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

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

21 CRYTEK GMBH,  
22 )  
23 Plaintiff,  
24 )  
25 v.  
26 )  
27 CLOUD IMPERIUM GAMES CORP.  
and ROBERTS SPACE INDUSTRIES  
CORP.,  
28 )  
Defendants.

Case No. 2:17-cv-08937-DMG-FFM

**JOINT RULE 26(f) REPORT**

Judge: Hon. Dolly M. Gee

1 Pursuant to Federal Rule of Civil Procedure Rule 26(f), Local Rule 26-1, and  
2 the Court's December 13, 2017 Order, Plaintiff Crytek GmbH ("Crytek") and  
3 Defendants Cloud Imperium Games Corporation ("CIG") and Roberts Space  
4 Industries Corporation ("RSI") (together, "Defendants"), by and through their  
5 undersigned counsel, having conducted a conference in accordance with Rule 26(f)  
6 on February 13, 2018, hereby submit the following Joint Report:

7 **I. STATEMENT OF THE CASE**

8 **A. Crytek's Position**

9 Plaintiff Crytek is an industry-leading video game developer, publisher, and  
10 technology provider. The instant suit against Defendants CIG and RSI stems from  
11 Defendants' breach of contract and copyright infringement in connection with their  
12 use of Crytek technology, including CryEngine, a cutting-edge, powerful, and  
13 feature-filled video game development platform and computer program.

14 Crytek commenced this action on December 12, 2017. Crytek identifies the  
15 specific breaches of contract and acts of copyright infringement by Defendants in the  
16 First Amended Complaint ("FAC", ECF No. 18). (*E.g.*, FAC ¶¶ 13-52.) It seeks  
17 money damages in excess of \$75,000 and equitable relief.

18 Defendants have not made readily known all related persons and entities  
19 connected with Defendants. As discovery progresses and Crytek's investigation  
20 continues, Crytek may add additional defendants or amend its pleadings.

21 Crytek declines to respond in this Joint Report to Defendants' lengthy and  
22 abusive statement of position set forth *infra*, which — Crytek respectfully submits —  
23 misapprehends the purpose of this Joint Report and largely reiterates arguments set  
24 forth in Defendants' motion to dismiss. That motion should be denied for the reasons  
25 set forth in Crytek's opposition to the motion. (ECF No. 25.) Crytek will further  
26 address Defendants' assertions in an appropriate setting as may be required.

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1           **B. Defendants' Position**

2           Defendants cannot understand Crytek's allegations of breach or infringement  
3 and the above description of "Crytek's Position" is so conclusory as to underscore the  
4 problem. It is impossible for any case to proceed on the allegations in the FAC.

5           Defendant CIG is developing a video game called *Star Citizen* and a related  
6 game called *Squadron 42* ("*SQ42*"). CIG and Crytek entered into a Game License  
7 Agreement ("GLA") (concealed by Crytek in its two pleadings), granting CIG the  
8 exclusive right to use Crytek's game engine, called "CryEngine," for exactly these  
9 purposes. In December 2016, CIG announced that it had begun to use another game  
10 engine, licensed to CIG by Amazon, called "Lumberyard" for both its *Star Citizen*  
11 and *SQ42* games. Defendants should not have to guess at what is at issue in this case,  
12 but the fragments found in the FAC lead to the guesses briefly described below by  
13 Defendants.

14           It is not clear whether Crytek sued Defendants for *not* using CryEngine, for  
15 *using* CryEngine, or both. It also is not clear why Crytek sued RSI for breaching a  
16 contract to which it is not a party. Crytek complains that Defendants are *not using*  
17 CryEngine and switched to Lumberyard, but ignores the fact that the GLA grants  
18 CIG a *license*, not an obligation, to use CryEngine. At the same time, Crytek  
19 complains that Defendants *are using* CryEngine to develop *SQ42*, even though the  
20 GLA expressly allows just that. Crytek further complains about Defendants'  
21 announcement that *SQ42* would be distributed as a standalone game, but ignores the  
22 fact that Defendants are using Lumberyard to develop *SQ42* and, in any event, *SQ42*  
23 has not yet been distributed at all, either with or without *Star Citizen*. Crytek also  
24 complains about Defendants not using Crytek's copyright and trademark notices for a  
25 game that uses Amazon's licensed engine.

