

This Partner Agreement (“**Agreement**”) between MAGNET FORENSICS and an entity wishing to resell Software (as defined below) and related services of Magnet Forensics (“**Partner**”) shall be effective as of the date of the Order submitted by the Partner (“**Effective Date**”). EACH OF THE PARTIES AFFIRM THAT IT UNDERSTANDS THE TERMS AND CONDITIONS SET FORTH BELOW, INCLUDING THE STATED EXCLUSIONS OF WARRANTIES AND LIMITATIONS OF REMEDIES, AND ACKNOWLEDGES THAT THESE TERMS AND CONDITIONS CONSTITUTE AN AGREED ALLOCATION OF RISK THAT IS REFLECTED IN THE PRICES. PARTNER CONFIRMS THAT BY SUBMITTING AN ORDER FOR THE SOFTWARE AND RELATED SERVICES IDENTIFIED IN THE QUOTATION PROVIDED BY MAGNET FORENSICS (OR A SUBSET THEREOF) PARTNER ACCEPTS THIS AGREEMENT AS THE CONTRACTUAL TERMS GOVERNING THE TRANSACTION.

## **1 Definitions**

- 1.1 **Customer** means a customer of Partner that procures a license for the Software from Magnet Forensics, and includes both end users and authorized resellers who sell to end users.
- 1.2 **Documentation** means all Software user documentation, printed materials, and "online" or electronic documentation and any copies thereof, in whole or in part, provided to you by Magnet Forensics.
- 1.3 **EULA** means the Magnet Forensics applicable license agreement for the Software available at [www.magnetforensics.com/legal/](http://www.magnetforensics.com/legal/) , (either End User License Agreement or Site License Agreement as indicated in the Order), as may be modified by Magnet Forensics from time to time.
- 1.4 **Feedback** has the meaning set out in Section 4.5;
- 1.5 **Magnet Forensics** has the meaning set out in Section 16.7(a);
- 1.6 **Magnet Software** means the proprietary software of Magnet Forensics or its affiliates identified in the Order.
- 1.7 **Order** means the document agreed to by Magnet Forensics and Partner indicating the quantity, price and term of the Software purchased.
- 1.8 **Software** means the Magnet Software and Third-Party Software provided to you by Magnet Forensics.
- 1.9 **Third-Party Software** means the copyrighted, patented or otherwise legally protected software of third parties (including open source code components) incorporated into the Software.
- 1.10 **Support** means the support services available from Magnet Forensics under the Support Terms and Conditions which can be found at [www.magnetforensics.com/legal/](http://www.magnetforensics.com/legal/).
- 1.11 **Territory** means the geographical region identified in the Order.
- 1.12 **Training** means training courses available from Magnet Forensics from time-to-time that Partner can resell to Customers.
- 1.13 **User** means a single individual user of the Software in whole or in part (including any functionality within the Software) who uses the Software in the regular course of business or for personal use, in accordance with the Documentation, and not for the purposes of development for commercial resale or further

distribution of the Software, including without limitation by resale or sublicensing, or for the purposes of providing services (including training) to third parties using the Software.

## **2 Distribution License Grant**

2.1 Subject to the terms and conditions of this Agreement, Magnet Forensics hereby grants Partner a non-exclusive, revocable, non-transferable license, during the Term of this Agreement and solely within the Territory:

- (a) to use and display the Software and associated documentation (and any Magnet Forensics trademarks attached thereto) solely for the purposes of marketing the Software to potential customers and Customers;
- (b) resell (i) the Software; (ii) Support, and (iii) Training to Customers in accordance with this Agreement; and
- (c) with the prior written consent of Magnet Forensics, to translate the English text of the documentation associated with the Software, Support, and Training (including the EULA and any agreement that accompanies Support and Training) to such language(s) as Partner may require for the purposes of Sections 2.1(a) to (c) above and to comply with local laws and regulations.

2.2 Except to the limited extent that Partner is authorized by Magnet Forensics in this Agreement, the restrictions contained in the EULA shall apply to the Partner. For greater certainty, nothing herein shall give Partner the right to use the Software or associated documentation in any way related to developing a product that is competitive with the Software, nor shall Partner be entitled to embed or integrate the Software into its own products or services in any way without Magnet Forensics' express prior written permission.

