



computer forensics + e-discovery + data recovery

a division of CAPCOM, Inc.

9 Tanner Street, East Entry, Haddonfield, NJ 08033 – 856.428.0878 (p) – 856.428.9401 (f)

This AGREEMENT made on this the ____ day of _____, 20____ between PVL Forensics Ltd., (a division of CAPCOM, Inc.) and _____ (herein referred to as “Client”) with an address of _____

Case Name: _____ Case Number: _____ Evidence Number(s): _____

1. PVL Forensics Ltd., Responsibility. PVL Forensics agrees to perform computer forensic services for said Client, including but not limited to: the listed computer(s), floppy disk(s), magnetic tape(s), hard disk drive(s), CD(s), multimedia device(s), flashcard(s), thumb drive(s), PDA(s), cell phone(s) or any other related material or storage media for purpose of imaging, examining and/or recovering information including, but not limited to, letters, correspondence, memoranda, journals, electronic mail, image (picture) files, database files, deleted items, partial files, or other types of files found in the media or computer. For the purpose of developing the information that Client so requests as more specifically described in the Preliminary Examination Checklist or as set forth in a valid subpoena or court order provided by the client. Client acknowledges that if PVL Forensics discovers any documents, things, or materials which in PVL Forensics Ltd’s sole and absolute discretion may constitute child pornography, PVL Forensics has a legal and ethical obligation to notify law enforcement officials immediately and PVL Forensics will do so. Client shall release and hold harmless PVL Forensics of and from any and all rights of actions, demand, liability and all claims relating to or arising out of any disclosure by PVL Forensics to law enforcement authorities.

2. Examination Results. – PVL Forensics has no control and therefore, can accept no responsibility over the final results of the examination as per paragraph 1 above. While the client can request for specific files, keywords, and other relevant data to be located on the supplied media, PVL Forensics can not guarantee the recovery of any files, keywords, data and/or other electronic information due to circumstances beyond their control including, but not limited too: non-existence of requested files, keywords, or other data on supplied media, lack of technology available to recover such information and/or unreadable media.

3. Forensic Guidelines – The International Society of Forensic Computer Examiners (ISFCE) has developed a specialized certification program (Certified Computer Examiner – CCE) and is the governing body of Certified Computer Examiners. The ISFCE has also developed and maintains a strict code of Ethical Conduct and Professional Standards to which all certified organizations must

adhere. PVL Forensics shall utilize only certified individuals for the purpose of this investigation and analysis and will adhere to the Ethical Conduct and Professional Standards set by the ISFCE.

4. Client Responsibility. The client hereby authorizes and has the legal authority to permit PVL Forensics to take computer equipment and/or data into his possession and analyze and/or create images of said computer equipment and/or data. The client takes full responsibility for providing PVL Forensics with this authority, and PVL Forensics, Ltd., its employees, its assigns, and its associates will be held harmless for any actions, suits, claims, losses, damages, costs, and liabilities arising from the provision of said computer equipment and/or data provided for imaging, examination and/or analysis. In the event that PVL Forensics, Ltd., its employees, its assigns, or its associates are made a party to any action, suit, or claim arising from the possession and/or examination of said computer equipment and/or data, client agrees to reimburse PVL Forensics, Ltd., its employees, its assigns, and its associates for any expenses incurred for their defense against such actions, suits, or claims.

Client agrees to fully cooperate with and participate to the extent requested by PVL Forensics in any work performed by PVL Forensics. Client agrees that they will provide PVL Forensics with any and all information PVL Forensics so requests, which is necessary for the performance of PVL Forensics Ltd., obligations under this agreement.

5. Scope of the Agreement. The scope of this agreement is set forth and defined in the Preliminary Examination Checklist or as set forth in a valid subpoena or court order provided by the client, as periodically may be attached hereto. The parties agree that this Agreement, the integrated Preliminary Examination Checklist (as outlined herein), the chain of custody form(s) and any subpoena or order attached and referenced in the Checklist where applicable constitute the entire agreement of the parties.

6. Chain of Custody Form(s). At any time, should evidence change parties, then Appendix A of this agreement must be completed at the time evidence is acquired. All associated chain of custody form(s) will become part of this agreement.

7. Testifying. PVL Forensics and/or its representatives agree to testify on behalf of the Client, in proceedings relating to the case identified above. PVL Forensics shall testify to the best of its knowledge, information and belief. PVL Forensics assumes no responsibility for and is in no way liable for the final outcome or determination of any legal matter relating to the above case.

PVL Forensics shall make reasonable efforts to accommodate the testimony schedule of the client and/or case.

PVL Forensics 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 the testifying fees schedule below whether or not PVL Forensics, Ltd., testifies in the case.

As used in this paragraph, "testimony" or "called to testify" includes, not by way of limitation, testimony in court, grand jury or congressional testimony, testimony or otherwise appearing before any Federal, state or municipal entity, deposition testimony, provision of assistance in responding to written discovery including but not limited to interrogatories, requests for production of documents or other materials or requests for admission and, appearance pursuant to subpoena, and the provision of a statement and/or testimony by way of affidavit, certification, attestation and/or sworn statement.

