

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

24-648

SAP Number

Sheriff/Coroner/Public Administrator

Department Contract Representative	Kelly Welty, Chief Deputy Director of Sheriff's Administration
Telephone Number	(909) 387-0640
Contractor	Magnet Forensics, LLC
Contractor Representative	Peter Vreeswyk
Telephone Number	(519) 342-0195 ex. 5555
Contract Term	07/23/2024 – 07/22/2027
Original Contract Amount	Non-financial Agreement
Amendment Amount	N/A
Total Contract Amount	Non-Financial Agreement
Cost Center	4431561000
Grant Number (if applicable)	

Briefly describe the general nature of the contract:

Approve non-financial End User License Agreement with Magnet Forensics, LLC, including non-standard terms, for the use of its GrayKey forensic software licensing, maintenance, and support services, for the period beginning July 23, 2024 and continuing for one year after the termination or expiry of the license term, as specified in quotes accepted by Purchasing as authorized by County Policy.

FOR COUNTY USE ONLY

Approved as to Legal Form

Bonnie Uphold
Bonnie Uphold (Jul 15, 2024 10:06 PDT)

Bonnie Uphold, Supervising Deputy County
Counsel

Date 07/15/2024

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

Kelly Welty
Kelly Welty (Jul 15, 2024 16:19 PDT)

Kelly Welty, Chief Deputy Director of Sheriff's
Administration

Date 07/15/2024



END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) is a legal agreement between San Bernardino County (“**You**”) and Magnet Forensics with respect to Your license, access and use of the Product and is effective as of the date of last signature (the “**Effective Date**”).

1 Definitions

- 1.1 “**Confidential Information**” means any information regardless of form or medium, whether tangible or intangible, including any copies or fixations made thereof that is disclosed by discloser, or to which the recipient is provided access by discloser, that is proprietary or confidential to discloser or its affiliated companies, including, without limitation, information that specifies, concerns or is related to discloser’s intellectual property, Software, Documentation, Product, trade secrets, business operations, finances, customers, technical know-how, prototypes, designs, processes, products, services, or the development, testing or commercial exploitation of any of the foregoing that is either specifically identified as confidential prior to or at the time of its disclosure or that would reasonably be considered by a person knowledgeable in the industry to be proprietary or confidential in nature because of legends or other markings on the information, the circumstances of disclosure or the nature of the information itself. Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, features, functions and solutions of GrayKey and VeraKey Products, information found on the Magnet Forensics support website, and (ii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as “confidential” or “proprietary.”
- 1.2 “**Documentation**” means the electronic, printed or other form of documents that accompany delivery of the Product that provides information about installation, operation, and use of the Product.
- 1.3 “**Hardware**” means the physical components, devices, or equipment provided to you by Magnet Forensics used for the operation of the Software.
- 1.4 “**License Term**” means the time period identified in Your Quotation or if no such period is identified in Your Quotation then for one (1) year commencing on the date the Software is available to You.
- 1.5 “**Magnet Forensics**” has the meaning set out in Section 12.1.
- 1.6 “**Magnet Software**” means the proprietary software of Magnet Forensics.
- 1.7 “**Perpetual License**” means a license purchased with a perpetual License Term as identified in a Quotation.
- 1.8 “**Product**” means the Magnet Forensics supplied products identified in the Quotation, which may include, Hardware, Software, and Support Services.
- 1.9 “**Quotation**” means the quotation provided to You by Magnet Forensics or a Magnet Forensics authorized reseller outlining the terms, conditions, and pricing details for the licensing of Magnet Hardware, Software, and Support Services.
- 1.10 “**Software**” means the Magnet Software and Third Party Software.
- 1.11 “**Support Services**” means the support services included in the Term License or separately purchased as part of the Perpetual License as indicated on Your Quotation and, in each case, described further in Section 4.1.
- 1.12 “**Term License**” means a license purchased with a non-perpetual License Term as identified in a Quotation.
- 1.13 “**Third Party Software**” means the copyrighted, patented or otherwise legally protected software of



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third parties (including open-source code components) incorporated into the Software.

- 1.14 **“User”** means a single user who uses the Software as permitted by this Agreement or is otherwise provided access to the Software by You.
- 1.15 **“You”, and “Your”** means the entity that purchases the license for Software pursuant to this Agreement.

2 License Grant

- 2.1 License. The licensed rights to the Software granted to You by Magnet Forensics are as set out in Schedules A, B, and C (Licensed Rights) to this Agreement, as applicable.

