



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia Purchase Order

Order Date: 06-29-2021

CORRECT ORDER NUMBER MUST APPEAR
ON ALL PACKAGES, INVOICES, AND
SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CPO 0601 0601 MAP2100000002 1	Procurement Folder:	877178
Document Name:	Magnet Axiom or Equal and GrayKey Online or Equal	Reason for Modification:	Award of CRFQ MAP21*4
Document Description:	Magnet Axiom and GrayKey Online or Equal		
Procurement Type:	Central Purchase Order		
Buyer Name:	Jessica L Hovanec		
Telephone:	304-558-2314		
Email:	jessica.l.hovanec@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VS0000016105 MAGNET FORENSICS USA INC 156 Columbia Street West Waterloo ON N2L 3L3 CA Vendor Contact Phone: 5193420195 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Larry D McDonnell Requestor Phone: 304-414-3422 Requestor Email: larry.mcdonnell@wv.gov 22 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
PROCUREMENT OFFICER 304-558-2930 DEPARTMENT OF HOMELAND SECURITY BLDG 1 RM W400 1900 KANAWHA BLVD E CHARLESTON WV 25305 US	ADMINISTRATIVE SECRETARY 304-558-4831 FUSION CENTER 4TH FLOOR SOUTH WING 1700 MACCORKLE AVE SE CHARLESTON WV 25314 US

Total Order Amount: \$36,244.00

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: 7/1/2021 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: 7/22/2021 ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: 7/23/2021 ELECTRONIC SIGNATURE ON FILE
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Extended Description:

The Vendor, Magnet Forensics USA, Inc., agrees to enter with the West Virginia Division of Administrative Services for the West Virginia Fusion Center a contract for the one-time purchase of Magnet Axiom Term Bundle, or Equal, access to Graykey Online Advanced or Equal, and Grayshift Graykey or Equal, per the bid requirements, terms, conditions, specifications, Addendum No. 1 issued 05/28/2021, Addendum No. 2 issued 06/01/2021, and the vendor's bid dated 06/02/2021 all incorporated herein by reference and made apart of hereof.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43232600	1.00000	EA	25.000000	25.00
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Contract Item #1: Magnet AXIOM Term Bundle, or Equal

Extended Description:

3.1.1 Contract Item #1: Magnet AXIOM Term Bundle, or Equal.

3.1.1.1 The Vendor must provide an estimated quantity of one (1) license of Magnet Axiom Term Bundle, Item#: 6B101-1, or Equal.

See attached specifications, for further details.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	43232600	1.00000	EA	5150.000000	5150.00
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Contract Item #2: Magnet AXIOM Term, or Equal.

Extended Description:

3.1.2 Contract Item #2: Magnet AXIOM Term, or Equal.

3.1.2.1 The Vendor must provide a quantity of one (1) license of Magnet Axiom, Item#: 6AX03-1, or Equal, software system and support for 12 months.

See attached specifications, for further details.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	43232502	1.00000	EA	2999.000000	2999.00
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Contract Item #3: Magnet Forensics Core Training Voucher

Extended Description:

3.1.3 Contract Item #3: Magnet Forensics Core Training Voucher or Equal

3.1.3.1 The Vendor must provide an estimated quantity of one (1) Magnet Forensics Core Training Voucher, Item#: 3TCV001, or Equal

See attached specifications, for further details.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
4	43232600	1.00000	EA	75.000000	75.00
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Contract Item #4: Grayshift Graykey Bundle, or Equal.

Extended Description:

3.1.4 Contract Item #4: Grayshift Graykey Bundle, or Equal.

3.1.4.1 The Vendor must provide an estimated quantity of one (1) license of Grayshift Graykey Bundle, Item#: 6B200, or Equal.

See attached specifications, for further details.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
5	43232600	1.00000	EA	27495.000000	27495.00
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Contract Item #5: Graykey Online Advanced, or Equal.

Extended Description:

3.1.5 Contract Item #5: Graykey Online Advanced, or Equal.

3.1.5.1 The Vendor must provide a quantity of one (1) license to access Graykey Online Advanced, Item#: 6GS120, or Equal, for 12 months.

See attached specifications, for further details.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
6	71151106	1.00000	EA	500.000000	500.00
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Contract Item #6: Grayshift Graykey Unit, or Equal.

Extended Description:

3.1.6 Contract Item #6: Grayshift Graykey Unit, or Equal.

3.1.6.1 The Vendor must provide a quantity of one (1) Grayshift Graykey Unit, Item#: 4GS01, or Equal.

See attached specifications, for further details.

	Document Phase	Document Description	Page 4
MAP2100000002	Draft	Magnet Axiom and GrayKey Online or Equal	

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☐ **Term Contract**

Initial Contract Term: This Contract becomes effective on _____ and the initial contract term extends until _____.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

☒ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached _____
Revised 04/21/2021

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for “Fixed Period Contract” or “Fixed Period Contract with Renewals” has been checked in Section 3 above. If either “Fixed Period Contract” or “Fixed Period Contract with Renewals” has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☒ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General’s office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

☐☐☐☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

c. The cost for each contract item used does not exceed one tenth of one percent (.1%)

of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the
Revised 04/21/2021

WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

Kelly McLachlin, Senior Account Executive

(Name, Title)

2220 University Ave E. Ste 300

(Printed Name and Title)

Waterloo, ON N2K 0A8

(Address)

519-272-5295

(Phone Number) / (Fax Number)

kellymclachlin@magnetforensics.com

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

Magnet
Forensics USA

(Company)
DocuSigned by:

Adam Belsher

(Authorized Signature) (Representative Name, Title)

Adam Belsher

CEO

(Printed Name and Title of Authorized Representative)

01-Jun-2021

(Date)

1-844-638-788

519-772-3908

4

(Phone Number) (Fax Number)

Revised 04/21/2021

DocuSigned by:

Reviewed by Legal
Denise Denomme

REQUEST FOR QUOTATION CRFQ MAP21*4
Magnet Axiom or Equal and GrayKey Online or Equal

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Division of Administrative Services for the West Virginia Fusion Center to establish a contract for the one-time purchase of Magnet Axiom Term Bundle, or Equal, access to Graykey Online Advanced or Equal, and Grayshift Graykey or Equal.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Item”** means Magnet Axiom Term Bundle or Equal, access to Graykey Online Advanced or Equal, and Grayshift Graykey or Equal as more fully described by these specifications.
 - 2.2 **“Pricing Page”** means the pages, contained in wvOASIS or attached as Exhibit A, upon which Vendor should list its proposed price for the Contract Items.
 - 2.3 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
3. **GENERAL REQUIREMENTS:**
 - 3.1 **Mandatory Contract Item Requirements:** Contract Item must meet or exceed the mandatory requirements listed below.
 - 3.1.1 **Contract Item #1: Magnet AXIOM Term Bundle, or Equal.**
 - 3.1.1.1 The Vendor must provide an estimated quantity of one (1) license of Magnet Axiom Term Bundle, Item#: 6B101-1, or Equal.
 - 3.1.2 **Contract Item #2: Magnet AXIOM Term, or Equal.**
 - 3.1.2.1 The Vendor must provide a quantity of one (1) license of Magnet Axiom, Item#: 6AX03-1, or Equal, software system and support for 12 months.
 - 3.1.2.2 The Vendor must provide a digital investigative software solution that will allow the Agency to analyze digital evidence recovered from smartphones, computers, and the cloud.
 - 3.1.2.3 The Vendor must provide an on-premise software system.
 - 3.1.2.4 The Vendor must provide software maintenance and support services.

REQUEST FOR QUOTATION CRFQ MAP21*4
Magnet Axiom or Equal and GrayKey Online or Equal

- 3.1.2.4.1** The Vendor must provide support coverage by telephone, online, and email Monday through Friday 9:00AM to 5:00PM (excluding state and federal holidays) for troubleshooting technical issues with 24-hour response time.
- 3.1.2.4.2** The Vendor must provide access to knowledge-based, technical documentation, and online support resources.
- 3.1.2.4.3** The Vendor must provide access to software updates, upgrades, service packs, and product releases to keep software operating effectively and efficiently at all times.

3.1.3 Contract Item #3: Magnet Forensics Core Training Voucher or Equal

- 3.1.3.1** The Vendor must provide an estimated quantity of one (1) Magnet Forensics Core Training Voucher, Item#: 3TCV001, or Equal
 - 3.1.3.1.1** Vendor must provide a course for a minimum of four (4) days.
 - 3.1.3.1.2** Vendor must provide an online, self-paced course.
 - 3.1.3.1.3** All instructional material must be presented in English.

3.1.4 Contract Item #4: Grayshift Graykey Bundle, or Equal.

- 3.1.4.1** The Vendor must provide an estimated quantity of one (1) license of Grayshift Graykey Bundle, Item#: 6B200, or Equal.

3.1.5 Contract Item #5: Graykey Online Advanced, or Equal.

- 3.1.5.1** The Vendor must provide a quantity of one (1) license to access Graykey Online Advanced, Item#: 6GS120, or Equal, for 12 months.
- 3.1.5.2** The Vendor must provide the following features:
 - 3.1.5.2.1** Access to same day extractions from locked iOS and Android devices.
 - 3.1.5.2.2** The capability to extract full contents from iOS and Android devices.
 - 3.1.5.2.3** iOS and Android device support.
 - 3.1.5.2.4** The capability to maintain evidence chain of custody.

3.1.6 Contract Item #6: Grayshift Graykey Unit, or Equal.

- 3.1.6.1** The Vendor must provide a quantity of one (1) Grayshift Graykey Unit, Item#: 4GS01, or Equal.

REQUEST FOR QUOTATION CRFQ MAP21*4
Magnet Axiom or Equal and GrayKey Online or Equal

3.1.6.2 Vendor must provide equipment that is capable of connecting to Android and iOS devices that bypasses passwords, passcodes, and passphrases to extract data.

3.1.7 Alternative ‘or Equal’ Submission

3.1.7.1 Vendor submitting an alternate brand must provide alternate brand information with alternative product number on Pricing Page upon request. Failure to submit documentation for an “or Equal” product can result vendor’s bid being disqualified.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a purchase price for the Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

4.2 Pricing Page: Vendor should complete the Pricing Page on wvOASIS by providing a unit cost for each Contract Item. The Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor’s bid being disqualified.

Vendor should provide with their bid a copy of any and all Software Terms and Conditions or licenses that the State of West Virginia or the Agency will have to agree to or accept as part of this solicitation. This information will be required before contract is issued.

Vendor should include a copy of any Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency will be required to agree to and accept as a part of this solicitation. This information will be required before contract is issued.

Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

5. PAYMENT:

5.1 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

6.1 Shipment and Delivery: Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order or notice to proceed. Vendor shall deliver the Contract Items within 15 working days after receiving a purchase order or notice to proceed. Contract Items must be delivered to Agency at:

West Virginia Fusion Center

REQUEST FOR QUOTATION CRFQ MAP21*4
Magnet Axiom or Equal and GrayKey Online or Equal

1700 MacCorkle Ave, SE
Charleston, WV 25314

- 6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if the shipment of the Contract Items will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the Contract, and/or obtaining the Contract Items from a third party.

Any Agency seeking to obtain the Contract Items from a third party under this provision must first obtain approval of the Purchasing Division.

- 6.3 Delivery Payment/Risk of Loss:** Vendor shall deliver the Contract Items F.O.B. destination to the Agency's location.
- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. VENDOR DEFAULT:

- 7.1** The following shall be considered a vendor default under this Contract.
- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

REQUEST FOR QUOTATION CRFQ MAP21*4
Magnet Axiom or Equal and GrayKey Online or Equal

- 7.1.4 Failure to remedy deficient performance upon request.
- 7.2 The following remedies shall be available to Agency upon default.
 - 7.2.1 Immediate cancellation of the Contract.
 - 7.2.2 Immediate cancellation of one or more release orders issued under this Contract.
 - 7.2.3 Any other remedies available in law or equity.



