



Contract Number

22-466

SAP Number

Sheriff/Coroner/Public Administrator

Department Contract Representative	Kelly Welty, Chief Deputy Director of Sheriff's Administration
Telephone Number	(909) 387-0640
Contractor	Grayshift, LLC
Contractor Representative	Jonathan Oszust
Telephone Number	(833) 472-9539
Contract Term	06/15/2022 – 06/14/2023
Original Contract Amount	\$27,995
Amendment Amount	N/A
Total Contract Amount	\$27,995
Cost Center	443156000

Briefly describe the general nature of the contract:

Master Service Agreement and End User License Agreement with Grayshift, LLC for the purchase of GrayKey forensic software licensing, including maintenance and support services for a one-year period from June 15, 2022 through June 14, 2023.

FOR COUNTY USE ONLY

Approved as to Legal Form

Richard D. Luczak, Deputy County Counsel

Date 6/7/2022

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Kelly Welty, Chief Deputy Director of Sheriff's Administration

Date 6/7/22

GRAYSHIFT, LLC

END USER LICENSE TERMS

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

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

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

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

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

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

5. FEES. Licensee shall pay the license fees set forth in the relevant Purchase Order for the Software and Product. Licensee will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Grayshift's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Licensee will make all required payments to Grayshift free and clear of, and without reduction for, any withholding taxes. Any portion of any amount payable hereunder that is not paid when due will accrue interest at two percent (2%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

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

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

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

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

10. **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, GRAYSHIFT PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, QUIET ENJOYMENT, INTEGRATION, TITLE, NON-INTERFERENCE AND NON-I FRINGEMENT. FURTHER, GRAYSHIFT DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE PRODUCT OR SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR THAT THE PRODUCT, SOFTWARE OR WRITTEN MATERIALS WILL BE CORRECT, ACCURATE, OR RELIABLE. THIS

DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. SHOULD THE PRODUCT PROVE DEFECTIVE FOLLOWING LICENSE, LICENSEE (AND NOT GRAYSHIFT) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR, EXCEPT AS MAY OTHERWISE BE PROVIDED BY A GRAYSHIFT RESELLER OR SUPPORT PROVIDER.

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

11.1. For the purposes of this Agreement, "Confidential Information" means any proprietary, trade secret, financial, technical and non-technical information related to Grayshift's business and current, future and proposed products and services and any derivatives therefrom containing, including, referring

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

11.2. Confidential Information shall not include any information that is (i) already known to the Receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with Grayshift that

rightfully acquired such information; (iv) communicated to a third party by the Receiving Party with Grayshift's express written consent or is required to be disclosed by law.

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

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

12. TERM AND TERMINATION. This Agreement shall continue until terminated as set forth herein. Notwithstanding the foregoing, the license to any Product is only during the license term applicable to such Product. The license term shall be determined in the Order. Grayshift may also revoke such license and/or terminate this Agreement immediately without refund or reimbursement if Licensee violates any provision of this Agreement. Any termination of this Agreement shall terminate the licenses granted hereunder. All Confidential Information, Products, Software and/or derivatives therefrom delivered pursuant to this Agreement shall be and remain the property of the Grayshift, and upon expiration or termination of this Agreement for any reason, Licensee shall destroy (or return, at Grayshift's election and expense) (i) the Product; (ii) all hardware that contains copies of the Software; (iii) all materials in the possession of Licensee in any medium that contain, refer to, or relate to all other written, printed, or tangible materials containing Confidential Information; and (iv) any derivatives therefrom, and shall so certify to Grayshift that such actions have occurred. No such material shall be retained or used by the Receiving Party in any form or for any reason. Except for the license and except as otherwise expressly provided herein, the terms of this Agreement, including the Confidentiality and Non-Disclosure obligations in Section 11 hereto, shall survive expiration and termination. Notwithstanding any other provision of this Agreement, the obligations of the parties as to Confidential Information shall

remain binding in perpetuity until such information no longer qualifies as Confidential Information or until Grayshift sends the Receiving Party written notice releasing the Receiving Party from its obligations under Section 11 hereto, whichever occurs first.