3 Fees, Taxes, and Delivery

- 3.1 Fees. You agree to pay Magnet Forensics all applicable fees identified in the Quotation within forty-five (45) days from date of the invoice. Magnet Forensics shall invoice You upon the earlier of: (a) You issuing a purchase order to Magnet Forensics that relates to the Quotation; (b) Your signing the Quotation; and (c) Your written indication, by email or otherwise, of Your approval of the Quotation.
- 3.2 Taxes. You are responsible for all taxes relating to Software and services identified in a Quotation (excluding any taxes based on the 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. If You are required to withhold any taxes from payments owed under this Agreement, the amount of payment due shall automatically be increased to offset such tax, so that the amount actually remitted to Magnet Forensics shall equal the amount invoiced or otherwise due.
- 3.3 Delivery. Software will be provided by electronic means. Title and risk of loss to tangible products such as Equipment pass to you upon delivery, which occurs when Magnet Forensics places them with a carrier for shipment to you, freight prepaid.

4 Support Services

- 4.1 Support Services. Details of support packages can be found at www.magnetforensics.com/legal/.
- 4.2 Magnet Forensics does not require Your personal data to provide Support Services. If, however, as part of an incident resolution, You wish to provide Magnet Forensics with Your data or information (i.e. video footage, screen shots, case file data), You are solely responsible and liable in connection with the provision of such data to Magnet Forensics, including, without limitation, ensuring that the collection, processing and transfer of such data is in compliance with all applicable laws. Any data You choose to provide to Magnet Forensics in connection with the licensing and/or support of the Software shall be processed and stored in accordance with the confidentiality provisions of this Agreement and the Magnet Forensics Privacy Policy available at <https://www.magnetforensics.com/legal/>.

5 Intellectual Property Rights

- 5.1 License Only. Except for the limited license set forth herein, You do not acquire any intellectual property rights to the Product or Documentation under this Agreement, including, without limitation, any right, title or interest in and to patents, copyrights, trademarks, trade names, industrial designs,



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Magnet Forensics Confidential Information, or trade secrets, whether registered or unregistered. The Software is licensed and not sold. Any rights not expressly granted under this Agreement are reserved by Magnet Forensics.

- 5.2 Feedback. Magnet Forensics shall own all feedback, comments, suggestions, ideas, and concepts that You provide or identify during Your use of the Product and Support Services, and all associated intellectual property rights (collectively the "Feedback"). You hereby assign to Magnet Forensics all of Your right, title and interest in Your Feedback. For certainty, Feedback shall not include any of Your data, Confidential Information, or intellectual property.

6 Confidentiality

- 6.1 Maintenance of Confidential Information. Subject to applicable law, each party agrees to: (a) keep confidential all Confidential Information disclosed by the other party; (b) only use, reproduce and disclose the Confidential Information to facilitate the use of the Software (in Your case) or support and develop the Software (in Magnet Forensics' case); and (c) protect the Confidential Information from unauthorized use, reproduction or disclosure in the same manner it protects the confidentiality of similar information of its own, but not less than a reasonable degree of care.
- 6.2 A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process, or applicable law, shall not be considered a breach of this Agreement; provided that the receiving party promptly notifies the disclosing party in writing, if notification is permitted by law, allowing Magnet Forensics to oppose such disclosure or obtain a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

7 Warranties, Exclusions, Disclaimer

- 7.1 Software Warranty. While Your Support Services are active, Magnet Forensics warrants that the Software shall materially conform to the Documentation. If the Software does not materially conform to the Documentation, and you give Magnet Forensics notice while Your Support Services are active, Magnet Forensics will, at its option, attempt to correct, repair, or replace the Software at no additional cost to You. If Magnet Forensics is unable to correct the Software to conform with the warranty stated herein within thirty (30) days, then upon Your request, Magnet Forensics shall, as your sole and exclusive remedy, refund You: (a) a prorated amount of any unused prepaid license fees if You purchased a Term License; or (b) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License.
- 7.2 Viruses, Licenses, Support Services. Magnet Forensics (a) has implemented testing practices consistent with industry standards designed to protect against viruses that may impede the Software; (b) includes fully paid-up licenses to any and all Third Party Software incorporated into the Software; and (c) will perform all Support Services in a good and workmanlike manner consistent with industry standards
- 7.3 EXCLUSIONS. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE EXCLUSIVE WARRANTIES MADE BY MAGNET FORENSICS TO YOU REGARDING THE PRODUCT, AND YOUR SOLE AND EXCLUSIVE REMEDY RESPECTING ANY DEFECTS, NON-CONFORMITIES OR PROBLEMS WITH THE PRODUCT. EXCEPT AS SET FORTH IN SECTION 7.1 AND 7.2, MAGNET FORENSICS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND



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CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, ACCURACY, RELIABILITY, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE PRODUCT PROVIDED HEREUNDER. To the maximum extent permitted by law, any implied warranties or conditions relating to the Software that cannot be excluded as set out above are limited to thirty (30) days from the date that the Software is delivered to You.

