

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

*Plaintiffs/Counter-Defendants,*

v.

VMWARE, INC.,

*Defendant/Counter-Plaintiff.*

C.A. No. 19-742-LPS

**STIPULATION CONCERNING REMOTE DEPOSITIONS**

IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for Plaintiffs/Counter-Defendants Cirba Inc. (d/b/a Densify) and Cirba IP, Inc. (“Cirba”) and Defendant/Counter-Plaintiff VMware, Inc. (“VMware”) (collectively, the “Parties”) that the following protocol shall govern depositions under Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure conducted remotely.

**SCOPE**

1. The procedures and provisions outlined in this Protocol govern any deposition, whether party or non-party, in the above-referenced action that will be conducted remotely by agreement of the Parties.
2. The terms “remote” and “remotely” refer to a deposition in which the deposition participants are not in the same physical location as all other deposition participants, requiring the use of telephone and/or video conferencing technology.

3. All deposition participants must be individuals to whom the disclosure of Confidential, Highly Confidential – Attorneys’ Eyes Only, or Highly Confidential – Source Code information is permitted under the Protective Order in this action (D.I. 111).

4. This Protocol should be shared with and reviewed by anyone who attends any remote deposition, whether live or by videoconference, including but not limited to all attending attorneys, witnesses, support staff, and/or vendor representatives.

### **REMOTE DEPOSITIONS PROCEDURES**

5. VMware will retain TSG Reporting (“Vendor”) for court reporting, videoconference, and remote deposition services. Cirba will retain Digital Evidence Group (“Vendor”) for court reporting, videoconference, and remote depositions services. An alternate provider of technology and/or court reporting services may be used on agreement of the Parties.

6. The Parties agree that a Vendor employee may attend the remote deposition to video record the deposition, troubleshoot any technological issues that may arise, and administer any virtual breakout rooms.

7. The remote deposition will be held on Zoom, which will be hosted by Vendor (the “Zoom Meeting”). Only Vendor personnel shall have hosting and co-hosting privileges. The Parties will instruct Vendor to register the deposition participants for the Zoom Meeting in advance of the deposition, based upon a list of deposition participants to be provided by the Parties. Only registered deposition participants will be permitted to enter the Zoom meeting for the remote deposition, which will require a password. No access to the deposition should be made available to individuals who are not deposition participants.

8. The only recording of the deposition, whether audio or visual, will be through Vendor, and the Parties agree not to use the Zoom “record” function or any other means to record the deposition. The Parties also agree that the video-recorded remote deposition and the

deposition transcript may be used in the litigation in Delaware as if this deposition was taken in-person in the United States, even if the deponent is physically located outside the United States. The Parties further stipulate not to object to the use of the video recording on the basis that the deposition was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at trial.

9. Deposition participants will be permitted to use Zoom's virtual background feature, at their option, provided that the virtual background is neutral and does not interfere with Vendor's videotaping of the deposition or the Vendor's ability to insure a stable and adequate internet connection for the Zoom Meeting to all deposition participants.

10. The deponent, court reporter, and counsel for the Parties will each participate in the videoconference deposition remotely and separately; however, one attorney representing the witness may, at the witness's discretion and to the extent permissible under applicable public health orders and restrictions, be physically present with the witness. Each person attending the 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.

11. Consistent with Local Rule 30.6, no counsel shall initiate a private conference, including through text message, electronic mail, or the chat feature in the videoconferencing system, with any deponent during any live testimony on the record. Such prohibition shall not affect the right of the deponent and his/her lawyer(s) to communicate in private off the record to the extent otherwise permitted under the applicable rules. A deponent may consult privately with counsel during any time such consultation would be permissible if the deposition were taken live, including during a break to seek advice on a potential issue of privilege.

12. During breaks in the deposition, the Parties may use the break-out room feature provided by Vendor, which simulates a live breakout room through videoconference.

Conversations in the break-out rooms shall not be recorded. The break-out rooms shall be established by and controlled by Vendor. Only those individuals listed for a particular Zoom break-out room will be permitted into the Zoom break-out room, with the exception of Vendor technical personnel, as necessary.

13. 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 is an “Officer” as defined by Federal Rule of Civil Procedure 28(a)(2) and 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, even if the court reporter is not a notary public in the location where the deponent resides.

14. The court reporter will stenographically record the testimony, and the court reporter’s transcript shall constitute the official record. If the deposition has been properly noticed to be videotaped, the Vendor 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.

15. The party that noticed the deposition shall be responsible for procuring a written transcript and video record of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition, including any costs associated with obtaining a real-time or expedited transcript.

16. At the beginning of the deposition, consistent with Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure, the Vendor employee responsible for video-recording the

deposition shall begin the deposition with an on-the-record statement that includes: (i) the officer's name and company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent's name; (iv) the officer's administration of the oath or affirmation to the deponent; and (v) the identity of all persons present.

