



MAGNET SERVICES™ TERMS & CONDITIONS

The following document (the “**Agreement**”) describes the terms and conditions under which you (“**You**” or “**Customer**”) will receive forensic services from Magnet Forensics as part of Your purchase of Magnet SERVICES™.

1. Definitions.

“**Customer Data**” means information, data, and other content, in any form or medium, that is accessed, submitted, processed, stored, or disclosed by You, or on Your behalf as part of the Forensic Services.

“**Deliverables**” means any deliverables agreed upon by the parties and set out in a mutually agreed upon SOW.

“**Magnet Forensics Privacy Policy**” means the Magnet Forensics Privacy Policy available at <https://www.magnetforensics.com/legal/>.

“**Order**” means the document agreed to by Magnet Forensics and You indicating the Forensic Services You wish to purchase from Magnet Forensics.

2. **Forensic Services.** Any forensic services to be performed by Magnet Forensics for You shall be as set out in a mutually agreed upon Statement of Work (“**SOW**”) executed by the parties (“**Forensic Services**”). This Agreement and the applicable SOW shall govern and supersede any terms and conditions stated on any purchase order or other document submitted by You. This Agreement shall take precedence in the event of any conflict or inconsistency between this Agreement and a SOW (except to the extent any SOW term expressly amends terms of this Agreement for the purposes of such SOW only). Any completion times set out in the SOW are estimates only. Magnet Forensics in its sole discretion will provide suitably experienced personnel to perform Forensic Services and reserves the right to have some or all of Forensic Services performed by sub-contractors. Magnet Forensics shall be vicariously liable for the performance of Forensic Services by such sub-contractors under a SOW.
3. **Fees, Taxes, Invoicing, and Payment.** The provision of Forensic Services by Magnet Forensics is conditional upon Your payment to Magnet Forensics of all applicable fees identified in an Order. All fees are payable within thirty (30) days from date of the invoice issued unless otherwise agreed upon in a SOW. If You fail to pay any amount 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 performance of Forensic Services until such time as all amounts owing have been paid by You. 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. You are responsible for, and shall pay all taxes relating to amounts owing under a SOW, excluding any taxes based on the net income of Magnet Forensics.
4. **Term, Suspension, and Termination.** Magnet Forensics may terminate Forensic Services and/or a SOW (or part thereof) immediately upon notice to You if: (a) You materially breach, fail to comply with, or otherwise contravene a term or condition of this Agreement and/or a SOW 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; (c) You breach, fail to comply with, or otherwise contravene any



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obligations of confidentiality, privacy, security or data protection which You fail to cure two (2) days after written notice thereof by Magnet Forensics; (d) You breach any applicable law or regulation; (e) Magnet Forensics in its sole discretion determines the continued performance of Forensic Services will reflect unfavorably on the reputation of Magnet Forensics or otherwise cause damage to its business, products and/or services; (f) 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. Additionally, Magnet Forensics may terminate Forensic Services and/or a SOW (or part thereof) if required to do so by any law, regulation, requirement or ruling issued in any form whatsoever by any judicial or other governmental body. Upon expiration or termination of Forensic Services and/or a SOW, any payments that are then due to Magnet Forensics become immediately payable in full. Magnet Forensics may suspend performance of Forensic Services where required by regulatory authorities or applicable law or where Magnet Forensics determines continuation of Forensic Services may pose a risk to Magnet Forensics property, systems, and/or intellectual property. Magnet Forensics will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that You may incur as a result of suspension and/or termination of a SOW or Forensic Services (or part thereof).

5. **Warranty.** Magnet Forensics warrants that Forensic Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. EXCEPT AS SET OUT IN SECTION 5, ALL FORENSIC SERVICES ARE PROVIDED TO YOU ON AN “AS IS” BASIS, WITHOUT ANY WARRANTY WHATSOEVER. MAGNET FORENSICS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE FORENSIC SERVICES AND/OR OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER.
6. **Limitation of Liability.** In no event will Magnet Forensics be liable under this Agreement or any SOW for any damages other than Your direct damages to the extent arising from Magnet Forensics’ fraud or willful misconduct, and in no event, shall Magnet Forensics’ aggregate liability exceed the amounts paid by You to Magnet Forensics for the Forensic Services giving rise to such damages. EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 6 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MAGNET FORENSICS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, DATA, USE OR OPPORTUNITY, THE CORRUPTION OF DATA, THE PERFORMANCE AND NON-PERFORMANCE OF ANY PRODUCT OR SERVICE, AND ANY BUGS OR DAMAGES CAUSED BY THIRD PARTY FILES, INCLUDING IF THE THIRD PARTY FILES CONTAIN MALICIOUS CODE AND/OR VIRUSES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT MAGNET FORENSICS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAGNET FORENSICS SHALL ONLY BE LIABLE TO YOU AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND SHALL HAVE NO OTHER OBLIGATION, DUTY OR LIABILITY TO YOU.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR ACTION BY YOU, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY. IN NO EVENT SHALL ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, SUPPLIER, SUBCONTRACTOR, OR INDEPENDENT CONTRACTOR OF MAGNET FORENSICS OR ANY AFFILIATES OF MAGNET FORENSICS HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.