8 Limitation of Liability

- 8.1 NOTWITHSTANDING ANY OTHER SECTION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY, STATUTE, LAW, EQUITY, OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY ORDER FOR (A) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES; (B) LOSS OF PROFITS OR REVENUE (OTHER THAN IN AN ACTION BY MAGNET FORENSICS TO RECOVER PAYMENT OF A PRICE OWED); OR (C) LOSS OF TIME, OPPORTUNITY OR ANY DAMAGES RELATING TO THE CORRUPTION OF DATA, LOSS OF THE USE OF DEVICES OR ANY PORTION THEREOF, AND DAMAGES CAUSED BY YOUR FILES, CONNECTED DEVICES, OR DATA COLLECTED BY YOU, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (OTHER THAN IN AN ACTION BY MAGNET FORENSICS TO RECOVER PAYMENT OF A PRICE OWED) WILL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCT IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES.
- 8.2 SECTION 8.1 SHALL NOT APPLY TO EITHER PARTY'S LIABILITY IN RELATION TO: (A) INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 (INDEMNIFICATION) UNDER THIS AGREEMENT; (B) MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; (C) BREACHES OF CONFIDENTIALITY UNDER SECTION 6; AND (D) YOUR PAYMENT OBLIGATIONS TO MAGNET FORENSICS, PROVIDED, HOWEVER, THAT MAGNET FORENSICS' CUMULATIVE LIABILITY UNDER SECTION 9.2 RELATING TO THIRD PARTY SOFTWARE SHALL IN NO EVENT EXCEED THE LESSER OF: THREE TIMES (3X) THE AMOUNT PAID BY YOU FOR THE SOFTWARE IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES AND ONE MILLION USD (\$1,000,000.00 USD).

9 Indemnification

- 9.1 Intentionally omitted.
- 9.2 Magnet Forensics Indemnity. Magnet Forensics will defend You from and against any suit brought against you by a third party to the extent the suit alleges that your use of a Product infringes a patent, copyright, trademark or trade secret in Canada or the United States (an "IP Claim"). Magnet will also pay the damages, costs, and attorneys' fees that are awarded against you in a final, non-appealable court judgment for the IP Claim, or required to be paid by you in a settlement of an IP Claim that Magnet has agreed to in writing. You agree to (i) give prompt notice of the IP Claim to Magnet Forensics; (ii) grant sole control of the defense and settlement of the IP Claim to Magnet Forensics; provided that Magnet Forensics may not settle the claim or suit absent Your written consent, unless such settlement: (i) includes a release of all claims pending against You, (ii) contains no admission of liability or wrongdoing by You, and (iii) imposes no obligations upon You other than an obligation



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to stop using the Product that is the subject of the claim, and (iii) provide reasonable cooperation to Magnet Forensics and, at Magnet Forensics' request and expense, assistance in the defense or settlement of the IP Claim ("Your Indemnification Obligations") and Magnet Forensics shall not be liable to the extent an IP Claim, or portion thereof, is attributable to Your breach of Your Indemnification Obligations. In the event of an IP Claim, Magnet Forensics may, at its option and expense: (a) obtain for You the right to continue to use the Product; (b) substitute a substantially equivalent non-infringing product; (c) modify the Product to make it noninfringing; or if (a), (b), and (c) are not commercially feasible, then (d) terminate Your license and require that You no longer access and use the Product. If Your license is terminated, You must return or destroy the Product and within 30 days of receipt of all of the Product or certification of destruction thereof, Magnet Forensics shall refund You x) a prorated amount of any unused prepaid license fees if You purchased a Term License; or y) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License. The indemnity obligations under this clause do not extend to Claims arising from or relating to: (aa) any modification to the Product or use in combination with any equipment, software, data or any other materials not authorized by Magnet Forensics where the infringement would not have occurred but for such activity; (bb) use of the Product by You in a manner contrary to the terms of this Agreement where the infringement would not have occurred but for such use; (cc) the continued use of the infringing Product after Magnet Forensics has provided substantially equivalent non-infringing software, a non-infringing modification of the Product, or terminated Your license in accordance with this Agreement; (dd) custom Product developed at Your request while utilizing Your specifications; (ee) Your collection and use of data resulting from Your use of the Software and any actions You take as a result thereof; or (ff) unauthorized use of the Product. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, THE PROVISIONS OF THIS CLAUSE STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MAGNET FORENSICS AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED MISAPPROPRIATION, VIOLATION AND/OR INFRINGEMENT OF ANY PROPRIETARY AND/OR INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

- 9.3 General Indemnity. Magnet Forensics will defend and hold harmless You, from and against any Claim arising from any of the following: (a) gross negligence, willful misconduct, fraudulent misrepresentation and fraud by Magnet Forensics; (b) bodily injury or death caused by Magnet Forensics; and (c) breach of confidentiality obligations.