26           Crytek tacks on several additional fragmented allegations, each of which is  
27 equally confusing and baseless. Crytek contends that Defendants failed to deliver  
28 certain bug fixes but omits the fact that Defendants tendered them years ago and

1 recently delivered them to Crytek. Crytek complains about Defendants posting  
2 instructional videos called "Bugsmashers" that purportedly display Crytek's source  
3 code, but fail to identify the videos or code at issue. Crytek also ignores that any use  
4 of the source code likely is *de minimis*, fair use and duplicative of source code  
5 already available to the public. Finally, Crytek complains about Defendants granting  
6 third-party developer Faceware Technologies access to Crytek's source code, but this  
7 is simply not true and Crytek has no basis to contend otherwise.

8         Given the hodgepodge Defendants must guess at in the FAC, and the lack of  
9 merit to any of these fragments, Defendants deduce that Crytek sues out of: wounded  
10 pride resulting from Defendants' move from CryEngine to Lumberyard; rapacity  
11 toward the crowdfunding amounts raised by Defendants to develop and produce the  
12 products; hope that filing this lawsuit will cause Defendants so much distraction and  
13 legal expense that they would rather pay Crytek, a company that has experienced a  
14 significant financial downturn in the last several years, a much-needed infusion of  
15 capital to make the lawsuit go away; and resentment over the fact that many of its  
16 employees abandoned Crytek which could not afford to pay them.

## 17 **II. SUBJECT MATTER JURISDICTION**

18         This action arises under 28 U.S.C. §§ 1331 and 1338(a) because federal courts  
19 have exclusive jurisdiction in copyright cases, and because those claims are federal  
20 questions. This Court also has diversity jurisdiction over this action under 28 U.S.C.  
21 § 1332 because Defendants are citizens of California, Plaintiff is a citizen of a foreign  
22 state, and the amount in controversy substantially exceeds \$75,000.

## 23 **III. LEGAL ISSUES**

### 24 **A. Crytek's Position**

25         The primary issues in this case are (i) whether the Defendants breached the  
26 Game License Agreement; (ii) whether Defendants infringed upon Crytek's  
27 copyrighted work; and (iii) the amount of damages to which Crytek may be entitled.

28

1           **B. Defendants' Position**

2           CIG and Crytek entered into a binding and enforceable GLA under which CIG  
3 has fully performed. The threshold legal issue is for Crytek to articulate, in a manner  
4 sufficient under the Federal Rules of Civil Procedure and the pleading standards set  
5 by the Supreme Court in *Twombly* and *Iqbal*: what if any promises Crytek alleges  
6 were not performed, and which of Defendants' works, if any, infringe which of  
7 Crytek's registered copyright-protected works, if any — subject to all defenses  
8 including those under the Copyright Act and the GLA.

9 **IV. SCHEDULING MATTERS AND DISCOVERY PLAN**

10           **A. Initial Disclosures**

11           Cognizant of Section 3(b) of the Court's Initial Standing Order, Crytek served  
12 initial disclosures on Defendants on January 19, 2018. Defendants will serve their  
13 initial disclosures on February 27, 2018. The parties do not propose any changes to  
14 the form or requirement for disclosures under Federal Rule of Civil Procedure 26(a).

15           **B. Discovery Subject, Timing, and Phasing**

16           The parties expect to conduct discovery requiring the production of documents,  
17 electronic materials, and things, interrogatories, requests for admission, and  
18 deposition testimony. The parties do not believe that discovery needs to be phased.

19           Cognizant of Section 3(b) of the Court's Initial Standing Order, Crytek served  
20 its First Set of Requests for Production of Documents and Inspection of Documents  
21 and Things ("First RFPs") and First Set of Interrogatories ("First Interrogatories") on  
22 Defendants on January 19, 2018. Defendants objected to the First Interrogatories as  
23 premature under Rule 26(d)(1). Crytek re-served the First Interrogatories by hand on  
24 Defendants on February 13, 2018.

