[INSERT CASE CAPTION HERE]

Stipulated Discovery Protocol (No ESI)

**1. PURPOSE**

This Stipulated Discovery Protocol (Protocol) will facilitate documents in this case as a supplement to the Indiana Rules of Trial Procedure, local rules, and any other applicable protocols and rules.

**2. COOPERATION**

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout discovery in the matter consistent with this Protocol. The parties have agreed that this Protocol governs discovery in the case, and intend to be mutually bound thereby.

**3. INITIAL DISCLOSURES**

The information and documents identified in the Initial Disclosures are those most likely to be automatically requested by experienced counsel in a similar case and which will most likely to be useful in narrowing the issues. Unless otherwise indicated by the Court or the parties herein, these Initial Disclosures are not intended to be exhaustive of what should be shared by the parties or to preclude other necessary discovery.

☐ NONE / NOT APPLICABLE

☐ STREAMLINED PATHWAY

Within thirty (30) days of execution of this Protocol, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name, last-known title and dates of employment, if applicable, and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

☐ COMPLEX PATHWAY

Within forty-five (45) days of execution of this Protocol, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name, last-known title and dates of employment, if applicable, and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Trial Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;

(iv) for inspection and copying as under Trial Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment; and

(v) documents that support any irreparable harm being alleged by the Plaintiff or any concerning any damages that Plaintiff is seeking in the Complaint.

**☐ GENERAL PATHWAY**

Within forty-five (45) days of execution of this Protocol, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name, last-known title and dates of employment, if applicable, and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under T.R. 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) documents that support any irreparable harm being alleged by the Plaintiff or any concerning any damages that Plaintiff is seeking in the Complaint.

**☐ OTHER:**

**4. SEARCH AND PRODUCTION LIMITATIONS – PATHWAY SPECIFIC**

**☐ NONE / NOT APPLICABLE**

**☐ STREAMLINED PATHWAY**

**Discovery Limitations**

Unless otherwise agreed to by the parties or Court order, no party shall serve more than: fifteen (15) interrogatories, fifteen (15) requests for production, and fifteen (15) requests for admission (excluding authenticating business records). Sub-parts to interrogatories, requests for productions and requests for admission shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D))). Each party is limited to not more than two (2) depositions (excluding experts and parties or party representatives), with a three-hour (3) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.

**☐ COMPLEX PATHWAY**

**Discovery Limitations**

Unless otherwise agreed to by the parties or Court order, no party shall serve more than: forty (40) interrogatories, forty (40) requests for production, and forty (40) requests for admission (excluding authenticating business records). Sub-parts to interrogatories, requests for productions and requests for admission shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D))). Each party is limited to not more than ten (10) depositions (excluding experts and parties or party representatives), with a seven-hour (7) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.

**☐ GENERAL PATHWAY**

**Discovery Limitations**

Unless otherwise agreed to by the parties or Court order, no party shall serve more than: twenty-five (25) interrogatories, twenty-five (25) requests for production, and twenty-five (25) requests for admission (excluding authenticating business records). Sub-parts to interrogatories, requests for productions and requests for admission shall not be counted as part of the number served, provided that the subparts are related to the same topic (i.e., multiple questions within one question, such as 1(A)-(D))). Each party is limited to not more than five (5) depositions (excluding experts), with a three-hour (3) limit for each deposition (unless the deposition is of an expert, a party, or a party representative), unless otherwise agreed to by the parties or Court order.

**☐ OTHER:**

**5. SEARCH AND PRODUCTION LIMITATIONS – ALL PATHWAYS**

**Scope and Proportionality**

Unless otherwise limited by Court order, the scope of discovery is as follows: Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter and is proportional to the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, the importance of the proposed discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**Relevant Time Period**

Generally, the relevant time period for all discovery is a period of six (6) years prior to the date of the adverse event/ action that forms the basis of the claim/counterclaim or defense, unless a different time is set by agreement of the parties or Court order.

**Objections**

If a party objects to a discovery request, either in whole or in part, the objecting party must concisely state in detail the basis for the objection. If a party provides a partial or incomplete answer or response to a discovery request, the responding party must state specifically the reason that the answer or response is partial or incomplete. Any general objections (e.g., an objection that does not specifically state the grounds on which it was based or an objection that applies globally, not to specific requests) will be stricken and have no effect.

**Mobile Devices**

If any responsive electronic data (e.g., call logs, email, calendars, contact data, notes, etc.) sent to or from mobile devices uniquely resides on the mobile device (i.e., is not routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage)), the parties will meet and confer, including assessing burden and cost, and, if applicable, production format.