10 Term and Termination

- 10.1 Term of Agreement. This Agreement shall survive for one (1) year after the termination or expiry of Your License Term.
- 10.2 Termination for Convenience. You may terminate this Agreement and Your license for Software at any time upon written notice to Magnet Forensics but You will not be entitled to any refund.
- 10.3 Termination for Breach. Either party may terminate this Agreement and any License Term immediately upon notice to the other if: (a) the other party materially breaches a material term or condition of this Agreement which breach remains unremedied for thirty (30) days following written notice thereof by the other party, or immediately if such breach is not capable of remedy; (b) the other party becomes involved in any legal proceeding concerning its solvency, commences liquidation proceedings, has a receiver or administrator appointed for any of its assets, ceases or threatens to cease operations, or otherwise has a serious and reasonable doubt arise respecting its solvency; or



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(c) if Magnet Forensics determines in its sole discretion that licensing the Product to You would violate applicable laws. If Your License Term is terminated due to breach by Magnet Forensics under (a) above, where Magnet Forensics is the relevant party under (b) above, or by Magnet Forensics in accordance with (c) above, Magnet Forensics shall refund You: (i) a prorated amount of any unused prepaid License fees if You purchased a Term License; or (ii) a prorated amount of any unused prepaid Support Services fees if You purchased a Perpetual License.

10.4 **Termination/Expiry Obligation.** Upon termination or expiry of this Agreement, and, if earlier, termination or expiry of a Term License, free trial or any Beta Period, You shall immediately cease all use and access of the Software and destroy or permanently delete all copies of the Software in Your possession along with any Documentation delivered to You or derivative works made therefrom.

10.5 **Request for Information for Compliance.** Upon request of Magnet Forensics, You agree to provide reasonable information on a timely basis to confirm Your compliance with the license rights and restrictions to the Product. Your failure to comply with this Section 10.5 will be deemed to be a material breach of this Agreement.

11 Compliance with Export Laws and Ethical Conduct

11.1 You shall not export any Product, Documentation, or Confidential Information unless You comply with all applicable international trade laws ("ITR"). Further, You warrant (a) You are not now been on any Restricted Party List or any sanctions list in the countries in which You conduct business; and (b) You understand and abide by applicable ITR laws administered by the country in which You conduct business. You agree to maintain a sanctions compliance policy and controls to ensure compliance with the applicable economic sanctions.

11.2 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: (a) in this Agreement; or (b) 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 (a) or (b) are the more restrictive.

11.3 Intentionally blank

12 Magnet Forensics Entity, Governing Law

12.1 "Magnet Forensics" means:

- a) Where Your "Bill To" address identified on the Quotation is in Canada, Magnet Forensics Inc., with an office at 2220 University Avenue East, Suite 300, Waterloo, Ontario, Canada N2K 0A8.
- b) Where Your "Bill To" address identified on the Quotation is in France, Magnet Forensics SA, with an office at c/o WeWork 33 Rue La Fayette Paris, France 75009.
- c) Where Your "Bill To" address identified on the Quotation is in Germany, Magnet Forensics GmbH, with a registered office at c/o Eversheds Sutherland (Services) GmbH, Brienner Strabe 12, 80333 Munich, Germany.



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- d) Where Your "Bill To" address identified on the Quotation is anywhere other than in Canada, France, and Germany, Magnet Forensics, LLC, with an office at c/o Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

12.2 **Governing Law.** This Agreement is governed by and construed under, excluding any body of law governing conflicts of laws, the laws of the State of California. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13 General Provisions

- 13.1 **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.
- 13.2 **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.
- 13.3 **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.
- 13.4 **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, facsimile or electronic mail. For notices to You, Magnet Forensics shall send such notice to Your "Bill To" Address. For notice to Magnet Forensics, You shall send such notice to Attn: Legal Department, Magnet Forensics, with an office at 300 Colonial Center Pkwy, Suite 130, Roswell, GA 30076, United States.
- 13.5 **Assignment.** You shall not assign or transfer this Agreement (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control) without the prior written consent of Magnet Forensics, which consent will not be unreasonably withheld, conditioned or delayed. Magnet Forensics may assign this Agreement, in whole as part of a corporate



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reorganization, consolidation, merger, or sale of all of its assets. You have the right to terminate this Agreement, if required by applicable law. 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 13.5 shall be null and void.