8a. Service & Exam Fees. In consideration of PVL Forensics Ltd., Inc. performance of the services as set forth in this agreement, Client shall pay PVL Forensics Ltd., Inc. and is responsible for all costs as follows:

- A. Initial Evidence Imaging/Acquisitions; Review; Analyze; Consultations are billed at the rate of \$225.00 per hour plus storage expenses if any. Any on-site work after business hours (outside of 9am to 5pm) and weekends (Saturday & Sundays) are billed at 1.5 times the regular rate (\$337.50). PVL Forensics will not perform any work after business hours without prior approval from client.
- B. Any additional tech(s) performing on site work, in addition to the first tech in A above, are billed at \$125. per hour (business hours) and \$187.50 per hour (after business hours) plus any applicable travel fees. This applies when two or more techs are on-site simultaneously.
- C. Client shall immediately upon execution of this Agreement provide an initial retainer fee in the amount of **\$2000.00**. PVL Forensics Ltd., Inc. will not conduct any work pursuant to this Agreement until the initial retainer is received.
- D. Client shall pay a minimum charge under this agreement. Said minimum charge is \$1,500.00. Client acknowledges that said minimum charge is due immediately upon signing of the agreement. This amount is deducted from retainer fee.
- E. Once the initial retainer has been reduced to a balance of \$200.00, client will be notified and billed for an additional five (5) hours of service time. Work will not continue until the second retainer is received. This process will continue in one half hour (1/2) blocks until the case is completed or the client has advised PVL Forensics Ltd., in writing, to cease working on the case.
- F. Client will be billed for any media, media supplies and shipping costs that are incurred as a result of this agreement. All media, media supplies and shipping charges are billed to the client at the same cost to that of PVL Forensics Ltd.
- G. Auto travel is billed at the rate of .45 per mile or a flat \$50. per two-way trip – whichever is higher, plus \$75. for each hour of travel time. Any travel relating to this case that requires air, auto, hotel, & other travel related fees will be the financial responsibility of the client.
- H. Any other reasonable costs incurred by PVL Forensics as a result of this case. All such costs will be made know to client prior to acquiring the needed product(s) or performing the required service(s).

8b. Testifying Fees. Client shall pay PVL Forensics Ltd., Inc. the following testifying fees as follows:

- I. All non-testifying time (i.e. preparation, counsel meetings, etc.) is billed at the full rate as set forth in 8a(A) above.
- J. All time spent testifying is billed at the full rate as set forth in 8a(A) above.
- K. All travel expenses/costs relating to this case that requires air, auto, hotel, & other travel related fees will be the financial responsibility of the client.
- L. Meal allowance is billed to the client at the cost of \$35. per day.
- M. Any other reasonable costs incurred by PVL Forensics as a result of this case. All such costs will be made know to client prior to acquiring the needed product(s) or performing the required service(s).
- N. All fees above relating to testifying are due in advance of any testifying work.

PVL Forensics Ltd., Inc. agrees to keep and record all time spent working on Client's case.

9. Responsibility for Fees. Client understands and acknowledges that client is solely responsible for all payment of Fees to PVL Forensics. Should Client be contracting for the services of PVL Forensics on behalf of someone else this shall in no way affect the responsibility of Client to pay for all services furnished under this agreement including all attorney fees, litigation expenses and court costs. Any outside agreement between Client and a third party shall in no way become integrated into this agreement. PVL Forensics may at its sole and absolute discretion require a personal guaranty from a principal or other person associated with Client. Client is responsible for all costs & fees associated with preparation for testimony even if representative from PVL Forensics does not actually testify. This includes, but is not limited too, computer examination work, report & exhibit preparation, attorney meetings, client meetings, in-person and phone conferences. Client is responsible for payment regardless of any outcome of any legal matter relating to the case noted above.

10. Collections. Client acknowledges and agrees that any and all costs, expenses including attorney's fees related to the collection of any monies owed to PVL Forensics Ltd., will be the responsibility of the Client.

11. Past Due Accounts. Client acknowledges that any past due account will incur interest charges to the extent they are allowable under New Jersey Law.

12. Expenses. Expenses incurred in the necessary course of the active case, including but not limited to: travel, hotel, airfare, etc. will be reimbursed by Client. The parties agree that the expenses will be approved in writing by Client in advance where reasonably possible. PVL Forensics Ltd., will submit invoices and receipts for all expenses related to the case.

13. Storage Fees. The parties acknowledge that there will be times when the data related to the case must be preserved and stored at various intervals during the case, or at the conclusion of said case, if it is so necessary. Forensic images, data, and other media related to a lawsuit will be retained by PVL Forensics for a period of one (1) year from receipt of such material from Client or until such lawsuit is settled or otherwise ends, whichever is sooner ("Retention Period"). After the Retention Period, the images and/or other media will either be destroyed or retained unless client provides written instructions within thirty (30) days prior to the end of the Retention Period. If Client instructs PVL Forensics to retain the images and/or media, Client shall pay a monthly storage fee. The parties acknowledge that the initial retainer paid, as outlined in Section 8(c), does not cover the cost of storage of the data and a new retainer agreement will be secured to cover said fees. Client may also request to store data at their facility, office, or other secure location. PVL Forensics will provide said data and client is responsible for any shipping or material charges incurred as a result of this. PVL Forensics shall in no way be held responsible by the client and client shall release and hold harmless PVL Forensics from any claims, damages or liability relating to or arising out of the destruction of the materials by PVL Forensics.

14. Subpoena. If PVL Forensics receives a subpoena seeking the production of any of the information or materials relating to this Agreement that are still within PVL Forensics custody or control, PVL Forensics will give prompt notice of such subpoena to Client in advance of its compliance. In the event Client seeks to oppose or object to a subpoena served upon PVL Forensics Ltd., Client shall do so at Client's sole cost and expense. Any costs, including attorney's fees, incurred by PVL Forensics as a result of a subpoena served upon PVL Forensics relating to Client shall be the sole and absolute responsibility of client.

15. Independent Contractor. The parties intend that PVL Forensics will be an independent contractor in the performance of any and all services relating to the agreement. PVL Forensics shall have the right to control and determine the method and means of performing the service necessitated by this agreement.

16. **Sub-contractor.** PVL Forensics may sub-contract all or part of the services to be performed pursuant to this agreement if PVL Forensics determines in its sole and absolute discretion it is in the best interest of the client. All terms for this contract will remain in full force should all or part of this agreement be sub-contracted.

17. **Other Clients.** PVL Forensics retains the right to perform services for other Clients except those that may cause conflict of interest to this case.

18. **Insurance and Taxes.** Both the client and PVL Forensics agree that PVL Forensics will act as an independent contractor in the performance of its duties under this contract. PVL Forensics is responsible for all income taxes unemployment insurance, and social security taxes, arising out of PVL Forensics Ltd's activities in accordance with contract and will maintain workers' compensation insurance for any and all employees of PVL Forensics

19. **Confidentiality.** ALL information gathered by PVL Forensics for Client's specified case is for Client only and will be kept confidential by PVL Forensics. Notwithstanding the foregoing, in the event that PVL Forensics has been retained by the client to conduct services associated with litigation all information obtained and/or retrieved by PVL Forensics shall be treated as confidential and used by the client and PVL Forensics for the purposes of preparing for a conducting pretrial and trial proceedings and appeals, if any, and for no other purpose. Only information gathered within an agreed upon order and scope defined therein will be reported. All other information will need to be added to checklist as information/scope may change. Client acknowledges that all techniques / procedures /methodologies/ Scripts / software used by PVL Forensics to obtain information for the Client will be kept confidential by both parties. Client agrees and represents not to disclose the PVL Forensics confidential information or use such confidential information for any purpose other than as permitted in writing by PVL Forensics. Client agrees not to disclose PVL Forensics' confidential information to anyone other than those persons in its employ.

20. **Responsibility.** PVL Forensics shall not be liable for any actions pertaining to services provided to client or this case due to failure(s) of any hardware, data, or information acquired during investigation of failure(s). Client hereby agrees to indemnify and hold PVL Forensics harmless from any such liability.

21. **Governing Law.** Provisions of this Agreement will be interpreted and governed by the laws of the State of New Jersey.

22. **Modification.** Regardless of any oral conversations, no variations or modification to the agreement will be valid and effective unless in writing and executed by both parties. This is the entire agreement between the parties and cannot be changed or modified orally.

23. **Validity Agreement.** Should any paragraph, clause, segment, part, or covenant of this contract be held unenforceable, the remaining portions of this agreement shall remain in full force and effect.

24. **Plurality.** Where the singular pronoun is used herein as referring to Client, and it appears that more than one person constitutes the Client, then the singular pronoun shall be construed as plural, and when Client consists of more than one person, Client's obligations hereunder shall be joint and several.

25. **Termination.** Each of PVL Forensics and the Client shall be free to terminate this Agreement at any time for cause upon written notice to the other Party upon written notice. The grounds for reasonable cause shall include: material violation of this agreement and/or any act exposing the other party to liability for personal injury or property damage. In the event of a termination by either PVL

Forensics 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. PVL Forensics will work with the Client to effect an orderly transition of the Matter to the Client or substitute consultant.

26. **No Authority to Bind Client.** PVL Forensics has no authority to enter any contracts or agreements on behalf of the client. This agreement does not create a partnership between the parties.

27. **Non-waiver.** The failure of either party to this Agreement to exercise any of its rights under this agreement at any time does not constitute a breach thereof and shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

28. **Notices.** Any notice given in connection with this Agreement shall be given in writing and delivered either by hand to the party or by certified mail, return receipt requested, or by fax to the party at the party's address stated herein. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

Entered into the date as mentioned above herein:

**PVL Forensics
(a division of CAPCOM, Inc.)**

Client:

David S. Capelli, CFC, ACE, CUC, CCE, DFCP
Duly Authorized Representative of
PVL Forensics

Duly Authorized Representative
of Client

Signature

Signature

Dated

Dated