



The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at *wvOASIS.gov*. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at *WVPurchasing.gov* with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

## Header @ 6

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Procurement Folder: 972342

Procurement Type: Central Purchase Order

Vendor ID: VS0000016105 

Legal Name: MAGNET FORENSICS USA INC

Alias/DBA:

Total Bid: \$8,174.00

Response Date: 12/07/2021 

Response Time: 10:37

Responded By User ID: MagnetForensics2 

First Name: Eric

Last Name: Klimstra

Email: vendorform@MAGNETFORE

Phone: 2264998841

SO Doc Code: CRFQ

SO Dept: 0601

SO Doc ID: MAP2200000002

Published Date: 12/7/21

Close Date: 12/16/21

Close Time: 13:30

Status: Closed

Solicitation Description: Magnet Axiom or Equal

Total of Header Attachments: 6

Total of All Attachments: 6



Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Contract Item #1: Magnet AXIOM Term Bundle, or Equal	1.00000	EA	0.000000	0.00

Comm Code	Manufacturer	Specification	Model #
43232600			

**Commodity Line Comments:** A bundle SKU only - no product attached to this

**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	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Contract Item #2: Magnet AXIOM Term, or Equal.	1.00000	EA	5175.000000	5175.00

Comm Code	Manufacturer	Specification	Model #
43232600			

**Commodity Line Comments:** Purchase is as per EULA attached. Includes shipping of \$25

**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.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	Contract Item #3: Magnet Forensics Core Training Voucher	1.00000	EA	2999.000000	2999.00

Comm Code	Manufacturer	Specification	Model #
43232502			

**Commodity Line Comments:** Digital delivery. Terms as per our Training Terms and Conditions attachment

**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.



## TRAINING TERMS AND CONDITIONS

Thank you for registering for training provided by Magnet. BY SUBMITTING AN ORDER FOR THE TRAINING IDENTIFIED IN THE QUOTATION PROVIDED BY MAGNET YOU ARE REPRESENTING THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY, THE TERMS AND CONDITIONS AS SET FORTH BELOW (“**AGREEMENT**”).

1. **Training.** The following training options are available for purchase from Magnet (“**Training**”):
  - 1.1. **Training Courses.** Magnet offers: (a) in-person instructor-led digital forensics training courses, and (b) virtual instructor-led courses, and (c) online self-paced digital forensics training courses. Magnet’s Training Course catalog is available at <https://training.magnetforensics.com/w/courses/> (collectively “**Training Courses**”);
  - 1.2. **Custom Training.** Training with modules customized to Your requirements; and
  - 1.3. **Training Annual Pass.** The Training Annual Pass (“**TAP**”) permits one (1) user to: (a) attend any Magnet hosted Training Course at any location; and (b) attend any virtual instructor-led or online self-paced Magnet Training courses for twelve (12) months from the date of the invoice issued when we receive Your purchase order. TAPs are non-cancelable, non-refundable, and non-transferable (unless transfer is approved by Magnet in writing in its sole discretion). TAP users shall not share Training Materials with others.
2. **Logistics.** Magnet Training Courses are delivered in the following venues:
  - 2.1. **Magnet Hosted Courses.** Magnet has a full schedule of Training Course for participants to attend at our Training facilities in Herndon, Virginia, USA and select locations globally.
  - 2.2. **Customer Hosted Courses.** Training Courses can be scheduled at Your premises (subject to minimum participant/duration requirements). For Training Courses hosted at Your premises, You shall provide Magnet access to adequate training room(s), facilities and other necessary resources, including, but not limited to, whiteboard/overhead projector with markers of various colours, video-projector, flip charts, etc. You shall reimburse Magnet for reasonable travel, accommodation and meal expenses incurred by Magnet to attend the Training Course at Your premises.
  - 2.3. **Magnet Training Portal.** Magnet offers Training Courses via its online platform (“**Training Portal**”).
    - 2.3.1 **Use of Training Portal.** By accessing the Training Portal, You expressly acknowledge and agree to the terms of this Agreement, our Personal Data Protection Policy (available at: <https://www.magnetforensics.com/legal>) and all other applicable policies and notices, as made available to You from time to time. When You are setting up Your Training Portal account, You must give us accurate and complete information. You are solely responsible for the activity that occurs in your Training Portal account, and You must keep Your account password secure.
    - 2.3.2 **Training Portal License.** Magnet hereby grants You a non-exclusive, non-transferable, revocable right to access and use the Training Portal for the sole purpose of obtaining Training from Magnet and solely in accordance with this Agreement. You agree not to, and shall not permit any third party to: (i) access any part of the Training Portal without Magnet’s consent, (ii) modify, translate, transfer (by sale, resale, license, sublicense, download or otherwise), reverse engineer, decompile, disassemble, create derivative works of or copy any part of the Training Portal or otherwise seek to obtain or use the source code or non-public APIs of any part of the Training Portal, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Magnet), (iii) remove, alter or obscure any proprietary notices, labels or marks on any component or portion of the Training Portal, (iv) market, sell, resell, rent, reproduce, display, distribute or lease any part of the Training Portal, (v) interfere with or disrupt the integrity or performance of any part of the Training Portal, (vi) use any part of the Training Portal for the benefit of any third party, and/or (vii) attempt to gain unauthorized access to any part of the Training Portal,