25           Counsel for each party has instructed their respective clients to preserve  
26 discoverable information.

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1                   **1. Crytek's Position**

2                   At this time, Crytek contends that discovery will be needed on at least the  
3 following subjects:

- 4                   • Defendants' products, including Star Citizen and Squadron 42;
- 5                   • marketing and promotion of Defendants' products;
- 6                   • revenue, profits, and crowdfunding obtained by Defendants;
- 7                   • Defendants' use of Crytek property, including CryEngine;
- 8                   • contracts and communications between the Defendants;
- 9                   • ownership, management, and structure of Defendants;
- 10                  • Defendants' communications with its customers;
- 11                  • operative contracts between Crytek and Defendants; and
- 12                  • technology transferred from Crytek to Defendants.

13                  Crytek disputes Defendants' description *infra* of the parties' discussions during  
14 the Rule 26(f) conference, including because that description is incomplete and  
15 inaccurate. (For example, Crytek's counsel stated during the conference that facts  
16 concerning crowdfunding are relevant to damages and the value of the game engine.)  
17 Crytek will further respond to those allegations at an appropriate time as may be  
18 required.

19                   **2. Defendants' Position**

20                  Defendants believe that the parties should commence discovery after the Court  
21 rules on Defendants' motion to dismiss, to the extent the case is not dismissed in its  
22 entirety. Moreover, Defendants strongly contest the relevance of many of the above  
23 topics. Among other things, it remains entirely unclear how "crowdfunding" or the  
24 "ownership, management and structure of Defendants" is relevant to any claim or  
25 defense in this matter. Their inclusion of these and other irrelevant topics serves only  
26 to underscore Crytek's ulterior motives in this lawsuit. During the Rule 26(f)  
27 conference, Defendants asked Crytek to explain why, for example the "crowdfunding  
28 obtained by Defendants" is relevant to any claim or defense. Crytek's only response

1 was that this topic is relevant "for all the obvious reasons." When Defendants asked  
2 Crytek to clarify this statement, Crytek declined to engage any further on the subject.

3 **C. Summary of Schedule**

4 The parties' respective proposals for a schedule of pretrial and trial dates, as  
5 well as the proposed timing of discovery, are addressed in Exhibit A.

6 **V. ADDITIONAL ISSUES DISCUSSED PURSUANT TO RULE 26(F) AND**  
7 **LOCAL RULE 26-1**

8 **A. Electronically Stored Information**

9 The parties represent that they have complied with their preservation  
10 obligations relating to electronically stored information ("ESI"), pursuant to Federal  
11 Rule of Civil Procedure 34.

12 The parties agree that ESI shall be produced pursuant to the Document  
13 Production Format Agreement in Exhibit B. To the extent not addressed in Exhibit  
14 B, the parties intend to meet and confer in good faith on production protocols and  
15 other technical details as necessary before involving the Court.

16 Defendants state that the above should be subject to the Court's protections  
17 regarding the proprietary of discovery at all, and any limitations on timing or other  
18 restrictions thereon.

19 **B. Privilege or Confidentiality**

20 In accordance with the Federal Rules of Civil Procedure, the parties have  
21 agreed that information withheld for privilege or as attorney work product will be  
22 listed on a privilege log, with the exception that privileged or attorney work product  
23 information involving litigation counsel on or after the date the above-entitled action  
24 was filed does not need to be logged.

25 The parties are working on a draft form of protective order so that the parties  
26 can jointly seek an order limiting disclosure of sensitive materials, such as the parties'  
27 confidential trade secrets, to anyone but outside litigation counsel. The parties intend  
28 to submit a joint stipulated protective order for the Court's approval.

1 The parties have agreed that consistent with Rule 26(b)(4) of the Federal Rules  
2 of Civil Procedure, attorney communications with experts, both testifying and non-  
3 testifying, and drafts of expert reports are not discoverable unless the expert relies on  
4 such communications pursuant to Rule 26(b)(4)(C)(ii) and (iii).

5 **C. Changes In Limitations On Discovery**

6 At this stage of the litigation, the parties do not see a need to modify the  
7 limitations on discovery set forth in the Federal Rules of Civil Procedure, but reserve  
8 the right to request such modification should the need arise. Specifically, each party  
9 reserves the right to move to increase the amount, scope and timing of any discovery.