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This End User License Agreement (the "**Agreement**") is a legal agreement between You and Magnet Forensics respecting Your use of the accompanying Software. BY SUBMITTING AN ORDER FOR THE SOFTWARE AND RELATED SERVICES IDENTIFIED IN THE QUOTATION PROVIDED BY MAGNET FORENSICS, BY CLICKING ON THE APPROPRIATE BUTTON WHEN DOWNLOADING THE SOFTWARE, OR BY USING THE SOFTWARE, YOU ARE REPRESENTING THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY, THE TERMS OF THIS AGREEMENT. If You do not agree with the terms of this Agreement, return the Software within ten (10) days of Your purchase to Magnet Forensics or the Magnet Forensics authorised reseller from which You bought the Software and present Your receipt of purchase for a full refund.

Authorised resellers of Magnet Forensics are not permitted to amend this Agreement, or to make any additional representations, commitments, or warranties binding on Magnet Forensics, other than in writing signed by an officer of Magnet Forensics. Except to the extent Magnet Forensics is expressly precluded by applicable law, Magnet Forensics reserves the right to make changes to this Agreement and by indicating Your acceptance to the amended agreement by clicking on the appropriate button, You accept the new agreement. Any changes will be effective only after the effective date of the change and will not affect any dispute arising prior to the effective date of the change. BY INDICATING YOUR ACCEPTANCE TO THIS AGREEMENT, YOU ARE ALSO AGREEING THAT THIS AGREEMENT REPLACES AND SUPERSEDES ANY PREVIOUSLY EXISTING MAGNET FORENSICS END USER AGREEMENT.

PLEASE NOTE: IF YOUR ORDER INDICATES THAT YOU ARE PURCHASING A SITE LICENSE OR MAGNET REVIEW (APPENDIX A); AN ACADEMIC LICENSE (APPENDIX B); A CONSULTANT LICENSE (APPENDIX C); AN ATLAS LICENSE (APPENDIX D); OR AN AXIOM CYBER LICENSE (APPENDIX E) THEN IMPORTANT MODIFICATIONS TO THIS AGREEMENT SPECIFIC TO THOSE PRODUCTS ARE CONTAINED IN THE APPENDICES IDENTIFIED ABOVE. IN ADDITION, THE TERMS SET OUT IN APPENDIX F SHALL APPLY TO ANY HOSTED DEPLOYMENT OF SOFTWARE.

If You have any questions or concerns about the terms of this Agreement, please contact us at legal@magnetforensics.com.

1 Definitions

- 1.1 "**Agreement**" means this Magnet Forensics End User License Agreement and, if applicable, any relevant quotations and invoices applicable to Your purchase of the Software and anything incorporated into this Agreement by reference.
- 1.2 "**Documentation**" means all Software user documentation, printed materials, and "online" or electronic documentation and any copies thereof, in whole or in part, provided to You by Magnet Forensics.
- 1.3 "**Feedback**" has the meaning set out in Section 2.9.
- 1.4 "**Key**" means the license key provided to You by Magnet Forensics to permit You to allow use of the Software.
- 1.5 "**Magnet Forensics**", "**we**", and "**us**" have the meaning set out in Section 13.1.
- 1.6 "**Magnet Forensics Privacy Policy**" means the policy available at <https://www.magnetforensics.com/legal/>
- 1.7 "**Magnet Software**" means the proprietary software of Magnet Forensics that is either: (a) identified in Your Order; (b) provided to You by Magnet Forensics on a trial or beta basis or (c) downloaded from <https://www.magnetforensics.com>.



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- 1.8 **"Order"** means the document agreed to by Magnet Forensics and You indicating the quantity, price and term of the Software and/or related services purchased.
- 1.9 **"Software"** means the Magnet Software and Third-Party Software provided to You by Magnet Forensics.
- 1.10 **"Third Party Software"** means the copyrighted, patented or otherwise legally protected software of third parties (including open source code components) incorporated into the Software as set forth in the View Source Licenses file of the Software.
- 1.11 **"User"** means a single individual user of the Software in whole or in part (including any functionality within the Software) with his/her own Key and who uses the Software in the regular course of his/her business or for personal use, in accordance with the Documentation, and not for the purposes of development for commercial resale or further distribution of the Software, including without limitation by resale or sublicensing, or for the purposes of providing services (including training) to third parties using the Software.
- 1.12 **"You"**, and **"Your"** means: the entity that purchases and is authorized to use the Software.

2 License Grant

- 2.1 License. Magnet Forensics hereby grants to You an individual, non-exclusive, revocable, non-transferable perpetual license to use the Software on the User's computer(s) in accordance with the terms set forth in this Agreement and the Documentation. You may provide access to or use of the "Portable Case" functionality within the Software to third parties provided: (a) only one instance of the "Portable Case" functionality within the Software is in use at any time by any such third parties; (b) such third parties must agree that their use of the "Portable Case" functionality within the Software is governed by the terms of this Agreement or substantially similar terms of use and (c) You must pay the applicable "Portable Case" license fees identified in Your Order, if any. If You are acquiring the Software on a term license, subscription basis or as part of a free trial, then the license rights set out in this Section 2.1 apply only for the time period identified in Your Order or for the time period authorized by Magnet Forensics, as the case may be.
- 2.2 Restrictions. You shall not and shall ensure that Users shall not:
- 2.2.1 copy, reproduce, or modify the Software or any part thereof;
 - 2.2.2 enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof;
 - 2.2.3 distribute, lend, assign, license, sublicense, lease, rent, transfer, sell or otherwise provide access to the Software, in whole or in part, to any third party;
 - 2.2.4 remove, deface, cover or otherwise obscure any proprietary rights notice or identification on the Software;
 - 2.2.5 copy any Documentation unless specifically authorized in writing to do so by Magnet Forensics;
 - 2.2.6 use the Software to provide services to third parties (including technical or training services), or otherwise publicly display or market the Software, for the purposes of Your commercial gain;
 - 2.2.7 use the Software in any unlawful manner; or
 - 2.2.8 authorize, permit or otherwise acquiesce in any other party engaging in any of the activities set forth in 2.2.1 – 2.2.7 above, or attempting to do so.

For the purposes of this provision "copy" or "reproduce" shall not include: (A) making additional copies of the Software for Your own use, as long as only one copy may be used at any one time in accordance with the Documentation; or (B) making one back-up copy of the Software, provided that such copy is not



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- 2.3 **Functionality.** You acknowledge that use of the Software may result in Your collection of information obtained from third parties, that such third party information is not under the control of Magnet Forensics, and Magnet Forensics is not responsible or in any way liable for the performance and non-performance of the Software to collect such third party information, including without limitation the accuracy, completeness, interpretation, reliability, copyright compliance, legality, decency, or any other aspect of such third party information. It is solely Your responsibility to evaluate the accuracy, completeness, interpretation, and usefulness of the collection of any such third-party information. Magnet Forensics has no special relationship with or fiduciary duty to You, and You acknowledge that Magnet Forensics has no control over, and no duty to take any action regarding any of Your acts or omissions, including without limitation: (a) what information and material You access through the Software; (b) how You may interpret or use the information and materials accessed through the Software; or (c) what actions You may take as a result of having been exposed to information and materials obtained through the Software. You therefore agree to indemnify, defend and hold Magnet Forensics harmless from any and all claims that arise as a result of Your use of the Software, including without limitation claims arising from Your non-compliance with applicable privacy or other legislation, and claims by third parties relating to their rights in the information and materials accessed by You.
- 2.4 **Excluded Applications.** You specifically acknowledge that the Software is not developed, or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous, time-sensitive or mission critical applications. You agree that Magnet Forensics shall not be liable for any claims or damages arising from such use. You agree to hold Magnet Forensics harmless from any claims for losses, costs, damages, or liability arising out of or in connection with the use of the Software for such applications.
- 2.5 **Right to Use.** By entering into this Agreement, You are representing and warranting that You have the legal right to acquire the Software and to use it in the jurisdiction in which You are located, and that Your payment for and use of the Software does and will not cause Magnet Forensics to be in breach of any applicable laws or regulations.
- 2.6 **Vicarious Liability.** You must ensure that all Your employees and contractors that use the Software comply with the terms and conditions of this Agreement and You shall be vicariously liable for the acts or omissions of such employees and contractors with respect to their use of the Software. You acknowledge that the Key is confidential information of Magnet Forensics. You shall not permit anyone other than Users to obtain access to the Software using the Key. You acknowledge that You shall be responsible for payment, in accordance with this Agreement, for unauthorized use of the Software access by the Key granted to You by Magnet Forensics.
- 2.7 **Upgrades.** All upgrades and updates to the Software are provided to You by Magnet Forensics pursuant to a separate support and maintenance agreement and shall also be considered Software hereunder, subject to all terms, conditions and restrictions contained herein together with the terms and conditions of the separate support and maintenance agreement.
- 2.8 **End of Life.** Magnet Forensics reserves the right to change, suspend, end-of-life or otherwise discontinue any version of the Software at any time, including the availability of any feature or content, or any promotion offered by Magnet Forensics. Magnet Forensics further reserves the right to change its standard pricing for the Software.
- 2.9 **Feedback.** Magnet Forensics welcomes Your feedback regarding the Software (including Beta Software), but we cannot receive feedback unless we are able to freely use the feedback to improve the Software. Therefore, unless we otherwise agree with You in writing, You hereby agree that: (a)



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we own all feedback, comments, suggestions for improvement, ideas, concepts and changes that You provide to us or identify in the course of Your use of the Software, and all associated intellectual property rights (collectively the "**Feedback**"); and (b) You hereby assign to us all of Your right, title and interest in Your Feedback. You will not knowingly provide us any Feedback that is subject to third party intellectual property rights. You agree to cooperate fully with us with respect to signing further documents and doing such other acts as are reasonably requested by us to confirm that we own the Feedback and to enable us to register and/or protect any associated intellectual property rights and/or confidential information.

- 2.10 **Third Party Software.** Notwithstanding any terms to the contrary in this Agreement, You acknowledge and agree that: (i) the Software contains Third Party Software; and (ii) You agree that, in addition to the terms of this Agreement, its use is further subject to the terms of such third-party licenses applicable to the Third-Party Software. Further, You hereby acknowledge that the third parties disclaim and make no representation or warranty with respect to such Third-Party Software or any portion thereof, and assume no liability for any claim that may arise with respect to such Third-Party Software or Your use or inability to use the same.
- 2.11 **Artifacts.** You and/or a third party may develop scripts that contain instructions (in either XML, Python or other format) that the Software scans to facilitate isolating categories of data in applications, programs, operating systems, etc. ("**Artifacts**"). Your use of any Artifact is at Your risk. Artifacts may contain malicious code or viruses. Magnet Forensics strongly recommends that You scan Artifacts for viruses prior to using in conjunction with the Software.

