

# **Engagement Agreement Forensic Analysis**

**Presented to:**

**Sidney Powell  
Defending the Republic**

**Presented by:**

**Paul Maggio  
SullivanStrickler LLC**

**Presented on:**

**6 December 2020**

Sidney Powell  
sidney@federalappeals.com

Dear Ms. Powell,

SullivanStrickler LLC ("SS") is pleased to present your firm ("Customer") this Engagement Agreement ("EA") detailing data services ("Services") to be performed on your behalf by SS. Upon full execution of this EA, SS will provide Customer with the services detailed below.

The following sections are included in this EA:

Exhibit 1 – Overview (Project Requirements, Assumption)

Should you have any questions or wish to discuss this document, I can be contacted at (404) 234-3962 or by e-mail at [pmaggio@sullivanstrickler.com](mailto:pmaggio@sullivanstrickler.com).

Sincerely,

Paul Maggio  
COO  
SullivanStrickler, LLC

I hereby agree to the terms of this EA,

Customer

**/s/Sidney Powell**

By (Signature)

**Sidney Powell**

Name (Printed)

**Lead Counsel**

Title

**12/6/2020**

Date

**Note:** Please scan and email, the executed full copy of this document to [pmaggio@sullivanstrickler.com](mailto:pmaggio@sullivanstrickler.com). SS will return a mutually executed original copy upon receipt.

## **Exhibit 1**

### **Overview**

#### **Requirements**

The following were defined during phone call, face to face meetings, and/or e-mail interactions between Customer and SS representatives as requirements ("Requirements") to be satisfied through the performance of Services by SS:

Customer is requesting that SS provide services such as Computer Forensic Collections and Analytics on the Dominion Voting Systems equipment; from the Poll Pads (iPads) to the Windows machines that run the scanners, to Linux machines that tabulate the votes in The State of Michigan.

## Processing

Reconfiguration of Source Media will occur in the manner determined by both Customer and SS. In situations where Customer has no requirement as to the production order, SS will restore data in the manner deemed most appropriate by SS as satisfying the Requirements contained herein. If Customer requires a specific production sequence to meet time commitments to other Customer or external processes, please inform SS prior to the commencement of Services so as to minimize the impact to the production processes.

- 1) Upon receipt of the media, SS will inventory and physically check the condition of all media, as well as fill out all required CoC documentation, if any. Any damaged or missing items will be reported to Customer;
- 2) Services will be performed as quickly as technically possible, taking into consideration technical limitations beyond SS and Customer's control;
- 3) Services to be performed in satisfaction of the Requirements contained herein do not include decrypting encrypted data or any other service not specifically detailed herein. SS offers such services as optional services to be priced via custom quote when detailed knowledge of the additional requirements are known;

SS's agreement to perform the Services is not a guarantee of Customer's desired results, but rather an agreement to simply perform the activities detailed herein. SS is not liable for damages, actual or consequential, resulting from its agreement to perform said Services.

## Shipping Instructions

Please ship any media not picked up to the address below. Tape and disk storage media should not be shipped via "ground" service due to the potential for damage to the media caused by magnets and other potential items which can only be shipped via "ground" service. Additionally, please do not use packing "peanuts" in your shipping container. Pieces can break off and find their way into tape cartridges, causing damage.

SullivanStrickler LLC  
ATTN: Media Management  
4532 Old Jonesboro Road  
Forest Park, GA 30297  
(678) 626-1659

## Pricing

### State of Michigan work

#### Flat rates

\$6500/expert/day. 4 experts - \$26,000.  
Travel & Lodging provided by customer  
Retainer of \$26,000 paid before work commences

### State of Arizona work

#### Flat rates

\$6500/expert/day. 4 experts - \$26,000.  
Travel & Lodging provided by customer  
Retainer of \$26,000 paid before work commences

