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ALL COUNSEL LISTED ON NEXT PAGE

IN THE SUPREME COURT OF THE UNITED STATES  
BEFORE THE OFFICE OF THE SPECIAL MASTER  
HON. MICHAEL J. MELLO

STATE OF TEXAS,  
Plaintiff,  
vs.  
STATE OF NEW MEXICO; and STATE OF  
COLORADO,  
Defendants.

Original Action Case No. 22O141  
(*Original 141*)

STIPULATION REGARDING  
PROCEDURE FOR PRODUCTION OF  
DOCUMENTS AND ELECTRONICALLY  
STORED INFORMATION (ESI)

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1 This Stipulation is entered into by the State of Texas (Texas), the United States of  
2 America (United States), the State of New Mexico (New Mexico), and the State of Colorado  
3 (Colorado) (individually a “Party” and collectively, “the Parties”):

4 WHEREAS, the Special Master, Honorable Judge Michael J. Melloy (Special Master) has  
5 requested that the Parties meet and confer to formalize a procedure for productions of documents  
6 and other discoverable information served and responded to in this matter, related to all stages of  
7 discovery, including expert disclosures, reports, and rebuttals thereto, as well as data and  
8 electronically stored information (“ESI”, as defined in paragraph (1)(e) herein) exchanged among  
9 the Parties in support, and wish to better define the scope of their obligations with the respect to  
10 collecting, preserving, and producing such information and materials;

11 WHEREAS, the Parties to the aforementioned original action mutually seek to reduce the  
12 time, expense, and other burdens of discovery related to the disclosure of certain electronically  
13 stored information, voluminous productions of documents, and expert reports, rebuttals, and data  
14 collected and disclosed related to expert discovery; and

15 WHEREAS, the Parties mutually seek to reduce the time, expense, and other burdens of  
16 importing productions of Documents (as defined in Paragraph (1)(e) herein) exchanged among  
17 the Parties and uploaded to the VeritextVault (as defined in paragraph (1)(a) herein), into each  
18 respective Party’s eDiscovery Platform database (hereinafter “Database”).

19 Therefore, the Parties stipulate to the following terms for the production of Documents for  
20 initial disclosure and in response to written and expert discovery, and hereby request that the  
21 Special Master enter as a Case Management Order, the following agreement:

22 **I. DEFINITIONS**

23 1. The terms used in this stipulation and order that are also used in the Federal Rules  
24 of Civil Procedure and have the same meaning that they have under the Federal Rules of Civil  
25 Procedure, unless otherwise provided in this stipulation and order. Whenever the terms set forth  
26 below are used in this stipulation and order, the following definitions apply:

27 a) “VeritextVault” as used herein, shall refer to the repository service  
28 provided by Veritext, accessible to those Accessing Entities listed in item (d), below.

1           b)       “Parties” as used herein, shall collectively refer to the State of Texas, the  
2 State of New Mexico, the State of Colorado, and the United States of America.

3           c)       “Amici” shall refer to the following *amici curiae*, as defined in section 3 of  
4 the September 6, 2018 Case Management Plan (CMP), and designated to have access to the  
5 VeritextVault pursuant to section 7.2.1.1 of the CMP: Albuquerque-Bernalillo County Water  
6 Utility Authority, the City of El Paso, the City of Las Cruces, Elephant Butte Irrigation District,  
7 El Paso County Water Improvement District No. 1, Hudspeth County Reclamation and  
8 Improvement District No. 1, the New Mexico Pecan Growers, New Mexico State University, and  
9 the State of Kansas<sup>1</sup>.

10          d)       “Accessing Entities” as used herein, shall refer to both the Parties to this  
11 litigation as defined in item (b) above, as well as the Amici listed in item (c) above, and  
12 acknowledged in the CMP, including their designated employees and agents.