or their related systems or networks; (viii) breach any applicable local, national or international law, rule or regulation; or (ix) transmit any data, send or upload any material that contains viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware. In addition, You may not access any part of the Training Portal for purposes of (i) building a competitive product or service, (ii) copying any features, functions or graphics of, or data or information in, the Training Portal, and/or (iii) monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. This license to access and use the Training Portal shall remain in effect until you have completed your Training Courses.

**2.3.3 Technical Requirements.** You must have required equipment, software, and internet access to be able to use the Training Portal. Acquiring, installing, maintaining, and operating equipment, and internet access is solely Your responsibility. Magnet neither represents nor warrants that the Training Portal will be accessible through all web browser releases or all versions of tablets, smartphones, or other computing devices.

### **3. Payment.**

**3.1. Fees.** Fees for Training are payable within thirty (30) days from date of the invoice issued when we receive Your purchase order. If You fail to pay the fees when payable, in addition to any other rights and remedies available to Magnet, Magnet 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. You shall also be responsible for paying for all reasonable fees and costs incurred by Magnet, including legal fees, in collecting any overdue amounts.

**3.2. Expiration.** All Training Course must be completed within twelve (12) months from date of the invoice issued when we receive Your purchase order. At the end of the twelve (12) month period, for any Training Course not completed, unless otherwise agreed to by Magnet, (a) if You paid fees in advance, those fees shall be deemed forfeited, or (b) any outstanding fees for Training Course not completed shall become payable and Magnet shall be entitled to invoice You. You agree that the requirement to complete all Training Course(s) within twelve (12) months or forfeit prepaid fees/pay the outstanding fees for Training Course(s) not completed is not a penalty but instead a reconciliation payment for costs incurred by Magnet due to Your non-attendance.

**3.3. Your Expenses.** You are responsible to make all arrangements for and pay the costs of travel, accommodations, and meals in connection with attending Training Courses.

**3.4. Taxes.** Unless otherwise indicated, all amounts payable by you for Training Courses are exclusive of any tax, duty, levy, or similar government charge that may be assessed by any jurisdiction. If you are required to withhold any taxes from payments owed, the amount of payment due shall automatically be increased to offset such tax, so that the amount remitted to Magnet shall equal the amount invoiced.