**Color**

Generally speaking, documents can be produced in black and white. However, if an original document contains color and is incomprehensible without color, the party producing the document should, upon request, produce the document in color to assist the party requesting the document in understanding the document. The parties expect that there will be few instances in which such requests will be necessary and such requests should not unreasonably be denied by the Producing party. Production of color images will be in JPEG format.

**6.** **SPECIFIC PRODUCTION FORMAT**

**Unitization**

In scanning hardcopy documents, multiple distinct documents should not be merged into a single record, and single documents should not be split into multiple records (*i.e.*, hard copy documents should be logically or physically unitized).

In the case of an organized compilation of separate hardcopy documents—for example, a binder containing several separate documents behind numbered tabs—the document behind each tab should be scanned separately, but the relationship among the documents in the binder should be reflected in proper coding of the family fields set out below.

**Production Format**

When the parties produce hard copy (paper) documents, the paper will be scanned and produced electronically as single page TIFF images, 300 DPI, named the same as their Bates number (Acrobat PDF scans will comply with this requirement). To the extent an image is illegible or difficult to read, the Requesting Party may ask to for the document to be rescanned; if rescanning does not resolve the issue, the Requesting Party may ask to see the original document, in which case the original shall promptly be made available by the producing party. Each TIFF should be endorsed with a unique document identifier (i.e., Bates Label). The scanning of original hardcopy documents does not otherwise require that the scanned images be treated as ESI.

**OCR**

For scanned images of hard copy documents, OCR should be performed on a document level and provided in document-level \*.txt files named to match the production number of the first page of the document to which the OCR text corresponds. OCR text should not be delivered in the data load file or any other delimited text file.

**☐ OTHER:**

**7. CONFIDENTIALITY**

**Requests to Seal Information**

Requests to seal information from public access must conform with Access to Court Records Rule 6.

**Protective Order**

Before seeking a protective order from the Court, the parties must confer in good faith in an effort to agree to a stipulated protective order regarding the disclosure and exchange of any discovery documents. The Court will not consider any protective order unless:

* the parties verify to the court that they have face-to-face or telephonically conferred regarding the need for and form of the protective order, or
* the party seeking the protective order can demonstrate that its meaningful and continued efforts to confer face-to-face or telephonically were unsuccessful, and time is of the essence in considering the need for a protective order. A single exchange of an email or letter alone is insufficient.

**8. BATES LABELING AND BRANDING**

**Bates Labelling**

For each Custodial Document, produced as TIFF images, the Producing party should electronically endorse a legible, unique Bates number onto each page at a location that does not obliterate, conceal or interfere with any information from the source document. For documents produced in native format, the Bates number shall be included in the file name of the produced document. Each Producing party should use unique Bates Labels to identify its images and documents. A Bates Label should begin with at least three alphabetical characters and followed by at least seven numbers (e.g., ABC0000001 or ACME00000023 or JUPITER0000004).

**Confidentiality Branding**

Confidentiality branding should be applied consistent with the Protective Order. If the Protective Order does not address such branding, then confidentiality branding shall be done by agreement of the parties. As an example, for a Confidential document, the documents shall be branded with “Confidential” in the bottom left corner of each page of the Confidential document.

**9. REDACTIONS**

**Available Redactions**

The parties agree to the use of the following redactions: privacy, privilege, unrelated to subject matter, confidentiality, and any other per agreement of the parties.

**Redaction Format**

The redaction shall be clearly indicated on the face of the document, with each redacted portion of the document stating that it has been redacted and the basis for the redaction, and a metadata field shall indicate that the document contains redactions and the basis for the redaction (e.g., “A/C Privilege”). Where a responsive and non-privileged document contains both redacted and non-redacted content, the parties shall produce the remainder of the non-redacted portions of the document and the text/OCR corresponding to the non-redacted portions.

**10. FOREIGN LANGUAGE**

If foreign language documents are responsive and not privileged, the parties will produce in the original language or the language collected. Producing Party will not be required to translate documents to English or any other language.

**11. TIMING OF PRODUCTION**

Productions shall be made within forty-five (45) days of receipt of the Request, unless otherwise agreed to by the parties in writing or ordered by the Court. For the Complex Pathway, parties may employ rolling productions starting within forty-five (45) days of receipt of the Request.

**12. PRIVILEGED DOCUMENTS**

**Contents of Privilege Log**

Unless otherwise agreed by the parties or ordered by the Court, the Privilege Log shall contain the following fields:

* CONTROL NUMBER
* FIRST BATES
* LAST BATES
* CUSTODIAN (LAST, FIRST, MIDDLE)
* DUPLICATE CUSTODIANS (LAST, FIRST, MIDDLE)
* AUTHOR / FROM
* RECIPIENT / TO
* CC
* BCC
* DATE SENT / RECEIVED / CREATED
* FILE NAME
* FILE TYPE
* STATUS OF PRIVILEGE DESIGNATION (E.G., ATTORNEY-CLIENT OR WORK PRODUCT) OR BASIS FOR REDACTION
* FULLY PRIVILEGED OR REDACTED
* SUBJECT / PRIVILEGE OR REDACTION CLAIM DESCRIPTION

**Redactions for Privilege**

Where a responsive and non-privileged document contains both redacted and non-redacted content, the parties shall produce the remainder of the non-redacted portions of the document and the text/OCR corresponding to the non-redacted portions. These documents should be added to the Privilege Log.

**Inadvertently Produced Privileged Information**

If, at any time, a party discovers that it produced information that it reasonably believes is subject to protection under the attorney/client, work-product, trial-preparation privileges or any other applicable protection, then it must promptly notify each Receiving Party of the claim for protection, the basis for it, amend its privilege log accordingly, if applicable. All Receiving Parties shall promptly return or destroy (and certify destruction in writing to the Producing Party) all copies of the information. Whenever possible, the producing party must produce substitute information that redacts the information subject to the claimed protection. The parties must also comply with Trial Rule 26(F) before seeking Court intervention to resolve any related dispute.

This production, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

**Privilege Log Exclusions**

A party need only log the topmost e-mail in a thread so long as the description of the subject matter includes enough information sufficient to demonstrate the privilege and as long as all lesser-contained e-mails are also independently privileged. If all lesser-contained e-mails are not independently privileged, the topmost e-mail thread must be redacted rather than withheld.

Documents comprising attorney client communications and/or attorney work product relating solely to the defense of this litigation, and solely between outside counsel or outside counsel and in-house counsel, and dated after the start of the litigation, need not be included on a privilege log.

**13. NON-PARTY PRODUCTIONS**

**Notice**

Any party that requests discovery from a non-party via subpoena or FOIA shall provide notice to all other parties in advance of serving the non-party request, pursuant to Trial Rule 34 (C).

**Production**

Any party that obtains discovery from a non-party via subpoena or FOIA shall produce a copy of the discovery to all other parties within thirty (30) days, unless other deadlines necessitate a need for earlier production. The party in possession of the non-party discovery may produce an exact copy of the non-party’s production to all other parties and is under no obligation to satisfy the production format requirements set forth in this Protocol.

The producing party is encouraged, however, to ask the non-party to comply with this Protocol or at a minimum, Bates number the documents consistent with this Protocol.

**14. EFFECT OF PROTOCOL AND DISPUTES**

**Duration**

This agreement will remain in effect during the pendency of the Case, including any appeals.

**Supplementation**

This Protocol shall not modify the requirement in Trial Rule 26(E) that all Discovery, including Initial Disclosures, for supplementation.

**Resolving Discovery Disputes**

Strict compliance with Trial Rule 26(F) meet and confer requirements in resolving discovery disputes is mandatory. For any discovery disputes, parties agree to either meet in person, virtually, or by phone; email discussion is insufficient to satisfy Trial Rule 26(F). If parties are unable to agree after a meeting in person or by phone, the parties will then ask for a short virtual or telephonic meeting with the judge to try resolve the dispute before filing a written motion. The parties agree that discovery dispute Motions (and any accompanying Memoranda and supporting materials) shall not exceed fifteen (15) double-spaced pages.

The parties’ consent to the use of a special master to resolve discovery disputes in the event that one is necessary.

**No Waiver**

This Agreement shall not constitute a waiver of any objection, including, but not limited to the ultimate discoverability, authenticity, privilege, admissibility, or relevance of any records addressed herein.

**Enforcement**

The Parties agree that this Agreement has the same force as an order of the Court, and that the Court may enforce it accordingly.

**15. MODIFICATION OR AMENDMENT TO PROTOCOL**

This Protocol may be modified by written agreement of the parties or by the Court for good cause shown.

**IT IS SO STIPULATED**, through parties and/or Counsel of Record.

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

Plaintiff(s) / Counsel for Plaintiff(s)

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

Defendant(s) / Counsel for Defendant(s)