2.3 Partner must purchase a license key to validate authorized use of the Software by each User of Customer. Issuance of a license key is dependent upon provision of all required information to Magnet Forensics respecting such license keys, which may include hardware specifications. Such license keys may be provided by means of a physical item that is integral to the authorization of the Software, such as a dongle or USB thumb drive. All shipping costs respecting such license keys shall be borne by Partner.

2.4 Unless otherwise specifically authorized by Magnet Forensics in writing, nothing herein shall entitle Partner to sell (i) the Software; (ii) Support, and (iii) Training to any third party other than Customers in the Territory. For greater certainty, Partner shall not sell to Customers who intend to resell the Software to end users outside of the Territory.

2.5 Notwithstanding anything to the contrary in this Agreement, Partner must notify Magnet Forensics prior to approaching any potential customer to avoid duplicate communications with Magnet Forensics or its other Partners. Magnet Forensics will promptly respond to Partner's notification to inform Partner of whether such potential customer is an existing Magnet Forensics customer, or a current prospect engaged in negotiations. Where Magnet Forensics informs Partner that a potential customer is an existing Magnet Forensics customer, or a current prospect engaged in negotiations, Partner shall comply with Magnet Forensics' specific instructions for interacting with such potential customer, which may include not engaging or selling (i) the Software; (ii) Support, and (iii) Training to such potential customer.

### **3 Partner Products and EULA Compliance**

- 3.1 Partner shall be solely responsible for the operation of its products, including without limitation developing such products and ensuring the compatibility of its products with the Software, where applicable. Magnet Forensics expressly disclaims all liability for any claims, losses or damages relating to Partner products, and Partner agrees to indemnify Magnet Forensics against all such claims, losses and damages in accordance with the indemnity provisions set forth in this Agreement.
- 3.2 Partner shall not, whether in a license agreement for its own products or otherwise, in any way negate or override any terms and conditions of the protection afforded to Magnet Forensics by the EULA and/or any agreement that accompanies the Support and Training. Partner is required to have Customers sign a software license agreement for use of the Software and Documentation substantially similar to the EULA as determined by Magnet Forensics (or where the Customer is a reseller, have the Customer contractually commit that they will require the ultimate end user sign such a software license agreement).

### **4 Business Conduct.**

#### **4.1 Partner warrants:**

- (a) it has the full power to enter into this Agreement and to perform its obligations hereunder;
- (b) it shall purchase one (1) copy of the Software at a fifty percent (50%) discount to use in accordance with section 2.1(a). Partner shall train at least one (1) employee on the Software via a training course accredited by Magnet Forensics;
- (c) it shall responsibly promote and market Software, Support and Training in the Territory in a way that reflects favorably on the reputation of Magnet Forensics. Partner shall not make any false or misleading representations regarding Software, Support or Training including, but not limited to, specifications, features, warranties, or disclaimers that are not consistent with the Documentation. Partner shall establish a proactive marketing campaign to be agreed upon by Magnet Forensics;
- (d) it shall comply with Magnet Forensics' trademark guidelines, including obtaining Magnet Forensics' prior approval to all marketing activities relating to the Software, Support, and Training;
- (e) it shall comply with the material objectives of the Magnet Forensics Code of Conduct available for download on the website of Magnet Forensics;
- (f) it shall not engage in deceptive, misleading or unethical practices;
- (g) it shall comply with all applicable laws, including international, national, regional and local laws, statutes, directives (UN, EU or otherwise) and regulations, including without limitation, privacy, electronic marketing, and data protection laws, and the US Foreign Corrupt Practices Act, UK Bribery Act, OECD Convention of Combating Bribery of Foreign Public Officials in International Transactions and any other applicable legislation enacted to enforce or implement any international convention prohibiting bribery and corruption;
- (h) it shall keep Magnet Forensics reasonably informed regarding its sales, marketing, and business development activities and plans relating to the Software, Support, and Training including by providing to Magnet Forensics monthly forecasts for a fifty-two (52) week rolling non-binding forecast or a lesser period as instructed by Magnet Forensics in its sole discretion; and