### **4. Changes.**

**4.1. Format/Rescheduling/Cancellation by Magnet.** Magnet endeavors to offer Training in a variety of formats including online self-paced, virtual instructor-led and in-person instructor-led. Magnet cannot guarantee that all Training Courses will be offered in all formats. Training Course(s) can be changed to a different format, rescheduled to a later date or cancelled by Magnet with twenty-one (21) days' notice. If Magnet cancels a Training Course due to insufficient attendance, you will have the option to immediately register in a different scheduled Training Course or Magnet will issue You a voucher to register in a future Training Course of your choice. All Training Course vouchers are valid for a period of 12-months from the date of issue.



## TRAINING TERMS AND CONDITIONS

- 4.2. Training Course Catalog. Magnet offers a comprehensive catalog of digital forensics Training Courses providing the opportunity for participants of all levels of experience to train for examinations involving multiple technology platforms including, but not limited to, smartphone, computer, IoT, cloud applications. Technology is constantly changing and so too are the digital forensics tools, techniques and workflows to support identifying, analyzing, and reporting digital evidence. Accordingly, Magnet reserves the right to add, remove or modify Training Courses from time to time without further notice.
- 4.3. Cancellation by You. You may cancel or reschedule your purchased in-person Training Course(s) or Custom Training without charge or penalty if written notice is received twenty-one (21) days or more prior to the date of the Training Course/Custom Training. No rescheduling shall be permitted on less than twenty-one (21) days written notice, which shall constitute a cancellation without a refund. Your written rescheduling or cancellation notice must be emailed to [training@magnetforensics.com](mailto:training@magnetforensics.com).
- 5. Training Materials.**
- 5.1. Training Materials. As part of a Training Course, You will be provided access to training materials developed by Magnet, including without limitation: (a) Magnet software and product documentation, (b) training course catalog, (c) training course materials, (d) instructional display material, (e) Training Portal log-in details; and (f) MCFE exam questions. (“**Training Materials**”).
- 5.2. Ownership of Training Materials. Magnet shall retain the ownership of, copyright in, and all intellectual property rights in and to the Training Materials, in whatever form and media, and all parts thereof.
- 5.3. License to Materials. Magnet hereby grants You a non-exclusive, non-transferable, revocable right and license to access and use the Training Materials for the sole purpose of obtaining Training from Magnet. You acknowledge that the license to use Training Materials shall not include a right to enhance, alter, reproduce or produce derivative works of the Training Materials, nor the right to transfer, assign, otherwise share the Training Materials to any third party.
- 5.4. Confidentiality of Training Materials. You shall keep confidential and shall not disclose to third parties without the prior written consent of Magnet, the Training Materials and any technical or commercial information which You acquired during the Training Course or as a result of discussions or other communications with Magnet.
- 6. Magnet Certified Forensics Examiner (“MCFE”).** Magnet offers a MCFE certification as evidence of competence with Magnet’s products. Currently, MCFE certification exams are at no additional costs to You so long as You have completed the prerequisite Training Courses. Information on the prerequisite courses is available at <https://www.magnetforensics.com/certifications/>. Magnet reserves the right to make changes to the prerequisites, and questions/length/format/costs of the MCFE certification exam.
- 7. Training Warranty.**
- 7.1. Training Warranty. Magnet’s Training is provided in accordance with the terms of this Agreement by skilled instructors in a professional manner consistent with generally accepted industry practices. You must notify Magnet within fifteen (15) days of attending a Training Course of any warranty deficiency (“**Warranty Period**”). Your sole and exclusive remedy for a breach of the aforementioned warranty is for Magnet to permit You to attend a replacement Training Course.



