify at the trial of this action.

10. No discovery deposition of a party's own expert witness may be used at trial in lieu of the personal appearance of that expert witness, unless all parties consent.

11. No *de bene esse* trial deposition may be taken unless the opposing party has had the opportunity to conduct a discovery deposition at least two (2) weeks prior to the date established for the taking of the *de bene esse* trial deposition.

12. No *de bene esse* deposition shall be taken in that two-week period immediately prior to the date set for trial to commence unless by court order or agreement of the parties.

13. The party noticing an expert witness's deposition may choose to take the deposition by telephone or by video-teleconferencing; however, nothing shall impair the right of any party to attend in person the deposition of any expert witness being taken by telephone or video-conference. At the request of any party, the deposition of any expert who resides outside of the county where this action is pending may be taken by telephone or video-conference deposition, and in the event of such a request, the party offering the expert will use every reasonable effort to make the expert available for a telephone or video-conference deposition. Any party desiring to be present at the witness's location to examine the witness in person, rather than by telephone or video-conference, may be permitted to do so. Unless otherwise agreed, the telephone or video-conference location shall be within fifty (50) miles of the witness's residence or place of work (whichever is closer). A stenographic record shall be made. If the noticing party so desires, a deposition may also be videotaped. Reasonable charges relating to the use of the telephone and/or video-teleconferencing equipment shall be borne equally by the parties appearing by telephone or video-conference. The party requesting a video conferencing deposition shall pay the travel costs and fees for travel time charged by deponent as a result of travel to and from the site of the videoconferencing deposition. Disputes relating to the cost of video-conference depositions shall be resolved by motion practice.

14. All parties are hereby ordered to pay the reasonable fees of any opposing party's expert witness for time actually spent in a discovery deposition. Each party shall bear his or her own costs for any other fees and expenses associated with the taking of the depositions of expert witnesses. In the event of any dispute or disagreement concerning reasonable hourly rates for an expert's deposition, the deposition shall be taken and thereafter, upon motion, the Court shall

establish a reasonable hourly rate for the expert's time in giving his or her deposition testimony.

No party shall be required to pay the other's expert in advance of a deposition.

II. Motions

The setting of the _____ deadline for completion of discovery shall not limit any party from filing summary judgment motions as to merits at any time during such period. The parties shall have until _____ to file post-discovery dispositive motions.

The parties have selected a mediator. Mediation shall be completed by _____.

III. Trial

This case may be set for trial after _____, **but no earlier than 45 days after the Court decides properly-filed dispositive motions.** The trial will be a jury trial. The estimated length of the trial is _____ days.

The parties agree to hold and conduct any hearing where it is convenient for the Court.

SO ORDERED, this the _____ day of _____, _____.

Judge _____

APPROVED AND AGREED TO BY COUNSEL

By: _____

N.C. State Bar No.
_____.com

Address
Telephone:
Facsimile:
Attorneys for Plaintiff

By: _____

N.C. State Bar No.
_____.com

Address
Telephone:
Facsimile:
Attorneys for Defendants

___.4

Sample Protocol for Discovery of Electronically Stored Information

[COURT]

PLAINTIFF,

Plaintiff,

v.

DEFENDANT,

Defendant.

PROTOCOL FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION

A. Purpose

This Order will govern discovery and production of electronically stored information (“ESI”) in this case as a supplement to the North Carolina Rules of Civil Procedure, this Court’s Local Rules, and any other applicable orders and rules.

B. Cooperation

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout this action.

C. Liaison

1. **Appointment of E-Discovery Liaisons:** The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the

liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

2. **Plaintiff:** Plaintiff appoints _____ as its e-discovery liaison.
3. **Defendant:** Defendant appoints _____ as its e-discovery liaison.