- (i) that: (i) any lead generation lists provided by Partner to Magnet Forensics shall be compiled in compliance with all applicable privacy, electronic marketing, and e-privacy laws, and in a manner that will allow Magnet Forensics to communicate directly with data subjects on such lists about Magnet Forensics' products and services, including, without limitation, all necessary consents having been obtained; and (ii) Partner shall establish, maintain and provide to Magnet Forensics upon request, records and/or other evidence of express consent having been obtained from data subjects.
- 4.2 Partner shall be solely responsible for all lead generation, promotion, marketing, and sale activities undertaken pursuant to this Agreement. Magnet Forensics expressly disclaims all liability for any claims, losses or damages arising out of such activities and Partner agrees to indemnify Magnet Forensics against all such claims, losses and damages in accordance with the indemnity provisions set forth in this Agreement.
- 4.3 Prior to any use of the Software by Customers, Customers must agree to the terms of the EULA. Partner shall only provide Customers with Software that has the EULA intact as shipped from Magnet Forensics.
- 4.4 Partner shall submit all orders to [sales@magnetforensics.com](mailto:sales@magnetforensics.com). All Orders for Software, Support, and Training which are submitted by Partner to Magnet Forensics are subject to acceptance by Magnet Forensics. Magnet Forensics can reject an Order for any reason at its sole discretion. Acceptance shall be deemed to have occurred upon shipment of the Software to Partner or Customer to fulfil the Order. Partner will provide Magnet Forensics with the names of each Customer to whom it sells the Software, together with the relevant contact information of such Customers, in order to facilitate Magnet Forensics' provision of Support and Training or other services respecting the Software to such Customers and to allow Magnet Forensics to enforce the terms of the EULA. Magnet Forensics reserves the right to change its price list at any time upon thirty (30) days' notice to Partner. Magnet Forensics is not responsible for pricing communicated by Partner to Customers after notice of a change to the list price and will not honour Orders received following the notice period that are based on price lists that are not current.
- 4.5 Partner agrees that: (a) all feedback, comments, suggestions for improvement, ideas, concepts and changes provided to Magnet Forensics or identified by Partner in the course of its use or resale of the Software, and all associated intellectual property rights (collectively the "**Feedback**") shall be owned by Magnet Forensics; and (b) Partner hereby assign to Magnet Forensics all of its right, title and interest in Partner Feedback. Partner will not knowingly provide Magnet Forensics any Feedback that is subject to third party intellectual property rights. Partner agrees to cooperate fully with Magnet Forensics with respect to signing further documents and doing such other acts as are reasonably requested by Magnet Forensics to confirm that Magnet Forensics owns the Feedback and to enable Magnet Forensics to register and/or protect any associated intellectual property rights and/or confidential information.
- 4.6 Nothing herein shall be construed as granting Partner any exclusive rights to market or sell the Software Support and Training in the Territory or otherwise.
- 4.7 Magnet Forensics reserves the right to publicize Partner's relationship with Magnet Forensics, including sale of the Software, Support and Training.

## **5 Support and Training**

- 5.1 Partner shall be solely responsible for providing all support for Partner's products and services.

- 5.2 Partner must specifically purchase Support from Magnet Forensics in order to obtain upgrades or updates to the Software or any Support (telephonic or otherwise) beyond Magnet Forensics' warranty obligations set forth herein, and all such Support shall be subject to Magnet Forensics' Support Terms and Conditions, which may be found at <http://www.magnetforensics.com/legal/>.
- 5.3 If a Customer encounters issues with the Software or requires instruction, support, training, or other aid respecting the Software, Partner shall direct all such queries to Magnet Forensics for direct response, and shall not make any attempt to answer such queries on behalf of Magnet Forensics unless Magnet Forensics explicitly provides prior written approval for Partner's representation of Magnet Forensics in such queries.
- 5.4 Magnet Forensics shall not be obligated to customize or otherwise modify the Software to meet Partner's requirements or those of any third party, including Customers and Users. If Partner wishes Magnet Forensics to customize the Software in any way, such customization shall be subject to the successful negotiation and execution of a separate written development agreement between Magnet Forensics and Partner, and shall be in accordance with the terms and conditions of such agreement.

## **6 Pricing and Payment of Fees**

- 6.1 Partner will pay Magnet Forensics the then-current list price for the Software, Support, and Training subject to approved discounts. Partner discounts will be determined by Magnet Forensics in its sole discretion acting reasonably taking into consideration (a) if opportunity is a government public tender, (b) level of involvement of Magnet Forensics in procuring business from Customer, and (c) whether opportunity was identified in Partner's monthly forecast.
- 6.2 Partner agrees to pay to Magnet Forensics the fees for Software, Support, and Training as set out in the applicable invoice net thirty (30) days from the date of the invoice in U.S. dollars. Notwithstanding the foregoing, Magnet Forensics reserves the right, upon notice to Partner and with respect to any or all orders placed by the Partner hereunder, to require Partner to pay for the Software, Support, and Training in advance (either the full amount or a partial amount as determined by Magnet Forensics in its sole discretion) where: (a) Partner has failed to pay any amount due under this Agreement upon such payment becoming due and payable, (b) Partner has exceeded the credit limit established by Magnet Forensics for Partner, in its sole discretion, or (c) Magnet Forensics has a reasonable apprehension of Partner being unable to pay its debts when due.
- 6.3 If Partner fails to pay any amount due under this Agreement upon such payment becoming 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. Partner 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.
- 6.4 Magnet Forensics is not obligated to accept any returns of the Software or offer refunds for the Software, Support, and Training except as explicitly set forth in this Agreement, the EULA, and any agreement that accompanies the Support and Training. If an Order for Software is cancelled by a Customer prior to delivery of such Software to the Customer, Partner may cancel the Order with Magnet Forensics and, where the Software was delivered to Partner, Partner may return such Software to Magnet Forensics, and Magnet Forensics will refund to Partner the amount paid by Partner for such Software hereunder or credit such amount to future Software orders from Partner. Partner will be responsible for informing

Customers who have accepted delivery of the Software that no returns or refunds relating to the Software are available other than as set out in the warranty section of the EULA. If Partner accepts any such returns or provides such refunds, Magnet Forensics will have no liability whatsoever respecting such returns or refunds, and Partner will indemnify Magnet Forensics against any claims, damages, costs, expenses or other amounts payable respecting such returns or refunds.

- 6.5 Partner is 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 Partner under this Agreement are exclusive of any shipping, freight, insurance, customs, import duties, local delivery, special handling, special packaging, 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, Support and Training, the execution of this Agreement or otherwise. If Partner is 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 remitted to Magnet Forensics shall equal the amount invoiced or otherwise due.

## **7 Warranties**

- 7.1 Magnet Forensics will provide Customers with the warranty on the Software set out in the EULA only; all other warranties are excluded. Partner shall manage all warranty claims by Customers, and, unless otherwise expressly agreed by Magnet Forensics, Magnet Forensics shall only be obligated to support such warranty claims by providing information and/or software fixes (as determined to be within the scope of Magnet Forensics' warranty and as deemed necessary by Magnet Forensics in its sole discretion) to Partner for appropriate communication to such Customers.
- 7.2 Magnet Forensics shall not be obligated to support or provide any warranty for the Software to the extent that any issues with the Software arise as a result of operation in conjunction with Partner's products or any third-party product, and Partner agrees to indemnify Magnet Forensics against any claims by Customers or any third parties relating to such issues.
- 7.3 Except as otherwise expressly stated herein, the Software is provided "AS IS", without any warranty whatsoever, express or implied, and Magnet Forensics shall have no obligation or liability to Partner or any other party whatsoever in respect of the Software or use thereof, including without limitation any indemnity or support obligations. Magnet Forensics' warranty contained in the EULA shall apply only to the extent that issues with the Software would have arisen in the Software as a standalone product.

## **8 Indemnity**

- 8.1 Provided Partner is not in material breach of this Agreement, Magnet Forensics, at its sole expense, will defend Partner against any claim and indemnify Partner from any damages, settlements, liabilities, costs and expenses (including, but not limited to, reasonable attorney fees) awarded by the court ("**Claim**") as a result of use of the Magnet Software infringing any valid patents or copyrights in Canada or the United States of any third party. In the event of a Claim, Magnet Forensics may, at its option and expense: (a) obtain for Partner the right to continue to use the Magnet Software; (b) substitute a substantially equivalent non-infringing product; (c) modify the Magnet Software to make it non-infringing; or if (a) (b) or (c) are not commercially feasible then (d) terminate the license. If the license is terminated, Partner must arrange for the return or destruction the Magnet Software and within 30 days of receipt of all of the Magnet Software or certification of destruction thereof, Magnet Forensics will refund the amount Partner paid. The indemnity obligations under this clause do not extend to Claims arising from or relating to: (aa)

any use of the Magnet Software in combination with any equipment, software, data or any other materials where the infringement would not have occurred but for such combination; (bb) any modification to the Magnet Software where the infringement would not have occurred but for such modification; (cc) use of the Magnet Software by Partner or Customer in a manner contrary to the terms of the EULA where the infringement would not have occurred but for such use; (dd) the continued use of the Magnet Software after Magnet Forensics has provided substantially equivalent non-infringing software; (ee) use of Third Party Software or (ff) a Claim the Partner was aware of prior to purchase of the Magnet Software. NOTWITHSTANDING ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, THE PROVISIONS OF THIS CLAUSE STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MAGNET FORENSICS AND PARTNERS 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. EXCEPT AS EXPRESSLY SET FORTH IN THIS CLAUSE, MAGNET FORENSICS EXPRESSLY DISCLAIMS ANY OBLIGATION TO INDEMNIFY OR DEFEND PARTNER AND/OR ANY OTHER PARTY FROM ANY CLAIM, DEMAND, ACTION OR THREATENED ACTION.

8.2 Partner agrees to defend and indemnify Magnet Forensics against any third party claims, judgments, damages, costs (including reasonable lawyers' fees and disbursements) and settlements agreed to by Partner in relation to: (a) Partner's breach of any term or condition of this Agreement, (b) Partner's breach of any representation or warranty under this Agreement; (c) any of Partner's products or services, and (d) any infringement claim arising from or in connection with: (i) modifications to the Software or any portion thereof authorized or performed by Partner or on Partner's behalf; or (ii) a Customer's combined use of the Software or portion thereof with other software and/or hardware products or applications not supplied by Magnet Forensics (including, without limitation, use in conjunction with any of Partner's products) where Partner authorized such combined use. Notwithstanding the foregoing, Partner shall have no indemnity obligation to Magnet Forensics in relation to any matter for which Magnet Forensics is obligated to indemnify Partner hereunder.

8.3 Each party's indemnity obligations hereunder are contingent upon: (a) the indemnifying party promptly being notified in writing of such claim, (b) the indemnifying party having the sole control of the defense and/or settlement thereof, (c) the indemnified party furnishing to the indemnifying party on request any information in the indemnified party's possession or control for such defense, (d) the indemnified party not admitting any such claim and/or making any payments with respect to such claim without the prior written consent of the indemnifying party, and (e) the indemnified party, at the indemnifying party's expense, cooperating with, and providing such assistance to the indemnifying party in the defense of such claims as reasonably requested by the indemnifying party.

## **9 Limitation of Liability**

9.1 IN NO EVENT WILL MAGNET FORENSICS BE LIABLE UNDER THIS AGREEMENT FOR ANY DAMAGES OTHER THAN PARTNER'S 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 FEES PAID BY PARTNER TO MAGNET FORENSICS IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PROCEEDING THE CLAIM FOR THE SOFTWARE, SUPPORT OR TRAINING GIVING RISE TO SUCH CLAIM. FOR CLARITY, ANY LIABILITY THAT PARTNER HAS TO A CUSTOMER FOR CONSEQUENTIAL DAMAGES OF THE TYPE DESCRIBED IN SECTION 9.2 SHALL NOT BE INCLUDED AS DIRECT DAMAGES SUFFERED BY PARTNER.

- 9.2 EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 9, 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, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT MAGNET FORENSICS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR ACTION BY PARTNER, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY.

## **10 Intellectual Property Rights**

- 10.1 Nothing herein shall be deemed to transfer ownership, right, title or interest in or to any intellectual property or any intellectual property rights from one party to the other. For greater certainty, Partner acknowledges that nothing herein transfers any intellectual property right in the Software, Support, and Training to Partner, and Magnet Forensics acknowledges that nothing herein transfers and intellectual property right in Partner's products to Magnet Forensics. Any rights not expressly granted under this Agreement are reserved.