7. Customer Data and Data Protection

- 7.1 You own all right, title, and interest, including all intellectual property rights, in and to the Customer Data. You hereby grant to Magnet Forensics a non-exclusive, royalty-free, worldwide, sublicensable license to reproduce, distribute, and otherwise use, host, and display Customer Data and perform all acts with respect to the Customer Data as may be necessary for Magnet Forensics to perform Forensic Services and otherwise fulfill its obligations under any SOW. Magnet Forensics does not guarantee regular data backups of any Customer Data as part of Forensic Services. You acknowledge and understand that Customer Data may be accessed by unauthorized persons when communicated across the internet, network communications facilities, telephone, or other electronic means. Magnet Forensics is not responsible for any Customer Data or Customer reports that may be accessed by a third-party provider and/or delayed, lost, altered, intercepted, or stored during transmission across public networks.
- 7.2 You represent and warrant that: (a) You have obtained all rights, permissions, and consents necessary to retain Magnet Forensics to perform Forensic Services and provide any devices and other examination sources or access ("**Examination Sources**") to Magnet Forensics, including without limitation, from any third parties whose data may be accessed, processed, stored, and used as part of the Forensic Services; and (b) You will perform all obligations under this Agreement or any SOW in compliance with all applicable laws and regulations, including, without limitation, those relating to privacy and data protection, and agree to indemnify Magnet Forensics in connection with any breach of such representations and warranties.
- 7.3 You acknowledge that the performance of Forensic Services may result in the collection of information obtained from third parties, and Magnet Forensics is not responsible or in any way liable for the collection or non-collection of such third party information, including without limitation the accuracy, completeness, interpretation, reliability, copyright compliance, legality, decency, or any other aspect of such third party information. It is solely Your responsibility to evaluate the accuracy, completeness, interpretation, and usefulness of the collection of any such third-party information or reports or other Deliverables provided under any SOW. You acknowledge that Magnet Forensics has no control over, and no duty to take any action regarding any of Your acts or omissions, including without limitation: (a) what Examination Sources or other support, materials or access You provide to Magnet Forensics in connection with the Forensic Services; and (b) how You may interpret, use or action any information, Customer Data, reports or other Deliverables relating to the Forensic Services, and You agree to indemnify, defend and hold Magnet Forensics harmless from any and all claims that arise in connection therewith.
- 7.4 You shall not knowingly provide Examination Sources, devices or access to other computing devices or systems to Magnet Forensics that You know or should have known to contain content that exploits,

abuses, or relates to the exploitation or abuse of children, including but not limited to images or depictions of child abuse or sexual abuse, or content that presents children in a sexual manner (collectively, “**Child Sexual Abuse Material**” or “**CSAM**”) when requesting Forensic Services. Magnet Forensics reserves the right, but does not assume the obligation, to investigate any such Examination Sources or other materials provided by You for CSAM or other illegal material, and should we discover such CSAM or other illegal materials Magnet Forensics may report, remove, disable access to, or modify any content. You acknowledge and agree that Magnet Forensics may and may be obligated to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Such reporting may include disclosing Customer information and/or Customer Data. You acknowledge and agree that Magnet Forensics also may and may be obligated to cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing Customer Data, and/or Customer Examination Sources, network, and/or systems information to such parties.