3 Beta Software

- 3.1 **Beta Products.** If the Software is identified as pre-commercial, evaluation, pilot, "alpha", or "beta" software ("**Beta Software**"), the license rights set out above with respect to Your use of such Beta Software apply only for the time period authorised by Magnet Forensics ("**Beta Period**") and solely to the extent necessary to enable You and the Users to test and provide Feedback to Magnet Forensics regarding the Beta Software. Such license will automatically terminate upon the expiration of the Beta Period, which period may be extended or terminated by Magnet Forensics at any time, in its sole discretion, but, unless You are in breach of this Agreement, Magnet Forensics will use commercially reasonable efforts to provide You with prior notice of any change to the duration of the Beta Period. Notwithstanding the Beta Period, You acknowledge and agree that Magnet Forensics may include technical measures in the Beta Software that renders it inoperable after a specified period of time and You agree that You will not circumvent such technical measures. In consideration of the grant of license for the Beta Software, You agree that You will provide Magnet Forensics with Feedback on Beta Software as Magnet Forensics reasonably requests without any compensation, and that Section 2.9 will apply to such Feedback.
- 3.2 **Beta Services.** Magnet Forensics may, in its sole discretion, provide You with assistance or personnel at Your site for Beta Software installation, configuration, or testing purposes. You acknowledge and agree that You are solely responsible for the selection, implementation, installation, maintenance and performance of any and all hardware, software and services used in conjunction with the Beta Software, and that Magnet Forensics shall not be liable for any loss or damage caused by Your reliance on any Magnet Forensics assistance or personnel performing installation, configuration, or testing in relation to the Beta Software. You acknowledge and agree that all terms and conditions relating to cloud-hosted services set out Appendix F to this Agreement shall apply to Beta Software. You shall only use testing data provided by Magnet Forensics in connection with Beta Software, unless otherwise agreed to in writing by Magnet Forensics, in which case You shall be solely liable (and not Magnet Forensics) for the use of any such testing data.
- 3.3 **Data Transmitted During Beta Period.** During the Beta Period, Magnet Forensics may agree to accept data from You. You undertake that prior to transmitting Your data to Magnet Forensics You



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shall anonymize the data by removing and/or obfuscating all personally identifiable information characteristics of the data. By submitting Your anonymized data, You grant Magnet Forensics a perpetual, irrevocable, worldwide, transferable royalty-free license to use such anonymized data to enhance the functionality of products of Magnet Forensics as they see fit.

- 3.4 Beta Products/Services "As Is". Because the Beta Software is still in development, it and any associated services hereunder are provided to You "AS IS", without any warranty whatsoever. MAGNET FORENSICS DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS IN RELATION TO THE BETA SOFTWARE AND RELATED SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY OR NON-INFRINGEMENT. IN NO EVENT WILL MAGNET FORENSICS BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR ANY LOSS, DAMAGE, COST, INJURY OR EXPENSE, INCLUDING LOSS OF TIME, MONEY OR GOODWILL, OR FOR DAMAGES OF ANY KIND, WHETHER DIRECT, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL IN RELATION TO THE BETA SOFTWARE OR RELATED SERVICES.

4 Fees and Taxes

- 4.1 Fees. Your use of the Software is conditional upon Your payment to Magnet Forensics of all applicable fees identified in the Order. All fees are payable within thirty (30) days from date of the invoice issued when the Software is delivered to You. If You fail to pay any amount under this Agreement that is due and payable, in addition to any other rights and remedies available to Magnet Forensics, Magnet Forensics shall be entitled to charge interest on all outstanding amounts at the lesser of 1.5% per month or the maximum rate permitted by law, such interest commencing as of the due date for such payment, and Magnet Forensics shall also be entitled to terminate Your license to use the Software. You shall also be responsible for paying for all reasonable fees and costs incurred by Magnet Forensics, including legal fees, in collecting any overdue amounts or enforcing any provision of this Agreement.
- 4.2 Taxes. You are responsible for, and shall pay all taxes relating to this Agreement, excluding any taxes based on the net income of Magnet Forensics. Unless otherwise indicated, all amounts payable by You under this Agreement are exclusive of any tax, duty, levy, or similar government charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, possession or use of the Software, the execution of this Agreement or otherwise. If You are required to withhold any taxes from payments owed under this Agreement, the amount of payment due shall automatically be increased to offset such tax, so that the amount actually remitted to Magnet Forensics shall equal the amount invoiced or otherwise due.

5 Support

- 5.1 Support. This license does not imply any rights to future upgrades or updates of the Software. You must specifically purchase support from Magnet Forensics to obtain upgrades or updates to the Software or any support for the Software beyond Magnet Forensics' warranty obligations set forth herein, and all such support shall be subject to Magnet Forensics' Support Terms and Conditions, which may be found at <http://www.magnetforensics.com/legal/>. If You contact Magnet Forensics for support or opt-in to send diagnostics or other technical information to Magnet Forensics through email or tools provided by Magnet Forensics for such purposes, You agree that: (a) the information the disclosing party discloses to the receiving party may be confidential information that the receiving party agrees to keep in strict confidence; and (b) Magnet Forensics may collect technical information like Software version number, Software usage information, operating system and environment information, and list of installed applications that may be helpful for the diagnostics purposes. Such information will be used for the purposes of support, software updates, and improvement of the Software in accordance with Magnet Forensics' Privacy Policy. You acknowledge and agree that calls and emails with Magnet Forensics and its service providers may be recorded or logged for



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training, quality assurance, customer service and reference purposes. If Magnet Forensics provides You with any upgrades or updates to the Software, such upgrades or updates shall be subject to the terms and conditions of this Agreement or such agreement, if any, which accompanies such upgrades or updates.

- 5.2 No Customization. Magnet Forensics shall not be responsible for the installation or integration of the Software with any hardware or software. In no event shall Magnet Forensics be obligated to customize or otherwise modify the Software.

6 Intellectual Property Rights, Indemnification by Magnet Forensics and Confidentiality

- 6.1 License Only. You do not acquire any intellectual property or other proprietary rights under this Agreement, including without limitation any right, title or interest in and to patents, copyrights, trademarks, industrial designs, confidential information, or trade secrets, whether registered or unregistered, relating to the Software or any part thereof. Your only rights to the Software and any part thereof shall be those rights expressly licensed to You under this Agreement. Any rights not expressly granted under this Agreement are reserved.
- 6.2 Magnet Forensics Ownership. You acknowledge that the Magnet Software is owned by Magnet Forensics, who retains all right, title and interest therein, and is protected by Canadian, U.S. and international copyright laws. In addition, other intellectual property laws (including patent laws) and treaties may protect the Software. It is therefore Your responsibility to fully comply with such laws in using and handling the Software. Nothing herein shall be construed as constituting a sale of the Software or any portion thereof to You.
- 6.3 Magnet Forensics Indemnity. Magnet Forensics, at its sole expense, will defend You against any claim and indemnify You from any damages awarded by a court or settlements, ("Claim") as a result of use of the Magnet Software infringing any valid patents or copyrights in Canada or the United States of any third party, provided that You: (i) give prompt notice of the Claim to Magnet Forensics; (ii) grant sole control of the defense and settlement of the Claim to Magnet Forensics; and (iii) provide reasonable cooperation to Magnet Forensics and, at Magnet Forensics' request and expense, assistance in the defense or settlement of the Claim. In the event of a Claim, Magnet Forensics may, at its option and expense: (a) obtain for You the right to continue to use the Magnet Software; (b) substitute a substantially equivalent non-infringing product; (c) modify the Magnet Software to make it non-infringing; or if (a) (b) or (c) are not commercially feasible then (d) terminate Your license. If Your license is terminated, You must return or destroy the Magnet Software and within 30 days of receipt of all of the Magnet Software or certification of destruction thereof, Magnet Forensics will refund the amount You paid. The indemnity obligations under this clause do not extend to Claims arising from or relating to: (aa) any use of the Magnet Software in combination with any equipment, software, data or any other materials not authorized by Magnet Forensics where the infringement would not have occurred but for such combination; (bb) any modification to the Magnet Software where the infringement would not have occurred but for such modification; (cc) use of the Magnet Software by You in a manner contrary to the terms of this Agreement where the infringement would not have occurred but for such use; (dd) the continued use of the Magnet Software after Magnet Forensics has provided substantially equivalent non-infringing software; (ee) use of Third Party Software or (ff) a Claim You were aware of prior to Your purchase of the Magnet Software. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, THE PROVISIONS OF THIS CLAUSE STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MAGNET FORENSICS AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED MISAPPROPRIATION, VIOLATION AND/OR INFRINGEMENT OF ANY PROPRIETARY AND/OR INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS CLAUSE, MAGNET FORENSICS EXPRESSLY DISCLAIMS ANY OBLIGATION TO INDEMNIFY OR DEFEND YOU



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AND/OR ANY OTHER PARTY FROM ANY CLAIM, DEMAND, ACTION OR THREATENED ACTION.

- 6.4 Confidentiality. You acknowledge and agree that the Magnet Software: (a) was developed at considerable time and expense by Magnet Forensics; and (b) contains confidential information including the trade-secrets of Magnet Forensics. Without limiting the foregoing, for Beta Software, confidential information includes the 'look and feel', performance, specifications, features and functionality of software, which information may not be discussed or shown to the public by You in any manner until publicly released by Magnet Forensics. The Software and Documentation should not be disclosed to third-parties without the express written consent of Magnet Forensics.

7 Warranties

- 7.1 10 Day Right of Return. THE SOFTWARE IS PROVIDED TO YOU "AS IS", WITHOUT ANY WARRANTY WHATSOEVER. Where the media on which the Software is provided is defective, or You are unable to download the Software in accordance with directions provided by Magnet Forensics, and You notify Magnet Forensics of such issues within ten (10) days of the delivery of the Software to You, Magnet Forensics will provide You with another copy of the Software at no charge to You.
- 7.2 EXCLUSIONS. THE WARRANTY SET FORTH IN THIS SECTION 7 IS THE EXCLUSIVE WARRANTY MADE BY MAGNET FORENSICS TO YOU, AND IS YOUR SOLE AND EXCLUSIVE REMEDY RESPECTING ANY DEFECTS, NON-CONFORMITIES OR PROBLEMS WITH THE SOFTWARE. MAGNET FORENSICS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE SOFTWARE PROVIDED HEREUNDER. MAGNET FORENSICS SPECIFICALLY DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. MAGNET FORENSICS DOES NOT WARRANT THAT THE SOFTWARE IS FREE FROM BUGS, ERRORS, OR LIMITATIONS. Some jurisdictions may not allow the exclusion or limitation of implied warranties and conditions. To the extent permitted by law, any implied warranties or conditions relating to the Software to the extent that they cannot be excluded as set out above are limited to thirty (30) days from the date that the Software is delivered to You. The allocations of liability in this Section 7.2 represent the agreed and bargained for understanding of the parties and Magnet Forensics' compensation hereunder reflects such allocations.
- 7.3 Not Covered by Warranty. To the limited extent that Magnet Forensics is not able to disclaim any warranty respecting the Software, any implied or imposed warranty respecting the Software shall nevertheless not apply to defects, non-conformities or problems resulting from: (a) improper or inadequate maintenance or installation of the Software; (b) use of the Software in combination with software, interfaces, or other materials that are not supplied or specifically authorized by Magnet Forensics; (c) unauthorized or improper use or modification of the Software, including use that is not contemplated under the terms of this Agreement or the Documentation accompanying the Software; (d) abuse, negligence, accident, or other damage from external sources (e) improper preparation of Your facilities for Software installation and use; (f) unauthorized maintenance or repair of the Software or (g) use of Third Party Software.

8 Limitation of Liability

- 8.1 Direct Damages. In no event will Magnet Forensics be liable under this Agreement for any damages other than Your direct damages to the extent arising from Magnet Forensics' gross negligence or willful



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misconduct, and in no event, shall Magnet Forensics' aggregate liability exceed the amounts paid by You to Magnet Forensics for the Software.

- 8.2 **EXCLUSIONS.** EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 8, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MAGNET FORENSICS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, DATA, USE OR OPPORTUNITY, THE CORRUPTION OF DATA, LOSS OF THE USE OF DEVICES OR ANY PORTION THEREOF, THE PERFORMANCE AND NON-PERFORMANCE OF THE SOFTWARE, AND ANY BUGS OR DAMAGES CAUSED BY THIRD PARTY FILES, INCLUDING IF THE THIRD PARTY FILES CONTAIN MALICIOUS CODE AND/OR VIRUSES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT MAGNET FORENSICS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAGNET FORENSICS SHALL ONLY BE LIABLE TO YOU AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND SHALL HAVE NO OTHER OBLIGATION, DUTY OR LIABILITY TO YOU. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR ACTION BY YOU, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY. IN NO EVENT SHALL ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, AUTHORISED RESELLER, SUPPLIER, SERVICE PROVIDER, OR INDEPENDENT CONTRACTOR OF MAGNET FORENSICS OR ANY AFFILIATES OF MAGNET FORENSICS HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.
- 8.3 **NO LIMITATIONS.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE OUR LIABILITY FOR FRAUD, FRAUDULENT MISREPRESENTATION, WILLFUL MISCONDUCT, OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

9 Indemnification

- 9.1 **Your Indemnification of Magnet Forensics.** You must defend and indemnify Magnet Forensics with respect to amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation legal fees, arising from: (a) a claim of infringement of any third party intellectual property right arising from Your combination or use of the Software with equipment, software, interfaces, or other materials that are not supplied or specifically authorized by Magnet Forensics, (b) any third party claim arising from Your use of the Software or any portion thereof (other than claims that arise solely from the use of the Software strictly in accordance with this Agreement), and (c) any third party claim arising out of Your material breach of this Agreement. Magnet Forensics reserves the right, at Your expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by You, in which event You will cooperate with Magnet Forensics, at Your expense, in asserting any available defences.