10 Defendants state that the above should be subject to the Court's guidance on  
11 whether discovery should proceed at all and, if so, when and under what conditions.

12 **D. Orders Under Rules 16(b), 16(c), or 26(c)**

13 Defendants intend to seek a protective order to stay or limit the timing or scope  
14 of discovery while their Motion to Dismiss is pending. The parties are not otherwise  
15 seeking any additional orders from the Court under Rules 16(b) or (c), or 26(c).

16 **E. Settlement/ADR**

17 **1. Crytek's Position**

18 The parties have not yet discussed settlement or resolution of this case. With  
19 respect to the ADR options available, Crytek elects mediation with a neutral from the  
20 Court Mediation Panel. Crytek proposes that the mediation with a neutral occur by  
21 January 29, 2019.

22 Crytek disputes Defendants' description *infra* of the parties' discussions during  
23 the Rule 26(f) conference as incomplete and inaccurate. (In particular, Crytek's  
24 counsel stated that Crytek was open both to mediation with a neutral from the Court  
25 Mediation Panel or with a private mediator, but declined to respond to Defendants'  
26 insistence that Crytek make a settlement demand during the Rule 26(f) conference.)  
27 Crytek will further respond to those allegations at an appropriate time as may be  
28 required.

1                   **2. Defendants' Position**

2           Defendants do not understand Crytek's "Position" set forth above. During the  
3 Rule 26(f) conference, Defendants asked Crytek what it wanted from this case and  
4 whether it had a settlement demand. Crytek said it was not prepared to make a  
5 settlement demand or tell Defendants what it hoped to achieve from the lawsuit.  
6 Defendants asked Crytek what method of settlement procedure Crytek preferred;  
7 Crytek would not state. If this case is not fully dismissed, when Crytek is able to  
8 articulate its substantive settlement position, Defendants believe a constructive  
9 approach would be for the parties to appear before Magistrate Judge Mumm for a  
10 settlement conference. Defendants believe that Magistrate Judge Mumm is  
11 particularly well suited to assist the parties with their settlement discussions given his  
12 extensive experience with intellectual property, media and entertainment litigation in  
13 his prior private litigation practice.

14                   **F. Complex Cases**

15           While it is early in the litigation, the parties do not foresee the need to use  
16 procedures in the Manual for Complex Litigation. Should the need arise, the parties  
17 agree to meet and confer as necessary to discuss whether complex issues, difficult  
18 legal questions or unusual proof problems require use of the manual.

19                   **G. Issues to be Determined by Motion**

20           Defendants' Motion to Dismiss was filed on January 5, 2018. (ECF No. 20.)  
21 Briefing on that motion was completed on January 26, 2018. (ECF Nos. 25, 26.) A  
22 hearing on the motion was vacated on February 8, 2018. (ECF No. 27.) No other  
23 motions are currently on the calendar.

24           The parties anticipate that they may need to seek the Court's assistance in  
25 discovery disputes should the parties be unable to resolve them informally. Should  
26 that need arise, the parties will comply with Section 3(a) of the Initial Standing  
27 Order.

28

1 In the event Defendants' Motion to Dismiss is denied in whole or in part,  
2 Defendants state that they intend to bring motions for full summary judgment or  
3 partial summary judgments on any remaining issues at the earliest possible time once  
4 they are clearly at issue.

5 **H. Trial Estimate**

6 **1. Crytek's Position**

7 Crytek has demanded a jury trial. Crytek estimates that the jury trial will last  
8 approximately five to ten (5-10) court days.

9 **2. Defendants' Position**

10 Defendants are unable to estimate the length of trial (or any matter of schedule  
11 or budget) until there is meaningful clarity regarding any of Crytek's claims against  
12 Defendants that are allowed past the pleading stage. With respect to Crytek's demand  
13 for a jury trial, the GLA precludes Crytek from recovering monetary damages.  
14 Accordingly, because Crytek may be entitled to equitable relief only, Crytek may not  
15 be entitled to a jury trial.

16 **I. Severance, Bifurcation or Other Ordering of Proof**

17 **1. Crytek's Position**

18 At this time, Crytek does not intend to request severance, bifurcation or other  
19 ordering of proof. Crytek expressly reserves its right to request severance,  
20 bifurcation, or other ordering of proof as information is uncovered during discovery.