17. At the beginning of each segment of the deposition, consistent with Rule 30(b)(5)(B) of the Federal Rules of Civil Procedure, the Vendor employee responsible for 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.

18. The Parties agree to work collaboratively and in good faith with Vendor to troubleshoot any technological issues so adjustments can be made. This provision shall not be interpreted to compel any party to proceed with the deposition if the deponent cannot hear or understand the other participants or if the participants cannot hear or understand the deponent.

19. The deponent shall endeavor to have technology sufficient to appear for a videotaped deposition and bandwidth sufficient to sustain the remote deposition. Counsel for 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.

20. The party taking the deposition reserves the right to halt the deposition due to technical issues or disruptions that make it unfeasible to continue the deposition, and continue the deposition at a later date or time, subject to the requirements of Fed. R. Civ. P. 30(d) and this stipulation. Before doing so, the Parties must make a full and complete effort to adequately resolve the technical issues with the help of the Vendor. Any time during which the deposition is

paused due to technical issues experienced by a deposition participant will not count against the 7-hour time limitation in Rule 30(d)(1).

21. If privileged information is disclosed during the deposition due to a technical disruption, or to the extent any privileged conversation between a deponent and the deponent's counsel is captured by a videoconferencing or other recording device, such disclosure shall not be deemed a waiver of privilege.

### **EXHIBITS**

22. Exhibits, except for those containing information designated as Highly Confidential – Source Code under the Protective Order (D.I. 111), may be introduced electronically during the deposition by (1) using the Vendor exhibit-sharing technology (*e.g.*, a streaming copy and/or a direct download (“local copy”) using the Vendor's exhibit sharing platform); or (2) using the screensharing technology within the videoconferencing platform provided by Vendor. Exhibits containing information designated as Highly Confidential – Source Code under the Protective Order (D.I. 111) may be introduced electronically during the deposition via a document camera or other mutually agreed-on means.

23. The deponent and defending counsel shall be provided a full and accurate electronic copy of any exhibit introduced in accordance with Paragraph 22 at the time the exhibit is introduced. If the exhibit is introduced by using the Vendor exhibit-sharing technology, counsel shall provide the witness the opportunity to review the exhibit at the time it is introduced. If the exhibit is introduced by using the screensharing technology, the relevant portion of the exhibit shall be displayed on the videoconferencing platform (visible to all deposition participants). If, at any time and for any reason, the witness desires to review any other portion of the exhibit, or any other deposition exhibit that has already been marked as an

exhibit and introduced, in order to answer such questions, the witness may do so by requesting control of the exhibit displayed on the videoconferencing platform or by requesting and/or referring to a local copy of an exhibit.

24. If a party chooses to provide paper copies of one or more exhibits (*e.g.*, exhibits containing information designated as Highly Confidential – Source Code under the Protective Order (D.I. 111)) for use by the witness during a remote deposition, it shall so notify the opposing party no less than three (3) days in advance of the deposition. Any such exhibits shall be sent to the location where the witness will be testifying. At least 48 hours before the scheduled start time, counsel for the deponent shall provide the noticing party with the address of the location of where the witness will be testifying so the paper copies of the exhibits can be sent to that location. Prior to sending any paper copies of exhibits, the party providing them may communicate any reasonable handling instructions it may have to the opposing party, who shall in turn forward these instructions to the recipient of such exhibits. Exhibits may not be reviewed in advance of the deposition. The use of paper exhibits during a remote deposition does not relieve a party's obligation to provide electronic copies of exhibits under Paragraphs 22-23.

25. At the conclusion of the deposition, any paper exhibits utilized by the witness during the deposition (including any expert reports) shall be returned without modification to the party taking the deposition either in person (if present) or via a pre-paid express package (*e.g.*, FedEx or UPS) provided by the party taking the deposition. Any paper exhibits not used during the deposition shall remain in the exhibit box unreviewed. Absent instructions to the contrary, the box shall be sealed and returned to the party providing the exhibits at its own expense.

26. In the case of a remote expert deposition, the party defending the deposition may provide the expert witness with an unabridged and unmarked bound paper copy of each of his or

her expert reports and/or documents cited in his or her expert reports for use during the deposition.

Dated: November 13, 2020

MORRIS JAMES LLP

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP

*/s/ Kenneth L. Dorsney*

---

Kenneth L. Dorsney (No. 3726)  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801  
(302) 888-6800  
kdorsney@morrisjames.com

*Attorneys for Plaintiffs/  
Counter-Defendants*

*/s/ Robert M. Vrana*

---

Anne Shea Gaza (No. 4093)  
Robert M. Vrana (No. 5666)  
Samantha G. Wilson (No. 5816)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
(302) 571-6600  
agaza@ycst.com  
rvrana@ycst.com  
swilson@ycst.com

*Attorneys for Defendant/  
Counter-Plaintiff*

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

Chief, United States District Judge

27323273