10 Term and Termination

- 10.1 **Term.** Your license to use the Software shall continue until this Agreement is terminated pursuant to this Section 10.
- 10.2 **Termination for Convenience.** You may terminate this Agreement at any time upon notice to Magnet Forensics but You will not be entitled to any refund.
- 10.3 **Termination by Magnet Forensics.** Magnet Forensics may terminate this Agreement immediately upon notice to You if: (a) You materially breach, fail to comply with, or otherwise contravene a term or condition of this Agreement which You fail to cure fifteen (15) days after written notice thereof by Magnet Forensics; (b) You materially breach any other agreement that You may have with Magnet Forensics which You fail to cure fifteen (15) days after written notice thereof by Magnet Forensics; or (c) You become involved in any legal



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proceeding concerning Your solvency, commence liquidation proceedings, have a receiver or administrator appointed of any of Your assets, cease or threaten to cease operations, or otherwise have a serious and reasonable doubt arise respecting Your solvency. Magnet Forensics may also terminate this Agreement upon ninety (90) days' written notice in the event that Magnet Forensics decides, in its sole discretion, to end-of-life the Software. Additionally, Magnet Forensics may terminate this Agreement if required to do so by any law, regulation, requirement or ruling issued in any form whatsoever by any judicial or other governmental body. Magnet Forensics will not be liable for any damage caused by the termination of this Agreement.

- 10.4 **Cease Use.** Upon expiration or termination of this Agreement (including expiration of term license, free trial or Beta Period), You will immediately cease all use of the Software and destroy and/or permanently delete all copies of the Software in Your possession, and any payments that are then due to Magnet Forensics become immediately payable in full.
- 10.5 **Audit.** Magnet Forensics reserves the right to investigate suspected violations of this Agreement. Magnet Forensics shall be permitted to audit (at least once annually and in accordance with Magnet Forensics standard procedures, which may include on-site and/or remote audit) the usage of the Software. You shall co-operate reasonably in the conduct of such audits. In the event an audit reveals that: (i) You underpaid license fees and/or support and maintenance fees to Magnet Forensics; and/or (ii) that You have used the Software in excess of the license quantities or levels stated in the applicable invoice(s), You shall pay on demand fees for such excess usage based on Magnet Forensics' then current prices in effect at the time of the audit, plus an additional administration fee equal to fifteen percent (15%) of the amount for excess usage. The above-described actions are not Magnet Forensics' exclusive remedies and Magnet Forensics may take any other legal, equitable or technical action it deems appropriate in the circumstances.

11 Injunctive Relief

- 11.1 You agree that Magnet Forensics has the right to institute legal or equitable proceedings, including proceedings seeking injunctive relief without the requirement to post a bond or demonstrate damages, for claims or disputes regarding: (i) amounts owed by You to Magnet Forensics in connection with Your use of the Software; (ii) Your violation or threatened violation of the sections of this Agreement entitled License Grant (Section 2), Intellectual Property Rights, Indemnification and Confidentiality (Section 6), Term and Termination (Section 10), and Compliance With Laws/Export (Section 12). Should You become aware of any activities by any third-party contrary to these terms and conditions, You will promptly notify Magnet Forensics and shall reasonably assist Magnet Forensics to enforce its rights against such third party.

12 Compliance with Laws/Export

- 12.1 In using the Software, You will observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, provincial, state, municipal and local governing bodies, of any country having jurisdiction over the Software or any part thereof.
- 12.2 You will not use, import, export, or re-export the Software except in compliance with all applicable laws, which shall include refraining from exporting to any person or country that is on any U.S. or Canadian export control list unless You have a valid and applicable permit to do so. You agree to indemnify Magnet Forensics from any loss, claims, liability or damages arising out of Your failure to comply with such laws. You hereby represent that You will not use the Software in the development, production, handling, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile delivery systems, or of materials or equipment that could be used in such weapons or their missile delivery systems, or resell or export to anyone or any entity involved in such activity.
- 12.3 If the Software is being licensed by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Software will be only as set forth (i) in this Agreement or (ii) as provided in FAR 12.212 (Computer Software) and (for



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Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (i) or (ii) are the more restrictive.

13 Magnet Forensics Entity, Governing Law and Arbitration

13.1 "Magnet Forensics", "we", and "us" means:

- a) Where Your primary address is anywhere other than in the U.S., Magnet Forensics Inc., with an office at 2220 University Avenue East, Waterloo, Ontario, Canada N2K 0A8.
- b) Where Your primary address is in the U.S. (including its territories, protectorates or overseas regions), Magnet Forensics USA, Inc., with an office at 2250 Corporate Park Drive, Suite 130, Herndon, Virginia, U.S. 20171.

13.2 Governing Law. This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of Ontario, Canada, excluding any body of law governing conflicts of laws. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. If the courts in Your jurisdiction will not permit You to consent to the jurisdiction and venue of Ontario, Canada, then Your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.3 Arbitration. Excluding claims for injunctive or other equitable relief and for claims related to the Software, any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, including any question regarding its existence, validity, or termination, such arbitration shall be settled by final and binding arbitration which will be held in accordance with the rules of arbitration of the Arbitration Act, 1991 (Ontario) and conducted in Toronto, Ontario. The arbitration shall be heard by one arbitrator appointed in accordance with the applicable rules and to be mutually agreed to by the parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator. The language of the arbitration shall be English. Each party shall bear one half of the costs associated with the arbitration proceedings. The costs shall exclude experts' costs and each party's legal costs. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

14 General Provisions

14.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings relating to the subject matter hereof. Your additional or different terms and conditions, whether on Your purchase order or otherwise, shall not apply. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

14.2 Force Majeure. Neither party shall be deemed to be in default of this Agreement for failure to fulfill its obligations due to causes beyond its reasonable control. This provision shall not be construed as excusing any payment obligations of either party hereunder.

14.3 Waiver. No waiver by either party of a breach or omission by the other party under this Agreement shall be binding on the waiving party unless it is expressly made in writing and signed by the waiving party. Any waiver by a party of a particular breach or omission by the other party shall not affect or impair the rights of the waiving party in respect of any subsequent breach or omission of the same or different kind.



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- 14.4 **Notices.** Any notices, reports or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail, courier or facsimile, delivered in electronic form.
- 14.5 **Assignment.** We may assign this Agreement without prior notice to You. You shall not assign or transfer (including by operation of law) this Agreement without the prior written consent of Magnet Forensics, which consent will not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon the parties hereto and their respective lawful successors and permitted assigns. Any purported assignment in violation of this Section 14.5 shall be null and void.
- 14.6 **Survival.** Any provision of this Agreement which expressly states that it is to continue in effect after termination or expiration of this Agreement, or which by its nature would survive the termination or expiration of this Agreement, shall do so.
- 14.7 **Electronic Execution.** You hereby agree to the use of electronic communication in order to enter into contracts, place orders and create other records and to the electronic delivery of notices, policies and records of transactions initiated or completed through the Software. Furthermore, You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- 14.8 **Invalidity.** If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in full force and effect.
- 14.9 **English.** It is the express will of the parties that this Agreement and all related documents have been drawn up in English. Where Your primary address is in Québec, then it is the express will of the parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais. Unless, and only to the extent, prohibited by law in Your jurisdiction, any and all disagreements, disputes, mediation, arbitration or litigation relating to this Agreement shall be conducted in the English language, including any correspondence, discovery, submissions, filings, pleadings, oral pleadings, arguments, oral arguments and orders or judgments.
- 14.10 **Publicity.** Upon obtaining Your written permission (not to be unreasonably withheld) Magnet Forensics may make announcements, press releases, publications, presentations and other public statements that reference Your identity as a customer, provided that Magnet Forensics does not disclose Your confidential information in the course of such publicity or misrepresent Your relationship with Magnet Forensics.
- 14.11 **Third Party Interest.** Magnet Forensics' affiliates, and Magnet Forensics and our affiliates' respective directors, officers, and employees are intended third party beneficiaries for the purpose of License Grant (Section 2.4), Warranty (Section 6), Limitation of Liability (Section 8), Indemnification (Section 9) and Compliance with Laws (Section 12.2) as if each was a party to this Agreement, in accordance with this Section and any applicable laws or regulations in Your jurisdiction. Except as otherwise specifically stated in this Agreement, any person who is not a party to this Agreement has no rights under this Agreement.

15 Contact



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- 15.1 If You have any questions regarding this Agreement, or if You have any questions, complaints, claims or other legal concerns relating to Magnet Forensics or its business, please contact Magnet Forensics at:

Magnet Forensics Inc.
2220 University Avenue East
Waterloo, Ontario
N2K 0A8
Phone: +1 (844) 638-7884
Email: legal@magnetforensics.com

16 Jurisdiction Specific Terms

- 16.1 Where Your primary address is in Europe (including Greenland), the Middle East, or Africa, then the following amendments apply to this Agreement:

- (a) Section 2.2(b) is deleted in its entirety and replaced with the following:

(b) *except to the extent that Magnet Forensics is expressly precluded by law from prohibiting these activities, enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof including the software that is provided as a license key to validate authorised use of the Software by a User and provided that the information obtained by You during such activities:*

- a. *is used only for the purpose of achieving interoperability of the Software or any part thereof with another software program;*
- b. *is not unnecessarily disclosed or communicated without our prior written consent to any third party; and*
- c. *is not used to create any software which is substantially similar to the Software;*

- (b) The first sentence of Section 13.2 is deleted in its entirety and replaced with the following:

13.2 *This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of England. ...*

- (c) The last sentence of Section 14.11 is deleted in its entirety and replaced with the following:

... Except as otherwise specifically stated in this Agreement, any person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the parties to terminate, rescind, or agree to any variation, waiver, or settlement under this Agreement are not subject to the consent of any other person.