13          e)       “Documents” as used herein, shall refer to all discoverable documents and  
14 ESI, which is defined in Federal Rule of Civil Procedure 34(a)(1)(A), and shall include metadata,  
15 Database load files (identifiable by the following file extensions: \*.dat, \*.csv, \*.lfp, \*.opt, or \*.txt)  
16 or other usable formats as agreed among the Parties, or as agreed in any subsequent stipulation  
17 concerning productions of ESI (collectively “Load Files”), native files, or other materials and/or  
18 media constituting responsive and discoverable information.

19          f)       “TXNM VeritextVault Manager” as used herein, shall refer to the  
20 individual or team of individuals assigned to the management of the VeritextVault repository for  
21 the *Texas v. New Mexico* matter, hosted by Veritext, whose contact information is as follows:  
22 E-mail: TXNM@veritext.com; Tel. 1-800-336-4000; or by transmitting Documents or media to  
23 any Veritext location, and which has been duly provided to all Accessing Entities via the case set-  
24 up document circulated to the Parties on September 4, 2018.

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26 \_\_\_\_\_  
27 <sup>1</sup> Colorado reserves the right to object to the scope of participation by certain Amici. To the extent that Colorado  
28 decides to seek a modification of the scope of participation by any Amici as set forth in the CMP, Colorado will  
present the issue to the Special Master by way of motion or otherwise and the remaining parties reserve all rights to  
respond accordingly.

1 g) "Draft," when used to describe either an electronic or hard copy document,  
2 means "a preliminary version of a document that has been shared by the author with another  
3 person (by e-mail, print, or otherwise) or that the author no longer intends to finalize or to share  
4 with another person."

5 h) "Duplicate," when used to describe either an electronic or hard copy  
6 document, means that the document does not show any facial differences, such as the inclusion of  
7 highlights, underlining, marginalia, total pages, attachments, markings, revisions, or the inclusion  
8 of tracked changes. Differences in system metadata fields, such as date created or modified, that  
9 do not affect the face of the document, are not relevant to determining whether the document is a  
10 duplicate.

11 i) "Gigabyte" means one billion bytes or 1,024 megabytes.

12 j) "Policy" means a regular practice at an entity that managers know about  
13 and expect to be carried out.

14 k) "Source" means the entity retaining, storage location, or, if known, the  
15 custodian of, any particular type(s) of Documents, ESI, and/or data.

## 16 II. PRESERVATION

17 2. ESI That Is Not Reasonably Accessible. The following categories of ESI listed  
18 below are not reasonably accessible in this litigation and need not be produced or included in a  
19 privilege log:

20 a) Data stored in a backup system for the purpose of system recovery or  
21 information restoration, including, but not limited to, disaster recovery backup tapes, continuity  
22 of operations systems, and data or system mirrors or shadows, if such data are routinely deleted or  
23 written over in accordance with an established routine system maintenance practice;

24 b) Voicemail messages;

25 c) Instant messages, such as messages sent on AOL Instant Messenger, Slack,  
26 Skype for Business, Google Talk, or Microsoft Communicator;

27 d) Text messages, such as cell phone to cell phone SMS or MMS messages;

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1 e) Electronic mail sent to or from a personal digital assistant (PDA),  
2 smartphone (e.g., Apple iPhone, Android), or tablet (e.g., iPad or Android tablet) provided that a  
3 copy of such e-mail is routinely saved elsewhere;

4 f) Other electronic data stored on a PDA, smartphone, or tablet, such as  
5 calendar or contact data or notes, provided that a copy of such information is routinely saved  
6 elsewhere;

7 g) Logs of calls made from cellular phones;

8 h) Deleted computer files, whether fragmented or whole (nothing in this order  
9 authorizes the intentional deletion of ESI after the duty arose to preserve such ESI);

10 i) Data stored in random access memory (RAM), cache memory, or in  
11 temporary or cache files, including internet history, web browser cache and cookie files, wherever  
12 located;

13 j) Data that is not accessible through the operating system installed on the  
14 same device;