## TRAINING TERMS AND CONDITIONS

- 7.2. **CPE.** Magnet instructor-led Training Courses (in-person or virtual) can be counted for up to 32 continuing professional education (“CPE”) credits through the National Registry of CPE Sponsors program offered by the National Association of State Boards of Accountancy (“NASBA”). Magnet is not liable for any changes to credit recognition through NASBA. Magnet’s self-paced online Training Course cannot be used for CPE credits.
- 7.3. **LIMITATION.** OTHER THAN AS OTHERWISE PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MAGNET MAKES NO WARRANTY OR CONDITION, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO TRAINING 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, ITS DISTRIBUTORS, AGENTS, DIRECTORS, OFFICERS, OR EMPLOYEES (COLLECTIVELY, “AGENTS”) SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.
- 8. Limitation of Liability.**
- 8.1. **Direct Damages.** Magnet’s total liability for all claims of any kind, whether in contract, warranty, tort (including negligence), strict liability, or otherwise, arising out of or related to this Agreement, or its performance or breach, shall be limited to direct damages and not exceed fees paid for the Training in respect of which the claim is made.
- 8.2. **EXCLUSIONS.** EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 9, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MAGNET BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT MAGNET WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.3. **NO LIMITATIONS.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE LIABILITY FOR FRAUD, FRAUDULENT MISREPRESENTATION, WILLFUL MISCONDUCT, OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.
9. **Audit.** Magnet reserves the right to investigate suspected violations of this Agreement. Magnet shall be permitted to audit compliance with this Agreement (at least once annually and in accordance with Magnet’s standard procedures, which may include on-site, remote audit or senior official certification) including, without limitation, TAP usage, use of the Training Portal, and use of Training Materials. You shall co-operate reasonably in the conduct of such audits. In the event an audit reveals that: (i) You underpaid for Training; and/or (ii) that You have used the Training in excess of the quantities or levels stated in the applicable invoice(s), You shall pay on demand fees for such excess usage based on Magnet’s 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’s exclusive remedies and Magnet may take any other legal, equitable or technical action it deems appropriate in the circumstances.
10. **Force Majeure.** Magnet shall not be liable for delays in delivery or for failure to perform due to causes beyond reasonable control of Magnet, which causes shall include, without limitation, acts of God, acts of civil or military authorities, fires, strikes, epidemics, quarantine restriction, flood, earthquakes, riot, war, delays in transportation or inability to obtain necessary labour, materials or supplies. You acknowledge and agree that for in-person Training





## TRAINING TERMS AND CONDITIONS

Courses scheduled at Your premises, if travel to Your location would be contrary to advisories issued by governmental authorities, Magnet may temporarily suspend or reschedule the in-person Training Courses.

- 11. Term and Termination.** This Agreement shall continue until You have completed Your Training. Magnet 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; (b) You materially breach any other agreement that You may have with Magnet which You fail to cure fifteen (15) days after written notice thereof by Magnet; or (c) You become involved in any legal 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.
- 12. Assignment.** Magnet 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, 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 12 shall be null and void.
- 13. 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. 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.
- 15. Publicity.** Upon obtaining Your written permission (not to be unreasonably withheld) Magnet may make announcements, press releases, publications, presentations and other public statements that reference Your identity as a customer.
- 16. Governing Law.** These terms and conditions, 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.
- 17. Entire Agreement.** These terms and conditions constitute the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings relating to the subject matter hereof. Magnet may amend this Agreement at any time by posting an amended version at [www.magnetforensics.com/legal](http://www.magnetforensics.com/legal). Your continued use of Training shall constitute Your consent to any changes made. Your additional or different terms and conditions, whether on your purchase order or otherwise, shall not apply.
- 18. Magnet Entity.**
  - 18.1. "Magnet" means: (a) where your primary address is anywhere other than in the U.S., Magnet Forensics Inc., located at 2220 University Avenue East, Waterloo, Ontario, N2K 0A8 Canada; (b) Where your primary address is in the U.S. (including its territories, protectorates or overseas regions), Magnet Forensics USA, Inc., located at 2250 Corporate Park Drive, Suite 130, Herndon, Virginia, U.S. 20171.

