

## CAPTION

(Case Name and Case Number)

### ORDER APPOINTING SPECIAL MASTER FOR ESI

1. \_\_\_\_\_ is hereby appointed as Special Master (Wisconsin law, a “Referee” under sec. 805.06) for Electronically Stored Information (“ESI”) pursuant to Rule 53 of the Federal Rules of Civil Procedure. \_\_\_\_\_ has filed the certification required by Rule 53(b)(3).
2. The Special Master shall proceed with all reasonable diligence to assist and, when necessary, direct the parties in completing required identification, preservation, recovery, and discovery of electronically stored information with reasonable dispatch and efficiency.
3. The Special Master shall review with the parties ongoing discovery requests to determine where potentially responsive information is stored and how it can most effectively be identified, accessed, preserved, sampled, searched, reviewed, redacted, and produced. To the extent the parties have disputes as to these matters, the Special Master may initiate or participate in the parties’ efforts to resolve same. The Special Master is authorized to resolve issues as to the scope and necessity of electronic discovery as well as search methods, terms and protocols, methods and forms of preservation, restoration, production and redaction, formatting, and other technical matters.
4. The Special Master is granted the full rights, powers, and duties afforded by F.R.C.P. Rule 53(c) (or sec. 805.06) and may adopt such procedures as are not inconsistent with that Rule or with this or other Orders of the Court. The Special Master may by order impose upon a party any sanction other than contempt and may recommend a contempt sanction against a party and contempt or any other sanction against a non-party.
5. The Special Master shall be empowered to communicate on an *ex parte* basis with a party for purposes of seeking to maintain the confidentiality of privileged, trade secret, or proprietary information or for routine scheduling and other matters which do not concern the merits of the parties’ claims. The Special Master may communicate with the Court *ex parte* on all matters as to which the Special Master has been empowered to act. The Special Master shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other judges performing similar functions.
6. The Special Master shall regularly file a written report, in such format the Special Master deems most helpful, identifying his/her activities and the status of matters within his/her purview. The report should identify outstanding issues with particular reference to matters requiring Court action. The Special Master shall maintain a record of materials and communications that form the basis for such reporting by a suitable means determined at the Special Master’s discretion.

7. Each side is ordered to designate a lead attorney and a lead technical individual as contacts for the Special Master. These designees shall have sufficient authority and knowledge to make commitments and carry them out to allow the Special Master to accomplish his/her duties. The parties are directed to give the Special Master their full cooperation and to promptly provide the Special Master access to any and all facilities, files, documents, media, systems, databases, and personnel (including technical staff and vendors) which the Special Master deems necessary to accomplish his/her duties.
8. Disclosure of privileged or protected information connected with the litigation to the Special Master shall not be a waiver of privilege or a right of protection in this cause and is also not a waiver in any other federal or state proceeding; accordingly, a claim of privilege or protection may not be raised as a basis to resist such disclosure.
9. The Court will decide *de novo* all objections to findings of fact or conclusions of law made by the Special Master. Any report, order, or recommendation of the Special Master, unless it involves a finding of fact or conclusion of law, will be deemed a ruling on a procedural matter. The Court will set aside a ruling on a procedural matter only where it is clearly erroneous or contrary to law.
10. The Special Master's compensation, as well as reasonable and necessary expenses, will be paid by the [Plaintiff] [Defendant] [parties in equal shares]. The Special Master shall be compensated at his/her usual and customary rate of \$\_\_\_\_\_ per hour or on a fixed flat basis of \$\_\_\_\_\_. The Special Master shall submit to both parties invoices for services performed according to the normal billing cycle and the [Plaintiff] [Defendant] [parties in equal shares] shall pay such invoices within thirty (30) days of receipt.
11. In making this appointment, the Court has determined that the matters with the purview of the Special Master necessitate specialized technical knowledge and cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

SO ORDERED AND ADJUDGED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
, Judge