21 **2. Defendants' Position**

22 To the extent any issues remain for discovery after the Court decides  
23 Defendants' Motion to Dismiss, Defendants request that the Court bifurcate discovery  
24 into two phases: *first*, discovery as it relates to any of Crytek's remaining theories of  
25 liability against Defendants, and *second*, and only if necessary, discovery as it relates  
26 to Crytek's claim for damages. As is apparent from the list of topics above that  
27 Crytek believes to be discoverable, including "revenue, profits, and crowdfunding  
28 obtained by Defendants," as well as the discovery requests already propounded by

1 Crytek, Crytek intends to conduct intrusive discovery regarding Defendants'  
2 fundraising and other financial matters that bear no relevance to any claim or defense  
3 and relate solely, if at all, to damages. At this stage, when Crytek's theories of  
4 liability remain in doubt, and in light of the plain language of the GLA expressly  
5 precluding either party from seeking monetary damages, the Court should limit any  
6 discovery to the issues of liability before allowing Crytek to seek highly-sensitive  
7 financial information related to Defendants' business that relates solely, if at all, to  
8 the issue of damages.

9 Defendants expressly reserve their right to request severance, additional  
10 bifurcation, or other ordering of proof as information is uncovered during discovery.

11 **J. Expert Witnesses**

12 **1. Crytek's Position**

13 Crytek may offer expert testimony related to the technical subject matter of  
14 this case (including source code), copying of copyrighted works, and damages. The  
15 timing of these disclosures is set forth in the proposed schedule attached as  
16 Exhibit A.

17 **2. Defendants' Position**

18 Defendants are unable to predict what expert testimony it may offer until there  
19 is meaningful clarity regarding any of Crytek's claims against Defendants that are  
20 allowed past the pleading stage.

21 **K. Electronic Service**

22 The parties agree that service by electronic means shall be allowed as set forth  
23 in Rule 5(b)(2)(E). Service by electronic means shall be considered the same as hand  
24 delivery for purposes of calculating the time to respond, provided service is made  
25 using the email(s) listed below, which may be supplemented or changed by written  
26 notice. The parties agree to refer to the parties and/or case name in the subject line  
27 for documents served by electronic means.

28

1 Service on Crytek shall be made to dlpcrytkip@skadden.com. Service on  
2 Defendants shall be made to jtaylor@fkks.com, jgoldman@fkks.com,  
3 aiskandar@fkks.com and docket@fkks.com.

4 As a professional courtesy, Crytek proposes that the parties serve documents  
5 not filed with the Court on or before 6:00 p.m. Pacific Time, including discovery-  
6 related materials and expert reports. If such documents are not served on or before  
7 6:00 p.m. Pacific Time, such documents would be deemed to have been served on the  
8 next business day. Defendants have not agreed to that proposal.

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1 Dated: February 27, 2018

Respectfully submitted,

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**ATTESTATION**

I, James Y. Pak, attest that the signatories listed above, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

By:           /s/ James Y. Pak            
James Y. Pak

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2018, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which sent notification of such filing to all counsel of record.

By:           /s/ James Y. Pak            
James Y. Pak

1 **Exhibit A**

2 Judge Dolly M. Gee

3 **SCHEDULE OF PRETRIAL & TRIAL DATES WORKSHEET**

4 Case No. 2:17-cv-08937-DMG-FFM Case Name: Crytek GmbH v. Cloud Imperium Games Corp. et al.

5 **1. Crytek's Position**

6 (Set forth in table below.)

MATTER	JOINT REQUESTED DATE	TIME
<b>TRIAL</b> <input type="checkbox"/> Court <input checked="" type="checkbox"/> Jury Duration Estimate: <u>5-10 days</u>	July 16, 2019 (Tuesday)	8:30 a.m.
<b>FINAL PRETRIAL CONFERENCE ("FPTC")</b> 4 wks before trial	June 18, 2019 (Tuesday)	2:00 p.m.