- 7.5 Upon completion of Forensic Services under a SOW (an “**Expiry Date**”): (i) any Customer Data and Deliverables in Magnet Forensics’ possession will be deleted or destroyed; and (ii) any Customer devices will be returned to Customer at Customer’s cost using a shipping label to be provided by Customer. Upon request by Customer within thirty (30) days of an Expiry Date, Magnet Forensics will make available for download by Customer, the applicable Customer Data and Deliverables to the extent Magnet Forensics has access to such Customer Data and Deliverables. Notwithstanding anything to the contrary in this Section, Magnet Forensics shall be entitled to: (i) retain one (1) copy of the Customer Data and Deliverables (and any such copies which are the subject of automatic or manual backups), as required to comply with any applicable law and/or reporting and/or accounting purposes. Requests from Customer for retrieval of Customer Data by Magnet Forensics may have costs associated therewith and payable by Customer. Any requested hosting and/or storage services will be subject to negotiation by the parties.
- 7.6 When the EU General Data Protection Regulation or the UK General Data Protection Regulation applies to Customer Data, Magnet Forensics’ Data Processing Addendum (“**Data Processing Addendum**”) located at www.magnetforensics.com/legal shall apply and supplement the terms of this Agreement. In the event of a conflict between this Agreement and the terms of the Data Processing Addendum, the terms of the Data Processing Addendum shall prevail.
- 7.7 When the California Consumer Privacy Act of 2018 applies to Customer Data, the following additional terms shall also apply: *“Without limiting the generality of other data privacy obligations under this Agreement, in the event the California Consumer Privacy Act of 2018 applies to Your use of the Forensic Services, Magnet Forensics agrees that it is expressly prohibited from retaining, using, or disclosing personal information of California consumers for any purpose, including retaining, using, or disclosing such personal information of California consumers for a commercial purpose, other than for a business purpose, including providing the Forensic Services or as expressly permitted in a SOW. In addition, Magnet Forensics will not further collect, sell, or use personal information of California consumers except as necessary to perform a business purpose, including to provide the Forensic Services or as expressly permitted in a SOW. Magnet Forensics certifies that it understands the restrictions contained in this clause and otherwise in a SOW with respect to handling of personal information of California consumers and shall comply with all such obligations. The parties expressly acknowledge and agree that Magnet Forensics is not providing any personal information of consumers to You for monetary or any other valuable consideration.”*

8. **Ownership and Intellectual Property.** Nothing in this Agreement is intended to grant any rights to You, directly or by implication, under any patent, copyright, trade secret or other intellectual property right of Magnet Forensics or its affiliates, whether registered or unregistered, relating to Magnet Forensics products or the Forensic Services (or any part thereof). Any rights not expressly granted under this Agreement are reserved.
9. **Confidentiality.** You agree to keep confidential any confidential information disclosed to You by Magnet Forensics during the course of Forensic Services, both during the term of a SOW and following expiration or termination thereof, which information may not be discussed or shown to the public by You in any manner until publicly released by Magnet Forensics. Customer acknowledges and agrees that disclosure of any confidential information of Magnet Forensics may irreparably harm Magnet Forensics, which will be inadequately compensable by damages. Magnet Forensics may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available.
10. **Magnet Forensics Entity, Governing Law and Arbitration**
11. "Magnet Forensics" 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, N2K 0A8 Canada; (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.
12. 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 consent to the jurisdiction and venue of Ontario, Canada. 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.
- 12.1 Excluding claims for injunctive or other equitable relief, any disagreement or dispute arising out of or relating to this Agreement, Forensic Services and/or any SOW, 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.

- 13. Miscellaneous.** (a) Any provision of this Agreement or a SOW which expressly states that it is to continue in effect after termination or expiration of this Agreement or a SOW, or which by its nature would survive the termination or expiration of this Agreement or a SOW, shall do so; (b) You shall not assign or transfer (including by operation of law) this Agreement or any SOW without the prior written consent of Magnet Forensics. This Agreement shall be binding upon the parties and their respective lawful successors and permitted assigns; (c) 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; (d) Magnet Forensics' affiliates, and Magnet Forensics and our affiliates' respective directors, officers, and employees are intended third party beneficiaries for the purpose of Warranty (Section 5), Limitation of Liability (Section 6), Customer Data and Data Protection (Section 7), Ownership and Intellectual Property (Section 8), and Confidentiality (Section 9) as if each was a party to this Agreement. Except as otherwise specifically stated in this Agreement, any person who is not a party to this Agreement has no rights under this Agreement; (e) If any part of this Agreement or a SOW 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 or such SOW shall continue in full force and effect; (f) The purchase of Magnet products and services from Magnet Forensics are all separate offers and separate from any other Order; (g) 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; (h) 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; (i) Magnet Forensics shall not be liable for delays in delivery or for failure to perform due to causes beyond reasonable control of Magnet Forensics, which causes shall include, without limitation, acts of God, acts or omissions of Customer or 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; and (j) 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.