- 13.6 Survival. Section 6 (Confidentiality), Section 8 (Limitation of Liability), Section 9 (Indemnification), and any other provision of this Agreement which by its nature would survive the termination or expiration of this Agreement shall do so.
- 13.7 Electronic Execution. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.
- 13.8 Invalidity. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, 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.



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IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► *Dawn Rowe*

Dawn Rowe, Chair, Board of Supervisors

Dated: JUL 23 2024
SIGNED AND CERTIFIED THAT A COPY OF THIS

DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

By *Lynna Monell*
Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County
Deputy



Magnet Forensics, LLC

(Print or type name of corporation, company, contractor, etc.)

By ► *Peter Vreeswyk*
(Authorized signature - sign in blue ink)

Name Peter Vreeswyk
(Print or type name of person signing contract)

Title Chief Financial Officer
(Print or Type)

Dated: 12-Jul-2024

Address Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Reviewed by Legal
Sarah Holder

FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*
Bonnie Uphold, Supervising
Deputy County Counsel

Date 7/16/2024

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► *Kelly Welty*
Kelly Welty, Chief Deputy Director of
Sheriff's Administration

Date 7/15/24

Schedule A – Licensed Rights for All Products



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1 Definitions.

- 1.1 **"Case License"** means the Software is subject to a license fee that is based on granting access to the Software for a single source (i.e. single hard drive or image file).
- 1.2 **"CLS License" or "LLS 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. CLS (Cloud License Server) virtual license Keys are hosted in an online, cloud-based environment whereas LLS (Local License Server) virtual license Keys are hosted on Your premises.
- 1.3 **"Dongle"** means a USB device provisioned with the Software.
- 1.4 **"Dongle License"** means the Software is subject to a license fee that is calculated per Dongle.
- 1.5 **"Enterprise License"** means the Software is subject to a license fee that is calculated based on a maximum number of Software installs and/or concurrent Users as set out in the Quotation.
- 1.6 **"Instance"** means a copy of the Software that a User is authorized to use. The maximum number of Instances per User are stated in the Quotation.
- 1.7 **"Key"** means the license key provided to You by Magnet Forensics to permit access to and use of the Software to a User.
- 1.8 **"Machine"** means each hardware machine or hardware unit on which the Software is used.
- 1.9 **"Machine License"** means the Software is subject to a license fee that is calculated per Machine.

- 2 **License Grant.** Magnet Forensics hereby grants to You a limited, non-exclusive, revocable, nontransferable, non-sublicensable license to use the Software on Your internal business networks for the number of Users, installs, and/or Instances and License Term indicated in Your Quotation in accordance with the terms set forth in this Agreement and the Documentation. Your license only permits you to possess and use the Software in object code form. For certainty: (a) academic licenses are granted for academic, non-commercial use only; (b) licenses for Magnet AUTOMATE products are licensed on a per 'control node' and 'agent node' basis; (c) Machine Licenses are solely permitted for use of the Software on the Machine on which such Software is first installed and by the original User; and (d) Dongle Licenses are for use on Machines only (and not for use in cloud or other virtual environments), and cannot be shared between individual Users. For further certainty: (i) Enterprise Licenses, CLS Licenses and LLS Licenses allow for concurrent Users of the Software as indicated in Your Quotation; and (ii) a unique key code is issued for a Case License tied to the original single source, with requirements for additional single sources requiring an add-on purchase. It is Your responsibility to fully comply with all applicable laws in using and handling the Software and any additional third-party license terms applicable to Third Party Software.

3 Restrictions. You shall not and shall ensure that Users shall not:

- copy, reproduce, or modify the Product or any part thereof, including, but not limited to, combining with other software or hardware other than as authorized by Magnet Forensics in writing;
- 3.1 enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, impair, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof;
- 3.2 distribute, lend, assign, license, sublicense, lease, pledge, rent, transfer, sell or otherwise provide access to the Software, in whole or in part, to any third party;



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- 3.3 use any Product on a time sharing, service bureau, application services provider (ASP), rental or other similar basis;
- 3.4 remove, deface, cover or otherwise obscure any proprietary rights notice or identification on the Software;
- 3.5 circumvent or disable copyright protection mechanisms or license management mechanisms;
- 3.6 photograph or record any of the Product's components, whether internal, external or as digitally displayed;
- 3.7 use the Product to provide services to third parties (including technical or training services), or otherwise publicly display or market the Software, for the purposes of Your commercial gain;
- 3.8 use the Product in conjunction with other software or hardware, except as authorized in writing by Magnet Forensics;
- 3.9 use the Product in any unlawful manner or to violate any rights of a third party; or
- 3.10 authorize, permit or otherwise acquiesce in any other party engaging in any of the activities set forth in 1.3.1 – 1.3.6 above, or attempting to do so.