D. Preservation

1. **Preservation in General:** The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate.
2. **Data Sources That Are Not Reasonably Accessible:** These data sources are not reasonably accessible because of undue burden or cost pursuant to N.C. R. Civ. P. 26(b)(2)(B) and ESI from these sources will not be preserved, searched, reviewed, or produced, unless otherwise ordered by the Court upon a motion of a party:
 - a. backup systems and/or tapes used for disaster recovery;
 - b. systems no longer in use that cannot reasonably be accessed;
 - c. voicemail messages;
 - d. information from handsets, mobile devices, personal digital assistants, and tablets that is duplicative of information that resides in a reasonably accessible data source;
 - e. deleted, slack, fragmented, or other data only accessible by forensics;
 - f. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
 - g. dynamic fields of databases or log files that are not retained in the usual course of business; and
 - h. information created or copied during the routine, good-faith performance of processes for the deployment, maintenance, retirement, and disposition of computer equipment.

E. Search

1. **Meet and Confer regarding Search Methods:** The parties agree that they will meet and confer about methods to search ESI to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.
2. **Filtering of Non-User Created Files:** A party may use multiple commercially reasonable means to exclude common system files and application executable files from its production and include files that contain user-created information in its production.
3. **Deduplication:** Neither party is required to produce more than a single copy of a responsive document. Each party may de-duplicate responsive ESI (based on MD5 hash values at the document level) across Custodians. For emails with attachments, the hash value is generated based on the parent/child document grouping. To the extent that de-duplication through MD5 hash values is not possible, the parties may meet and confer to discuss any other proposed method of de-duplication.

F. Privilege: Clawback and Nonwaiver

No party intends to produce document(s) or information that are protected by the attorney-client privilege or the work product doctrine. In the event that such document(s) or information are produced, the producing party may request their return from the receiving party, which will immediately cease to use such documents and will within five (5) days return or destroy all copies of such document(s) and any materials paraphrasing, summarizing, referencing or otherwise using such document(s). Any such inadvertent production of document(s) or information protected by the attorney-client privilege or the work product doctrine shall not constitute a waiver of attorney-client privilege or work product protection.

G. Production Formats

The parties agree to produce documents in a format described in Appendix 1 to this Protocol. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

H. Modification

This Protocol may be modified by written agreement of the parties.

IT IS SO STIPULATED, through Counsel of Record.

* * * *

Dated: _____

Respectfully submitted,

/s/ *DRAFT*
Attorneys for Plaintiff

/s/ *DRAFT*
Attorneys for Defendant

APPENDIX 1: PRODUCTION FORMAT AND METADATA

A. Production Format

1. **TIFFs.** Documents that exist only in hard copy format must be scanned and produced as TIFFs. Documents that exist as electronically stored information (“ESI”) must be converted to and produced as TIFFs, except for audio, video, and multi-media files and spreadsheets and databases, which must be produced as described below. Unless excepted below, single page TIFFs should be provided for all documents. Each TIFF image must be named according to a unique corresponding Bates number associated with the document. Each TIFF image must be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). Where the TIFF image is unreadable or has materially degraded the quality of the original, the producing party must provide a higher quality TIFF image or the native or original file.
2. **Native files.** Spreadsheets (e.g. MS Excel) will be produced in native format with redactions, if any, clearly marked. To the extent that they are produced in this action, audio, video, and multi-media files will be produced in native format. For each native file produced, a Bates numbered TIFF placeholder indicating that the document was provided only in native format must accompany the native file. The parties will make reasonable efforts to ensure that any native files that are produced only as TIFF images are formatted so as to be readable and so as to not degrade the image quality of the original.
3. **Text Files.** A text file must be provided as a single text file for each document, and the filename itself should match its respective TIFF filename. A commercially acceptable technology for optical character recognition “OCR” must be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not

contain the redacted portions of the documents and OCR text files will be substituted instead of extracted text files for redacted documents.

4. **General Quality Control of Load Files.** Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production's data load file should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production's image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file.
5. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential within a given document and across the production sets. Image file names and Bates numbers must meet the following requirements: (i) have a consistent format within and between productions, including a consistent number of characters; (ii) have the same number of numerals to prevent issues with image display and use leading zeros where necessary to achieve this; (iii) not use a space or special characters to separate the prefix from numbers; and (iv) be sequential within a given document.
6. **Presentations.** The parties must process presentations (e.g. MS PowerPoint) with hidden slides and speaker's notes unhidden, and show both the slide and the speaker's notes on the TIFF image.
7. **Redaction of Information.** If documents are produced containing redacted information, an electronic copy of the original, unredacted data must be securely preserved in such a manner so as to preserve without modification, alteration, or addition the content of such data including any metadata therewith.
8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with the Protective Order in this matter and include the appropriate confidentiality

designation in the CONFIDENTIALITY field of the appropriate load file. Each responsive document produced in native format will have its confidentiality designation identified in the filename of the native file and include the appropriate confidentiality designation in the CONFIDENTIALITY field of the appropriate load file.

