



edited format, at the hearing. The Parties reserve all other objections to the use of any deposition testimony at the hearing.

4. The participants including the deponent, court reporter, counsel for the Parties, and Party representatives will each participate in the videoconference deposition remotely and separately. Each person attending a deposition shall be visible to all other participants, their statements shall be audible to all participants, and they should each strive to ensure their environment is free from noise and distractions.

5. No counsel, witness, or other participant in the deposition shall initiate a private conference or any communications, including but not limited to through text message, electronic mail, or the chat feature in the videoconferencing system, with any deponent while a question is pending or while the deposition is on the record, except for the purpose of determining whether a privilege should be asserted. If a deponent or counsel for the deponent wish to have a private communication regarding privilege, that person will verbally state on the record such a request for a private communication, and by what means, prior to such communication being initiated. Private conferences may only be initiated during breaks in the deposition, except for the purpose of determining whether a privilege should be asserted.

6. During breaks in the deposition, the Parties may conference internally, including with the witness, using means separate from the virtual deposition environment provided by the court reporting service. All such alternative means of communicating shall be turned off or otherwise stopped when the deposition resumes.

7. Remote depositions shall be recorded by stenographic means, but given the COVID-19 pandemic, the court reporter will not be physically present with the witness whose

deposition is being taken. The Parties agree that the court reporter shall be permitted to administer the oath to the witness via the videoconference. The Parties agree not to challenge the validity of any oath administered by the court reporter in any forum, even if the court reporter is not a notary public in the state where the deponent resides.

8. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record. The court reporting service will simultaneously videotape the deposition and preserve the video recording. The court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript.

9. The Parties will provide the court reporting service a copy of this Stipulation and Order within twenty-four hours of its approval and execution by the Panel.

10. At the beginning of each deposition, the court reporting service employee responsible for video-recording the deposition shall begin the deposition with an on-the-record statement that includes: (i) their name and company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent's name; and (v) the identity of all persons present.

11. At the beginning of each segment of the deposition, the court reporting service employee responsible for the video-recording the deposition shall begin that segment of the remote deposition by reciting (i) the officer's name and business address; (ii) the date, time, and place of the deposition; and (iii) the deponent's name.

12. At the start of the deposition, after being put under oath by the stenographer, counsel taking the deposition ("Deposing Counsel") shall instruct the witness and the witness

shall confirm his/her understanding that (a) he or she may not communicate with anyone during the examination other than counsel or the court reporter, (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by Deposing Counsel, and (c) he or she is not to use any other devices during the deposition other than his or her phone for dialing into the audio proceedings for the deposition and his or her computer for connecting to the video proceedings for the deposition. The witness shall confirm that the witness is alone by using his or her camera to scan the room before and after offering his or her testimony. This fact shall be made of record during the proceedings.

13. The Parties agree to work collaboratively and in good faith with the court reporting service to assess such deponent's technological abilities and to troubleshoot any issues at least 48 hours in advance of the deposition so any adjustments can be made. In doing so, each party and witness shall test the software at least 48 hours in advance of the deposition. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition where the deponent cannot hear or understand the other participants or where the participants cannot hear or understand the deponent. If there is a technological issue that prevents the deposition from proceeding, the Parties agree to work collaboratively and in good faith to reschedule the deposition after the technological issues are resolved.

14. Every deponent shall endeavor to have technology sufficient to appear for a videotaped deposition (e.g., a webcam and computer and telephone audio), and bandwidth sufficient to sustain the remote deposition. Counsel for each deponent shall consult with the deponent prior to the deposition to ensure the deponent has the required technology. If not,

counsel for the deponent shall endeavor to supply the required technology to the deponent prior to the deposition. In the case of non-party witnesses (including former employees), counsel representing the witness shall supply any necessary technology that the deponent does not have.

15. The Parties agree that this Stipulation and Order applies to remote depositions of non-parties and shall work in a collaborative manner in attempting to schedule remote depositions of non-parties. The Party taking any non-party deposition shall provide this Stipulation and Order to counsel for any non-party within a reasonable time before the date of the deposition.