## **Exhibit 2**

### **Terms of Service**

Sidney Powell  
Defending the Republic  
sidney@federalappeals.com

**These Terms of Service form part of a contract between SullivanStrickler, LLC (the “Company”) and the individual, corporation, partnership, limited liability company or other business (the “Customer”) who submits an order (the “Order”) for services or products (collectively, the “Services”) through the Company’s website at [www.sullivanstrickler.com](http://www.sullivanstrickler.com) (the “Company Site”) or via telephone or written order form in each case referencing the Service Description (defined below). The entire contract consists of these Terms of Service, any billing information provided by the Customer and the description of the Services (the “Service Description”) provided by the Company on its website or in another format.**

**The Company Site and the Service Description set forth the features, functions and Services elements that are included within the Services.**

#### **1. Order, Acceptance and Services.**

(a) When Accepted by Company, the Order submitted by Customer creates a contract between Customer and Company, consisting of the Order, the Service Description and these Terms of Service. An Order is “Accepted” by Company when Company provides the Customer with a user name and password through which to access the Services, provides the Company with a written Order acceptance or provisions the Services to the Customer (whether electronically or by physical delivery).

(b) Company will provide, and Customer will purchase and pay for, the Services specified in the Order (the “Service Fees”). Service Fees will vary and will be specified in the Customer’s Order or in the Service Description.

**2. Fees, Taxes and Payment.** Customer will pay to Company the Service Fees in the amount and in the manner set forth above as retainers and supported in an electronic invoice provided by Company to Customer

#### **3. Term and Termination.**

(a) Services will commence when provisioned and continue until terminated by either party (such period being the “Term”).

(b) Either party may terminate this Agreement immediately upon the occurrence of any one or more of the following events: (i) the other party fails to pay when due any amounts required to be paid under this Agreement; (ii) the other party breaches any material term or provision of this Agreement (other than a breach described in subsection (i) above), and if capable of cure, such breach remains uncured 10 days after the non-breaching party gives written notice thereof to the breaching party; or (iii) the other party becomes insolvent, makes an assignment for the benefit of its creditors, institutes or becomes subject to any proceeding under any bankruptcy or similar laws for the relief of debtors, or seeks the appointment of, or becomes subject to the appoint of, any trustee or receiver for all or any portion of such party’s assets.

(c) Upon termination of this Agreement for any cause or reason whatsoever, neither party shall have any further rights or obligations under this Agreement, except for Customer’s obligation to pay for Orders previously Accepted

and the provisions of Sections 2 through 14 of this Agreement shall survive the expiration or termination of this Agreement for any cause or reason whatsoever, and, notwithstanding the expiration or termination of this Agreement, the parties shall each remain liable to the other for any indebtedness or other liability theretofore arising under this Agreement. Termination of this Agreement and retention of pre-paid fees and charges shall be in addition to, and not be in lieu of, any other legal or equitable rights or remedies to which Company may be entitled.

#### 4. Customer's Representations and Warranties.

Customer hereby represents and warrants to Company, and agrees that during the Term Customer will ensure that: (a) Customer is the owner or valid licensee of all of the information, documents, graphic items and other data (of every kind and description) that Customer may process through its receipt of the Services or use in the Services (as applicable, the "Customer Content"), and Customer has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Customer Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Company to pay any fees, residuals, guild payments or other compensation of any kind to any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association or organization, or government or any agency or political subdivision thereof (as applicable, a "Person"); (b) Customer's use, publication and display of the Customer Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any Person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any Person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated; (c) Customer will comply with all applicable laws, rules and regulations regarding the Customer Content and any Web-based display portal the Company may provision for the Customer's use (as applicable, the "Customer Page") and will use the Customer Page only for lawful purposes; (d) Customer has used its best efforts to ensure that the Customer Content is and will at all times remain free of all computer viruses, worms, trojan horses and other malicious code; and (e) Customer will use the Services only for the Customer's own purposes and not for resale or distribution.

#### 5. License to Company.

Customer hereby grants to Company a non-exclusive, royalty-free, worldwide right and license during the Term to do the following to the extent necessary in the performance of the Services under the Order: (a) digitize, convert, install, upload, select, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly display, publicly perform and hyperlink the Customer Content; and (b) make archival or back-up copies of the Customer Content and the Customer Page. Except for the rights expressly granted above, Company is not acquiring any right, title or interest in or to the Customer Content, all of which shall remain solely with Customer.