15 k) Server, system, or network logs;

16 l) Electronic data temporarily stored by scientific equipment or attached  
17 devices, provided that the data that is ordinarily preserved as part of a scientific, technical, or  
18 expert report is, in fact, preserved in its ordinary location and form;

19 m) Metadata associated with any electronic storage device, electronic storage  
20 program, or any data contained therein. As used herein, the terms “electronic storage device” and  
21 “electronic storage program” do not include programs such as Outlook and Exchange. Electronic  
22 data contained on Outlook and Exchange must be preserved in the same manner as all other ESI  
23 not exempted by paragraph 2 herein;

24 n) Mirror or shadow copies of files or disk drives; and

25 o) Electronic data temporarily stored by scanners, copiers, and/or fax  
26 machines; and

27 p) Personal Information that, as defined and pursuant to applicable state or  
28 federal law, restricts storage, retention, or sharing by a Party.

1           3.       Nothing in this Stipulation and Order prevents any Party from asserting, in  
2 accordance with the Federal Rules of Civil Procedure, that other categories of ESI are not  
3 reasonably accessible.

4           4.       The Parties need not preserve, for this litigation, the categories of ESI listed in  
5 paragraph 2 unless, on the date that this stipulation and order is entered by the Special Master,  
6 either Party has a Policy that results in the routine preservation of such ESI, in which case such  
7 Party shall continue to preserve such ESI in accordance with its Policy.

8           5.       No Discovery of Material Not Required To Be Preserved. The Parties shall not  
9 seek discovery of items that need not be preserved pursuant to paragraphs 2-4 above. If any  
10 discovery request is susceptible of a construction that calls for the production of items that need  
11 not be preserved pursuant to paragraphs 2-4, such items need not be searched for, produced, or  
12 identified on a privilege log pursuant to the CMP and relevant and incorporated sections of the  
13 Federal Rules of Civil Procedure.

14           6.       The Parties may continue to work, in the ordinary course of business, on  
15 Documents that do not meet the definition of Draft in paragraph (1)(g) herein, and preserve any  
16 Draft Documents in the normal course of business.

17           7.       Use of Documents During Litigation. Notwithstanding any other provision of this  
18 stipulation and order, the Parties may take any of the following actions with respect to Documents  
19 and ESI without breaching their duty to preserve Documents and ESI.

20           a)       The Parties may move loose Documents or those which are contained in a  
21 folder or subfolder or ESI into files or folders that adhere to an organizational scheme that was  
22 created before this case was initiated. Nothing in this paragraph prevents the Parties from  
23 implementing an organizational scheme that applies only to documents or ESI created after this  
24 case was initiated.

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1           b)       The Parties may delete, overwrite, or wipe ESI from devices that are being  
2 replaced, upgraded, reimaged, disposed of, or returned at the end of lease, provided that the  
3 potentially relevant ESI is first copied to a new location in a manner that preserves the data,  
4 including metadata, that must be produced in accordance with section V, *infra*, of this stipulation  
5 and order.

6           c)       The Parties may move data from one device to another, or from one  
7 location to another, provided that a copy of the ESI remains accessible in the first location or the  
8 new copy is created in a manner that preserves the data, including metadata, which must be  
9 produced in accordance with section V, *infra*, of this stipulation and order.

10          d)       The Parties may load loose ESI into an enterprise content management  
11 system, provided that: (1) the enterprise content management system captures all of the metadata  
12 fields that must be produced under this order and does not convert the format of the ESI in a way  
13 that makes it significantly less accessible; or (2) the Parties maintain a copy of the ESI in its  
14 native format and make their production from this native file collection.

15          e)       The Parties may upgrade, patch, reprogram, or customize software that  
16 stores relevant data, even if such actions alter the way data is maintained, stored, or viewed.