- 16.2 Where Your primary address is in the U.S., then the following amendments apply to this Agreement:

- (a) Section 13.2 is deleted in its entirety and replaced with the following:

13.2 *This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of New York, U.S., excluding any body of law governing conflicts of laws. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. If the courts in Your jurisdiction will not permit You to*



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consent to the jurisdiction and venue of federal and state courts located in New York, New York, U.S., then Your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

- (b) Section 13.3 is deleted in its entirety and replaced with the following:

13.3 Excluding claims for injunctive or other equitable relief and for claims related to the Software, any dispute or controversy arising out of or relating to this Agreement, including without limitation, any and all disputes, claims (whether in tort, contract, statutory or otherwise) or disagreements concerning the existence, breach, interpretation, application or termination of this Agreement shall be resolved by final and binding arbitration in accordance with the JAMS Inc. Comprehensive Arbitration Rules & Procedures then in effect. There shall be no right or authority for any claims to be arbitrated on a class action basis. The arbitration shall take place in New York, New York or at the option of the party seeking relief, online, by telephone, online, or via written submissions alone, and be administered by JAMS. The arbitral tribunal ("Tribunal") shall be composed of one arbitrator, who shall be independent and impartial. If the parties fail to agree on the arbitrator within twenty (20) calendar days after the initiation of an arbitration hereunder, JAMS shall appoint the arbitrator. The decision of the arbitrator will be final and binding on the parties. Nothing in this Section shall prevent either party from seeking immediate injunctive relief from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The parties undertake to keep confidential all awards in their arbitration, together with all confidential information, all materials in the proceedings created for the purpose of the arbitration and all other documents produced by the other party in the proceedings and not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority. The arbitrator shall award all fees and expenses, including reasonable attorney's fees, to the prevailing party. The language of the arbitration shall be English. Each party shall bear one half of the costs associated with the arbitration proceedings. The costs shall exclude experts' costs and each party's legal costs. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- 16.3 Where Your primary address is in Asia Pacific (including Pakistan, Sri Lanka, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan), then the following amendments apply to this Agreement:

- (a) Section 13.2 is deleted in its entirety and replaced with the following:

13.2 This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of Singapore, excluding any body of law governing conflicts of laws. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. If the courts in Your jurisdiction will not permit You to consent to the jurisdiction and venue of Singapore, then Your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the

United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

- (b) Section 13.3 is deleted in its entirety and replaced with the following:

13.3 Excluding claims for injunctive or other equitable relief and for claims related to the Software, any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, including any question regarding its existence, validity, or termination, except to the extent specifically prohibited by applicable law in Your jurisdiction, shall be settled by final and binding arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause, and conducted in Singapore. The arbitration shall be heard by one arbitrator appointed in accordance with the SIAC Rules and to be mutually agreed to by the parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator. The language of the arbitration shall be English. Each party shall bear one half of the costs associated with the arbitration proceedings. The costs shall exclude experts' costs and each party's legal costs. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- (c) The last sentence of Section 14.11 is deleted in its entirety and replaced with the following:

... Except as otherwise specifically stated in this Agreement, nothing in this Agreement confers or is intended to confer any rights on any person who is not a party to this Agreement pursuant to the Contracts (Rights of Third Parties) Act.

- 16.4 If Your primary address is not in any of the regions or countries specified in Section 16.1, 16.2, or 16.3, the Agreement will apply to You without further amendment.



END USER LICENSE AGREEMENT

Appendix A

SITE LICENSE OR MAGNET REVIEW

If Your Order indicates that You are licensing the Software on a Site License basis or you are licensing Magnet Review then the End User License Agreement is amended in accordance with the terms included in this Appendix which shall apply to Your use of the Software. For clarity, if there is an inconsistency between the End User License Agreement and this Appendix, the terms of this Appendix shall prevail.

1 Definitions (This definition shall be added to Section 1 of the End User License Agreement).

- 1.1 **"Instance"** means a copy of the Software that a User is authorized to use, in accordance with the terms set forth in this Agreement. For Site License deployments, Users may be authorized to use multiple copies of the Software. The maximum number of Instances per User are stated in Your Order.

2 Support. (This section shall replace section 5.1 of the End User License Agreement).

- 2.1 Support. During the term of Your license, Magnet Forensics shall provide support and maintenance services, including upgrades and updates to the Software. All such support shall be subject to Magnet Forensics' Support Terms and Conditions, which may be found at <http://www.magnetforensics.com/legal/>. If You contact Magnet Forensics for support or opt-in to send diagnostics or other technical information to Magnet Forensics through email or tools provided by Magnet Forensics for such purposes, You agree that: (a) the information the disclosing party discloses to the receiving party may be confidential information that the receiving party agrees to keep in strict confidence; and (b) Magnet Forensics may collect technical information like Software version number, Software usage information, operating system and environment information, and list of installed applications that may be helpful for the diagnostics purposes. Such information will be used for the purposes of support, software updates, and improvement of the Software in accordance with Magnet Forensics' Privacy Policy. You acknowledge and agree that calls and emails with Magnet Forensics and its service providers may be recorded or logged for training, quality assurance, customer service and reference purposes. If Magnet Forensics provides You with any upgrades or updates to the Software, such upgrades or updates shall be subject to the terms and conditions of this Agreement or such agreement, if any, which accompanies such upgrades or updates.

3 License Compliance (This section shall replace section 10.5 of the End User License Agreement).

- 3.1 Annual or End of Term Reconciliation. You must inform Magnet Forensics of any Users/Instances more than the maximum stated in Your Order on the date in which said Users/Instances started. Additionally, You acknowledge and agree that at the end of the Term, You shall provide Magnet Forensics with a record of all Users/Instances used during the Term, including details respecting Users/Instances in excess of the maximums stated in their Order.
- 3.2 Certificate. Upon request of Magnet Forensics, not to exceed once per twelve-month period, You shall provide a written certificate of compliance from an authorized signing officer confirming the number of Users/Instances and Your compliance with the other terms of this Agreement.
- 3.3 General Audit Rights. Magnet Forensics reserves the right to investigate suspected violations of this Agreement. Magnet Forensics shall be permitted to audit Your usage of the Software (not to exceed once annually and in accordance with Magnet Forensics standard procedures, which may include on-site and/or remote audit). You shall co-operate in the conduct of such audits. If an audit reveals (i) that You underpaid license fees and/or support services fees to Magnet Forensics; and/or (ii) that



END USER LICENSE AGREEMENT

You have used the Software more than the Users/Instances stated in Your Order, You shall pay Magnet Forensics in accordance with section 3.4 herein.

- 3.4 Reconciliation. If it is determined that You are in breach of this Agreement, You shall pay to Magnet Forensics all underpaid amounts based on Magnet Forensics' then current prices plus an additional administration fee equal to fifteen percent (15%) of the amount for excess usage. Such amounts shall be immediately due upon Your receipt of Magnet Forensics' invoice specifying such underpaid amounts. The above-described actions are not Magnet Forensics' exclusive remedies and Magnet Forensics may take any other legal, equitable or technical action it deems appropriate in the circumstances.



END USER LICENSE AGREEMENT

Appendix B

ACADEMIC LICENSE

If Your Order indicates that You are licensing the Software on an Academic License basis then the End User License Agreement is amended in accordance with the terms included in this Appendix which shall apply to Your use of the Software. For clarity, if there is an inconsistency between the End User License Agreement and this Appendix, the terms of this Appendix shall prevail.

1 License Grant (This section shall replace section 2.1 of the End User License Agreement).

- 1.1 License. Magnet Forensics hereby grants to You an individual, non-exclusive, revocable, non-transferable perpetual license to use the Software on the User's computer(s) for academic, non-commercial purposes in accordance with the terms set forth in this Agreement and the Documentation. You may provide access to or use of the "Portable Case" functionality within the Software to third parties provided: (a) only one instance of the "Portable Case" functionality within the Software is in use at any time by any such third parties; (b) the third party must agree that their use of the "Portable Case" functionality within the Software is governed by the terms of this Agreement or substantially similar terms of use; and (c) You must pay the applicable "Portable Case" license fees identified in Your Order, if any. If You are acquiring the Software on a term license, subscription basis or as part of a free trial, then the license rights set out in this Section 1.1 apply only for the time period identified in Your Order or for the time period authorized by Magnet Forensics or its authorized resellers, as the case may be.



END USER LICENSE AGREEMENT

Appendix C

CONSULTANT LICENSE

If Your Order indicates that You are licensing the Software on a Consultant License basis then the End User License Agreement is amended in accordance with the terms included in this Appendix which shall apply to Your use of the Software. For clarity, if there is an inconsistency between the End User License Agreement and this Appendix, the terms of this Appendix shall prevail.

1 License Grant (The following sections shall replace sections 2.1 and 2.2 of the End User License Agreement).

- 1.1 License. Magnet Forensics hereby grants to You an individual, non-exclusive, revocable, non-transferable perpetual license to use the Software on the User's computer(s) in accordance with the terms set forth in this Agreement and the Documentation. You may provide access to or use of the "Portable Case" functionality within the Software to Your customers provided such access is (a) directly related to Your provision of services to Your customer; (b) Your customer must agree that their use of the "Portable Case" functionality within the Software is governed by the terms of this Agreement or substantially similar terms of use; and (c) You must pay the applicable per customer "Portable Case" license fees identified in Your Order, if any. If You are acquiring the Software on a term license, subscription basis or as part of a free trial, then the license rights set out in this Section 2.1 apply only for the time period identified in Your Order or for the time period authorised by Magnet Forensics, as the case may be.
- 1.2 Restrictions. You shall not and shall ensure that Users shall not:
 - 1.2.1 copy, reproduce, or modify the Software or any part thereof;
 - 1.2.2 enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof;
 - 1.2.3 distribute, lend, assign, license, sublicense, lease, rent, transfer, sell or otherwise provide access to the Software, in whole or in part, to any third party;
 - 1.2.4 remove, deface, cover or otherwise obscure any proprietary rights notice or identification on the Software;
 - 1.2.5 copy any Documentation unless specifically authorized in writing to do so by Magnet Forensics;
 - 1.2.6 use the Software in any unlawful manner; or
 - 1.2.7 authorise, permit or otherwise acquiesce in any other party engaging in any of the activities set forth in 2.2.1 – 2.2.6 above, or attempting to do so.

For the purposes of this provision "copy" or "reproduce" shall not include: (A) making additional copies of the Software for Your own use, as long as only one copy may be used at any one time in accordance with in the Documentation; or (B) making one back-up copy of the Software, provided that such copy is not used simultaneously or concurrently with the original including, without limitation, pre-installing the Software or any part thereof on any computers used by other persons or third parties.

- 1.3 Services to third parties. You may utilize the Software in relation to Your provision of forensic analysis services to a third party for commercial gain, subject to Your compliance with all other terms of this Agreement and the payment of all applicable fees, provided that:
 - 1.3.1 You shall be solely responsible for Your services, including any use or operation of the Software (both separately or in combination with any other software), to provide such services, and, as Magnet Forensics expressly disclaims all liability for any claims, losses or damages relating to Your services, You agree to indemnify Magnet Forensics against all such claims, losses and damages in accordance with the indemnity provisions set forth in this Agreement (including any claims that



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- may be brought by Your customers in relation to the services or Your use of the Software in providing the services);
- 1.3.2 You shall not permit Your customers to use the Software directly unless You have first obtained Magnet Forensics' express written permission, and such permission may be subject to parameters imposed by Magnet Forensics;
 - 1.3.3 You shall not use the Software to provide digital forensics training to third parties (including instructions on how to use the Software), unless You have first obtained Magnet Forensics' express written permission, and such permission may be subject to parameters imposed by Magnet Forensics;
 - 1.3.4 You shall not, whether in an agreement for Your services or otherwise, in any way negate or override any terms and conditions of the protections afforded to Magnet Forensics under this Agreement;
 - 1.3.5 You shall not engage in deceptive, misleading, illegal or unethical practices that might reasonably be detrimental to Magnet Forensics or any Magnet Forensics products or services, including the Software;
 - 1.3.6 You shall not make any representations, warranties or guarantees about Magnet Forensics or the Software and the operation of the Software, unless expressly authorized in writing by Magnet Forensics, and specifically shall in no event make any representations, guarantees or warranties that are inconsistent with the terms of this Agreement;
 - 1.3.7 You shall comply with all applicable federal, state, provincial and local laws and regulations in performing Your services, and
 - 1.3.8 where You wish to publicize, market or otherwise promote the use of the Software in Your services, You must do so in a manner consistent with Magnet Forensics' marketing and trademark requirements, obtainable upon request from Magnet Forensics, and must submit all such proposed marketing activities to Magnet Forensics for approval prior to undertaking such activities.



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Appendix D

MAGNET ATLAS LICENSE

If Your Order indicates that You are licensing Magnet ATLAS then the End User License Agreement is amended in accordance with the terms included in this Appendix which shall apply to Your use of the Software. For clarity, if there is an inconsistency between the End User License Agreement and this Appendix, the terms of this Appendix shall prevail.

1 License Grant (This section shall replace section 2.1 of the End User License Agreement).

- 1.1 License. Subject to Your payment of all applicable fees, Magnet Forensics hereby grants You for the license term stated in Your Order a non-exclusive, revocable, non-transferable license, for the limited number of Users identified in Your Order to use the Software for Your internal business purposes in accordance with the terms set forth in this Agreement and the Documentation.