#### 6. Company's Acceptable Use Policy.

Customer will abide by, and utilize the Services and the Customer Page only in accordance with this Agreement and any applicable law.

#### 7. Customer's Responsibilities.

(a) Customer is solely responsible for the quality, performance and all other aspects of the Customer Content and any statements made within the Customer Page.

(b) Customer will cooperate fully with Company in connection with Company's performance of the Services.

#### 8. Company Intellectual Property.

(a) Except for the Customer's limited right to utilize the Services, this Agreement does not transfer from Company to Customer any of the Company's proprietary technology, including, without limitation, Company services, software tools, hardware designs, algorithms, software (in source code and object code forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Company or licensed to Company from a third party), and also including any derivatives, improvements, enhancements, updates, modifications or extensions of Company Technology conceived, reduced to practice or developed at any time (as applicable, the "Company Technology").

(b) Company Technology, and all rights, titles and interests in and to the Company Technology shall remain solely with Company. Customer shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the Company Technology.

(c) Company's trademarks, trade names, service marks, logos, other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of Company. Customer may not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of Company. Company shall maintain and control ownership of all Internet protocol numbers and addresses that may be assigned by Company to Customer. Company may, in its sole discretion, change or remove any and all such Internet protocol numbers and addresses.

(d) To the extent the Services include the sale of licensed software by Company to Customer, the sales of such licensed software are subject to any additional license terms as may be provided in the product packaging or in any applicable click-through or similar software license agreement, as well as the provisions of this Section 7 relating to Company Technology.

#### 9. Resale Products.

Any Services that include products manufactured or developed by a third party for resale by Company may be subject to additional terms and conditions as required by the original manufacturer or developer, as set forth in the Service Description.

#### 10. Limited Warranty.

(a) Company represents and warrants to Customer that the Services will be performed (i) in a manner consistent with industry standards reasonably applicable to the performance thereof and (ii) at least at the same level of service as provided by Company generally to its other Customers for the same services. Customer will be deemed to have accepted such Services unless Customer notifies Company within seven (7) business days after performance of any Services of any breach of the foregoing warranties. Customer's sole and exclusive remedy, and Company's sole obligation, for breach of the foregoing warranties shall be for Company, at its option, to re-perform the defective Services at no cost to Customer, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue Customer a credit in an amount equal to the current monthly Service Fees pro-rated by the number of hours in which the Services have been interrupted.

(b) The foregoing warranties shall not apply to performance issues or defects in the Services (i) caused by factors outside of Company's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment or any third-party equipment not within the sole control of Company.

(c) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF



THIRD-PARTY RIGHTS, AND COMPANY HEREBY EXPRESSLY DISCLAIMS THE SAME. WITHOUT LIMITING THE FOREGOING, ANY THIRD-PARTY SOFTWARE PROVIDED TO CUSTOMER HEREUNDER IS PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.

#### 11. Limitation of Liability.

(a) IN NO EVENT WILL COMPANY'S LIABILITY IN CONNECTION WITH THE SERVICES, ANY SOFTWARE PROVIDED HEREUNDER OR ANY ORDER, WHETHER CAUSED BY FAILURE TO DELIVER, NON-PERFORMANCE, DEFECTS, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE AGGREGATE SERVICE FEES PAID TO COMPANY BY CUSTOMER DURING THE 6-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

(b) COMPANY CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. COMPANY WILL NOT BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.

(c) EXCEPT AS EXPRESSLY PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE IN ANY WAY TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY ORDER, OR (EXCEPT AS PROVIDED IN SECTIONS 11 AND 12) FOR ANY CLAIM AGAINST THE OTHER PARTY BY A THIRD PARTY, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.

(d) The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other legal theory (including strict liability), other than claims based on fraud or willful misconduct. The limitations contained in Section 10(c) shall not apply to liability arising on account of Customer's indemnification obligations under Section 11.

#### 12. Indemnification of Company.

Customer shall defend, indemnify and hold harmless Company, its affiliates and their respective present, former and future officers, directors, employees and agents, and their respective heirs, legal representatives, successors and assigns (collectively the "Company Indemnitees"), from and against any and all losses, damages, costs, liabilities and expenses (including, without limitation, amounts paid in settlement and reasonable attorneys' fees) which any of the Company Indemnitees may suffer, incur or sustain resulting from or arising out of (i) Customer's breach of any representation, warranty, or covenant contained in the Agreement, (ii) the Customer Content, the Customer Page or any end user's use of the Customer Content or the Customer Page, (iii) violation by Customer or any of its officers, directors, employees or agents of any applicable law, (iv) claims or actions of third parties alleging misappropriation of trade secrets or infringement of patents, copyrights, trademarks or other intellectual property rights arising from the use, display or publication of Customer's domain names, the Customer Page, the Customer Content, or the use of the Services in combination with hardware, software or content not provided by Company, (v) claims or actions by third parties relating to or arising out of Customer's use of the Services, and (vi) any damage to Company's servers or other hardware caused by Customer.

#### 13. Indemnification of Customer.

(a) Subject to Section 11, Company shall, at its own expense, indemnify, defend and hold Customer harmless from any claim or suit alleging that the Services infringe any United States patent, copyright or trademark existing on the Effective Date, or that Company has knowingly misappropriated any trade secret or other intellectual property right of any other Person, including any losses, damages or expenses arising from any such claim or suit. Customer agrees to cooperate with and assist Company in the defense or settlement of any such claim or suit. Customer shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation or assistance requested by Company, but Company will not be liable for any costs or expenses incurred without its prior written authorization.

(b) Promptly after receipt by Customer of a threat of any claim or suit, or a notice of the commencement or filing of any claim or suit, against which Customer may be indemnified hereunder, Customer shall give written notice thereof to Company, provided that failure to give or delay in giving such notice to Company shall not relieve Company of any liability it may have to Customer hereunder, except to the extent that the defense of such claim or suit is prejudiced thereby. Company shall have sole control of the defense, and of all negotiations for settlement, of such claim or suit. Subject to the foregoing, Customer may participate in the defense of any such claim or suit at Customer's own expense.

(c) If an injunction, decree or judgment is, or Company believes in its sole discretion is likely to be, entered providing that Customer may not use the Services as contemplated in this Agreement without violating the intellectual property rights of a third party, Company may, at its sole option and expense, either (i) procure for Customer the right to use the Services or affected part thereof as provided in this Agreement; (ii) replace the Services or affected part thereof with other non-infringing services or modify the Services or affected part thereof so as to be non-infringing; or (iii) terminate this Agreement upon written notice to Customer.

(d) Notwithstanding Section 12(a), Company assumes no liability for infringement claims arising from (i) use of the Services with third-party products or services where the third-party products or services cause the infringement, (ii) any modification of the Services not authorized by Company in writing, (iii) the Customer Content, the Customer Page or any content, data or information provided or supplied by an End User, or (iv) Customer's use of any third-party software provided hereunder. THE FOREGOING DEFENSE AND INDEMNIFICATION PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATION OF COMPANY, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE SERVICES PROVIDED HEREUNDER.

#### 14. Privacy Policy.

(a) Company will keep confidential Customer's name, address, telephone number, email address, credit card information, password and other non-public information provided by Customer to Company for the purpose of obtaining or maintaining the Customer's account or paying amounts owed to Company (collectively, the "Customer Confidential Information").

(b) Company may use the Customer Confidential Information to administer the Customer's account, collect fees owed by Customer and as reasonably necessary or convenient to facilitate the Services. Company may not provide the Customer Confidential Information to any third party, except for attorneys, accountants, employees and agents working on behalf of Company pursuant to this Agreement.

(c) Company may collect information regarding the Customer from sources other than the Customer Confidential Information (including data concerning Customer's usage of the Services and the Company Site) ("Customer Non-Confidential Information"). Company may use the Customer Non-Confidential Information for any purpose and may share Customer Non-Confidential Information with any party so long as the Customer Non-Confidential Information cannot be correlated with, or linked to, Customer Confidential Information. The Company Site may

use software cookies or web beacons to track Customer usage of the Company Site or the Services. Information collected by Company through such means is Customer Non-Confidential Information.

(d) Notwithstanding Section 13(a), the following shall not be considered Customer Confidential Information: (i) any information that Company can demonstrate by written documentation was within its legitimate possession prior to the time of disclosure by Customer; (ii) any information that was in the public domain prior to disclosure by Customer to Company as evidenced by documents that were published prior to such disclosure; (iii) any information that, after disclosure by the Customer to Company, comes into the public domain through no fault of Company, or (iv) any information that is disclosed to Company without restriction by a third party who has legitimate possession thereof and the legal right to make such disclosure.

(e) The data will be maintained in compliance with HIPAA, the Health Insurance Portability and Accountability Act, which sets the standard for protecting sensitive patient data. Company will ensure that any dealing with protected health information (PHI) will follow all the required physical, network, and process security measures.

#### 15. Miscellaneous.

(a) Independent Contractor. Company and Customer are independent contractors and nothing contained in this Agreement places Company and Customer in the relationship of principal and agent, master and servant, partners or joint ventures. Neither party has, expressly or by implication, or may represent itself as having, any authority to make contracts or enter into any agreements in the name of the other party, or to obligate or bind the other party in any manner whatsoever.

(b) Governing Law; Jurisdiction. Any controversy or claim arising out of or relating to this Agreement, the formation of this Agreement or the breach of this Agreement, including any claim based upon arising from an alleged tort, shall be governed by the substantive laws of the State of Georgia, except that all arbitration and related proceedings conducted pursuant to Section 14(c) below, including without limitation confirmation proceedings, shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et. seq. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. ANY SUIT, ACTION OR PROCEEDING CONCERNING THIS AGREEMENT THAT IS NOT SUBJECT TO MANDATORY ARBITRATION PURSUANT TO SECTION 14(C) BELOW MUST BE BROUGHT IN A GEORGIA STATE OR FEDERAL COURT LOCATED IN FULTON COUNTY, GEORGIA, AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT ANY SUCH SUIT, ACTION OR PROCEEDING WHICH IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) Mandatory Arbitration. Notwithstanding Section 14(b) above, each party agrees that any dispute between the parties arising out of this Agreement or in any manner relating to the Services must be submitted by the parties to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as administered by the American Arbitration Association in Atlanta, Georgia (or such other recognized provider of arbitration services agreed upon by both parties) before a single arbitrator, appointed in accordance with such rules. Any such dispute shall address only the claims brought by the applicable party and no party may represent a class of similarly situated persons. Any such arbitrator must render a reasoned opinion in writing only where the amount in dispute exceeds \$100,000. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration will be held in Atlanta, Georgia. Any action filed by either party in any court in violation of this Section should be dismissed pursuant to this Section.

(d) Headings. The headings herein are for convenience only and are not part of this Agreement.

(e) Entire Agreement; Amendments. This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. In case of a conflict between this Agreement and any Order, confirmation, correspondence or other communication of Customer or Company, the terms and conditions of this Agreement shall control. This Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms of Service may be modified from time to time by Company in its sole discretion, which modifications will be effective upon posting to Company Site.

(f) Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

(g) Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers set forth below the parties' signatures. Either party may change its address or facsimile number for purposes of this Agreement by notice in writing to the other party as provided herein. Company may give written notice to Customer via e-mail to the Customer's e-mail address as maintained in Company's billing records.

(h) Waiver. No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.

(i) Assignment; Successors. Customer may not assign or transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of Company. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. Company may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of Customer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(j) Limitation of Actions. No action, regardless of form, arising by reason of or in connection with this Agreement may be brought by either party more than one year after the cause of action has arisen.

(k) Counterparts. If this Agreement is signed manually, it may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is signed electronically, Company's records of such execution shall be presumed accurate unless proven otherwise.

(l) Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply

shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

(m) No Third-Party Beneficiaries. Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended, nor shall anything herein be construed to confer any rights, legal or equitable, in any Person other than the parties hereto and their respective successors and permitted assigns.

(n) Government Regulations. Customer may not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the United States government and any country or organization of nations within whose jurisdiction Customer operates or does business.