9. **Production Media.** Documents must be produced on external hard drives, readily accessible computer(s), or other electronic media (“Production Media”). Each piece of Production Media must identify a production number corresponding to the production volume (e.g., “VOL001”, “VOL002”), as well as the volume of the material in that production (e.g. “-001”, “-002”). Each piece of Production Media must also identify: (1) the producing party’s name; (2) the production date; and (3) the Bates Number range of the materials contained on the Production Media. Where possible, Production Media will be USB drives (external or flash drives).

B. Metadata Fields and Metadata File

1. Each of the metadata and coding fields set forth below that can be extracted must be produced for that document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: (a) BEGDOC, (b) ENDDOC, (c) BEGATTACH, (d) ENDATTACH, (e) CONFIDENTIALITY, (k) CUSTODIAN, (l) DEDUPED_CUSTODIAN, (m) NATIVEFILE, (n) NATIVEFILEPATH, (o) TEXTFILEPATH, and (p) PAGECOUNT, which should be populated by the party or the party’s vendor.
2. The parties will make reasonable efforts to ensure that metadata fields automatically extracted from the documents are correct.
3. Each party will provide the following metadata fields, where available:

Field Name	Field Description
BEGDOC	Beginning Bates number as stamped on the production image
ENDDOC	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CONFIDENTIALITY	Confidentiality designation assigned to document
CUSTODIAN	Individual from whom the documents originated
DEDUPED_CUSTODIAN	Individual(s) whose documents de-duplicated out; only relevant for global de-duplication.
FILENAME	Filename of an electronic document (Edoc only)
DOCTYPE	Type of document
NATIVEFILE	“Yes” for Edoc produced in its native file format
LANGUAGE	Primary language of document
DOCEXT	File extension associated with document (if any)
FILESIZE	File size, in bytes
FULLPATH	The directory structure of the original file(s).
TITLE	Any value populated in the Title field of the document properties (Edoc only)
AUTHOR	Any value populated in the Author field of the document properties (Edoc only)
SUBJECT	Any value populated in the Subject field of the document properties (Edoc only)
DOCDATE	Date the document was created (format: MM/DD/YYYY) (Edoc only)
DATEMODIFIED	Date when document was last modified according to file system information (Edoc only)
HASHVALUE	MD5 hash value of document
PARENTID	BEGBATES of parent document (Edoc attachments only)

Field Name	Field Description
HASATTACH	“Yes” for parent Edocs
ATTACHCOUNT	Number of attachments to parent document (Edoc parents only)
FROM	The name and email address of the sender of the email
TO	All recipients that were included on the “To” line of the email
CC	All recipients that were included on the “CC” line of the email
BCC	All recipients that were included on the “BCC” line of the email
EMAILSUBJECT	Subject of email
DATRECEIVED	Date email was received (format: MM/DD/YYYY)
TIMERECEIVED	Time email was received
DATESENT	Date email was sent (format: MM/DD/YYYY)
TIMESENT	Time email was sent
NATIVEFILEPATH	Native File Link (Native Files only)
TEXTFILEPATH	Path to extracted text/OCR file for document
PAGECOUNT	Number of TIFF pages in document

___..5 Provision for the Non-Waiver of Attorney-Client Privilege and Work Product
Protection

Privilege: Clawback and Nonwaiver

No party intends to produce document(s) or information that are protected by the attorney-client privilege or the work product doctrine. In the event that such document(s) or information are produced, the producing party may request their return from the receiving party, which will immediately cease to use such documents and will within five (5) days return or destroy all copies of such document(s) and any materials paraphrasing, summarizing, referencing or otherwise using such document(s). Any such inadvertent production of document(s) or information protected by the attorney-client privilege or the work product doctrine shall not constitute a waiver of attorney-client privilege or work product protection.