16. The Parties agree that the following methods for administering exhibits will be employed during a remote deposition:

a. Deposing Counsel will send, via FedEx or UPS, physical copies of documents that may be used during the deposition (“Potential Deposition Exhibits”) to the witness’ home address as provided by the witness’ Counsel. Deposing Counsel shall provide the witness’ counsel or other parties’ counsel (if different) (collectively, “All Other Counsel”) the appropriate tracking information for the package. The Potential Deposition Exhibits shall be delivered to the witness no later than 12:00 pm ET three (3) business days before the deposition. Counsel for the witness shall confirm that the witness received the package by sending an e-mail to Deposing Counsel. Each Potential Deposition Exhibit shall be sealed in individual envelopes and numbered sequentially (e.g., [Witness Name] 1, [Witness Name] 2, etc.) (the “Exhibit Envelopes”). The witness shall keep the package and the Exhibit Envelopes sealed until the deposition begins and shall only unseal the package on the record, on video, and during the deposition when directed to do so by Deposing Counsel. At the start of the

deposition, after being put under oath by the stenographer, Deposing Counsel shall also ask the witness to confirm that he or she did not open any of the Exhibit Envelopes prior to the start of the deposition. Each Exhibit Envelope shall remain sealed until Deposing Counsel instructs the witness to open an Exhibit Envelope during the deposition on the record and the witness shall open the Exhibit Envelope on video. [NOTE: the 3 day window was agreed to because of witness concerns early in the pandemic about receiving packages and wanting a period of time packages would sit outside before accepting packages into their homes. That period of time could be shortened if witnesses and counsel agree to a shorter window of time]

b. Deposing Counsel shall send a compressed, password protected .zip file of the Potential Deposition Exhibits via electronic mail to All Other Counsel and the court reporter no later than 12:00 pm ET three (3) business days before the deposition. All Other Counsel and the court reporter shall confirm receipt of the .zip file by electronic mail to Deposing Counsel. Deposing Counsel shall provide the .zip file password via electronic email to All Other Counsel and the court reporter no later than thirty (30) minutes prior to the commencement of the deposition. Every recipient of a .zip file, shall not open the .zip file until the deposition begins and when directed to do so by Deposing Counsel, except as detailed below in paragraph 16(c). All Other Counsel shall confirm on the record that he or she did not open the .zip file prior to the deposition. If sending documents by electronic mail, Deposing Counsel will be mindful of the file size limitations, which presumptively should be less than 50 MB.

c. If All Other Counsel want to have a copy of the Potential Deposition Exhibits in the .zip file printed for them for use at the deposition, such counsel shall provide to Deposing Counsel the email address of an assistant or paralegal at his or her firm who will coordinate printing physical copies of the Potential Deposition Exhibits and placing them in

Exhibit Envelopes in the manner described in paragraph 15(a). Such documents and the password to open the .zip file shall be delivered to the designated assistant or paralegal via email no later than 12:00 pm ET three (3) business days before the deposition. Each Exhibit Envelope shall remain sealed until Deposing Counsel instructs the witness to open an Exhibit Envelope during the deposition on the record and the witness opens the Exhibit Envelope on video. All Other Counsel must confirm on the record at the deposition that he or she has not reviewed the electronic or physical copies of the exhibits prior to the deposition.

17. The parties recognize that from time to time there may be a need to introduce and use additional exhibits that were not sent prior to the deposition and witness and counsel. The parties acknowledge the practice outlined in this Stipulation is the agreed upon procedure for the administration of exhibits prior to depositions and will keep the use of any additional exhibits limited. If counsel needs to use an exhibit not sent to counsel and the witness prior to the deposition, he or she will need to email that exhibit to counsel and the counsel during the deposition and prior to marking it and introducing it through the remote deposition web-based platform.

18. In the event All Other Counsel reasonably anticipates conducting a re-direct examination of a witness and use of potential redirect examination exhibits (the "Potential Redirect-examination Exhibits"), All Other Counsel will provide the Potential Redirect-examination Exhibits to Deposing Counsel in the same manner as set forth in paragraph 16 of this Stipulation if the Potential Redirect-examination Exhibits are expected to exceed five (5) documents. To the extent that Potential Redirect-examination Exhibits are expected to be fewer than five (5) documents, the procedure set forth in paragraph 17 of this Stipulation shall govern.

19. All deponents receiving documents before or during a deposition, pursuant to Paragraph 16 above, shall return the documents to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Deposing Counsel shall include a pre-paid return shipping label in any package of documents sent to a deponent and will arrange for a service to retrieve the materials.

20. Counsel for the Parties may keep any document or exhibit used during the deposition consistent with the Stipulated Protective Order entered in this case. Counsel for the Parties shall return any documents not used during the deposition to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. In the alternative, Counsel for the Parties may send an email to counsel who sent the documents representing all documents not used have been deleted and/or destroyed.

21. Deposing Counsel shall provide any counsel for non-party witnesses with a copy of the Parties' Stipulated Protective Order. Counsel for non-party witnesses may keep any document used during the deposition in accordance with the Stipulated Protective Order, and shall return any documents not used during the deposition to the Counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner.

Dated: \_\_\_\_\_

SO ORDERED: