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- 8.1 Direct Damages. In no event will Magnet Forensics be liable under this Agreement for any damages other than Your direct damages to the extent arising from Magnet Forensics' gross negligence or willful misconduct, and in no event, shall Magnet Forensics' aggregate liability exceed the amounts paid by You to Magnet Forensics for the Software.
- 8.2 EXCLUSIONS. EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 8, 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, LOSS OF THE USE OF DEVICES OR ANY PORTION THEREOF, THE PERFORMANCE AND NON-PERFORMANCE OF THE SOFTWARE, 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, AUTHORISED RESELLER, SUPPLIER, SERVICE PROVIDER, OR INDEPENDENT CONTRACTOR OF MAGNET FORENSICS OR ANY AFFILIATES OF MAGNET FORENSICS HAVE ANY LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT.

- 8.3 NO LIMITATIONS. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE OUR LIABILITY FOR FRAUD, FRAUDULENT MISREPRESENTATION, WILLFUL MISCONDUCT, OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

## **9 Indemnification**

- 9.1 Your Indemnification of Magnet Forensics. You must defend and indemnify Magnet Forensics with respect to amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation legal fees, arising from: (a) a claim of infringement of any third party intellectual property right arising from Your combination or use of the Software with equipment, software, interfaces, or other materials that are not supplied or specifically authorized by Magnet Forensics, , and (b) any third party claim arising out of Your material breach of this Agreement. Magnet Forensics reserves the right, at Your expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by You, in which event You will cooperate with Magnet Forensics, at Your expense, in asserting any available defences.

## **10 Term and Termination**

- 10.1 Term. Your license to use the Software shall continue until this Agreement is terminated pursuant to this Section 10.
- 10.2 Termination for Convenience. You may terminate this Agreement at any time upon notice to Magnet Forensics but You will not be entitled to any refund.
- 10.3 Termination by Magnet Forensics. Magnet Forensics may terminate this Agreement immediately upon notice to You if: (a) You materially breach, fail to comply with, or otherwise contravene a term or condition of this Agreement which You fail to cure fifteen (15) days after written notice thereof by Magnet Forensics; (b) You materially breach any other agreement that You may have with Magnet Forensics which You fail to cure fifteen (15) days after written notice thereof by Magnet Forensics; or (c) You become involved in any legal proceeding concerning Your solvency, commence liquidation proceedings, have a receiver or administrator appointed of any of Your assets, cease or threaten to cease operations, or otherwise have a serious and reasonable doubt arise respecting Your solvency. Magnet Forensics may also terminate this Agreement upon ninety (90) days' written notice in the event that Magnet Forensics decides, in its sole discretion, to end-of-life the Software. Additionally, Magnet Forensics may terminate this Agreement if required to do so by any law, regulation, requirement or ruling issued in any form whatsoever by any judicial or other governmental body. Magnet Forensics will not be liable for any damage caused by the termination of this Agreement.
- 10.4 Cease Use. Upon expiration or termination of this Agreement (including expiration of term license, free trial or Beta Period), You will immediately cease all use of the Software and destroy and/or permanently delete all copies of the Software in Your possession, and any payments that are then due to Magnet Forensics become immediately payable in full.



## END USER LICENSE AGREEMENT

- 10.5 Certificate of Compliance. Magnet Forensics reserves the right to investigate suspected violations of this Agreement. Upon request of Magnet Forensics, not to exceed once per twelve-month period, You shall provide a written certificate of compliance from an authorized signing officer confirming the number of Users/Instances and Your compliance with the terms of this Agreement. In the event that Your written certificate of compliance reveals that: (i) You underpaid license fees and/or support and maintenance fees to Magnet Forensics; and/or (ii) that You have used the Software in excess of the license quantities or levels stated in the applicable invoice(s), You shall pay on demand fees for such excess usage based on Magnet Forensics' then current prices in effect at that time, plus an additional administration fee equal to fifteen percent (15%) of the amount for excess usage. The above-described actions are not Magnet Forensics' exclusive remedies and Magnet Forensics may take any other legal, equitable or technical action it deems appropriate in the circumstances.

### 11 Injunctive Relief

- 11.1 You agree that Magnet Forensics has the right to institute legal or equitable proceedings, including proceedings seeking injunctive relief without the requirement to post a bond or demonstrate damages, for claims or disputes regarding: (i) amounts owed by You to Magnet Forensics in connection with Your use of the Software; (ii) Your violation or threatened violation of the sections of this Agreement entitled License Grant (Section 2), Intellectual Property Rights, Indemnification and Confidentiality (Section 6), Term and Termination (Section 10), and Compliance With Laws/Export (Section 12). Should You become aware of any activities by any third-party contrary to these terms and conditions, You will promptly notify Magnet Forensics and shall reasonably assist Magnet Forensics to enforce its rights against such third party.

### 12 Compliance with Laws/Export

- 12.1 In using the Software, You will observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, provincial, state, municipal and local governing bodies, of any country having jurisdiction over the Software or any part thereof.
- 12.2 You will not use, import, export, or re-export the Software except in compliance with all applicable laws, which shall include refraining from exporting to any person or country that is on any U.S. or Canadian export control list unless You have a valid and applicable permit to do so. You agree to indemnify Magnet Forensics from any loss, claims, liability or damages arising out of Your failure to comply with such laws. You hereby represent that You will not use the Software in the development, production, handling, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile delivery systems, or of materials or equipment that could be used in such weapons or their missile delivery systems, or resell or export to anyone or any entity involved in such activity.
- 12.3 If the Software is being licensed by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then, as a commercial item, the Government's rights in the Software will be only as set forth (i) in this Agreement or (ii) as provided in FAR 12.212 (Computer Software) and (for Department of Defense use or disclosure) DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), whichever set of rights provided in (i) or (ii) are the more restrictive.

### 13 Magnet Forensics Entity, Governing Law and Arbitration

- 13.1 "Magnet Forensics", "we", and "us" means:
- Where Your primary address is anywhere other than in the U.S., Magnet Forensics Inc., with an office at 2220 University Avenue East, Waterloo, Ontario, Canada N2K 0A8.
  - Where Your primary address is in the U.S. (including its territories, protectorates or overseas regions), Magnet Forensics USA, Inc., with an office at 2250 Corporate Park Drive, Suite 130, Herndon, Virginia, U.S. 20171.

13.2 **Governing Law.** This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of Ontario, Canada, excluding any body of law governing conflicts of laws. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.3 **Arbitration.** Excluding claims for injunctive or other equitable relief and for claims related to the Software, any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, including any question regarding its existence, validity, or termination, such arbitration shall be settled by final and binding arbitration which will be held in accordance with the rules of arbitration of the Arbitration Act, 1991 (Ontario) and conducted in Toronto, Ontario. The arbitration shall be heard by one (1) arbitrator appointed in accordance with the applicable rules and to be mutually agreed to by the parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator. The language of the arbitration shall be English. Each party shall bear one half of the costs associated with the arbitration proceedings. The costs shall exclude experts' costs and each party's legal costs. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

#### **14 General Provisions**

14.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings relating to the subject matter hereof. Your additional or different terms and conditions, whether on Your purchase order or otherwise, shall not apply. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

14.2 **Force Majeure.** Neither party shall be deemed to be in default of this Agreement for failure to fulfill its obligations due to causes beyond its reasonable control. This provision shall not be construed as excusing any payment obligations of either party hereunder.

14.3 **Waiver.** No waiver by either party of a breach or omission by the other party under this Agreement shall be binding on the waiving party unless it is expressly made in writing and signed by the waiving party. Any waiver by a party of a particular breach or omission by the other party shall not affect or impair the rights of the waiving party in respect of any subsequent breach or omission of the same or different kind.

14.4 **Notices.** Any notices, reports or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail, courier or facsimile, delivered in electronic form.

14.5 **Assignment.** We may assign this Agreement without prior notice to You. You shall not assign or transfer (including by operation of law) this Agreement without the prior written consent of Magnet Forensics, which consent will not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon the parties hereto and their respective lawful successors and permitted assigns. Any purported assignment in violation of this Section 14.5 shall be null and void.

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



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- 14.7 **Electronic Execution.** You hereby agree to the use of electronic communication in order to enter into contracts, place orders and create other records and to the electronic delivery of notices, policies and records of transactions initiated or completed through the Software. Furthermore, You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- 14.8 **Invalidity.** If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in full force and effect.
- 14.9 **English.** It is the express will of the parties that this Agreement and all related documents have been drawn up in English. Where Your primary address is in Québec, then it is the express will of the parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais. Unless, and only to the extent, prohibited by law in Your jurisdiction, any and all disagreements, disputes, mediation, arbitration or litigation relating to this Agreement shall be conducted in the English language, including any correspondence, discovery, submissions, filings, pleadings, oral pleadings, arguments, oral arguments and orders or judgments.
- 14.10 **Publicity.** Magnet Forensics may make announcements, press releases, publications, presentations and other public statements that reference Your identity as a customer ("**Publicity Activity**"), provided that Magnet Forensics does not disclose Your confidential information in the course of such Publicity Activity or misrepresent Your relationship with Magnet Forensics. Magnet Forensics shall be entitled to use any of Your trademarks or logos as part of such Publicity Activity provided it does so in compliance with any branding requirements brought to its attention by You.
- 14.11 **Third Party Interest.** Magnet Forensics' affiliates, and Magnet Forensics and our affiliates' respective directors, officers, and employees are intended third party beneficiaries for the purpose of License Grant (Section 2.4), Warranty (Section 6), Limitation of Liability (Section 8), Indemnification (Section 9) and Compliance with Laws (Section 12.2) as if each was a party to this Agreement, in accordance with this Section and any applicable laws or regulations in Your jurisdiction. Except as otherwise specifically stated in this Agreement, any person who is not a party to this Agreement has no rights under this Agreement.

## 15 Contact

- 15.1 If You have any questions regarding this Agreement, or if You have any questions, complaints, claims or other legal concerns relating to Magnet Forensics or its business, please contact Magnet Forensics at:

Magnet Forensics Inc.  
2220 University Avenue East  
Waterloo, Ontario  
N2K 0A8  
Phone: +1 (844) 638-7884  
Email: [legal@magnetforensics.com](mailto:legal@magnetforensics.com)



## 16 Jurisdiction Specific Terms

16.1 Where Your primary address is in Europe (including Greenland), the Middle East, or Africa, then the following amendments apply to this Agreement:

(a) Section 2.2(2) is deleted in its entirety and replaced with the following:

(2) *except to the extent that Magnet Forensics is expressly precluded by law from prohibiting these activities, enhance, improve, alter, create derivative works, reverse engineer, disassemble, deconstruct, translate, decrypt, reverse compile or convert into human readable form the Software or any part thereof including the software that is provided as a license key to validate authorised use of the Software by a User and provided that the information obtained by You during such activities:*

- a. *is used only for the purpose of achieving interoperability of the Software or any part thereof with another software program;*
- b. *is not unnecessarily disclosed or communicated without our prior written consent to any third party; and*
- c. *is not used to create any software which is substantially similar to the Software;*

(b) The first sentence of Section 13.2 is deleted in its entirety and replaced with the following:

*13.2 This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of England. ...*

(c) The last sentence of Section 14.11 is deleted in its entirety and replaced with the following:

*... Except as otherwise specifically stated in this Agreement, any person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the parties to terminate, rescind, or agree to any variation, waiver, or settlement under this Agreement are not subject to the consent of any other person.*

16.2 Where Your primary address is in the U.S., then the following amendments apply to this Agreement:

(a) Section 13.2 is deleted in its entirety and replaced with the following:

*13.2 This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of New York, U.S., excluding any body of law governing conflicts of laws, and the parties hereby attorn to the exclusive jurisdiction of federal and state courts located in New, York, New York, U.S. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.*

(b) Section 13.3 is deleted in its entirety and replaced with the following:

*13.3 Excluding claims for injunctive or other equitable relief and for claims related to the Software, any dispute or controversy arising out of or relating to this Agreement, including without limitation, any and all disputes, claims (whether in tort, contract, statutory or otherwise) or disagreements concerning the existence, breach, interpretation, application*

or termination of this Agreement shall be resolved by final and binding arbitration in accordance with the JAMS Inc. Comprehensive Arbitration Rules & Procedures then in effect. There shall be no right or authority for any claims to be arbitrated on a class action basis. The arbitration shall take place in New York, New York or at the option of the party seeking relief, online, by telephone, online, or via written submissions alone, and be administered by JAMS. The arbitral tribunal ("Tribunal") shall be composed of one arbitrator, who shall be independent and impartial. If the parties fail to agree on the arbitrator within twenty (20) calendar days after the initiation of an arbitration hereunder, JAMS shall appoint the arbitrator. The decision of the arbitrator will be final and binding on the parties. Nothing in this Section shall prevent either party from seeking immediate injunctive relief from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The parties undertake to keep confidential all awards in their arbitration, together with all confidential information, all materials in the proceedings created for the purpose of the arbitration and all other documents produced by the other party in the proceedings and not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority. The arbitrator shall award all fees and expenses, including reasonable attorney's fees, to the prevailing party. The language of the arbitration shall be English. Each party shall bear one half of the costs associated with the arbitration proceedings. The costs shall exclude experts' costs and each party's legal costs. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

16.3 Where Your primary address is in Asia Pacific (including Pakistan, Sri Lanka, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan), then the following amendments apply to this Agreement:

(a) Section 13.2 is deleted in its entirety and replaced with the following:

*13.2 This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of Singapore, excluding any body of law governing conflicts of laws, and the parties hereby attorn to the exclusive jurisdiction of federal and state courts located in Singapore. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law. You also waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.*

(b) Section 13.3 is deleted in its entirety and replaced with the following:

*13.3 Excluding claims for injunctive or other equitable relief and for claims related to the Software, any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, including any question regarding its existence, validity, or termination, except to the extent specifically prohibited by applicable law in Your jurisdiction, shall be settled by final and binding arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause, and conducted in Singapore. The arbitration shall be heard by one arbitrator appointed in accordance with the SIAC Rules and to be mutually agreed to by the parties within thirty (30) days of the appointment of the arbitrator, failing which a neutral third party shall appoint the arbitrator. The language of*



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*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.*

- (c) The last sentence of Section 14.11 is deleted in its entirety and replaced with the following:

*... Except as otherwise specifically stated in this Agreement, nothing in this Agreement confers or is intended to confer any rights on any person who is not a party to this Agreement pursuant to the Contracts (Rights of Third Parties) Act.*

- 16.4 If Your primary address is not in any of the regions or countries specified in Section 16.1, 16.2, or 16.3, the Agreement will apply to You without further amendment.

**END OF AGREEMENT**