ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Rules 1, 8, 9, 11-c, 11-e, 11-g, and Appendices of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), effective April 11, 2022, to read as follows (new material underlined, deletions in strikethrough):

Rule 1. Appearance by Counsel with Knowledge and Authority.

* * *

(b) Consistent with the requirements of Rule 11-c~~Rule 8(b)~~, 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.

* * *

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.

~~(b) Prior to the preliminary conference, counsel shall confer with regard to anticipated electronic discovery issues. Such issues shall be addressed with the court at the preliminary conference and shall include but not be limited to (i) identification of potentially relevant types or categories of electronically stored information ("ESI") and the relevant time frame; (ii) disclosure of the applications and manner in which the ESI is maintained; (iii) identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible; (iv) implementation of a preservation plan for potentially relevant ESI; (v) identification of the individual(s) responsible for preservation of ESI; (vi) the scope, extent, order, and form of production; (vii) identification, redaction, labeling, and logging of privileged or confidential ESI; (viii) claw-back or other provisions for privileged or protected ESI; (ix) the scope or method for searching and reviewing ESI; (x) the anticipated cost and burden of data recovery and proposed initial allocation of such costs; and (xi) designation of experts; and (xii) the need to vary the presumptive number or duration of depositions set forth in Rule 11-d.~~

* * *

Rule 9. Accelerated Adjudication Actions.

* * *

(d) In any accelerated action, ~~electronic discovery shall proceed as follows unless the parties agree otherwise:~~

~~(i) the production of electronic documents shall normally be made in a searchable format that is usable by the party receiving the e-documents;~~

~~(ii)~~ the description of custodians ~~from whom electronic documents may be collected~~ 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.~~; and~~ In other respects, electronic discovery shall proceed as set forth in Rule 11-c.

~~(iii) where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the court will either deny such 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.~~

* * *

Rule 11-c. Discovery of Electronically Stored Information ~~from Nonparties~~.

(a) Parties and nonparties should ~~adhere to~~consult the Commercial Division's Guidelines for Discovery of Electronically Stored Information ("ESI") (the "ESI Guidelines") ~~from nonparties~~, 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 non-party's production of ESI, in accordance with CPLR 3111 and 3122(d).

(f) The parties are encouraged to use efficient means to identify ESI for production, which may include 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 product 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 CPLR 3126, a party should take reasonable steps to preserve ESI that it has a duty to preserve.

* * *

Rule 11-e. Responses and Objections to Document Requests

* * *

~~(f) The parties are encouraged to use the most efficient means to review documents, including electronically stored information ("ESI"), that is consistent with the parties' disclosure obligations under Article 31 of the CPLR and proportional to the needs of the case. Such means may include technology-assisted review, including predictive coding, in appropriate cases. The parties are encouraged to confer, at the outset of discovery and as needed throughout the discovery period, about technology-assisted review mechanisms they intend to use in document review and production.~~

* * *

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:

* * *

(c) In the event the parties wish to incorporate a privilege claw-back provision into either (i) the confidentiality order to be utilized in their commercial case, or (ii) another form of order utilized by the Justice presiding over the matter, they shall utilize the text set forth in Appendix B, Paragraph 18 ~~Appendix E~~ to these Rules of the Commercial Division. In the event the parties wish to deviate from the language in Appendix B, Paragraph 18 ~~Appendix E~~, 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.

* * *

Appendix A of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division) is to be replaced by revised Appendix A (Exhibit A).

Appendix B (model confidentiality order) of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division) is to be replaced by revised Appendix B (Exhibit B).

* * *

APPENDIX E.
(reserved)

~~COMMERCIAL DIVISION PRIVILEGE CLAWBACK PROVISION (Rule 11-g[c])~~

~~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.~~

Chief Administrative Judge of the Courts

Date: March 7, 2022

AO/72/22

EXHIBIT A

APPENDIX A
Commercial 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 ESI 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 11-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.

EXHIBIT B

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

_____, Plaintiff, - against – _____, Defendant.	Index No. _____ **STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION**

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 deposition, 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 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.

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 Stipulation 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 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*

Dated: _____

SO ORDERED

_____

J.S.C.

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

---------- x

_____, :

Plaintiff, :

- against – :

_____, :

Defendant. :

---------- x

Index No. _____

AGREEMENT WITH RESPECT TO CONFIDENTIAL MATERIAL

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 the jurisdiction of this court for the purpose of enforcement of the Stipulation in this action.

Dated: _____ _____