MATTER	TIME COMPUTATION	JOINT REQUESTED DATE
Amended Pleadings and Addition of Parties Cut-Off (includes hearing of motions to amend)	90 days after scheduling conference	May 14, 2018
Non-Expert Discovery Cut-Off (includes hearing of discovery motions)	at least 14 wks before FPTC	Jan. 15, 2019
Motion Cut-Off (filing deadline)	at least 13 wks before FPTC	Feb. 12, 2019
Initial Expert Disclosure & Report Deadline	at least 9 wks before FPTC	Feb. 19, 2019
Rebuttal Expert Disclosure & Report Deadline	at least 5 wks before FPTC	March 19, 2019
Expert Discovery Cut-Off (includes hearing of discovery motions)	at least 3 wks before FPTC	April 30, 2019
Settlement Conference Completion Date	at least 4 wks before FPTC	May 28, 2019
Motions in Limine Filing Deadline	at least 3 wks before FPTC	May 21, 2019
Opposition to Motion in Limine Filing Deadline	at least 2 wks before FPTC	June 4, 2019
Other Dates: (e.g., class cert motion cut-off, early mediation, etc.)		(no proposed deadlines)

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**2. Defendants' Position**

Defendants are unable to participate in scheduling discovery and trial dates until there is meaningful clarity regarding any of Crytek's claims against Defendants that are allowed past the pleading stage. At this stage, Defendants express no view on the dates proposed above by Crytek.

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**Exhibit B**

**DOCUMENT PRODUCTION FORMAT AGREEMENT**

**De-duplication.** The parties will globally de-duplicate documents by MD5 hash across the universe of collected custodial documents for review and production. The Custodians metadata field will identify all custodians for whom any duplicate copies of a document are not being produced. If custodians are added to the production after the initial de-duplication has occurred, or other changes occur that affect the completeness of the Custodians field, the parties will produce replacement metadata consistent with the new information.

**TIFF Images.** Unless otherwise stated in this Stipulation, each document will be produced in Group IV Tagged Image File Format ("TIFF"), regardless of whether such documents are stored in electronic or hard copy form. Each TIFF image file should be one page and should reflect how the source document would appear if printed to hard copy in black-and-white. Native files from which produced TIFF format files are created shall be preserved and remain unchanged. Each TIFF format file of an electronic document will be endorsed by a unique Bates number and any applicable confidentiality legend on the bottom of each image page in such a way so as not to obliterate, conceal, or interfere with any information from the source document.

1           **Load File(s).** Document productions shall include Concordance-compatible  
2 load file(s) that indicate document breaks of the TIFF images and additional fields as  
3 identified below ("Metadata Fields").  
4

5           **File Name.** Each document image file will be named with the unique Bates  
6 Number of the page of the document in question followed by the file extension "TIF."  
7 File names should not contain spaces or underscore symbols.  
8

9           **Document Unitization.** If a document is more than one page, the unitization  
10 of the document and any attachments and/or affixed notes will be maintained as they  
11 existed in the original document.  
12

13           **Searchable Text.** In addition to TIFF images, each production will include  
14 text files corresponding to the TIFF image files described above.  
15

16           **Hard Copy Documents.** Hard copy documents shall be converted to  
17 searchable text using Optical Character Recognition ("OCR") technology and  
18 searchable ASCII text (or Unicode text if the text is in a language requiring  
19 characters outside of the ASCII character set, if requested) files shall be produced.  
20 Each file will be named with the unique Bates Number of the first page of the  
21 corresponding TIFF document followed by the extension "TXT." A single  
22 document-level \*.TXT file shall be produced for each document. Text will not be  
23 produced in page-level text files or as a field in the Metadata Load File.  
24  
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26

27           **Electronic Documents.** The full text of each native electronic document shall  
28 be extracted ("Extracted Text") and produced in a text file. The Extracted Text will

1 be provided in searchable ASCII text format (or Unicode text format if the text is in a  
2 language requiring characters outside of the ASCII character set, if requested) and  
3 will be named with the unique Bates Number of the first page of the corresponding  
4 TIFF document followed by the extension ".TXT." A single document-level \*.TXT  
5 file shall be produced for each document. Text will not be produced in page-level  
6 text files or as a field in the Metadata Load File.  
7