2 Section 2.3 of the End User License Agreement is deleted as non-applicable.

3 Section 2.11 of the End User License Agreement is deleted as non-applicable.

4 On Premise Loaned Equipment (This section shall be inserted in the End User License Agreement after Section 3 Beta Software).

- 4.1 Loaned Equipment. If identified in Your Order, the Software shall be installed on hardware loaned from Magnet Forensics and stored at Your premises. Title to the loaned equipment shall remain with Magnet Forensics. Magnet Forensics shall provide maintenance services to ensure the Software operates on the loaned equipment in accordance with specifications in the Documentation, however, You shall be responsible for the full cost of repair or replacement of the loaned equipment that is damaged, lost, confiscated, or stolen from the time You assume custody until it is returned to Magnet Forensics. If the loaned equipment is lost, stolen or damaged, You agree to promptly notify Magnet Forensics. At the expiry of the license term stated in Your Order or earlier termination of this Agreement in accordance with the terms herein, You shall return the loaned equipment to Magnet Forensics in as good a condition as when received by You, except for reasonable wear and tear. Except as specifically stated herein and the Documentation, Magnet Forensics disclaims all representations and warranties associated with the loaned equipment and any use thereof, including any warranty of fitness for a particular purpose.

5 Support. (This section shall replace section 5.1 of the End User License Agreement).

- 5.1 Support. During the license term stated in Your Order, Magnet Forensics shall provide support and maintenance services, including upgrades and updates to the Software. All such support shall be subject to Magnet Forensics' Support Terms and Conditions, which may be found at <http://www.magnetforensics.com/legal/>. If You contact Magnet Forensics for support or opt-in to send diagnostics or other technical information to Magnet Forensics through email or tools provided by Magnet Forensics for such purposes, You agree that: (a) the information the disclosing party discloses to the receiving party may be confidential information that the receiving party agrees to keep in strict confidence; and (b) Magnet Forensics may collect technical information like Software version number, Software usage information, operating system and environment information, and list of installed applications that may be helpful for the diagnostics purposes. Such information will be used for the purposes of support, software updates, and improvement of the Software in accordance with Magnet Forensics' Privacy Policy. You acknowledge and agree that calls and emails with Magnet Forensics and its service providers may be recorded or logged for training, quality assurance, customer service and reference purposes. If Magnet Forensics provides You with any upgrades or updates to the Software, such upgrades or updates shall be subject to the terms



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and conditions of this Agreement or such agreement, if any, which accompanies such upgrades or updates.



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Appendix E

AXIOM CYBER LICENSE

If Your Order indicates that You are licensing AXIOM Cyber, then the End User License Agreement is amended in accordance with the terms included in this Appendix which shall apply to Your use of the Software. For clarity, if there is an inconsistency between the End User License Agreement and this Appendix, the terms of this Appendix shall prevail.

1 License Grant (This section shall replace section 2.1 of the End User License Agreement).

License. Magnet Forensics hereby grants to You a non-exclusive, revocable, non-transferable license to use the Software in accordance with Your Order. You may provide access to or use of the "Portable Case" functionality within the Software to third parties provided: (a) only one instance of the "Portable Case" functionality within the Software is in use at any time by any such third parties; (b) such third parties must agree that their use of the "Portable Case" functionality within the Software is governed by the terms of this Agreement or substantially similar terms of use and (c) You must pay the applicable "Portable Case" license fees identified in Your Order, if any.

1.1 Machine Key Licensing. If Your Order indicates "Machine Key/Fixed" then the Software is subject to a license fee that is calculated per hardware machine or hardware unit (a "**Machine**"). For a "Machine Key" license You are solely permitted to use the Software on the Machine on which such Software is first installed.

1.2 Dongle Licensing. If Your Order indicates "Dongle/Floating" the Software is subject to a license fee that is calculated per USB device provisioned with the Software (a "**Dongle**"). For a Dongle license You are solely permitted to use the Software on the Machine that the Dongle is connected to.

Software license grants shall be for that term set out in the Order or if no term is set out therein then the foregoing license grant shall be perpetual. If You are acquiring the Software on a term license, subscription basis or as part of a free trial, then the license rights set out above apply only for the time period identified in Your Order or for the time period authorized by Magnet Forensics, as the case may be.



Appendix F

HOSTED DEPLOYMENT

1. If identified in Your Order, Magnet Forensics shall facilitate hosting the Software at a third-party site and granting You access to the Software during the license term stated in Your Order via a standard internet interface. You acknowledge that Magnet Forensics utilizes a third-party provider to host and provide access to the Software and as such Your use and access to the Software shall be subject to the terms of service from the third-party provider (including availability, data disclosure, service levels, termination rights, and acceptable use requirements). You are solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all transmitted data processed by the Software. Magnet Forensics shall endeavour to provide industry-standard secure data transmission channels for use by You to upload, enter or transmit data to the Software, for example using HTTPS protocol. However, despite such efforts, You acknowledge and understand that Your data may be accessed by unauthorized persons when communicated across the internet, network communications facilities, telephone or other electronic means. Magnet Forensics is not responsible for any of Your data which may be accessed by the third-party provider and/or delayed, lost, altered, intercepted or stored during the transmission across public networks. You agree to comply with all applicable laws and regulations, including, without limitation, those relating to import, export, and privacy in accessing and using the third-party provider site. You agree that Magnet Forensics is not responsible for any interference with Your use of or access to the Software or security breaches arising from or attributable to the Internet and/or the third party provider and You waive all claims against Magnet Forensics in connection therewith. You must defend and indemnify Magnet Forensics with respect to any amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation legal fees, arising from Your use of any such third-party provider site, including, without limitation, any data You may transfer, process, or store on such third-party provider site. Magnet Forensics reserves the right, at Your expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by You, in which event You will cooperate with Magnet Forensics, at Your expense, in asserting any available defences.
2. ANY SUCH HOSTING, HOSTED ENVIRONMENT AND/OR RELATED SERVICES PROVIDED BY MAGNET FORENSICS IS PROVIDED TO YOU "AS IS", WITHOUT ANY WARRANTY WHATSOEVER. MAGNET FORENSICS DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS IN RELATION TO SUCH HOSTING, HOSTED ENVIRONMENT AND/OR RELATED SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, UNINTERRUPTED ACCESS, SERVICE LEVEL COMMITMENTS, DURABILITY OR NON-INFRINGEMENT. IN NO EVENT WILL MAGNET FORENSICS BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR ANY LOSS, DAMAGE, COST, INJURY OR EXPENSE, INCLUDING LOSS OF TIME, MONEY OR GOODWILL, OR FOR DAMAGES OF ANY KIND, WHETHER DIRECT, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL IN RELATION TO THE HOSTING, THE HOSTED ENVIRONMENT AND/OR RELATED SERVICES.

GRAYSHIFT, LLC

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IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING GRAYSHIFT-SUPPLIED SOFTWARE AS PART OF THE GRAYSHIFT PRODUCT (THE "PRODUCT") CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

THIS PRODUCT CONTAINS CERTAIN SOFTWARE ("SOFTWARE") AND OTHER PROPRIETARY MATERIAL, THE USE OF WHICH IS SUBJECT TO THIS END USER SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT CLICK "I AGREE" AND DO NOT USE THE SOFTWARE. YOUR CLICKING "I AGREE" OR USING THE PRODUCT OR SOFTWARE INDICATES THAT YOU ACCEPT THESE TERMS. IF YOU DO NOT AGREE WITH ALL TERMS, YOU MUST RETURN THE PRODUCT, ALL MANUALS AND DOCUMENTATION, AND PROOF OF PAYMENT AND DISCONTINUE USE OF THE SOFTWARE. WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL BY OR ON BEHALF OF GRAYSHIFT SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY. IF YOU HAVE ORDERED THIS PRODUCT, GRAYSHIFT'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON YOUR ASSENT TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS.

1. ACCEPTANCE AND DELIVERY. Software will be provided by electronic means. Acceptance of Software ("Acceptance") shall be automatic upon the successful completion of Grayshift's standard installation procedures on the Product.

2. LICENSE GRANT. Subject to the terms of this Agreement and for the consideration specified in the Order (defined below), Grayshift, LLC ("Grayshift") hereby grants to you ("Licensee" or "You") a limited, revocable, nontransferable, non-assignable, non-sublicensable, non-exclusive license to use and allow Authorized Users to use the Software, in object code form, solely as such Software is embedded in proprietary equipment provided herewith ("Product") and solely for purposes of accessing mobile devices ("Devices") in your possession or control. You may only use the Product at the authorized physical locations (the "Authorized Locations") specified in your online order (the "Order") or that you have otherwise registered with Grayshift and you acknowledge and agree that in order for the Product to function properly in online mode, you must be connected to the Internet. When you are using the Product in offline mode, you do not need to be connected to the Internet. Grayshift may use certain third-party monitoring tools to ensure that you are in compliance with the foregoing restrictions, which such tools may be subject to Third Party Components terms as further described herein. For purposes of this Agreement, "Authorized Users" means collectively, employees, agents, or contractors of Licensee accessing or using the Product.

3. THIRD PARTY COMPONENTS. The Software makes use of or otherwise incorporates third party components, including certain Google Maps features and content. Use of Google Maps features and content is subject to the then-current versions of the: (1) Google Maps/Google Earth Additional Terms of Service at https://maps.google.com/help/terms_maps.html; and (2)

Google Privacy Policy
at <https://www.google.com/policies/privacy/>.

4. LICENSE RESTRICTIONS. Notwithstanding anything to the contrary in this Agreement, Licensee will not (or allow an Authorized User to): (a) modify any Product; (b) reverse compile, reverse assemble, reverse engineer or otherwise translate all or any portion of any Product; (c) pledge, rent, lease, share, distribute, sell or create derivative works of any Product; (d) use any Product on a time sharing, service bureau, application service provider (ASP), rental or other similar basis; (e) make copies of any Product, except as provided for in the license grant above; (f) remove, alter or deface (or attempt any of the foregoing) proprietary notices, labels or marks in any Product; (g) distribute any copy of any Software to any third party, including without limitation selling any Product in a secondhand market; (h) use any Software other than with Products provided by Grayshift; (i) use the Product other than at an Authorized Location; (j) deactivate, modify or impair the functioning of any disabling code in any Software; (k) circumvent or disable Grayshift copyright protection mechanisms or license management mechanisms; (l) use any Product in violation of any applicable Law or to support any illegal activity; or (m) use any Product to violate any rights of any third party. Grayshift expressly reserves the right to seek all available legal and equitable remedies to prevent any of the foregoing and to recover any lost profits, damages or costs resulting from any of the foregoing.

5. FEES. Licensee shall pay the license fees set forth in the relevant Purchase Order for the Software and Product. Licensee will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Grayshift's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Licensee will make all required payments to Grayshift free and clear of, and without reduction for, any withholding taxes. Any portion of any amount payable

hereunder that is not paid when due will accrue interest at two percent (2%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

6. **SUPPORT.** Grayshift will provide support services (including updates and upgrades) for the Software as specified in the Order and in accordance with the support terms located at <https://grayshift.com>.

7. **TITLE.** As between the parties, Grayshift and its licensors retain all right, title, and interest, including, without limitation, all intellectual property rights to the Product. Licensee understands that Grayshift may modify or discontinue offering the Product at any time. The Product is protected by the copyright laws of the United States and international copyright treaties. This Agreement does not give Licensee any rights not expressly granted herein. This Agreement does not constitute a sale of the Product or any portion or copy of it. All rights not granted are reserved for Grayshift.

8. **LIMITATION OF LIABILITY.** UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, SHALL GRAYSHIFT OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM USE. GRAYSHIFT'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY LICENSEE FOR THE PRODUCT.