17          f)       The Parties may take any of the following actions with respect to data in a  
18 database provided that it is part of the routine use of the database: input additional data; access  
19 data; update the software running the database; append new data; and modify existing data.

20          g)       The Parties may edit or take down any data on a publicly accessible  
21 internet site.

22          h)       The Parties may compress, decompress, encrypt, or decrypt data subject to  
23 preservation in this matter provided that any data losses during such processes do not result in  
24 loss of the metadata required to be produced under this stipulation and order or significantly  
25 degrade the quality of the data.

26          i)       The Parties may update social media sites, but may not take affirmative  
27 steps to delete relevant data posted before this case was initiated.

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1                   3)     The e-mail shares the exact numeric and text values in the  
2                   following fields, if available: date sent, time sent, to, from, cc, bcc, subject,  
3                   body (i.e., Extracted Text and/or OCR Text), and attachment names.

4                   b)     The Parties hereby stipulate and agree that in this matter there is a  
5                   rebuttable presumption of evidence that an e-mail correctly addressed to a recipient was actually  
6                   delivered to that recipient's e-mail inbox. This stipulation does not apply to drafts.

7                   c)     *E-mail Threading.* Where multiple e-mail messages are part of a single  
8                   chain or "thread," a Party is only required to produce the most inclusive message and need not  
9                   produce earlier, less inclusive e-mail messages within that e-mail family that are fully contained,  
10                  including E-mail Attachments and including identical senders and recipients, within the most  
11                  inclusive e-mail message. For the purposes of this Stipulation, the term "E-mail Attachment"  
12                  shall refer to any substantive Document(s) and/or ESI which has been attached to and transmitted  
13                  with an e-mail communication. If a later message contains different text, senders, or recipients,  
14                  or does not include an E-mail Attachment that was part of the earlier message, this message must  
15                  be also be produced.

16                  d)     *Deduplication of ESI other than e-mail.* To the extent possible, the Parties  
17                  agree to take all reasonable and practicable steps to avoid duplication, and produce only one copy  
18                  for each entity Source or individual custodian in possession of, or maintaining custody or control  
19                  over the Document or file. The Parties may identify duplicate Documents based upon a  
20                  comparison the MD5 or SHA-1 hash values, or by comparing Document metadata, OCR or  
21                  Extracted Text, or by any other reasonable method of review that will identify exact duplicates of  
22                  ESI and electronic files other than e-mails. It should be noted that where Documents do not  
23                  contain metadata as a result of their age, method of collection, or other factors outside of the  
24                  producing Party's control, the Parties are not able to reliably de-duplicate these Documents using  
25                  automated processes or metadata field values. In such instances, the Parties agree to make  
26                  reasonable efforts to manually review proposed production Documents and to reduce duplication  
27                  as is reasonably practicable.

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1           12.    Search Technology

2           a)       On November 20, 2018, the Parties shall confer to agree upon search terms  
3 and protocols for each Party’s broadly-based search across all potentially relevant custodians,  
4 locations, and Sources, with the intent that each Party collect, review, and produce all  
5 discoverable Documents and ESI relevant to the claims, defenses, and disputed facts alleged with  
6 particularity in the pleadings. No later than November 13, 2018, seven (7) days prior to the date  
7 the Parties agree to confer, each Party shall distribute a table describing: (i) the collections of ESI  
8 including Source(s) and/or individual custodian(s) for which it proposes to use search terms; (ii)  
9 the search terms that it proposes to use for each collection; and the computer software or  
10 technologies it proposes to use to carry out the search(es) in each collection.