9 **Redactions.** Searchable text files corresponding to the TIFF image files for  
10 redacted Electronic Documents and Hard Copy Documents will include Extracted  
11 Text or OCR text only to the extent that it will not disclose redacted information.  
12

13 **Production Media.** Documents will be produced on encrypted external hard  
14 drives or readily accessible computer or electronic media (the "Production Media").  
15 Each piece of Production Media will identify: (1) the producing party's name; (2) the  
16 production date; (3) the highest confidentiality designation reflected on the  
17 documents contained within the production; and (4) the Bates Number range of the  
18 materials contained on the Production Media. For productions with a total volume of  
19 5 GB or less (in a compressed or uncompressed transfer format), production by File  
20 Transfer Protocol ("FTP") or a similar file sharing service is an acceptable alternative  
21 to production by hard media and need not be accompanied by hard media. Data  
22 produced through electronic transfer will also be encrypted.  
23  
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25

26 **Native Production.** The parties will produce spreadsheet files and  
27 presentations (*e.g.*, Excel, PowerPoint), and sound, video, and other files not practical  
28

1 for the TIFF format in native form or in another reasonably usable form. Such native  
2 file productions shall include metadata as set forth below and a single-page TIFF  
3 image indicating that the associated file was produced in native form. Each produced  
4 native file shall be named with a unique Bates Number (*e.g.*, ABC00000001.xls).  
5 The confidentiality stamp on the TIFF image file should be considered as being  
6 applied to the linked native file. To the extent either party believes that certain  
7 documents or groups of documents should be produced in an alternative format, the  
8 parties agree to meet and confer in good faith concerning such alternative production  
9 arrangements.  
10  
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13 **Additional Native Production.** The parties reserve the ability to request other  
14 files be produced in native form or in another reasonably usable form upon review of  
15 the other party's production. The parties reserve their respective rights to object to  
16 any such request.  
17

18 **Text Messages.** The parties intend to meet and confer in good faith at a future  
19 date regarding the production of mobile phone text messages on a custodian-by-  
20 custodian basis.  
21

22 **Metadata.** For all Electronic Documents, an ASCII text (or Unicode text if  
23 the text is in a language requiring characters outside of the ASCII character set) Load  
24 File shall be produced setting forth the data fields listed below ("Metadata Fields"), to  
25 the extent such metadata exists. Additive fields such as Custodian must be produced  
26 even though not otherwise existing. The parties further agree that other metadata  
27  
28

1 fields may be requested by either party, to be produced on a document-by-document  
 2 basis.

<u>DATA FIELD</u>	<u>DESCRIPTION</u>
BEGDOC	Beginning Bates number assigned to each document
ENDDOC	Ending Bates number assigned to each document
BEGATTACH	Beginning Bates number assigned to the group of documents to which the parent document and any attachment documents are associated
ENDATTACH	Ending Bates number assigned to the group of documents to which the parent document and any attachment documents are associated
CUSTODIANS	The custodian (or multiple custodians for globally de-duped documents) of a document
RECORDTYPE	The type of record ( <i>e.g.</i> , email, email attachment, edoc or calendar item)
APPLICATION	Document type as identified by metadata associated with the native document indicating the application that created the native document ( <i>e.g.</i> , Google Docs, Microsoft Word 6.0, Gmail, Outlook Email, etc.)
EMAILSUBJECT	The subject line of a produced email
DOCAUTHOR	The Author of a document
FROM	The "From" line of a produced email
TO	The "To" line of a produced email
CC	The "CC" line of a produced email
BCC	The "BCC" line of a produced email
DATESENT	The date (MMDDYYYY) an email was sent
TIMESENT	The time that an email was sent
DATECREATED	The date that a document was created
DATELASTMOD	The date that a document was last modified
FILENAME	The filename of a produced document
TITLE	The title of a document
DOCEXT	The file extension ( <i>e.g.</i> , .txt or .pdf) of a produced document

1	FILESIZE	The file size (in KB\MB\GB) of a produced document
2		
3	NATIVEFILE	The location of the produced native version of a document
4	TEXTFILE	The location of the extracted text/OCR text for a document
5	CONFIDENTIALITY	The text of confidentiality language (per the parties' agreed-upon Protective Order) stamped on images of a document
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