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

- 4 Restrictions Applicable to Consultant Licenses.** Notwithstanding Section 1.3.8, if Your license is identified in a Quotation as a "consultant license", You may use the Software in relation to Your provision of forensic analysis services to a third party for commercial gain, subject to Your compliance with all other terms of this Agreement and the payment of all applicable fees, provided that the following additional restrictions shall apply:

- 4.1 You shall be solely responsible for Your services, including any use or operation of the Software (both separately or in combination with any other software), to provide such services, and, as Magnet Forensics expressly disclaims all liability for any claims, losses or damages relating to Your services, You agree to indemnify Magnet Forensics against all such claims, losses and damages;
- 4.2 You shall not permit Your customers to use the Software (with the exception of using the Portable Case functionality);
- 4.3 You shall not use the Software to provide digital forensics training to third parties (including instructions on how to use the Software), unless You have first obtained Magnet Forensics' express written permission;
- 4.4 You shall not, whether in an agreement for Your services or otherwise, in any way modify, negate or override any terms and conditions of the protections afforded to Magnet Forensics under this Agreement;
- 4.5 You shall not engage in deceptive, misleading, illegal or unethical practices that might reasonably be detrimental to Magnet Forensics or its products or services;
- 4.6 You shall not make any representations, warranties or guarantees about Magnet Forensics or its products and services except as expressly set out in this Agreement; and
- 4.7 where You wish to publicize, market or otherwise promote the use of the Software in Your services, You must do so in a manner consistent with Magnet Forensics' External Marketing Policy (located at https://www.magnetforensics.com/wp-content/uploads/2022/11/MagnetForensics_BrandGuidelines.pdf) and any other marketing and trademark requirements set out by Magnet Forensics from time to time. Any use of Magnet Forensics' Trademarks shall remain unchanged and give legal notice of such trademark status.



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- 5 **Beta Software.** If You have requested use of or have access to Software or features that are identified by Magnet Forensics as pre-commercial, preview release, evaluation, pilot, "alpha", or "beta" software ("Beta Software"), the license rights set out above with respect to Your use of such Beta Software apply only to the extent necessary to enable You and the Users to test and provide Feedback to Magnet Forensics regarding the Beta Software. You acknowledge and agree that Magnet Forensics may terminate Your use of Beta Software at any time and may include technical measures in the Beta Software that renders it inoperable and You agree that You will not circumvent such technical measures. You further acknowledge and agree that the Beta Software is provided "AS IS" with none of the representations, warranties, or indemnities provided in the Agreement. In consideration of the grant of license for the Beta Software, You agree that You will provide Magnet Forensics with Feedback on Beta Software as Magnet Forensics reasonably requests without any compensation.
- 6 **Trial Licenses.** If Your License is indicated as a Trial License on the Quotation ("Trial License"), the license rights set out above with respect to Your use of such Trial License apply only for the time period authorized by Magnet Forensics ("Trial Period") and solely to the extent necessary to enable You and the Users to test the Product in order to identify if the Product is suitable for purchase from Magnet Forensics. Additionally, the Product underlying the Trial License or delivered to you as a Free Tool is provided "AS IS" with none of the representations, warranties or indemnities provided in the Agreement. Notwithstanding the Trial Period, Magnet Forensics may terminate Your Trial License at any time and require that You cease using the Software.



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Schedule B – Additional VeraKey Terms and Conditions

1 Definitions.

- 1.1 **"Authorized Country"** means a country in which Magnet Forensics has authorized use of the VeraKey as set out in the Documentation.
- 1.2 **"Authorized User(s)"** means employees who are authorized by You to access or use the Product and Software. You agree to limit the number of Authorized Users to those employees who perform extractions in the normal course of their employment.
- 1.3 **"Authorized Device"** means mobile devices (a) owned and controlled by you; (b) if you are retained to perform an Investigation by a third party, owned by such third party; or (c) owned by an individual that has expressly, voluntarily, and specifically authorized you in writing, without coercion or threat of reprisal, to perform an Extraction of their mobile device.
- 1.4 **"Extraction"** means the use of the Product to extract data from an Authorized Device.