11           b)       To the extent the Party receiving a Request for Production of Documents  
12 (RFP) pursuant to Federal Rule of Civil Procedure 34 and CMP section 7.2, believes that any  
13 particular RFP requires an additional electronic search of custodians, locations, or sources  
14 because responsive materials are reasonably unlikely to be included within the collection of  
15 responsive Documents and/or ESI collected or produced pursuant to paragraph 11(a) in order to  
16 meet obligations of diligence, that Party shall confer with the requesting Party or Parties and  
17 provide, in writing, its proposed search terms, custodians, locations and sources within fourteen  
18 (14) business days of receipt of the RFP. If the requesting Party wishes to obtain more  
19 information about the proposed search(es) or objects to some or all of the proposed search  
20 protocol, the Parties must confer within seven (7) days of receipt of the information provided.  
21 Any unresolved dispute must be brought to the Special Master’s attention with seven (7) days of  
22 the Parties’ conferral.

23           c)       Nothing in this provision requires a Party to accept the results of an  
24 electronic search alone conducted under paragraph 11(b) as a sufficient response to a discovery  
25 response, although the Parties may agree to do so in any particular situation.

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1 **B. 502(d) Order**

2 15. The Parties to this original action have agreed to provisions regarding Requests for  
3 Production of Documents/Inspections to Parties in CMP section 7.2. This stipulation hereby  
4 incorporates CMP section 7.2.3 regarding the operative effect of Rule 502(d) of the Federal Rules  
5 of Evidence (Rule 502(d)) and those provisions shall be controlling. In the event the Parties agree  
6 to a stipulation regarding Rule 502(d) orders, the terms of any such future stipulation shall be  
7 controlling, as agreed.

8 **C. Privilege Log**

9 16. E-mail Threads or Chains. An e-mail may be treated as a single document  
10 regardless of the number of e-mails contained within the e-mail thread or chain. To the extent  
11 required, the privilege log entry for an e-mail withheld under a claim of privilege, may identify  
12 the author, recipient(s), subject, dates, and times based on the metadata from the top-level  
13 message, and is not required to include metadata from any e-mail in the underlying e-mail thread  
14 or chain. If an e-mail contains both privileged and non-privileged communications, the non-  
15 privileged communications must be produced. This requirement may be satisfied by producing  
16 the original of the embedded, non-privileged e-mail, but if the original is not available, it may be  
17 satisfied by producing a redacted version of the privileged e-mail. The Parties agree that, in  
18 addition to the limitations set forth in paragraphs 2 and 12, the following documents need not be  
19 included on a privilege log:

20 a) Communications between the Parties and their counsel (including internal  
21 communications within a law firm or within a legal department of the Party) on and after the  
22 filing of this lawsuit and before the lawsuit in anticipation of this litigation regarding the litigation  
23 or litigation strategy.

24 b) Work product created by or for counsel in this matter after commencement  
25 of this lawsuit and before the lawsuit in anticipation of this litigation.

26 17. E-mail Attachments. Any E-mail Attachment to an e-mail which, upon review, is  
27 determined to be privileged, must be independently reviewed for relevance, responsiveness, and  
28 to determine if the E-Mail Attachment is also privileged. In the event the “parent” e-mail is

1 privileged and the “child” attachment is not, the attachment must be produced. If the E-mail  
2 Attachment(s) to a privileged e-mail is, in fact, privileged, it shall be listed separately on the  
3 privilege log, with a notation or reference to indicate it’s family relationship to the privileged  
4 e-mail, which must also be listed on the privilege log, immediately preceding the attachment.

5 In preparing and producing privilege logs, the Parties shall comply with the CMP sections  
6 7.2.3(a)-(g) and CMP section 10.

## 7 V. PRODUCTION

8 18. Procedures for Production. Unless stated otherwise in a written agreement signed  
9 by each of the Parties to this litigation, the following specifications and procedures apply to the  
10 form and content of Documents and/or ESI produced in this matter. Compliance with these  
11 procedures constitutes compliance with the Federal Rules of Civil Procedure and the CMP on file  
12 in this matter, as revised.

13 a) *Format of Productions.* Except as stated otherwise below, ESI produced  
14 by a Party shall be converted, if reasonably practicable, to not less than 300 dpi, multi-page,  
15 black-and-white TIFF images or black-and-white /full color PDF images (Images), depending on  
16 the technological limitations of the producing Party. Where graphics, photos, or other high-  
17 resolution digital images are required by this order, these files may be produced as Images, but  
18 may, if available, also be produced in native format, such as JPG, PNG, or other higher-resolution  
19 format, in order to preserve quality. If a receiving Party requests native format of any such  
20 Images, the producing Party shall produce the same if available. Each produced Document shall  
21 be unitized on a document-level, unless doing so would alter the manner in which the  
22 Document(s) and/or ESI was stored in the ordinary course of business. Large collections of  
23 scanned or word process-generated Documents and/or ESI should not be combined into a single  
24 Image file prior to production; if Documents and/or ESI materials are maintained as individual  
25 Document, they must be produced individually and each Document/file must be listed as a  
26 separate record in the Database Load Files.

27 b) *Bates Numbering.* Each Image page must be branded with a unique Bates  
28 number containing a prefix (which identifies the producing Party as set forth in the CMP), e.g.,

1 TX, NM, US, CO, which to the extent possible, should be permanently burned onto the Images,  
2 not added to the Image as an overlay, which can easily be removed.

3 c) *Service of ESI Productions.* Unless otherwise agreed by the Parties, the  
4 Images must be produced in accordance with the September 28, 2018 Interim Stipulation on file  
5 with the Special Master, must be served via upload to the VeritextVault or Box.com, as outlined  
6 in the September 28, 2018 Interim Stipulation, and must be followed by a Notice of Production,  
7 served upon all Parties in accordance with the CMP.

8 d) *Database Load Files.* Each Party's Production Images must be  
9 accompanied Database Load Files, which must include both a "Data load file," an "Image load  
10 file," and Extracted and/or OCR "Text Files" corresponding to each produced Document. The  
11 Data load file may be produced as a delimited text file (\*.dat) or comma delimited Excel file  
12 (\*.csv) (collectively, "Data load file"), which shall contain Document data/metadata for each of  
13 the applicable fields described in Appendix A. The Data load file shall contain a "TextPath" field  
14 populated with a relative path to the individual, document level, text files which contain either  
15 Extracted Text or OCR Text (if appropriate) and shall be named as the Beginning Production  
16 number (Text Files). The Image load file, which associates and maps each Database record's  
17 Beginning Bates number to its corresponding Image file using a relative path to the Image file  
18 location, may be produced in any of the following formats: (1) an Opticon™ (\*.opt) file; (2) an  
19 IPRO "cross reference file" (\*.lfp); or (3) by including in the Data load file, an "ImagePath" field  
20 using a relative path to the Image file location (collectively "Image load file"). For all  
21 Documents produced in accordance with the September 28, 2018 Interim Stipulation, the Parties  
22 shall provide corresponding Data load files, Text load files, and Image load files (collectively  
23 "Load Files") within five (5) business days of uploading the produced Images. Should any Party  
24 encounter technical difficulties which prevent the production of the required Load Files within  
25 five (5) business days that Party will confer with the other Parties and provide a description of the  
26 issue preventing timely production, and an estimate of additional time necessary for the Party to  
27 comply.

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1 e) *ESI Metadata and Master Index.* Nothing in this stipulation requires a  
2 Party to manually code or populate a metadata field in Appendix A (other than “Source”) if such  
3 fields cannot be extracted from a document. However, the parties have conferred, and have  
4 agreed to share with one another, an index of their Document productions pursuant to CMP  
5 section 7.2.2 (Master Index), which may include manually coded field values based upon an  
6 independent review of the Documents. As many of the Documents in this matter were accessible  
7 only in hard copy or paper format, and manually scanned, metadata is not reasonably available,  
8 and much of the metadata associated with these Documents would not be meaningful for the  
9 purposes of review.

10 f) *Paper Documents*

11 1) Documents printed on paper that is larger than 11 x 17 inches may,  
12 at the producing Party’s discretion, be produced in hard-copy on paper format. Documents  
13 produced on paper must be produced as they are kept in the ordinary course of business or must  
14 be organized and labeled to correspond to the categories in the request.

15 2) Documents printed on paper that is 11 x 17 inches or smaller must  
16 be scanned and produced to the VeritextVault or other FTP as provided in the September 28,  
17 2018 Interim Stipulation and in accordance with section V, paragraph 32(a), herein.

18 g) *Word and/or WordPerfect Documents*

19 1) Word or WordPerfect generated files may be produced as Images  
20 and the Parties must produce full extracted text from the Document, unless the Document has  
21 been redacted during privilege review, in which case the Parties may produce OCR Text which  
22 excludes the redacted portion.

23 2) Any party desiring to obtain native versions of Microsoft Word  
24 and/or WordPerfect files shall confer to resolve any disputes in this regard.

25 h) PDF files will be produced as Image files with Data load files which  
26 include those metadata fields, as available, listed in Appendix A.

27 i) *Microsoft PowerPoint or other Presentations.* Microsoft PowerPoint or  
28 other Presentation files (\*.ppt, \*.pptx, etc.) shall be produced as native files and may also be

1 processed and produced as full color Images with one slide per page, and shall include full  
2 extracted text. If any presenter notes are associated with the PowerPoint or Presentation file, the  
3 slides may be produced as full color, half page Images, with presenter notes appearing below each  
4 slide. If any part of the PowerPoint or Presentation file is redacted, the file shall be produced as  
5 an Image and the Text load files produced may contain OCR text, in lieu of extracted text.

6 j) *E-mails*

7 1) E-mails shall be produced as Images and the producing Party must  
8 also produce full extracted text files, unless the e-mail produced contains redactions. If a Party  
9 redacts any part of an e-mail before producing it, OCR text may be provided in place of the  
10 original extracted text in addition to the redacted image of the e-mail.

11 2) E-mail Attachments, as defined above, must be processed and

12 included in the Data load file as separate Documents. However, the parent-child relationship (the  
13 association between e-mails and E-mail Attachments) should be preserved, and the appropriate  
14 Beginning Attachment and Ending Attachment fields listed in Appendix A must be populated.  
15 Further, E-mail Attachments should be consecutively produced with the parent e-mail record.  
16 The Beginning and Ending Attachment Bates numbers must also be included in the Data load  
17 files, as noted in Appendix A, as well as the Master Index produced in accordance with CMP  
18 section 7.2.2, as provided in Appendix B attached hereto.

19 k) Microsoft Excel files (\*.xls, \*.xlsx, etc.) and other spreadsheets must be

20 produced in native format and must include an Image placeholder, which provides the name of  
21 the native file and is branded with a uniquely assigned Bates number. Spreadsheets may be  
22 produced as Images if the Document is redacted or if the native is unavailable. The Data load file  
23 must contain a field that identifies the file path of the native file (FileName or similar field value)  
24 which corresponds to each natively produced Document. Any documents produced in their  
25 native format shall be named according to the assigned Document-level Bates number, which  
26 corresponds to the Bates number branded on the placeholder Image.

27 l) Embedded non-substantive attachments to e-mails or other files such as

28 logo images, social media links, or e-mail signatures, may be removed from a Party's production,

1 and removed from the Document or e-mail “family”, if the producing Party determines such  
2 embedded attachments are nonresponsive or without substantive value.

3 m) Digital photographs may be produced as document level Images and Bates  
4 numbered as specified above. The receiving Party may, after reviewing the produced digital  
5 photographs, request that the photographs be produced as native files in their original resolution,  
6 if available and if not already produced.

7 n) When any Party produces any kind of electronic data other than described  
8 above, including data from databases, CAD drawings, GIS data, videos, etc., the Parties will meet  
9 and confer to determine a reasonably useable form for the production.

10 o) Except as stated above, a Party need not produce the same ESI in more  
11 than one format.

## 12 VI. MISCELLANEOUS PROVISIONS.

13 19. Discovery Disputes. Before filing any motion with the Special Master regarding  
14 electronic discovery or evidence, the Parties shall meet and confer in a good faith attempt to  
15 resolve such disputes, in accordance with CMP section 12.

16 20. Costs of Document Production. Unless this Special Master orders otherwise for  
17 good cause shown, each Party shall bear the costs of collecting, processing, reviewing, and  
18 producing its own Documents.

19 21. Effect of Order. The Parties’ agreement to this stipulation and order is without  
20 prejudice to the right of any Party to seek an order from the Special Master to rescind or amend  
21 this stipulation and order for good cause shown. Nothing in this stipulation and order abridges the  
22 rights of any person to seek judicial review or to pursue other appropriate judicial action with  
23 respect to any discovery ruling made by the Special Master in this matter.

24 22. Integration/Appendices. The following documents are incorporated herein by  
25 reference:

26 a) “Appendix A” is a list of the metadata fields to be included in the Data load  
27 files produced by each Party. To the extent additional metadata is available, the Parties have  
28 agreed to produce all additional non-privileged metadata.

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b) "Appendix B" is a list of the fields to be included in the aforementioned Master Index maintained by the parties, and updated no later than fifteen (15) days following a Party's production of Documents and/or ESI.

This agreement may be signed in counterparts and is fully executed on the date of the last signature. The below signatories affirm that they have the right to bind their respective Parties to this agreement:

THE UNITED STATES OF AMERICA

Dated: November 8, 2018

/s/ Lee Leininger  
James J. DuBois  
Stephen Macfarlane  
Lee Leininger  
U.S. Department of Justice  
Attorneys for the United States of America

STATE OF TEXAS

Dated: November 8, 2018

/s/ Stuart L. Somach  
Stuart L. Somach  
Somach Simmons & Dunn, P.C.  
Attorneys for the State of Texas


STATE OF NEW MEXICO

Dated: November 12, 2018

/s/ David A. Roman  
Marcus J. Rael, Jr.  
David A. Roman  
Robles, Rael and Anaya  
Attorneys for the State of New Mexico

STATE OF COLORADO

Dated: 11-8-18

  
Chad M. Wallace, Sr. Assistant Attorney General  
Colorado Department of Law  
Counsel of Record for the State of Colorado

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**Appendix A**

The following represent the Metadata field values for inclusion in Data load files exchanged among the Parties. These field names are general abbreviations and may differ from eDiscovery Review Platform to the next. As long as the available information and field values are sufficiently provided by each Party, the names of the fields are not required to match the following list:

BegProd, EndProd, Source, PageCount, BegAttach, EndAttach, AttachCount, AttachRange, Author/E-mail From, Recipient/E-mail To, E-mailSubject, E-mailCC, E-mailBCC, FileName, FileExt, DateSent, TimeSent, ProdDate, NativePath, OriginalFolderPath, ImageFilePath, DateCreated, DateLastModified, MD5Hash, TextPath (if producing Text load files, which is the preferred method of production), or ExtractedText/OCR (if producing Extracted/OCR text in the a Data load file).

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**Appendix B**

The following represent the Metadata and/or Data Fields which the Parties agree to populate and include in the Master Index prepared in accordance with CMP section 7.2.2. The field names included in each Party's Master Index may differ from following list but the values for each field must be sufficiently provided:

Beginning Production Bates Number, Ending Production Bates Number, Source, Page Count, Beginning Attachment Bates Number, Ending Attachment Bates Number, Author/E-mail From, Recipient/E-mail To, E-mail Subject, E-mail CC, E-mail BCC, Document Description, Document Date, Production Date.

## SERVICE LIST

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(Service via E-Mail and U.S. Mail)

**Honorable Michael J. Melloy**

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United States Circuit Judge  
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