

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

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

1.1 “**EULA**” means the license agreement that governs your use of the Software to you.

1.2 “**Term**” means the period for which you have purchased support and/or maintenance services from Magnet Forensics, if any.

1.3 “**Updates**” means software releases from Magnet Forensics, identified by Magnet Forensics as updates, which supplement a version of Software that you have obtained from Magnet Forensics and that may correct defects, bugs or programming errors in such version of Software or provide minor increases in functionality for such version of Software.

1.4 “**Upgrades**” means software releases from Magnet Forensics, identified by Magnet Forensics as upgrades, which replace a version of Software that you have obtained from Magnet Forensics with a newer version of such Software.

## **2. SUPPORT AND MAINTENANCE SERVICES**

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

### Support Services:

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

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

### Maintenance Services:

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

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

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

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

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

### **3. TRANSMISSION OF DATA**

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

### **4. TERMINATION**

4.1. This Agreement may be terminated immediately upon notice for cause if:

4.2. either party commits a material breach of this Agreement or the EULA, or consistently fails to properly perform and observe its obligations under this Agreement or the EULA, and fails to rectify the situation within thirty (30) calendar days of the non-breaching party delivering notice of the breach or consistent failure to perform; or

4.3. either party becomes insolvent, or a receiver or receiver-manager is appointed for any part of the property of such party, or such party makes an assignment, proposal or arrangement for the benefit of its creditors or such party files an assignment in bankruptcy, or any proceedings under any bankruptcy or insolvency laws are commenced against such party.

4.4. Magnet Forensics shall have the right to terminate this Agreement immediately upon notice to you if your license to use the Software under the EULA is terminated for any reason.

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

4.6. If you have pre-paid for the support and maintenance services, you will not be entitled to any refund of any portion of such payment due to early termination, other than termination by Magnet Forensics for convenience or

termination by you due to Magnet Forensics' breach or insolvency. Termination of this Agreement shall not affect your payment obligation for any support and maintenance services rendered by Magnet Forensics prior to the date of termination. Magnet Forensics shall not be obligated to provide any support and maintenance services after the expiration or termination date, for whatever reason.

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

## **5. FEES**

5.1. Magnet Forensics shall invoice you for all support and maintenance service fees in accordance with its normal billing practices, and you will pay all fees within thirty (30) days following receipt of invoice.

5.2. Magnet Forensics reserves the right to change fees for support and maintenance services at any time, provided that the fee in effect at the time of your purchase of support and maintenance services shall apply for the duration of your purchased Term. For greater certainty, for any renewal term of support and maintenance services, Magnet Forensics has no obligation to offer you the same fees for support and maintenance services as you may previously have had.

5.3. You are responsible for, and shall pay all taxes relating to this Agreement, excluding any taxes based on the net income of Magnet Forensics. Unless otherwise indicated, all amounts payable by you under this Agreement are exclusive of any tax, duty, levy, or similar government charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, possession or use of the Software or services hereunder, the execution of this Agreement or otherwise.

5.4. If you fail to pay any amount under this Agreement that is due and payable, in addition to any other rights and remedies available to Magnet Forensics, Magnet Forensics shall be entitled to charge interest on all outstanding amounts at the lesser of 1.5% per month or the maximum rate permitted by law, such interest commencing as of the due date for such payment, and Magnet Forensics shall also be entitled to suspend provision of support and maintenance services. You shall also be responsible for paying for all reasonable fees and costs incurred by Magnet Forensics, including legal fees, in collecting any overdue amounts or enforcing any provision of this Agreement.

5.5. All fees are in United States dollars.

## **6. INTELLECTUAL PROPERTY RIGHTS**

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

## **7. LIMITED WARRANTY AND LIMITATION OF LIABILITY**

7.1. Magnet Forensics warrants that all services provided in accordance with the terms of this Agreement shall be provided in a competent, professional manner by persons who are fully trained and qualified in respect of the Software. Magnet Forensics does not represent or warrant that the services provided hereunder will achieve a particular result for your business, or that the operation of the Software will be error free or uninterrupted, or that

all errors in the Software can be found or corrected, although Magnet Forensics shall use commercially reasonable efforts to do so.

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

## 8. GENERAL

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

[END OF AGREEMENT]