2 License Restrictions. If You are licensing the VeraKey Product, as identified in Your Quotation, You agree to the following additional restrictions in addition to the license rights and restrictions set out in Schedule A of this Agreement:

- 2.1 You may only use the VeraKey Product in an Authorized Country for Extractions on Authorized Devices in aid of an official investigation of corporate malfeasance including (a) fraud, (b) bribery, (c) theft, (d) antitrust violation, (e) sabotage, (f) breach of confidentiality obligations, (g) securities violation, (h) IP infringement or misappropriation of intellectual property, (i) as part of or in response to an official government investigation or request for product of documentation (FDA, SEC, FTC, OSHA, etc.), (j) as part of a legally compelled production of documents by a court of competent jurisdiction, (k) in defense of a criminal charge filed in a court of competent jurisdiction, where such investigation is made in response to an official complaint supported by reasonable evidence (each, an "Investigation") and for no other purpose ("Authorized Extraction(s)"). You agree not to use the Product to screen, audit, spot-check, or otherwise discover instances of corporate malfeasance or violation of corporate policy. Prior to performing an Extraction, Magnet Forensics may require that you or your Authorized User(s) certify that the contemplated Extraction meets the above definition of an Authorized Extraction. You warrant that any certification materials submitted as part of Your Authorized Extraction certification responsibilities are true and correct in all material respects.
- 2.2 To the extent legally practicable, Authorized Devices must remain in Your possession and control until after the software agent employed by the Product has been successfully uninstalled from such Authorized Devices.
- 2.3 Only Authorized Users who have obtained any necessary consents and approvals are permitted to access and use the Product or Software in connection with any Extractions. You shall notify Magnet Forensics in writing the name and user information associated with each Authorized User, and within thirty (30) calendar days following a change of an Authorized User's employment status such that the Authorized User ceases to be authorized by You to access or use the Product and Software either through ceasing to be employed by You or a change in his or her position within the Your organization such that he or she is no longer authorized to access or use the Product and Software.
- 2.4 You agree to designate an employee with senior management and oversight responsibilities within your organization to act as Your "Primary Authorized User." The Primary Authorized User will be notified each time an extraction is performed on the device and shall supervise use and security of the Product and Software. You agree to require the Primary Authorized User, as part of their



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employment obligations, to monitor the use of and ensure the security of the Product. The Primary Authorized User is not permitted to perform Extractions. You shall notify Magnet Forensics in writing the name and user information associated with the Primary Authorized User, and within thirty (30) calendar days following a change of the Primary Authorized User's employment status such that the Primary Authorized User ceases to be tasked by the Licensee to oversee the use and security of the Product and Software.

- 2.5 You will conduct, at your expense, background checks on your employees (including but not limited to Authorized Users) and those of your agents and subcontractors who will have access (whether physical, remote, or otherwise) to Magnet Products or Software. You will not permit your employees, agents, or an (including the personnel of any of its agents or subcontractors) that have been convicted of a felony crime or has agreed to or entered into a pretrial diversion or similar program in connection with a felony crime to have access to: (a) Magnet Forensics Confidential Information; (b) the secure environment in which the Product is stored; (c) the Product, the Software, or any associated materials.
- 2.6 You covenant and agree to keep the Product in a physically secure environment at all times, and to take all necessary precautions to restrict use of the Product to Authorized Users. You acknowledge and agree that for the Product to function properly in online mode, the Product must be connected to the Internet.
- 2.7 Magnet Forensics may use third-party monitoring tools to ensure that You comply with the foregoing restrictions. You acknowledge that Your use of the Product may be subject to additional terms and conditions as set by the third-party responsible for such tools.
- 3 **Warranty Disclaimer.** Notwithstanding Section 7.1 of the Agreement, You acknowledge and agree that the Software is provided AS-IS and without any warranty of any kind. Further, You acknowledge that all case stakeholders are aware of and understand the associated risk that the Authorized Device may become damaged and/or Authorized Device data may be unrecoverable when used with the Product or Software, in particular for Authorized Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. You further understand that not all permutations of Authorized Device software, software builds, states, and usage profiles have been tested by Magnet Forensics. Before utilizing the Product and Software on an Authorized Devices under any of the above conditions, please consult Magnet Forensics through the customer support portal. You release Magnet Forensics from all liability associated with damage to a mobile device or corruption of mobile device data resulting from the use of the Software or the Product.
- 4 **Violations of License Restrictions.**
 - 4.1 Section 8.1 of the Agreement (Limitation of Liability) shall not apply to damages arising from Your violation(s) of Schedule A - Section 3 and this Schedule B.
 - 4.2 In addition to the termination rights set out in Section 10 of the Agreement (Termination), Magnet Forensics may terminate this Agreement and suspend Your License, at its sole discretion and option, without notice and without refund or reimbursement if You violate any material term or condition of this Agreement.
- 5 **Heightened Confidentiality Obligations.** The VeraKey Product, along with its associated Documentation, are sensitive technologies whose Confidential Information requires the highest duty



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of care. You, Your employees, Your agents who require access in order to perform hereunder, and all final users of the VeraKey Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Magnet Forensics' rights therein, at all times exercising the highest duty of care. Receiving Party agrees to restrict access to VeraKey Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Magnet Forensics. Further, Receiving Party acknowledges and agrees that due to the unique nature of the VeraKey Products, there can be no adequate remedy at law for any breach of its obligations under this Section 5 related to such Products, that any such breach will cause irreparable and continuing damage to Magnet Forensics and, therefore, that upon any such breach or any threat thereof, Magnet Forensics shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.

