

**EXEMPLAR ENGAGEMENT AGREEMENT  
(DO NOT COMPLETE OR MODIFY)**

**Consulting Agreement**

This Consulting Agreement (this "Agreement"), effective \_\_\_\_\_, is entered into by and between [NAME of FIRM or ATTORNEY] ("**Client**") as counsel for [NAME of FIRM or ATTORNEY'S CLIENT] and **Craig D. Ball, P.C., a Texas Professional Corporation ("Ball")**.

**Recitals**

Ball, whose principal is a computer forensic examiner as well as an attorney licensed in Texas and admitted to practice before all Texas courts, has expertise in the areas of computer forensics and electronic discovery.

Client desires to engage Ball as an electronic evidence consultant on the terms and conditions set forth herein.

In consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the parties hereto agree as follows:

**Engagement**

Client hereby engages Ball to render the consulting services described in Schedule A hereto and such other services as may be agreed to by Client and Ball from time to time.

Ball hereby accepts the engagement to provide consulting services to Client on the terms and conditions set forth herein.

**Duties**

Ball shall serve as a consultant to Client in the activities of Client set forth in Exhibit A hereto or as otherwise requested by Client, by or through its members, agents, employees, or consultants. Ball will perform such services under the general direction of Client, but Ball determines the manner and means by which the services are accomplished. Ball agrees to perform all duties to the best of his professional ability. Subject to the other provisions of this agreement and except as required by law, Ball and Client mutually agree to take commercially reasonable steps to protect from disclosure to third parties confidential and proprietary information exchanged in connection with this matter.

**Compensation**

**Consulting Fees.** Client agrees to pay Ball and Ball agrees to accept for Ball's services under this Agreement consulting fees as set forth in Schedule A. Payment of consulting fees must be made within the number of days after receipt of Ball's invoice as set forth in Schedule A. Billable hours will include time spent in transit for Client or otherwise in connection with this engagement, provided however that such travel time will be billed at one-half (50%) of the rate set out in Schedule A unless substantive work, research or discussions in support of the engagement are performed while traveling, in which case such activities will be billed at the full rates set out in Schedule A.

Notwithstanding any other provision herein, in the event Ball is called to testify in connection with any matters pertaining to this engagement or services performed hereunder, Ball'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 Ball for such time and associated expenses according to Schedule 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, responding to or resisting other forms of written discovery, production or appearance pursuant to subpoena, and testimony by affidavit, attestation and/or sworn statement.

**Third Parties.** In the event a third party (e.g., the person or entity Client represents in this matter) shall timely pay or reimburse Ball for any of the activities described in this paragraph for which Client is obligated to pay or reimburse Ball, Client shall be credited with such payments actually received by Ball from the third party, up to the amount of Client's obligation hereunder.

If Client causes a third party to pay Ball on its behalf, Ball will accept timely payment from such third party in place of a direct payment; provided, however, that Client remains solely responsible for paying Ball all fees and expenses due under this Agreement in a timely manner and Ball shall not, in any event, be obligated to recover any outstanding fees or expenses from third parties.

**Legal Relationship.** Ball is an independent contractor with respect to Client and is not an employee or agent of Client. Ball does not serve as legal counsel to those Client serves. Ball shall be entitled to no benefits or compensation from Client except as set forth in this Agreement or by written amendment hereto signed by the parties. **This Agreement does not confer upon Ball a share or interest in any attorney's fee recovered by Client or its members. The obligation to compensate and reimburse Ball timely and fully under this Agreement is not contingent upon the outcome of any claim or action, upon collection of monies from third parties or upon the opinions or testimony that Ball may offer.**

**Expenses.** Client agrees to reimburse Ball all costs and expenses incurred in performing duties hereunder, including (not by way of limitation) for the cost of travel and lodging, storage media and for tools, applications or services specifically required by the engagement. Such reimbursement shall be made within twenty-one (21) days of submission of a request for reimbursement. Ball agrees to provide documentation of such costs and expenses upon request.

### **Confidentiality and Privilege Respecting Contraband Data**

Ball 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, Ball 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, Ball 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.

### **Warranty of Lawful Access**

Client warrants that any media tendered or made available to Ball 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 Ball 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.

### **Term**

Upon execution and tender of the specified engagement fee, this Agreement commences on the date first written above and, unless modified by the mutual written agreement of the parties shall continue until the earlier of the End Date set out in Exhibit A or, if no End Date is specified, for sixth months from the effective date of this Agreement. Either Client or Ball may terminate this Agreement upon 10 days written notice to the other. Upon termination of this agreement, Ball shall be entitled to payments for periods that occurred prior to the date notice of termination is received and for which Ball has not been paid, as well as for all time and expenses when "called to testify" as hereinbefore described.

### **Consultant's Business Activities**

During the term of this Agreement and while Client is in good standing with respect to monies owed under this agreement, Ball will engage in no representation of, or consultation for the firms, entities or persons specified in the Forbearance of Engagement clause in Exhibit A where such activity is directly related to the subject matter of the Engagement without obtaining the express consent of Client. This provision will not oblige Ball to resist, and Ball may comply with, lawful discovery efforts or an order or direction of any court of competent jurisdiction. Neither this provision nor this engagement shall in any manner otherwise limit or restrict Ball's participation in consulting, teaching, writing, lecturing, public speaking or continuing legal education activities.

Subject to such other personal and professional commitments as Ball in his sole discretion undertakes to complete, Ball shall devote such time, attention and energy to the business and affairs of Client as requested by Client, and in any event no less than the amount of time specified in Exhibit A hereto.

### **Attorney's Fees**

Should either party hereto, or any heir, member, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Agreement, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party or parties against whom enforcement was sought.

### **Entire Agreement**

This Agreement contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

### **Amendment**

This Agreement may be amended only by a writing signed by Craig D. Ball and by a duly authorized agent or representative of Client.

**Governing Law**

This Agreement shall be construed in accordance with the law of the State of Texas, which law shall govern actions arising hereunder. Any dispute arising hereunder shall be brought and all parties agree to submit to personal jurisdiction in a court of competent jurisdiction in Travis County, Texas.

AGREED:

[NAME of FIRM or ATTORNEY]

**Craig D. Ball, P.C.**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Craig Ball, President

**Schedule A to Consulting Agreement**

**Client:** [NAME of FIRM or ATTORNEY] [IDENTIFY MATTER]

1. Name of Consultant: **Craig D. Ball, P.C.**
2. Address of Consultant for notice: **3723 Lost Creek Blvd., Austin, Texas 78735**
3. Term of Consulting Period: **Start Date:**  
**End Date:**
4. Minimum number of hours to be performed during consulting period: **ten (10)**  
  
Duties of Consultant: **Advise and assist client concerning electronic evidence issues in the cause styled, \_\_\_\_\_.**
5. Consulting Fee for Services Pursuant to this Agreement: **\$500.00/hour**
6. Forbearance of Engagement: \_\_\_\_\_
7. **The cost of archival, working and production media in computer forensics engagements is billed at \$.50/gigabyte (or any part thereof) of media capacity, unless the actual cost of same exceeds \$.50/gigabyte, in which case media may is billed at 120% of actual cost.**
8. Billing and Collection:  
**Consulting Fees for work performed in a month is customarily billed by e-mail on or after the last day of the month, and payment of the Consulting Fees shall be made within 21 days after the receipt of Consultant's invoice. Accounts overdue thirty days or more are charged an additional service charge of 1.5% of the unpaid balance per month. The costs of collection, including any attorney's fees and expenses, is added to the invoice principal amount and is subject to the monthly service charge.**
9. Engagement Fee:  
**Consultant requires a five thousand dollar (\$5,000.00) non-refundable engagement fee be tendered with Client's execution of the Consulting Agreement. The engagement fee is credited against sums due and owing for consulting fees under the agreement and further sums may be required as retainers when the engagement fee credit is exhausted (The T.I.N. for Craig D. Ball, P.C. is 76-0345998. An executed W-9 follows).**