**19. Jurisdiction Specific Terms.** Where your primary address is:

19.1. in Europe (including Greenland), the Middle East, or Africa, then the following amendments apply to this Agreement:

a) The first sentence of Section 16 is deleted in its entirety and replaced with the following:

13. Governing Law. These terms and conditions, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of England. ...

19.2. in U.S., then the following amendments apply to this Agreement:

a) The first sentence of Section 16 is deleted in its entirety and replaced with the following:

13. Governing Law. These terms and conditions, 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.. ...

19.3. 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) The first sentence of Section 16 is deleted in its entirety and replaced with the following:

13. Governing Law. These terms and conditions, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of Singapore...

19.4. If Your primary address is not in any of the regions or countries specified in Section 19.1, 19.2, or 19.3, the terms and condition will apply to you without further amendment.

[END OF AGREEMENT]



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

**Phone:** 519-342-0195  
**E-Mail:** sales@magnetforensics.com

DUNS: 080001807  
Cage Code: 7K9J2

**Quote #:** Q-177025-2  
**Issue Date:** 6 Dec, 2021  
**Expires On:** 31 Dec, 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.mcnaire@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.mcnaire@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.mcnaire@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

Sub-Total USD 8,174.00  
Taxes USD 0.00  
**Grand Total USD 8,174.00**

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/](http://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](mailto: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**

<b>Commercial General Liability</b>	<b>Insurer</b>	Berkley Insurance Company	
<b>Policy #</b>	BC01774-2004		
<b>Effective</b>	30-Sep-2020	<b>Expiry</b>	30-Sep-2021
<b>Limits of Liability</b>	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		
<b>Professional Liability</b>	<b>Insurer</b>	Berkley Insurance Company	
<b>Policy #</b>	BC01774-2004		
<b>Effective</b>	30-Sep-2020	<b>Expiry</b>	30-Sep-2021
<b>Limits of Liability</b>	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

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**Professional Liability**  
-----

DedPerClaim USD50,000  
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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*  
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**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



## END USER LICENSE AGREEMENT

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.

If You have any questions or concerns about the terms of this Agreement, please contact us at [legal@magnetforensics.com](mailto: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 “**CLS License**” means the Software is subject to a license fee that is calculated based on the number of concurrent usage virtual license Keys identified in the Quotation as available at any one time to be downloaded by Users.
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- 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 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 Certificate of Compliance. Magnet Forensics reserves the right to investigate suspected violations of this Agreement. 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 terms of this Agreement. In the event that Your written certificate of compliance 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





## END USER LICENSE AGREEMENT

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 that time, 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 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. 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 (1) 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.
- 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.** Magnet Forensics may make announcements, press releases, publications, presentations and other public statements that reference Your identity as a customer ("**Publicity Activity**"), provided that Magnet Forensics does not disclose Your confidential information in the course of such Publicity Activity or misrepresent Your relationship with Magnet Forensics. Magnet Forensics shall be entitled to use any of Your trademarks or logos as part of such Publicity Activity provided it does so in compliance with any branding requirements brought to its attention by You.
- 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

- 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](mailto: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(2) is deleted in its entirety and replaced with the following:

(2) *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, and the parties hereby attorn to the exclusive jurisdiction of federal and state courts located in New York, New York, U.S. 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. 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, and the parties hereby attorn to the exclusive jurisdiction of federal and state courts located in Singapore. 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. 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*



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*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 OF AGREEMENT**

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 (“**You**” or “**Customer**”) 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 “**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.
- 1.2 “**EULA**” means the license agreement that governs Your use of the Software.
- 1.3 “**Term**” means the period for which You have purchased support and/or maintenance services from Magnet Forensics.
- 1.4 “**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 increases in functionality for such version of 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 maintenance services (telephonically, and by email and via a webportal), consisting of the following:

- (a) Provision of Updates to the Software;
- (b) Advice on the use and maintenance of the Software where such Software is not operating in accordance with the Documentation; and
- (c) Instruction on the use and maintenance of the Software where such instructions are not included in the Documentation.

Where bugs or defects are not critical (as determined in Magnet Forensics’ sole discretion), Magnet Forensics reserves the right to include fixes in a future scheduled release of the Software.