9. **LICENSEE WARRANTIES.** Licensee represents, warrants and covenants to Grayshift that (a) only Authorized Users of Licensee who have obtained any necessary consents and approvals pursuant to applicable laws shall be permitted to use any of the Grayshift Products in connection with any Devices; (b) Licensee and its Authorized Users shall only use the Products and Software in compliance with all applicable laws; and (c) Licensee and its Authorized Users shall only use the Products and Software in accordance with the consents and approvals obtained pursuant to applicable laws.

10. **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, GRAYSHIFT PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, QUIET ENJOYMENT, INTEGRATION, TITLE, NON-INTERFERENCE AND NON-INFRINGEMENT. FURTHER, GRAYSHIFT DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE PRODUCT OR

SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR THAT THE PRODUCT, SOFTWARE OR WRITTEN MATERIALS WILL BE CORRECT, ACCURATE, OR RELIABLE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. SHOULD THE PRODUCT PROVE DEFECTIVE FOLLOWING LICENSE, LICENSEE (AND NOT GRAYSHIFT) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR, EXCEPT AS MAY OTHERWISE BE PROVIDED BY A GRAYSHIFT RESELLER OR SUPPORT PROVIDER.

11. **CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS.** Licensee, Licensees employees or agents who require access in order to perform hereunder and all final users of the Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information, as defined below, nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Grayshift's rights therein, at all times exercising the highest duty of care. Further, the Receiving Party shall not attempt to use any Confidential Information to discover, reverse compile, reverse assemble or reverse engineer the Product, including by removal, disassembly or alteration of any of the Product's components, whether internal or external. Receiving Party agrees to restrict access to Grayshift's Confidential Information to those employees or agents who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Grayshift.

11.1. For the purposes of this Agreement, "Confidential Information" means any proprietary, trade secret, financial, technical and non-technical information related to Grayshift's business and current, future and proposed products and services and any derivatives therefrom containing, including, referring to, or otherwise reflecting and/or generated from such Confidential Information. Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, contents, features, functions and solutions of Grayshift's software or product offerings (including the Product and the Software), user manuals (including the Product User's Manual), and the terms and conditions of this Agreement, as updated from time to time; (ii) information related to Grayshift's research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans; and (iii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as "confidential" or "proprietary."

11.2. Confidential Information shall not include any information that is (i) already known to the Receiving Party at

the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with Grayshift that rightfully acquired such information; or (iv) communicated to a third party by the Receiving Party with Grayshift's express written consent.

11.3. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the Receiving Party promptly notifies Grayshift in writing, if notification is permitted by law, and uses commercially reasonable efforts to assist Grayshift, at Grayshift's expense, in opposing such disclosure or obtaining a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

11.4. The Receiving Party acknowledges and agrees that due to the unique nature of Grayshift's Confidential Information, there can be no adequate remedy at law for any breach of its obligations under this Section 11, that any such breach will cause irreparable and continuing damage to Grayshift and, therefore, that upon any such breach or any threat thereof, Grayshift shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.

12. TERM AND TERMINATION. This Agreement shall continue until terminated as set forth herein. Notwithstanding the foregoing, the license to any Product is only during the license term applicable to such Product. The license term shall be determined in the Order. Grayshift may also revoke such license and/or terminate this Agreement immediately without refund or reimbursement if Licensee violates any provision of this Agreement. Any termination of this Agreement shall terminate the licenses granted hereunder. All Confidential Information, Products, Software and/or derivatives therefrom delivered pursuant to this Agreement shall be and remain the property of the Grayshift, and upon expiration or termination of this Agreement for any reason, Licensee shall destroy (or return, at Grayshift's election) (i) the Product; (ii) all hardware that contains copies of the Software; (iii) all materials in the possession of Licensee in any medium that contain, refer to, or relate to all other written, printed, or tangible materials containing Confidential Information; and (iv) any derivatives therefrom, and shall so certify to Grayshift that such actions have occurred. No such material shall be retained or used by the Receiving Party in any form or for any reason.

Except for the license and except as otherwise expressly provided herein, the terms of this Agreement, including the Confidentiality and Non-Disclosure obligations in Section 11 hereto, shall survive expiration and termination. Notwithstanding any other provision of this Agreement, the obligations of the parties as to Confidential Information shall remain binding in perpetuity until such information no longer qualifies as Confidential Information or until Grayshift sends the Receiving Party written notice releasing the Receiving Party from its obligations under Section 11 hereto, whichever occurs first.

13. INDEMNITY. Licensee shall indemnify, defend, or at its option settle, any third party claim or suit against Grayshift based on a claim: (i) of any breach of this Agreement by Licensee, its affiliates, employees, agents, successors and assigns; and (ii) relating to or based on the activities conducted by Licensee or its Authorized Users, using or that used the Software and Product; and Licensee shall pay any final judgment entered against Grayshift in any such proceeding or agreed to in settlement. Grayshift will notify Licensee in writing of such claim or suit and give all information and assistance reasonably requested by Licensee or such designee.

14. GOVERNMENT USE. If Licensee is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product or any related documentation is restricted in accordance with the Federal Acquisition Regulation 12.212 for civilian agencies and the Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Product and documentation is a "commercial item", "commercial computer software" and "commercial computer software documentation." The use of the Product and documentation is further restricted in accordance with the terms of this Agreement, or any modifications thereto.

15. EXPORT CONTROLS. Licensee shall comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of the United States or foreign agency or authority. Licensee will not export, or allow the export or re-export, of the Product in violation of any such laws, restrictions or regulations.

16. MISCELLANEOUS. This Agreement represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations. This Agreement may be amended only by a writing executed by both parties. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The failure of Grayshift to act with respect to a breach of this Agreement by Licensee or others does not constitute a waiver and shall not limit Grayshift's rights with respect to such breach or any subsequent breaches. This Agreement is personal to Licensee and may not be assigned, sublicensed, or transferred for any reason whatsoever.

(including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control involving Licensee) without Grayshift's consent and any action or conduct in violation of the foregoing shall be void and without effect. This Agreement shall be governed by and construed under the laws of the State of Georgia, U.S.A. without regard to the conflicts of laws provisions thereof, and

GRAYSHIFT

Signature: _____

Name: _____

Title: _____

Date: _____

without regard to the United Nations Convention on Contracts for the International Sale of Goods. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the state and federal courts in Georgia; Licensee hereby agrees to service of process in accordance with the rules of such court.

AGENCY: _____

Signature: _____

Name: _____

Title: _____

Date: _____



SUPPORT TERMS AND CONDITIONS

The following document (the “**Agreement**”) describes the terms and conditions under which you will receive support and maintenance services from Magnet Forensics Inc. (“**Magnet Forensics**”) in relation to software purchased by you from Magnet Forensics. In addition to these terms and conditions the provision of support and maintenance services by Magnet Forensics shall also be subject to the then current EULA corresponding to the software purchased by you.

1. DEFINITIONS. In addition to the terms defined herein, capitalized terms shall have the meaning ascribed in the EULA.

- 1.1 “**EULA**” means the license agreement that governs your use of the Software to you.
- 1.2 “**Term**” means the period for which you have purchased support and/or maintenance services from Magnet Forensics, if any.
- 1.3 “**Updates**” means software releases from Magnet Forensics, identified by Magnet Forensics as updates, which supplement a version of Software that you have obtained from Magnet Forensics and that may correct defects, bugs or programming errors in such version of Software or provide minor increases in functionality for such version of Software.
- 1.4 “**Upgrades**” means software releases from Magnet Forensics, identified by Magnet Forensics as upgrades, which replace a version of Software that you have obtained from Magnet Forensics with a newer version of such Software.

2. SUPPORT AND MAINTENANCE SERVICES

2.1 During the Term, subject to the payment of all applicable fees, Magnet Forensics shall provide support and/or maintenance services consisting of the following:

Support Services:

- (a) Advice provided telephonically and by e-mail on the use and maintenance of the Software where such Software is not operating in accordance with its specifications;
- (b) Instruction provided telephonically and by e-mail on the use and maintenance of the Software where such instructions are not included in the documentation accompanying the Software; and
- (c) Guidance on software failure diagnoses and suggestions for Software error correction provided telephonically and by e-mail; and
- (d) Commercially reasonable efforts to correct any defects in the Software which prevent the Software from operating in accordance with its specifications (including the provision of Updates or Upgrades where necessary to correct a defect in the Software which prevents the Software from operating in accordance with its specifications).

Support services may take the form of specific bug fixes, special releases to remedy defects in the Software or, where bugs or defects are not critical (as determined in Magnet Forensics' sole discretion) inclusion of fixes in a future scheduled release of the Software.

Maintenance Services:

- (a) the provision of Updates to the Software including, without limitation, enhancements to the Software.
- (b) the provision of Upgrades to the Software.

2.2 Magnet Forensics' obligations to perform the support and maintenance services hereunder, as applicable, will apply only to the Software provided to you by Magnet Forensics and not to peripheral data or any third-party hardware or software. Support and maintenance services shall be available between 8:30 a.m. to 5:30 p.m., Eastern Time, Monday to Friday, excluding Canadian statutory or national holidays (each a “**Business Day**”).

2.3 The following services (the “**Excluded Services**”) are specifically not included in the support and maintenance services:

- (a) advice or instructions related to general usage of the Software;
- (b) installation of the Software;
- (c) on-site support related to the Software;
- (d) corrections of defects found by Magnet Forensics to be:
 - (i) in other than a current, unaltered release of the Software provided free of charge to you;
 - (ii) caused by your negligence or that of a third party (other than a third party working on Magnet Forensics' behalf), or modifications made to the Software by you or by any third-party other than a third party working on Magnet Forensics' behalf;
 - (iii) arise from use or interoperability of the Software in combination with hardware or software not specifically approved by Magnet Forensics;
 - (iv) caused by normal wear and tear;
 - (v) caused by improper or unauthorized use of the Software;
 - (vi) caused by use of the Software in a manner contrary to, or otherwise not in accordance with, documentation, guidelines or instructions provided by Magnet Forensics in relation to the Software;
 - (vii) due to external causes such as, but not limited to, power failure or electrical power surges; or
 - (viii) defects which do not prevent the Software from operating in accordance with its specifications.

In the event that you wish Magnet Forensics to perform any Excluded Service, such Excluded Service must be pursuant to a separate, mutually agreed upon written agreement between you and Magnet Forensics.

3. TRANSMISSION OF DATA

- 3.1. Support and maintenance services do not include or require transmission of your data or information to Magnet Forensics. On an exception basis, as part of incident resolution, Magnet Forensics may agree to receive your data or information (i.e. screen shots, case file data, etc.). Magnet Forensics shall process and store any received data and information in accordance with the Magnet Forensics Privacy Policy available at <https://www.magnetforensics.com/legal/>.

4. TERMINATION

- 4.1. This Agreement may be terminated immediately upon notice for cause if:
- 4.2. either party commits a material breach of this Agreement or the EULA, or consistently fails to properly perform and observe its obligations under this Agreement or the EULA, and fails to rectify the situation within thirty (30) calendar days of the non-breaching party delivering notice of the breach or consistent failure to perform; or
- 4.3. either party becomes insolvent, or a receiver or receiver-manager is appointed for any part of the property of such party, or such party makes an assignment, proposal or arrangement for the benefit of its creditors or such party files an assignment in bankruptcy, or any proceedings under any bankruptcy or insolvency laws are commenced against such party.
- 4.4. Magnet Forensics shall have the right to terminate this Agreement immediately upon notice to you if your license to use the Software under the EULA is terminated for any reason.
- 4.5. Each party shall have the right to terminate this Agreement for convenience upon ninety (90) days' notice to the other party.
- 4.6. If you have pre-paid for the support and maintenance services, you will not be entitled to any refund of any portion of such payment due to early termination, other than termination by Magnet Forensics for convenience or termination by you due to Magnet Forensics' breach or insolvency. Termination of this Agreement shall not affect your payment obligation for any support and maintenance services rendered by Magnet Forensics prior to the date

of termination. Magnet Forensics shall not be obligated to provide any support and maintenance services after the expiration or termination date, for whatever reason.

