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***Attorneys for Defendants Cloud
Imperium Games Corp. and Roberts
Space Industries Corp.***

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CRYTEK GMBH,) Case No. 2:17-cv-08937-DMG-FFM
)
Plaintiff,) [HON. DOLLY M. GEE]
)
v.) **STIPULATED PROTECTIVE ORDER**
)
CLOUD IMPERIUM GAMES CORP. and)
ROBERTS SPACE INDUSTRIES CORP.,)
)
Defendants.)

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that
8 the protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve source code, customer and pricing lists, licensing
17 agreements with third parties, and other valuable research, development, commercial,
18 financial, technical and/or proprietary information for which special protection from
19 public disclosure and from use for any purpose other than prosecution of this action
20 is warranted. Such confidential and proprietary materials and information consist of,
21 among other things, confidential business or financial information, information
22 regarding confidential business practices, licensing agreements with third parties, or
23 other confidential research, development, or commercial information, information
24 otherwise generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case decisions,
26 or common law. Accordingly, to expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the parties are entitled to keep confidential, to ensure

1 that the parties are permitted reasonable necessary uses of such material in preparation
2 for and in the conduct of trial, to address their handling at the end of the litigation,
3 and serve the ends of justice, a protective order for such information is justified in this
4 matter. It is the intent of the parties that information will not be designated as
5 confidential for tactical reasons and that nothing be so designated without a good faith
6 belief that it has been maintained in a confidential, non-public manner, and there is
7 good cause why it should not be part of the public record of this case.

8

9 2. DEFINITIONS

10 2.1 Action: this pending federal law suit.

11 2.2 Challenging Party: a Party or Non-Party that challenges the
12 designation of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for protection
15 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
16 Cause Statement.

17 2.4 “CONFIDENTIAL – SOURCE CODE” Information or Items: computer
18 source code and/or live data (that is, data as it exists residing in a database or
19 databases) in a form suitable for input to a preprocessor, assembler, compiler, or
20 translator (including any comments therein) (“Source Code Material”) that qualify for
21 protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
22 Good Cause Statement, and which comprises or includes confidential, proprietary, or
23 trade secret Source Code Material.

24 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
25 support staff).

26 2.6 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL –

1 SOURCE CODE.”

2 2.7 Disclosure or Discovery Material: all items or information, regardless
3 of the medium or manner in which it is generated, stored, or maintained (including,
4 among other things, testimony, transcripts, and tangible things), that are produced or
5 generated in disclosures or responses to discovery in this matter.

6 2.8 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
8 an expert witness or as a consultant in this Action.

9 2.9 “HIGHLY CONFIDENTIAL” Information or Items: highly sensitive
10 information (regardless of how it is generated, stored or maintained) or tangible
11 things that qualify for protection under Federal Rule of Civil Procedure 26(c) and as
12 specified above in the Good Cause Statement, disclosure of which to another Party
13 or Non-Party would create a substantial risk of serious harm that could not be
14 avoided by less restrictive means.

15 2.10 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.11 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.12 Outside Counsel of Record: attorneys who are not employees of a party
21 to this Action but are retained to represent or advise a party to this Action and have
22 appeared in this Action on behalf of that party or are affiliated with a law firm which
23 has appeared on behalf of that party, and includes support staff.

24 2.13 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.15 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.16 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
7 “CONFIDENTIAL – SOURCE CODE.”

8 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
9 from a Producing Party.

10

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or extracted
14 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
15 Protected Material; and (3) any testimony, conversations, or presentations by Parties
16 or their Counsel that might reveal Protected Material.

17 Any use of Protected Material at trial shall be governed by the orders of the
18 trial judge. This Order does not govern the use of Protected Material at trial.

19

20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations
22 imposed by this Order shall remain in effect until a Designating Party agrees
23 otherwise in writing or a court order otherwise directs. Final disposition shall be
24 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
25 or without prejudice; and (2) final judgment herein after the completion and
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
27 including the time limits for filing any motions or applications for extension of time
28 pursuant to applicable law.

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5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those documents, items, or oral or written communications that qualify so that other material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in

this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

- (a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – SOURCE CODE” (hereinafter “CONFIDENTIALITY Legend”), to each document

1 that contains protected material.

2 A Party or Non-Party that makes original documents available for inspection
3 need not designate them for protection until after the inspecting Party has indicated
4 which documents it would like copied and produced. During the inspection and before
5 the designation, all of the material made available for inspection shall be deemed
6 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or
8 portions thereof, qualify for protection under this Order. Then, before producing the
9 specified documents, the Producing Party must affix the appropriate
10 CONFIDENTIALITY Legend to each page that contains Protected Material.

11 (b) for testimony given in depositions that the Designating Party identify
12 the Disclosure or Discovery Material on the record, before the close of the deposition
13 all protected testimony.

14 (c) for information produced in some form other than documentary and for
15 any other tangible items, that the Producing Party affix in a prominent place on the
16 exterior of the container or containers in which the information is stored the
17 appropriate CONFIDENTIALITY Legend.

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material.
21 Upon timely correction of a designation, the Receiving Party must make reasonable
22 efforts to assure that the material is treated in accordance with the provisions of this
23 Order.

24
25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
27 designation of confidentiality at any time that is consistent with the Court’s
28 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 or withdrawn the confidentiality designation, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing
9 Party’s designation until the Court rules on the challenge.

10
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 Action only for prosecuting, defending, or attempting to settle this Action. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. Without written permission from the Designating
17 Party or a court order secured after appropriate notice to all interested persons, a Party
18 may not file in the public record in this Action any Protected Material. When the
19 Action has been terminated, a Receiving Party must comply with the provisions of
20 section 13 below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
22 location and in a secure manner that ensures that access is limited to the persons
23 authorized under this Order.

24 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
25 otherwise ordered by the court or permitted in writing by the Designating Party, a
26 Receiving Party may disclose any information or item designated
27 “CONFIDENTIAL” only to:

28 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well

1 as employees of said Outside Counsel of Record to whom it is reasonably necessary
2 to disclose the information for this Action;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this Action;

5 (c) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff;

10 (f) professional jury or trial consultants, mock jurors, and Professional
11 Vendors to whom disclosure is reasonably necessary for this Action and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information;

15 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
16 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
17 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
18 not be permitted to keep any confidential information unless they sign the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
20 agreed by the Designating Party or ordered by the court. Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal Protected Material may be
22 separately bound by the court reporter and may not be disclosed to anyone except as
23 permitted under this Stipulated Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel,
25 mutually agreed upon by any of the parties engaged in settlement discussions.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.
27 Unless otherwise ordered by the court or permitted in writing by the Designating
28 Party, a Receiving Party may disclose any information or item designated “HIGHLY

1 CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
3 as employees of said Outside Counsel of Record to whom it is reasonably necessary
4 to disclose the information for this Action;

5 (b) Experts (as defined in this Order) of the Receiving Party to whom
6 disclosure is reasonably necessary for this Action and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (c) the court and its personnel;

9 (d) court reporters and their staff;

10 (e) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information;

12 (f) any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 7.4 Disclosure of “CONFIDENTIAL – SOURCE CODE” Information or
15 Items. The Parties shall meet and confer and enter into a separate agreement and/or
16 stipulated protective order, incorporating by reference the terms herein, regarding the
17 procedures and protocol for the production and/or inspection of information
18 designated as “CONFIDENTIAL – SOURCE CODE.” Protected Material designated
19 as “CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections
20 afforded to “HIGHLY CONFIDENTIAL” information and may be disclosed only to
21 the individuals to whom “HIGHLY CONFIDENTIAL” information may be
22 disclosed, as set forth in Paragraph 7.3.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this Action as
27 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL –
28 SOURCE CODE,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order
4 to issue in the other litigation that some or all of the material covered by the subpoena
5 or order is subject to this Protective Order. Such notification shall include a copy of
6 this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued
8 by the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with
10 the subpoena or court order shall not produce any information designated in this action
11 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL –
12 SOURCE CODE,” before a determination by the court from which the subpoena or
13 order issued, unless the Party has obtained the Designating Party’s permission. The
14 Designating Party shall bear the burden and expense of seeking protection in that court
15 of its confidential material and nothing in these provisions should be construed as
16 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
17 directive from another court.

18
19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a
22 Non-Party in this Action and designated as “CONFIDENTIAL,” “HIGHLY
23 CONFIDENTIAL,” or “CONFIDENTIAL – SOURCE CODE.” Such information
24 produced by Non-Parties in connection with this litigation is protected by the
25 remedies and relief provided by this Order. Nothing in these provisions should be
26 construed as prohibiting a Non-Party from seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to
28 produce a Non-Party’s confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (3) make the information requested available for inspection by the Non-
10 Party, if requested.

11 (c) If the Non-Party fails to seek a protective order from this court within
12 14 days of receiving the notice and accompanying information, the Receiving Party
13 may produce the Non-Party's confidential information responsive to the discovery
14 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
15 not produce any information in its possession or control that is subject to the
16 confidentiality agreement with the Non-Party before a determination by the court.
17 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
18 of seeking protection in this court of its Protected Material.

19
20 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
24 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
25 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
26 persons to whom unauthorized disclosures were made of all the terms of this Order,
27 and (d) request such person or persons to execute the "Acknowledgment and
28 Agreement to Be Bound" that is attached hereto as Exhibit A.

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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

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13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2

3 DATED: August 6, 2019

4

5 ERISE IP, P.A.

6 /s/ Clifford T. Brazen

7 Clifford T. Brazen

8 Phone: (913) 777-5600

9 cliff.brazen@eriseip.com

10

11 *Attorneys for Plaintiff*
12 CRYTEK GMBH

13

14 DATED: August 6, 2019

15

16 FRANKFURT KURNIT KLEIN & SELZ P.C.

17

18 /s/ Azita Iskandar

19

20 Azita Iskandar

21

22 Phone: (310) 579-9619

23

24 aiskandar@fkks.com

25

26 *Attorneys for Defendants*

27

28 CLOUD IMPERIUM GAMES CORP. and ROBERTS SPACE INDUSTRIES CORP

29

30 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

31

32 DATED: _____

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34 _____

35 The Honorable Frederick F. Mumm
36 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
_____ in the case of *Crytek GmbH v. Cloud Imperium Games Corp. et al.* Case
No. 2:17-cv-08937-DMG-FFM . I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____