2.2 Magnet Forensics’ obligations to perform the support and/or maintenance services hereunder, will apply only to the Software provided to You by Magnet Forensics and not to peripheral data or any third-party hardware or software. Such support and maintenance will be provided in accordance with the level of support and maintenance purchased by You for the Software, as set out in Exhibit 1 to this Agreement.

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 the 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 the Documentation.

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.). You (and not Magnet Forensics) shall be solely liable in connection with the provision of such data to Magnet Forensics, including, without limitation, compliance with all applicable laws. 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:

- (a) 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
- (b) 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.

- 4.2. 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.

- 4.3. Each party shall have the right to terminate this Agreement for convenience upon ninety (90) days' notice to the other party.

- 4.4. 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 of this Agreement, for whatever reason.

- 4.5. 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 AND 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 EULA, 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 AND 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.

EXHIBIT FOLLOWS

EXHIBIT 1

**SUPPORT PACKAGES for  
Magnet AXIOM  
Magnet AXIOM CYBER**



	<b>ESSENTIAL SUPPORT</b>	<b>PREMIUM SUPPORT</b>
<b>Product updates</b> In-product and portal access to latest software version and release notes.	Included	Included
<b>Self-help</b> 24x7 portal access to ticketing system, product documentation, and knowledge base.	Included	Included
Support hours for all cases	Monday – Friday* 8:30am – 8:30pm Eastern	Monday – Friday* 9:00am – 5:00pm GMT 8:30am - 5:30pm Eastern 8:30am - 5:30pm Pacific
Authorized support contacts	1 named contact	5 named contacts
Web and email case submissions	Unlimited	Unlimited
Phone case submissions	5 cases/year	Unlimited
Accelerated response times and touchpoints (based on posted Support hours)	n/a	S1: First response within 4 hours; daily updates S2: First response within 8 hours; weekly updates S3: First response within 24 hours; monthly updates
Escalations	n/a	S1 tickets handled across key time zones until resolution
Activity review	n/a	SLA management and quarterly support case review via email Email notifications when a reported bug or feature gets implemented

\*Except statutory or national holidays

**S1 (Severity 1):** Critical impact to business operations, as set by Magnet Forensics

**S2 (Severity 2):** Moderate impact to business operations, as set by Magnet Forensics

**S3 (Severity 3):** Minimal impact to business operations, as set by Magnet Forensics

**SUPPORT PACKAGES for  
Magnet AUTOMATE  
Magnet REVIEW**



	ESSENTIAL SUPPORT
<b>Product updates</b> Product update notifications and remote deployment support.	Included
<b>Self-help</b> 24x7 portal access to ticketing system, release notes, product documentation, and knowledge base.	Included
Support hours for all cases	Monday – Friday* 9:00am - 5:00pm GMT 8:30am - 5:30pm Eastern 8:30am - 5:30pm Pacific
Authorized support contacts	5 named contacts
Web, email, and phone case submissions	Unlimited
Accelerated response times and touchpoints (based on posted Support hours)	S1: First response within 4 hours; daily updates S2: First response within 8 hours; weekly updates S3: First response within 24 hours; monthly updates
Named support contact	Dedicated and specialized technical support analyst
Escalations	S1 tickets handled across key time zones until resolution
Activity review	SLA management and quarterly support case review via email Email notifications when a reported bug or feature gets implemented Monthly health check

\*Except statutory or national holidays

**S1 (Severity 1):** Critical impact to business operations, as set by Magnet Forensics

**S2 (Severity 2):** Moderate impact to business operations, as set by Magnet Forensics

**S3 (Severity 3):** Minimal impact to business operations, as set by Magnet Forensics



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

State of West Virginia  
Centralized Request for Quote

<b>Proc Folder:</b> 972342			<b>Reason for Modification:</b>
<b>Doc Description:</b> Magnet Axiom or Equal			
<b>Proc Type:</b> Central Purchase Order			
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>
2021-11-30	2021-12-16 13:30	CRFQ 0601 MAP2200000002	1

**BID RECEIVING LOCATION**

BID CLERK  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON ST E  
CHARLESTON WV 25305  
US

**VENDOR**

**Vendor Customer Code:**

**Vendor Name :** Magnet Forensics USA Inc.

**Address :** 2250 Corporate Park Dr. Suite 130

**Street :**

**City :** Herndon

**State :** Virginia

**Country :**

**Zip :** 20171

**Principal Contact :** Kelly McLachlin

**Vendor Contact Phone:** 1-844-638-7884

**Extension:**

**FOR INFORMATION CONTACT THE BUYER**

David H Pauline  
304-558-0067  
david.h.pauline@wv.gov

DocuSigned by:  
**Vendor Signature X** Adam Belsler

**FEIN#**

**DATE** 06-Dec-2021

C25EF1230BA4477...

**All offers subject to all terms and conditions contained in this solicitation**

**ADDITIONAL INFORMATION**

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, see attached documents.

INVOICE TO		SHIP TO	
DEPARTMENT OF HOMELAND SECURITY BLDG 1 RM W400 1900 KANAWHA BLVD E CHARLESTON WV US		FUSION CENTER  4TH FLOOR SOUTH WING 1700 MACCORKLE AVE SE CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Item #1: Magnet AXIOM Term Bundle, or Equal	1.00000	EA	n/a	n/a

Comm Code	Manufacturer	Specification	Model #
43232600			

**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.

INVOICE TO		SHIP TO	
DEPARTMENT OF HOMELAND SECURITY BLDG 1 RM W400 1900 KANAWHA BLVD E CHARLESTON WV US		FUSION CENTER  4TH FLOOR SOUTH WING 1700 MACCORKLE AVE SE CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Contract Item #2: Magnet AXIOM Term, or Equal.	1.00000	EA	\$5150	\$5150

Comm Code	Manufacturer	Specification	Model #
43232600			

**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.

**INVOICE TO****SHIP TO**

DEPARTMENT OF  
HOMELAND SECURITY  
BLDG 1 RM W400  
1900 KANAWHA BLVD E  
CHARLESTON WV  
US

FUSION CENTER  
4TH FLOOR SOUTH WING  
1700 MACCORKLE AVE SE  
CHARLESTON WV  
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Contract Item #3: Magnet Forensics Core Training Voucher	1.00000	EA	\$2999	\$2999

Comm Code	Manufacturer	Specification	Model #
43232502			

**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.

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Technical Questions Due by 11:00 am est	2021-12-06

DocuSign Envelope ID: 4F317356-F37F-424C-855D-8E671EE21144			
	Document Phase	Document Description	Page
			4
MAP220000002	Draft	Magnet Axiom or Equal	

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

Exceptions. The following sections shall not apply: Section 11 (Liquidated Damages), 26 (Subsequent Forms), 28 (Warranty), and 36 (Indemnification). Vendor shall not be obligated to carry \$1M auto insurance.



## INSTRUCTIONS TO VENDORS SUBMITTING BIDS

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

**2. MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting  
Revised 07/01/2021

are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted e-mails should have solicitation number in the subject line.

Question Submission Deadline: December 6, 2021 at 11:00 am EST.

Submit Questions to: David Pauline, Senior Buyer  
2019 Washington Street, East  
Charleston, WV 25305  
Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)  
Email: david.h.pauline@wv.gov

**5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

**6. BID SUBMISSION:** All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

The bid delivery address is:  
Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the Purchasing Division.:

SEALED BID:  
BUYER:  
SOLICITATION NO.:  
BID OPENING DATE:  
BID OPENING TIME:  
FAX NUMBER:

The Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. Submission of a response to a Request for Proposal is not permitted in wvOASIS.

**For Request For Proposal ("RFP") Responses Only:** In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal prior to the bid opening date and time identified in Section 7 below, plus N/A convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should clearly identify and segregate the cost proposal from the technical proposal in a separately sealed envelope.