- 6 Excess Use of Licenses.** If You use the Product in excess of the license quantities or levels stated in Your Quote, Magnet Forensics reserves the right to invoice You for such excess use based on the then current list price of the minimum add-on package required to bring Your use into compliance and you agree to pay such invoice in accordance with Section 3 of the Agreement.



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Schedule C – Additional GrayKey Terms and Conditions

1 Definitions.

- 1.2 “**Authorized Location**” means the authorized physical locations specified in the Quotation or that Licensee has otherwise registered with Magnet Forensics and that Magnet Forensics has approved in writing.
- 1.3 “**Authorized User(s)**” means collectively, employees, agents or contractors who are authorized by You to access or use the Product and Software.
- 1.4 “**Device**” means a mobile device.
- 1.5 “**Extraction**” means the use of the Product to extract data from a Device.

2 License Restrictions. If You are licensing the GrayKey Product, as identified in Your Quotation, You agree to the following additional restrictions in addition to the license rights and restrictions set out in Schedule A of this Agreement:

- 2.1 Only Authorized Users who have obtained any necessary consents and approvals are permitted to access and use the Product or Software in connection with any Extractions. You shall notify Magnet Forensics in writing the name and user information associated with each Authorized User, and within thirty (30) calendar days following a change of an Authorized User’s employment status such that the Authorized User ceases to be authorized by You to access or use the Product and Software either through ceasing to be employed by You or a change in his or her position within the Your organization such that he or she is no longer authorized to access or use the Product and Software.
- 2.2 To the extent legally practicable, Devices must remain in Your possession and control until after the software agent employed by the Product has been successfully uninstalled from such Devices.
- 2.3 If Your use of the Product is restricted to the Authorized Location identified in Your Quotation, You covenant and agree to keep the Product in a physically secure environment within the Authorized Location at all times, and to take all necessary precautions to restrict use of the Product to Authorized Users. You acknowledge and agree that for the Product to function properly in online mode, the Product must be connected to the Internet.
- 2.4 Magnet Forensics may use third-party monitoring tools to ensure that You are in compliance with the foregoing restrictions. You acknowledge that Your use of the Product may be subject to additional terms and conditions as set by the third-party responsible for such tools.

3 Warranty Disclaimer. Notwithstanding Section 7.1 of the Agreement, You acknowledge and agree that the Software is provided AS-IS and without any warranty of any kind. Further, You acknowledge that all case stakeholders are aware of and understand the associated risk that a Device may become damaged and/or Device data may be unrecoverable when used with the Product or Software, in particular for Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. You further understand that not all permutations of Device software, software builds, states, and usage profiles have been tested by Magnet Forensics. Before utilizing the Product and Software on a Devices under any of the above conditions, please consult Magnet Forensics through the customer support portal. You release Magnet Forensics from all liability associated with damage to a mobile device or corruption of mobile device data resulting from the use of the Software or the Product.



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4 Violations of License Restrictions.

- 4.1 Section 8.1 of the Agreement (Limitation of Liability) shall not apply to damages arising from Your violation(s) of Schedule A - Section 3 and this Schedule C.
- 4.2 In addition to the termination rights set out in Section 10 of the Agreement (Termination), Magnet Forensics may terminate this Agreement and suspend Your License, at its sole discretion and option, without notice and without refund or reimbursement if You violate any material term or condition of this Agreement.

5 Heightened Confidentiality Obligations. The GrayKey Product, along with its associated Documentation, are sensitive technologies whose Confidential Information requires the highest duty of care. You, Your employees, Your agents who require access in order to perform hereunder, and all final users of the GrayKey Products (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Magnet Forensics' rights therein, at all times exercising the highest duty of care. Receiving Party agrees to restrict access to GrayKey Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Magnet Forensics. Further, Receiving Party acknowledges and agrees that due to the unique nature of the GrayKey Products, there can be no adequate remedy at law for any breach of its obligations under this Section 5 related to such Products, that any such breach will cause irreparable and continuing damage to Magnet Forensics and, therefore, that upon any such breach or any threat thereof, Magnet Forensics shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope.