

AGREEMENT FOR COMPUTER FORENSIC SERVICES

This Agreement For Computer Forensic Services (this “Agreement”) is entered into as of _____, 2008, by and between <name of company> (“Consultant”) with a place of business at <company address> and _____ (the “Client”). Consultant and the Client are collectively referred to in this Agreement in the singular as a “Party” and in the plural as the “Parties”.

WHEREAS, Consultant is a computer forensic examiner and has expertise in the areas of computer forensics and electronic discovery; and

WHEREAS, Client wishes to engage Consultant to perform computer forensics; and

WHEREAS, each of the Parties has been independently made aware of and accepted of the premises of the engagement of Consultant by the Client; and

WHEREAS, Consultant here by accepts the engagement by the Client and the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants of the Parties appearing in this Agreement, Consultant and Client mutually agree to the following terms and conditions which shall govern the engagement.

ARTICLE I ENGAGEMENT

The Client agrees to hire and engage Consultant and Consultant agrees to accept engagement by the Client to perform the services set forth in the Article II below (the “Matter”) according to the terms and conditions of this Agreement.

ARTICLE II MATTER AND SCOPE

A. **Matter.** The “Matter” consists of the following:

Computer Forensic analysis of the hard drive(s); CD(s); DVD(s); phone(s); PDA(s); digital memory; digital music players; “thumb” drives; systems containing any of these items; and other sources of data (“Sources”) set forth on Exhibit B, attached hereto and made a part hereof, which made be updated from time to time by the mutual written agreement of the parties.

B. **Scope of Matter.** Consultant will conduct a digital forensic analysis of the digital media provided by Client. The analysis will consist of: recovering deleted and/or damaged files, producing a summary of all file types on the media; and identifying all files related to the investigation based on key word searches using information provided by the Client. Consultant will prepare a written report outlining the findings and present to Client.

C. **Other Services.** In the event that the Client desires professional services from Consultant outside of the Matter and the scope thereof, then in such event Consultant and the Client will meet and confer with regard thereto, the extent of the involvement of Consultant in such activity, and the compensation of Consultant therefor.

D. **Relationship.** Consultant shall serve as a consultant to Client in the activities of Client set forth in Exhibit C <or Statement of Work, or however you want to detail your work product> hereto or as otherwise requested by Client, by or through its members, agents, employees, or consultants. Consultant will perform such services under the general direction of Client, but Consultant determines the manner and means by which the services are accomplished. Consultant is an independent contractor with respect to Client and is not an employee or agent of Client.

ARTICLE III FEES ON THE MATTER / PROFESSIONAL SERVICES COMPONENT AND DEPOSIT

A. **Hourly Rates.** For all professional services performed by Consultant in relation to the Matter, Client will pay Consultant's current hourly rates as stated on Exhibit A to this Agreement.

B. **Notice of Rate Changes.** The hourly rates for the professional staff of Consultant are reviewed from time to time and may be adjusted by Consultant during the pendency of the Matter. Consultant reserves the right to change the hourly rates for the professional staff of Consultant. Any change in the hourly rates for the professional staff of Consultant will be effective one billing cycle (thirty (30) days, more or less) following written notice thereof to the Client.

C. **Calculation and Payment of Fees and Expenses.** All billings by Consultant for professional services are calculated on the basis of a minimum of one-tenths of an hour for any and all work performed by the professional staff of Consultant on behalf of the Client, including, without limitation, preparation of documents and correspondence, making and receiving telephone calls, reviewing files, reviewing correspondence, etc. The Client understands, acknowledges, and agrees that the professional services of Consultant rendered and fees, costs, and expenses incurred or advanced prior to engagement of Consultant by the Client pursuant to this Agreement (including, without limitation, conferences, telephone conferences, etc.) will be invoiced by Consultant in accordance with the terms and conditions of this Agreement. The Client agrees to pay to Consultant the statement of Consultant for such professional services, fees, costs, and expenses in accordance with the terms and conditions of Article V.

D. **Estimated Fees/No Guaranty.** Consultant acknowledges that Consultant has estimated a fee of _____ thousand Dollars (\$ _____ .00) as an approximate fee for the professional services component to be performed by Consultant on the Matter to the extent elaborated in Article II. The Client acknowledges that Consultant has NOT quoted a fee for the Matter or an approximation thereof. The Client understands, acknowledges, and agrees that in the event that at any time Consultant mentions an amount as the fee for the professional services of Consultant on the Matter, then the amount mentioned by Consultant is solely an estimate thereof and Consultant does not and cannot predict the actual amount of the fees for the professional services of

Consultant on the Matter. Moreover, the Client acknowledges, understands, and agrees that should Consultant be required to perform professional services outside of the Matter or the scope thereof as detailed in Article II or should the Client create work for or cause Consultant to perform duplicitous work, then in each such event the Client acknowledges, understands, and agrees that any estimate of the fees for the professional services of Consultant on the Matter shall not control and such shall neither be an estimate of total fees nor a flat fee for the professional services component performed by Consultant on the Matter. The Client understands, acknowledges, and agrees that the total cost for the professional services component performed by Consultant on the Matter may be higher than the sum estimated by Consultant and the retainer lodged with Consultant by the Client whether or not the Matter or the scope of the Matter changes to a material degree. The Client acknowledges, understands, and agrees that Consultant can not and has not promised or guaranteed a particular result.

ARTICLE IV FEES, COSTS, AND EXPENSES

A. **Basic Services.** The Client agrees to pay to Consultant any and all of the fees, costs, and expenses necessary in the opinion of Consultant which will be or have been incurred or advanced by Consultant in relation to the Matter or for other professional services requested by the Client including, without limitation, fees, costs, and expenses related to or arising out of the activities of third party service providers and the acts of filing, recording, publishing, and transporting either in advance or within thirty (30) days of billing therefore. Furthermore, the Client agrees to reimburse Consultant within thirty (30) days of billing therefore, any and all fees, costs, and expenses advanced or incurred by Consultant, which may include, without limitation, substantial duplicating and photocopying, long distance telephone toll charges, outbound telefax, mileage, travel time in excess of one hour, travel costs and expenses (airfare, hotel costs, parking, rental car, per diem, etc.), express delivery and extraordinary postage, expedited delivery, a file opening charge, digital media used to deliver phases of the project to Client (hard drives, disk enclosures, magnetic tapes, CD's and DVD's, etc.), and any and all other disbursements reasonably necessary in the opinion of Consultant to the activities of Consultant in providing professional services on the Matter. The current charges by Consultant for photocopies and outbound telefax are stated on Exhibit A to this Agreement. Consultant may request that the Client directly settle the statements of third party vendors and the fees of governmental agencies and the Client agrees that upon such request the Client shall within the terms offered thereby directly pay such third party vendors and governmental agencies. The Client understands, acknowledges, and agrees that any and all fees, costs, and expenses incurred or advanced by Consultant on the Matter shall be invoiced to the Client in addition to (a) any sum estimated by Consultant or appearing in this Agreement, and (b) sums invoiced by Consultant for fees for the professional services rendered to the Client on the Matter. The Client understands, acknowledges, and agrees that fees, costs, and expenses incurred or advanced by Consultant shall be invoiced by Consultant to the Client and the Client agrees to pay such sums in accordance with Article V.

B. **Testimony.** Notwithstanding any other provision herein, in the event Consultant is called to testify in connection with any matters pertaining to this engagement or services performed hereunder, Consultant's time spent in transit to and from, preparation for, attendance upon and giving of such testimony shall constitute consulting services for Client pursuant to this agreement and, Client shall compensate Consultant for such time and associated expenses according to Exhibit A hereto.

As used in this paragraph, "called to testify" includes, not by way of limitation, testimony in court,

grand jury or congressional testimony, deposition, testimony, responding to or resisting interrogatories, responding to or resisting requests for production or requests for admission and, responding to or resisting other forms of written discovery, appearance pursuant to subpoena, and testimony by affidavit, attestation and/or sworn statement.

C. **Subpoena.** If any of the information or materials relating to this Agreement that are still within Consultant's custody or control are subpoenaed, Consultant will give prompt notice of such subpoena in advance of its compliance. Should Client require Consultant to oppose a subpoena, Client will either retain legal counsel to represent Consultant or will indemnify Consultant from and against all costs and expenses, including reasonable attorney's fees, costs, liabilities and disbursements, resulting from such action.

D. **Retention and Storage.** Forensic images and other media related to a lawsuit will be retained by Consultant for a period of one (1) year from receipt of such material from Client or until such lawsuit is settled, whichever is sooner ("Retention Period"). After the Retention Period, the images and/or other media will either be destroyed or retained based upon Client's written instructions. If Client does not provide written instructions within ten (10) days of the end of the Retention period, Client agrees that any and all images and/or media will be destroyed. If Client instructs Consultant to retain the images and/or media, a monthly storage fee will be charged to Client.

ARTICLE V PAYMENT TERMS AND SERVICE CHARGE

Consultant invoices on a monthly basis. However, Consultant may in the sole discretion of Consultant elect to issue a statement for a shorter period of time if and when Consultant determines that the sum due to Consultant for fees for professional services or fees, costs, and expenses incurred or advanced in relation to the Matter or other matters has exceeded the amount of credit Consultant is willing to extend to the Client. The Client agrees that all statements of Consultant for fees for professional services performed and for fees, costs, and expenses incurred or advanced in relation to the Matter or otherwise (including a short period statement) are due and payable upon the presentation of a statement therefore and the Client agrees that the Client shall pay each and every statement of Consultant (including a short period statement) within thirty (30) days of the date thereof.

While Consultant seeks to include in each statement all charges of Consultant for fees for professional services and fees, costs, and expenses incurred or advanced for the billing period covered by the statement for such billing period, Consultant hereby informs the Client that it is not unusual for charges of Consultant for fees for professional services and fees, costs, and expenses incurred or advanced from a prior previously invoiced billing period may appear in a subsequent statement. The Client agrees that Consultant shall have the right to issue a statement to the Client for charges of Consultant for fees for professional services and fees, costs, and expenses incurred or advanced at any time and not only in the statement covering the relevant billing period.

The Client agrees to pay a monthly service charge on all amounts that remain unpaid more than thirty (30) days from the date of billing equal to the greater of 1 and 1/2% per month (18% *per annum*) or the highest rate permitted by relevant law, whichever is lower) of the outstanding balance of the statement from the date of the original statement until paid.

ARTICLE VI TERMINATION

Each of Consultant and the Client shall be free to terminate this Agreement at any time upon written notice to the other Party. In the event of a termination of the Computer Analyst-client relationship by either Consultant or the Client, the Client shall remain responsible for all fees for professional services rendered and fees, costs, and expenses incurred or advanced through the date of termination. Consultant will work with the Client to effect an orderly transition of the Matter to the Client or substitute Consultant.

ARTICLE VII DISCLOSURE / ERRORS AND OMISSIONS INSURANCE

Consultant maintains errors and omissions insurance coverage applicable to the services to be rendered pursuant to this Agreement.

ARTICLE VIII WARRANTY OF LAWFUL ACCESS

Client warrants that any media tendered or made available to Consultant for examination or duplication and any access granted to any information, system or network was obtained lawfully, in full compliance with all applicable statutes and regulations or orders or policies of any court or agency of competent jurisdiction, and with due regard for and deference to the property or privacy rights of third parties. Client agrees to indemnify and hold Consultant harmless from any claim or suit alleging unauthorized or unlawful access to any information, media, system or network, including all damages, expenses, liability, fines and attorney fees.

ARTICLE IX GENERAL TERMS

A. **Entire Agreement.** Each of the Parties to this Agreement declares and represents that no promise, inducement or agreement not expressed in this Agreement has been made to such Party, and that this Agreement and the Exhibit(s) to this Agreement contain the entire agreement between the Parties and that the terms and conditions of this Agreement are contractual and not a mere recital. This is the entire agreement between the Parties which supersedes all prior and contemporaneous communications between the Parties.

B. **Notices.** Any notice or other communication required or permitted by this Agreement to be given to a Party shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by U.S. registered or certified mail (return receipt requested), or sent via facsimile (with receipt of confirmation of complete transmission) to the Party at the Party's address or facsimile number written below or at such other address or facsimile number as the party may have previously specified by like notice. If by mail, delivery shall be deemed effective 3 business days after mailing in accordance with this Section IX (B).

(1) If to the Client:

(2) If to Consultant:
<full company name>
<full company contact information>

C. **No Waiver.** The terms and conditions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only by a further writing executed by each of the Parties to this Agreement.

D. **Severability.** In case any one or more of the terms and conditions or a portion thereof contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or condition of this Agreement and this Agreement shall be construed as if the invalid, illegal or unenforceable term or condition or portion thereof had never been contained in this Agreement and the intent of the severed term, condition or portion thereof shall, as nearly as possible, be carried into effect.

E. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California without regard to its conflict of laws rules.

F. **Binding.** This Agreement and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon each of the Parties and each and all the personal representatives, successors, and assigns of the Parties and each of them as though all of them were parties to this Agreement.

G. **Counterparts.** This Agreement shall be executed in two counterparts and each such counterpart shall be deemed to be an original instrument and all of which when taken together shall constitute collectively a single agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

H. **Attorneys' Fees and Costs.** If any dispute arises between the Parties concerning the enforcement or declaration of any right under this Agreement *or* if any litigation *or* appeal therefrom is commenced between the Parties for the enforcement or declaration of any right under this Agreement, then the prevailing Party shall be entitled to receive from the nonprevailing Party any and all of the costs, expenses, and fees incurred by the prevailing Party in connection therewith, including, without limitation, attorneys' and consultants' costs, expenses, and fees. In the event a dispute is litigated, then the court hearing the trial or appeal of the matter (or any court of competent jurisdiction in a separate action brought for the purpose of recovery of costs, expenses, and fees under this paragraph) shall order the nonprevailing Party to pay to the prevailing Party the costs, expenses, and fees incurred by the prevailing Party in relation to the litigation or on any appeal.

Costs, expenses, and fees incurred in enforcing any judgment, to include, without limitation, attorneys' costs, expenses, and fees, are recoverable as a separate item. In no case shall the right to post-judgment costs, expenses, and fees incurred to enforce a judgment obtained by one of the Parties against the other Party be merged into any judgment obtained.

I. **Voluntary.** Each of the Parties represents, acknowledges, and agrees that such Party (i) has carefully read this Agreement, understands the terms and conditions of this Agreement and (ii) enters into this Agreement on a voluntary basis after due consideration.

J. **Advice of Counsel.** The Client acknowledges and agrees that the Client has been advised to seek and has had an adequate opportunity to obtain independent Counsel regarding the meaning and effect of this Agreement. The Client states that the Client has read and discussed the terms and conditions of this Agreement with independent advisors and certifies that the Client understands the terms and conditions of this Agreement and is satisfied therewith.

K. **Confidentiality.** Subject to the other provisions of this agreement and except as required by law, the Parties agree to take commercially reasonable steps to protect from disclosure to third parties any confidential and proprietary information of the other Party that may be exchanged in connection with the Matter. Subject to the other provisions of this agreement and except as required by law, Consultant agrees to take commercially reasonable steps to protect the confidentiality of information in or on electronic data and media made available or furnished to him for examination. Client agrees that if, during the course of this engagement, Consultant shall find within any electronic data or media evidence of child exploitation (e.g., child pornography) or of a credible threat of physical harm to any person, Consultant shall be entitled to immediately bring such matters to the attention of federal or state law enforcement authorities and that no assertion of privilege, confidentiality or breach of contract will be raised as a bar to such action.

L. **Authorization.** Each person executing this Agreement on behalf of an entity states that such person is authorized to execute this Agreement on behalf of such entity and that this Agreement is binding upon such entity in accordance with its terms and conditions.

<company name>

CLIENT

By: _____

By: _____

Name: <authorized representative>

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

to

**AGREEMENT FOR COMPUTER FORENSIC SERVICES
SERVICES AND FEES**

- A. Name of Consultant(s).**
- B. Term of Consulting Period.**
- C. Minimum.** Minimum number of hours to be performed during consulting period: Ten (10) hours
- D. Current Billing Rate.** With respect to the Matter, the current billing rate of Consultant handling the Matter, is \$250.00 per hour.

COSTS

Photocopying	\$0.20 per page
Telefaxing (outbound)	\$2.00 per page
Third Party Goods and Services	At cost
Travel	\$100.00 per hour
Mileage	.46 cents per mile

E. Additional Conditions of Service.

1. Consultant cannot accept engagements in support of the defense in criminal prosecutions.
2. Client may not identify or designate Consultant as an expert or consultant in Client's case until and unless we have agreed in writing to serve in that capacity and we have received the required engagement fee.
3. Consultant is engaged by the attorney or firm that hires us, not that attorney's or firm's client. The attorney or firm engaging us is primarily responsible for our charges and such charges are not

contingent upon the outcome of the case or examination, nor upon the actions of the attorney or firm's client.

4. Consultant's standard hourly rate is \$250.00. Consultant requires a minimum \$2,500.00 non-refundable engagement fee, which we credit to billings for time and expenses.

5. Client warrants that any media tendered to us for examination or duplication and any access granted to any system or network has been lawfully obtained, in full compliance with all applicable orders or policies of any court or agency of competent jurisdiction.

6. It is Client's responsibility to furnish the names and capacities of all parties or potential parties before engagement so that Consultant can determine if there are any potential conflict of interest in consulting with Client.

7. If Consultant is not formally retained in a timely manner, Consultant is not limited in its ability to accept, and Client may not challenge Consultant's acceptance of work in any matter, including for Client's opponent or any party who may be adverse to your client's interests, even if you have shared confidential information with us relating to such client or matter.

8. Client understands that if any child pornography is encountered during NetCerto's investigations, all work will stop, all materials will be secured, Client's legal counsel and NetCerto's legal counsel will be contacted, and the appropriate law enforcement agency will be contacted.

EXHIBIT B

to

AGREEMENT FOR COMPUTER FORENSIC SERVICES

SOURCES

Sources include, but are not limited to:

- Hard drives
- “Thumb” drives
- Magnetic tapes
- Floppy disks
- Cellular phones
- Personal digital assistants
- Digital music players
- Digital cameras
- Removable digital media – Compact Flash card, Secure Digital card, Smart Media card, Memory Stick card, etc
- Digital memory – RAM, NVRAM, EEPROMs, etc.
- Systems containing any of the above