13. RESERVED

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

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

16. MISCELLANEOUS. This Agreement represents the complete agreement concerning this license between the parties and supersedes all prior agreements and representations. This Agreement may be amended only by a writing executed by both parties. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The failure of Grayshift to act with respect to a breach of this Agreement by Licensee or others does not constitute a waiver and shall not limit Grayshift's rights with respect to such breach or any subsequent breaches. This Agreement is personal to Licensee and may not be assigned, sublicensed, or transferred for any reason whatsoever (including, without limitation, by operation of law, merger, reorganization, or as a result of an acquisition or change of control involving Licensee) without Grayshift's consent and any action or conduct in violation of the foregoing shall be void and without effect. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A. without regard to the conflicts of laws provisions thereof, and

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

GRAYSHIFT DocuSigned by:

Signature:

Mark Snell

Name:

Mark Snell

Title:

Chief Financial Officer

Date:

6/7/2022

Pursuant to the Uniform Electronic Transaction Act (Cal. Civ. Code §§ 1633.1 to 1633.17), and the San Bernardino County Board of Supervisors Resolution No. 2022__040, the parties have agreed to the use of facsimile, and/or digital signatures in the execution of the Contract and any of its subsequent amendments. Such signatures 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 Agreement upon request.

AGENCY: San Bernardino County

Signature:

Name: Curt HagmanTitle: Chairman, Board of SupervisorsDate: JUN 14 2022

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By

Deputy



GRAYSHIFT

Grayshift LLC

931 Monroe Drive NE Suite A102-340
Atlanta, GA 30308
USA
Phone: (833) 472-9539

Quote Number: Q-13430-2
Created Date: 5/24/2022
Expiration Date: 7/23/2022
Contract Start Date: 6/15/2022

CAGE Code: 7R0W9
DUNS Number: 081045174
NAICS: 511210

Ship To

San Bernardino

Bill To

San Bernardino
County of San Bernardino Sheriff's Office
655 EAST 3RD STREET
San Bernardino, California 2415-0061
United States
htcd@sbcisd.org

This license will be digitally delivered.

SALESPERSON	EMAIL	DELIVERY METHOD	PAYMENT TERMS
Jonathan Oszust	jonathan@grayshift.com	Digital	Net 60

All prices below are in U.S. Dollar

PRODUCT NAME	START	END	PART	QTY	PRICE	EXTENDED
GrayKey License - Advanced Unlimited Consent and BFU Extractions. 225 AFU, Instant Unlock or Brute Force Advanced actions Action Credits Included: 225 Renewal for Serial Numbers: 9a926beed4690b21	6/15/2022	6/14/2023	GKL-ONF-AD	1.00	27,995.00	27,995.00

TOTAL: USD 27,995.00

Quote Terms

- Delivery of GrayKey requires the end-user's prior acceptance of Grayshift's End User License Terms Agreement ("EULA")
- Your acceptance of this quotation will indicate your acceptance of the terms of Grayshift's EULA, without exception or reservation. The EULA is available at <https://grayshift.com/terms>
- License Term = 12 months
- The final invoice may include tax if applicable
- Your contract will start on 6/15/2022 and will end after license term
- Please reference quote number on payment method

Payment Terms

- Non-payment thirty days after issuance of your invoice may result in a suspended license
- Credit Cards: Major credit cards accepted including Visa, Mastercard, and American Express
- Additional Information: Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local income, use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on Grayshift's net income). In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Grayshift on account thereof. As an example, if the price to be paid is \$100 but there is, for example, 10% withholding, Grayshift will still directly be paid \$100. The payor may need to "gross up" the overall payment so the amount due Grayshift after any withholding is \$100

Terms & Conditions

For online licenses only (not acceptable for the purchase of expansion packs), a signed quote is acceptable in lieu of a purchase order to execute this order under the following conditions:

a. The intended licensee identified in the quote does not require the issuance of a Purchase Order, and

and

b. The above quote is of a total value less than \$50,000 USD

By signing this quote, you certify that the above is accurate and that you are an authorized representative of the intended licensor identified in this quote with the authority to enter into this agreement.

Signature:



Effective Date:

____/____/____ JUN 14 2022

Name (Print):

Curt Hagman

Title:

Chairman, Board of Supervisors

Please sign and email to Jonathan Oszust at jonathan@grayshift.com

Grayshift LLC
THANK YOU FOR YOUR BUSINESS!