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Abstract of Review of RPost Registered E-mail® in Context of Enforceability and Admissibility Requirements of U.S. Substantive and Procedural Law

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Lock Lord Bissell & Liddell provided a legal review of RPost's Registered E-mail® service. The RPost® service delivers a Registered E-mail® message to the recipient and returns verifiable evidence of the precise content (message body and all attachments) and official time the e-mail was sent and received by each recipient. The service accomplishes this without any extra recipient action or special settings or software on the recipient side. This legal review presents the following conclusions as to this Registered E-mail® service:

- (1) **DELIVERY PROOF:** RPost's Registered E-mail® service provides a record of sending and receiving in accordance with the Uniform Electronic Transactions Act (UETA) by recording the recipient's server's receipt thereof;
- (2) **CONTENT PROOF:** The encryption and tamper-detectability of RPost's Registered E-mail® service preserves the contents of emails and their attachments so as to satisfy process requirements designed under UETA or the Electronic Signatures in Global and National Commerce Act (ESIGN) and evidence law and to establish evidence of content;
- (3) **OFFICIAL TIME STAMP:** RPost's link to a trusted and objective time source provides essential and credible evidence in disputes in which the time an email was sent or received is material to the case;
- (4) **ADMISSIBLE EVIDENCE:** RPost's Registered E-mail® service receipts are admissible as to their fact of delivery, as to their legal time of delivery and as to the authenticity of their content;
- (5) **FUNCTIONAL EQUIVALENCE:** RPost's Registered E-mail® service, under UETA and ESIGN, can serve as the functional equivalent of paper mail, to be used in lieu of certified mail, registered mail, return receipt mail, private express mail services, fax logs and similar types of paper mail services; and
- (6) **ELECTRONIC ORIGINAL:** RPost's Authentication Receipt™ provides a true electronic original of the message content, message attachments, and transmission meta-data including the delivery audit trail.

Our review also indicated that RPost's Registered E-mail® service has been carefully constructed in light of rapidly evolving law, including applicable U.S. legal treatment of electronic message transmissions, information security and the admissibility of electronic evidence. In enhancing the enforceability of emails used in business transactions, RPost's Registered E-mail® service creates opportunities for substantial cost savings in transactions that would otherwise rely on much more expensive services such as commercial overnight mail or registered or certified mail.

The ease of replication and modification of electronically stored information ("ESI") and the openness and decentralization of networks, systems and the Internet pose significant challenges for rendering and keeping ESI secure against tampering after the relevant event, as well as for finding a credible custodian with firsthand knowledge of the processes followed to create, execute, preserve, send and receive ESI, and to generate or recreate that ESI when it is to be proffered as evidence. These challenges become greater as the ESI ages, as systems are upgraded or abandoned and blocks of business and companies are bought and sold. ESI also presents opportunities for achieving reliable security, authentication and custodianship that paper documents do not, however, primarily due to its potential (1) for being created or securely bundled to contain its own internal controls, and (2) for instantaneous, reliable detection of tampering through comparison of ESI identifiers such as "hash" algorithms. RPost's Registered E-mail® service takes advantage of both such opportunities to incorporate data-level controls and tamper-detectability that do not, like layers of information security, become more expensive and less effective over time.

Several elements of RPost's Registered E-mail® service are particularly important to our analysis. First of all, the service's capture of the message's receipt by the recipient's server is very important in view of the "deemer" provision of UETA -- the law in 46 states -- that generally deems receipt by the server as receipt by the recipient. Second, the service's use of an independent, reliable source of time in the records it creates is important not only in cases in which time is at issue, but in authentication of such records generally, given the ease of manipulation of the clocks of computer systems and therefore the ability to falsify an email sent or received at a particular "time" (as opposed to governmental or commercial paper mail services, where neither sender nor recipient controls the time stamp). Finally, RPost's use of hash values and public key infrastructure encryption to demonstrate that a proffered email is the same as the original is very important given the potential for tampering with such content (again, greater than for paper mail).

The general guidance contained in this letter memorandum and in the review that it summarizes is based on our understanding of the current state of the law in the areas addressed. Decisions by organizations concerning the management of ESI should be undertaken in consultation with their counsel, and not in reliance on this letter or such review.

About the Authors: Jon Neiditz chairs Locke, Lord Bissell & Liddell's Information Management Practice. Jay Safer has experience in complex litigation and arbitrations and chairs the New York City Bar Association's Council on Judicial Administration. Pat Hatfield co-chairs Locke, Lord Bissell & Liddell's Technology Transactions Section. Amanda Witt is a Leader of Locke Lord Bissell & Liddell's Electronic Signature Practice.

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