**7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

Bid Opening Date and Time: December 16, 2021 at 1:30 pm EST.

Bid Opening Location: Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATE MODEL OR BRAND:** Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

**11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**15. PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at:

<http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

**15A. RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

**16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference

for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

**17. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

**18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

**19. NON-RESPONSIBLE:** The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

**20. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

**21. 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.

**22. INTERESTED PARTY DISCLOSURE:** West Virginia Code § 6D-1-2 requires that the vendor submit to the Purchasing Division a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award.

A copy of that form is included with this solicitation or can be obtained from the 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.

**23. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.6. This authority does not apply to instances where state law mandates receipt with the bid.

**24. E-MAIL NOTIFICATION OF AWARD:** The Purchasing Division will attempt to provide bidders with e-mail notification of contract award when a solicitation that the bidder participated in has been awarded. For notification purposes, bidders must provide the Purchasing Division with a valid email address in the bid response. Bidders may also monitor wvOASIS or the Purchasing Division's website to determine when a contract has been awarded.

## 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 07/01/2021



**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 of 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.

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 that insurance requirement is listed in this section.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

**Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ 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.

Certificate Holder: WV Dept of Administration  
2019 Washington, St., East  
Charleston, WV 25305

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 regarding 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](mailto: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.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

1. 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
2. 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 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.

REQUEST FOR QUOTATION – CRFQ MAP22\*02  
**Magnet Axiom or Equal**

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**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.
- 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 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 MAP22\*02  
**Magnet Axiom or Equal**

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**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 Alternative ‘or Equal’ Submission**

**3.1.4.1** 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.

REQUEST FOR QUOTATION – CRFQ MAP22\*02  
**Magnet Axiom or Equal**

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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  
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.

REQUEST FOR QUOTATION – CRFQ MAP22\*02  
**Magnet Axiom or Equal**

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**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.

**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.

**CRFQ MAP22\*02 - EXHIBIT A – Pricing Page  
Magnet Axiom or Equal**

Section	Description	Manufacturer and Model if Bidding "or Equal" products	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
3.1.1	Contract Item #1: Magnet AXIOM Term Bundle, or Equal		EA	1		\$ -
3.1.2	Contract Item #2: Magnet AXIOM Term, or Equal		EA	1		\$ -
3.1.3	Contract Item #3: Magnet Forensics Core Training Voucher or Equal		EA	1		\$ -
					<b>Overall Total Cost</b>	\$ -

Please note: This information is being captured for auditing purposes.  
 Any product or service not on the Agency provided Cost Sheet will not be allowable. The state cannot accept alternate pricing pages, failure to use Exhibit A Cost Sheet could lead to disqualification of vendors bid.  
 Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

**BIDDER /VENDOR INFORMATION:**

<b>Vendor Name:</b>	Magnet Forensics Inc.
<b>Address:</b>	
<b>City, St. Zip:</b>	
<b>Phone No.:</b>	
<b>Email Address:</b>	

DocuSigned by:

*Adam Belsler*

**Vendor Signature:**

DS

Reviewed by Legal  
Josh Abraham

06-Dec-2021

**Date:**



STATE OF WEST VIRGINIA  
Purchasing Division

# PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(j), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

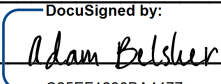
**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: Magnet Forensics Inc.

Authorized Signature:  Date: 06-Dec-2021  
DocuSigned by: C25EF1230BA4477...

State of Province of Ontario

County of Region of Waterloo, to-wit:


Taken, subscribed, and sworn to before me this 06-Dec-2021 day of 20.

My Commission expires N/A, 20    .

**AFFIX SEAL HERE**

DS  
Reviewed by Legal  
Josh Abraham

**NOTARY PUBLIC**

DocuSigned by:  
  
DE3063016CEB4E2...  
**Purchasing Affidavit (Revised 01/19/2018)**