SUMMARY JURY TRIAL PART:
SUFFOLK COUNTY RULES AND PROCEDURE

A. Nature of the Binding Summary Jury Trial: A summary jury trial is generally a one-day jury trial with relaxed rules of evidence similar to arbitration except that a jury decides factual issues and renders a verdict as a jury would in a traditional trial. The parties may agree on the mode and method of presentation. However, if practical and damages are agreed upon by the parties, the trial will determine liability only. Otherwise, trials will be bifurcated with damages immediately following the liability portion of the trial, in the course of one day. In the absence of agreement of counsel and approved by the trial court, the process and rules that follow shall apply.

1. **Consent of Parties:** The signatories to the Transfer Agreement represent that they have the authority of their respective clients and/or insurance carriers to enter into the agreement and such agreement shall be irrevocably binding upon the respective principals.

2. **Stipulation:** If the parties agree to a summary jury trial, a written stipulation shall be signed by the attorneys reciting any high/low parameters, agreeing to waive any rights to appeal, agreeing to withdraw any pending motions and agreeing not to file any written motions subsequent to the execution of the written stipulation. The high and low parameters of summary jury trial, if any, shall not be disclosed to the jury.

3. **No Right to Appeal:** The parties agree to waive costs and disbursements and further agree to waive the right to appeal from the determination of this matter.

4. **No Motion Practice:** The parties shall execute a written stipulation agreeing to withdraw any pending motions filed in the case and agreeing not to file any written motions subsequent to the execution of the written stipulation.

5. **Scheduling:** Summary jury trials will be placed on the calendar for trial at the earliest possible date available in the Summary Jury Trial Part, hereinafter referred to as the SJT Part. Once said date is assigned it shall be considered a date certain. Adjournments require permission of the SJT Part Justice.

6. **Pre-trial submissions:**

a) Any party intending to offer documentary evidence upon trial, including but not limited to accident reports, medical records and lost income records, shall serve copies of such documentary evidence upon all parties not less than 30 days before trial, except that it shall not be necessary to serve any previously exchanged Examination before Trial Transcripts.

b) No later than 10 days before trial the SJT Justice assigned to the case shall conduct an evidentiary hearing at which time objections to any documentary evidence previously submitted

as provided for herein shall be determined and witness lists shall be exchanged. If there is no objection at said time, counsel shall so stipulate in writing. The SJT Justice may issue an order of preclusion if either side fails to serve documentary evidence as is required herein.

c) Reference to PJI sections shall be sufficient on requests to charge. Requests to Charge shall be submitted at the evidentiary hearing, together with proposed verdict sheets.

7. **Record:** A summary jury trial will be recorded by a court reporter.

8. **Existing Offer and Demand:** The parties may stipulate that the pre-trial offer and demand remain unaltered through the binding summary jury trial. Either party may elect to accept the last settlement proposal of the opponent at any time before the verdict is announced by the jury.

9. **Jury Selection:** By counsel with strict time limits of the Court and counsel. If the Court or Court Attorney - Referee conducts the voir dire each side shall nonetheless have 10 minutes each to also voir dire the jury. Summary juries shall consist of no less than six jurors and one alternate unless the parties stipulate to fewer jurors. The Court shall allow each side two peremptory challenges.

10. **Time Limits:** Each side shall be entitled to a ten minute opening and closing and one hour for presentation of their case. The Court may allot more time to a party to insure full exploration of the issues provided counsel presents a compelling reason to support the request for additional time. Unless the SJT Justice directs otherwise, the court clerk should keep track of the time and remind counsel of the status of allotted time at appropriate intervals.