- 4.7. Any provision of this Agreement which expressly states that it is to continue in effect after termination or expiration of this Agreement, or which by its nature would survive the termination or expiration of this Agreement, shall do so.

5. FEES

- 5.1. Magnet Forensics shall invoice you for all support and maintenance service fees in accordance with its normal billing practices, and you will pay all fees within thirty (30) days following receipt of invoice.
- 5.2. Magnet Forensics reserves the right to change fees for support and maintenance services at any time, provided that the fee in effect at the time of your purchase of support and maintenance services shall apply for the duration of your purchased Term. For greater certainty, for any renewal term of support and maintenance services, Magnet Forensics has no obligation to offer you the same fees for support and maintenance services as you may previously have had.
- 5.3. You are responsible for, and shall pay all taxes relating to this Agreement, excluding any taxes based on the net income of Magnet Forensics. Unless otherwise indicated, all amounts payable by you under this Agreement are exclusive of any tax, duty, levy, or similar government charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, possession or use of the Software or services hereunder, the execution of this Agreement or otherwise.
- 5.4. If you fail to pay any amount under this Agreement that is due and payable, in addition to any other rights and remedies available to Magnet Forensics, Magnet Forensics shall be entitled to charge interest on all outstanding amounts at the lesser of 1.5% per month or the maximum rate permitted by law, such interest commencing as of the due date for such payment, and Magnet Forensics shall also be entitled to suspend provision of support and maintenance services. You shall also be responsible for paying for all reasonable fees and costs incurred by Magnet Forensics, including legal fees, in collecting any overdue amounts or enforcing any provision of this Agreement.
- 5.5. All fees are in United States dollars.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. You acknowledge and agree that Magnet Forensics shall own all intellectual property rights (whether or not patentable or registrable under copyright, trade-mark or similar legislation or subject to analogous protection) in and to the Software, including any and all enhancements and modifications made to the Software, and all work conceived, created, invented produced, designed or reduced to practice by Magnet Forensics and its personnel as a result of or with respect to any and all services provided to you pursuant to this Agreement, including Updates and Upgrades (collectively, the "**Modifications**"). Your rights and obligations relating to the use of the Software (including any Updates and Upgrades) shall be governed by the terms of the EULA regardless of whether you, your employees or contractors may have contributed to any Modifications in any way.

7. LIMITED WARRANTY AND LIMITATION OF LIABILITY

- 7.1. Magnet Forensics warrants that all services provided in accordance with the terms of this Agreement shall be provided in a competent, professional manner by persons who are fully trained and qualified in respect of the Software. Magnet Forensics does not represent or warrant that the services provided hereunder will achieve a particular result for your business, or that the operation of the Software will be error free or uninterrupted, or that all errors in the Software can be found or corrected, although Magnet Forensics shall use commercially reasonable efforts to do so.

7.2. OTHER THAN AS OTHERWISE PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MAGNET FORENSICS MAKES NO WARRANTY OR CONDITION, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, MODIFICATIONS, THE SUPPORT SERVICES, THE MAINTENANCE SERVICES OR ANY OTHER SERVICES PROVIDED IN ACCORDANCE WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MAGNET FORENSICS, ITS DISTRIBUTORS, AGENTS, DIRECTORS, OFFICERS, OR EMPLOYEES (COLLECTIVELY, "**AGENTS**") SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. OTHER THAN AS SPECIFICALLY PROVIDED IN THE USER AGREEMENT, YOU ASSUME THE ENTIRE RISK AS TO THE USE AND PERFORMANCE OF THE SOFTWARE AND THE MODIFICATIONS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. IN NO EVENT SHALL MAGNET FORENSICS, ITS AGENTS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE, THE MODIFICATIONS, THE SUPPORT SERVICES, THE MAINTENANCE SERVICES OR ANY OTHER SERVICES BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE, INABILITY TO USE OR THE PERFORMANCE OR NON-PERFORMANCE OF, THE SOFTWARE, THE MODIFICATIONS, OR THE PROVISION OF THE SERVICES, EVEN IF MAGNET FORENSICS OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM, OR IT IS FORESEEABLE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL MAGNET FORENSICS'S MAXIMUM AGGREGATE LIABILITY TO YOU FOR DIRECT DAMAGES EXCEED THE TOTAL AMOUNT PAID BY YOU FOR THE SERVICES PERFORMED BY MAGNET FORENSICS IN ACCORDANCE WITH THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE LIMITATIONS OF THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM.

8. GENERAL

8.1. All terms and conditions of the EULA shall, unless expressly in conflict with the terms and conditions of this Agreement, apply, and are hereby incorporated herein by this reference. Where such a conflict exists, the terms and conditions of this Agreement shall govern.

[END OF AGREEMENT]



Support Description

Grayshift support is available via telephone, email, and an online customer portal containing chat functionality and a searchable knowledge base. Grayshift will provide support and services for the length of the service license. Our support includes unlimited upgrades and updates as available.

For GrayKey subscribers, Grayshift's inquiry target response time is as follows.

Priority	Description	Target Response Times
Urgent	Major functionality is unusable and the issue has a <u>critical impact</u> on your operations. No workaround is available. Examples: <ul style="list-style-type: none">• License is blacklisted• GrayKey will not boot• GrayKey will not process any devices• User Interface unusable	2 Business Hours (as defined below)
High	Major functionality is degraded and the issue has a <u>major impact</u> on your operations. No reasonable workaround is available. Examples: <ul style="list-style-type: none">• GrayKey is unable to process one device, but is working on other devices	4 Business Hours
Normal	Functionality is not working that has a <u>minor impact</u> on your operations or workflow. Examples: <ul style="list-style-type: none">• User Interface degraded, slow• New users need support access• Checking status on a previously filed bug report	6 Business Hours
Low	Functionality is not working that has <u>very minor</u> or <u>no impact</u> on your operations or workflow.	1 Business Day

NOTE: "Business Hours" is defined as 9:00 AM to 5:00 PM Eastern Time on Monday through Friday (excluding U.S. Federal holidays).

Resources:

- Customer Service and Support Portal: In addition to providing telephone and email support, support services are managed out of a customer support portal, located at support.grayshift.com. Please note that a username/password is required to access the support site. If you have purchased a GrayKey or are responsible for using one, and are unable to access the support portal, knowledge base, or community page, please contact us at support@grayshift.com so we can provide access.
- User Guides and Knowledge Base: At all times during the subscription term, Licensee shall have access to electronic versions of the GrayKey user guides, FAQs, and Knowledge Base (located at support.grayshift.com), as well as a community portal (located at support.grayshift.com/hc/en-us/community/topics).

Quotation

**Address:**

2250 Corporate Park Drive, Suite 130
Herndon, VA 20171
United States

Phone: 519-342-0195**Email:** sales@magnetforensics.com**DUNS:** 080001807**Cage Code:** 7K9J2**Quote #:**

Q-166239-3

Issue Date:

1 Jun, 2021

Expires On:

30 Jun, 2021

Bill To

Preston McNair
West Virginia Fusion Center
1900 Kanawha Boulevard, Building 1, West Wing,
Suite W-400
Charleston, WV 25305
United States
3045584831
preston.b.mcnaair@wv.gov

Ship To

Preston McNair
West Virginia Fusion Center
1900 Kanawha Boulevard, Building 1, West Wing,
Suite W-400
Charleston, WV 25305
United States
3045584831
preston.b.mcnaair@wv.gov

End User

Preston McNair
West Virginia Fusion Center
1900 Kanawha Boulevard, Building 1, West Wing,
Suite W-400
Charleston WV 25305
United States
3045584831
preston.b.mcnaair@wv.gov

PREPARED BY	PHONE	EMAIL	PAYMENT TERM
Kelly McLachlin	(226) 499-9085	kelly.mclachlin@magnetforensics.com	Net 30

ITEM #	PRODUCT NAME	TERM (mth)	UNIT SELLING PRICE	QTY	EXTENDED PRICE
6B101-1	Magnet AXIOM Term Bundle		USD 0.00	1	USD 0.00
6AX03-1	Magnet AXIOM Term	12	USD 5,150.00	1	USD 5,150.00
5D000	Shipping - Domestic		USD 25.00	1	USD 25.00
3TCV001	Magnet Forensics Core Training Voucher		USD 2,999.00	1	USD 2,999.00
6B200	Grayshift GrayKey Bundle		USD 0.00	1	USD 0.00
6GS120	GrayKey Online Advanced	12	USD 27,995.00	1	USD 27,995.00
4GS01	Grayshift GrayKey Unit		USD 0.00	1	USD 0.00
5GSD00	Grayshift Shipping - US		USD 75.00	1	USD 75.00

Sub-Total

USD 36,244.00

Taxes

USD 0.00

Grand Total**USD 36,244.00**

Prices subject to change upon quote expiry. Accurate sales tax will be calculated at the time of invoicing when applicable. If your company is tax exempt, please provide appropriate support with your signed quote.

Terms & Conditions

Unless you have an existing written agreement with Magnet Forensics for the software and related services listed in this quotation, by: (a) signing below, (b) submitting an Order to Magnet Forensics referencing this quotation, or (c) making payment for the software and related services listed in this quotation, you agree to the terms and conditions at magnetforensics.com/legal/ applicable to the software and related services listed in this quotation.

Signature

Date:

____/____/____

Name (Print):

Title:

Please sign and email to Kelly McLachlin at kelly.mclachlin@magnetforensics.com

Ref. No. 320008845524

CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.
5500 North Service Road
Suite 402
Burlington ON L7L 6W6
tel 289-313-2600 fax 289-313-2601

Re: Evidence of Insurance

State of West Virginia
2019 Washington Street, East
Charleston, WV 25305-0130
USA

Insurance as described herein has been arranged on behalf of the Insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

Insured

Magnet Forensics USA, Inc.
2250 Corporate Park Drive
Suite 130
Herndon, VA 20171
USA

Coverage

Commercial General Liability	Insurer	Berkley Insurance Company	
Policy #	BC01774-2004		
Effective	30-Sep-2020	Expiry	30-Sep-2021
Limits of Liability	Bodily Injury & Property Damage, Each Occurrence USD1,000,000 Products and Completed Operations, Aggregate USD1,000,000 Personal Injury & Advertising Liability USD1,000,000 Employers Liability USD1,000,000 Tenant's Legal Liability - All Risks USD1,000,000 Non-Owned Automobile Liability USD1,000,000 Legal Liability for Damage to Hired Automobiles USD50,000 Policy may be subject to a general aggregate and other aggregates where applicable		
Professional Liability	Insurer	Berkley Insurance Company	
Policy #	BC01774-2004		
Effective	30-Sep-2020	Expiry	30-Sep-2021
Limits of Liability	Per Claim USD1,000,000 Subject to aggregate where applicable		

Additional Insured

Only with respect to the above and arising out of the Named Insured's operations are the following name(s) added to the policy as Additional Insured(s). The policy limits are not increased by the addition of such Additional Insured(s) and remain as stated in this Certificate.

State of West Virginia where required by written contract or written agreement with respect to Commercial General Liability

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,

THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE
THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICY

Ref. No. 320008845524

CERTIFICATE OF INSURANCE

Terms and / or Additional Coverage

Professional Liability Policy also includes:

- Technology Products and Services - USD1,000,000
- Electronic Media - USD1,000,000
- Network Security/Privacy Breach - USD1,000,000

Professional Liability

DedPerClaim USD50,000

THIS CERTIFICATE CONSTITUTES A STATEMENT OF THE FACTS AS OF THE DATE OF ISSUANCE AND ARE SO REPRESENTED AND WARRANTED ONLY TO State of West Virginia. OTHER PERSONS RELYING ON THIS CERTIFICATE DO SO AT THEIR OWN RISK.

Dated : 28-June-2021

Aon Reed Stenhouse Inc

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,

THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE
THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICY

AON