11. **Rules of Evidence:**

a) The parties may offer such evidence as is relevant and material to the dispute. Conformity to legal rules of evidence shall not be necessary, subject to the provisions relating to documentary evidence set forth below.

b) Examination before Trial testimony of a party may be offered by any opposing party, however a party shall not be permitted to offer his/her own Examination before Trial testimony except as provided by the CPLR. This section shall apply to video depositions as well.

c) Past and future lost income may be proved by the submission of documentary evidence from the plaintiffs' employer, including but not limited to pay stubs, tax returns, W-2 and/or 1099 forms provided that such amounts may be calculated with a reasonable degree of mathematical certainty based solely upon present income and life expectancy. Any claim of future lost earnings premised upon inflation, lost opportunity, promotion, career advancement or similar theory shall only be proved by expert testimony or the report of an expert previously exchanged pursuant to these rules.

d) In the event a party wishes to offer the testimony of a non-party witness, such testimony can only be offered through the use of the non-party deposition testimony of such

witness taken pursuant to the notice requirements of the CPLR or by producing that witness at trial.

e) None of the foregoing shall be construed to prevent a party from calling witnesses upon trial; live video testimony shall be permitted, however, in the event a party intends to call an expert witness, medical or otherwise, that party must provide written notice to all parties of such witness, along with a copy of that medical expert's narrative report(s), not less than 20 days before trial, in the event of a non-medical expert counsel shall comply with the standard provisions of the CPLR concerning non-medical experts. Failure to comply with this provision shall result in the preclusion of such expert witness at the time of trial.

f) The following shall also be admissible, police reports, the MV104 of any party; medical records including but not limited to hospital records, ambulance records; medical records and/or reports from plaintiff's medical providers, defendant doctor reports inclusive of No Fault medical exam reports; diagnostic test results including but not limited to X-rays, MRI, CT scan, and EMG reports, or any other graphic, numerical, symbolic, or pictorial representation of medical or diagnostic procedure or test of plaintiff, any stipulated evidence shall also be admitted.

g) There shall be no requirement that any record referred to in paragraph "c" or "f" be certified, affirmed or sworn to.

h) Pre-trial evidentiary issues normally determined by the trial judge, such as motions in limine and redaction of documentary evidence, shall be determined in conformance with the applicable rules of evidence by the SJT Trial Justice at the evidentiary hearing and in accordance with the rules as provided for in paragraphs 5 and 11 a) through 11 g) herein. Any objections to be raised at said hearing shall be in writing and served on opposing counsel no less than 5 days in advance of said hearing.

i) The SJT Justice shall, where required, issue "So Ordered" subpoenas to secure the attendance of witnesses or the production of documents as may be requested by any party.

12. Case Presentation:

a) Counsel may present summaries of evidence, factual allegations, inferences from discovery. Counsel may use photographs, diagrams, power point presentations, overhead projectors, trial notebooks, all of which can be submitted to the jury, or any other innovative method of presentation. Trial notebooks should be bifurcated in form to allow for presentation of liability and/or damages portion of summary jury trial.

b) Anything which is to be submitted to the jury as part of the presentation of the case must be exchanged with opposing counsel within the conformity of the rules concerning the presentation of case and pre-trial submissions. Counsel shall not refer to or introduce evidence which would not be admissible at trial other than as previously stated. Counsel are encouraged to stipulate to factual and evidentiary matters to the greatest extent possible.

c) No more than two witnesses for each side may be called for direct and cross-examination. On application of a party and upon good cause shown, the court may allow an increase in the number of witnesses. Time spent by counsel on direct and cross examination shall count against their allotted time for presentation of their case unless the court directs otherwise.

d) Counsel by written stipulation, may agree upon the evidence to be submitted.

13. **Jury Verdict:** Upon request by the jury, the Court shall give the jury a written copy of the jury charge for use during deliberations. Five out of six jurors must agree on the verdict. The verdict is to be binding as rendered or limited by a high/low stipulation. The jurors may bring into the jury room any trial notebooks, exhibits, presentations, etc. that may have been presented during the trial.

14. **No Directed Verdicts:** Parties agree to waive any motions for directed verdicts as well as any motions to set aside the verdict or any judgment rendered by said jury, The Court shall not set aside any verdict or any judgment entered thereon, nor shall it direct the judgment be entered in favor of a party entitled to judgment as a matter of law, nor shall it order a new trial as to any issues where the verdict is alleged to be contrary to the weight of the evidence.

15. **Inconsistent Verdicts:** In the case of inconsistent verdicts, the SJT Justice shall question and charge the jury as appropriate to resolve any inconsistency in said verdict.

16. **Infant Plaintiff:** In a summary jury trial involving an infant, the Court must approve any high/low parameters prior to trial.

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