## **11 Audit**

- 11.1 To permit Magnet Forensics to confirm Partner's compliance with this Agreement, Partner shall maintain, for the Term of this Agreement and for two (2) years thereafter, complete and accurate records, in accordance with standard business practices in Partner's industry and generally accepted accounting principles, to support and document the marketing and sale of the Software, Support and Training. To assure such compliance, Magnet Forensics, or other auditors reasonably acceptable to Partner on Magnet Forensics' behalf, may inspect, both during the Term and for two (2) years thereafter, such records. All such audits will be conducted during regular business hours at Partner's offices, and shall not unreasonably interfere with Partner's business activities. If an audit reveals that Partner has underpaid fees to Magnet Forensics, Partner shall pay to Magnet Forensics all underpaid amounts plus interest on the underpaid fees at the rate specified in Section 6.2 of the Agreement, calculated from the date that such amounts were originally due until the time such amounts are paid. Such amounts shall be immediately due upon Partner's receipt of Magnet Forensics' invoice specifying such underpaid amounts. Magnet Forensics shall bear the cost of all audits, provided that if an audit reveals a five percent (5%) or greater non-compliance in any quarter by Partner, or material non-compliance with Section 4.3 herein, Partner shall bear all costs of such audit.

## **12 Confidential Information**

- 12.1 The parties agree that any information that would reasonably be considered by a person knowledgeable in the industry to be proprietary or confidential (including without limitation details of the Software, Class Kits, students attending training sessions, etc.) shall be deemed "**Confidential Information**". A party that is a recipient of Confidential Information shall hold the same in confidence and use it only to the extent reasonably required to fulfill their obligations under this Agreement. A party that is a recipient of Confidential Information shall protect such Confidential Information using the same degree of care that it uses to protect its own confidential information of a similar nature. Such care shall not be less than a reasonable degree of care. A party that is a recipient of Confidential Information shall not, directly or indirectly, disclose the Confidential Information to any employees, contractors, affiliates or third parties



except to employees whom have a need to know the Confidential Information to perform the obligations under this Agreement, provided that such employee has been advised of the confidentiality obligations contained in this Agreement and has either agreed in writing to be bound by the obligations, or has entered into a binding written obligation of confidentiality with the party that is the recipient of Confidential Information that affords substantially similar protection as this Agreement. Both parties acknowledge that the Confidential Information has been developed at significant cost and has significant commercial value, and both parties agree that disclosure or inappropriate use of the Confidential Information could cause irreparable harm. Accordingly, both parties agree that owner of Confidential Information will have the right to seek, in addition to any of its other rights and remedies under law and equity, injunctive relief for any violation of confidentiality provision of this Agreement without posting bond or by posting bond at the lowest amount required by law. Both parties shall be required to handle Confidential Information in accordance with the terms of this Agreement for a period of three (3) years from disclosure.

### **13 Term and Termination**

- 13.1 This Agreement is effective for an initial term of one (1) year from the Effective Date (the “**Initial Term**”) unless terminated earlier pursuant to this Section 13 or another express provision of this Agreement. Thereafter, it shall automatically renew for successive one (1) year periods (each a “**Renewal Term**”), unless: (a) either Party provides to the other Party at least ninety (90) days written notice of its decision to terminate this Agreement prior to the end of the Initial Term or Renewal Term with such expiration being effective as of the end of the then current term; or (b) this Agreement is terminated earlier pursuant to Section 13 or another express provision of this Agreement. The Initial Term and each Renewal Term are collectively referred to as the “**Term**”.
- 13.2 Magnet Forensics may terminate this Agreement and/or any User licenses immediately upon notice to Partner if: (a) Partner materially breaches, fails to comply with, or otherwise contravenes a condition of this Agreement, or (b) Partner materially breaches any other agreement that it may have with Magnet Forensics, or (c) Partner fails to pay an invoice from Magnet Forensics within thirty (30) days of the date of the invoice and/or (d) Partner becomes involved in any legal proceeding concerning its solvency, commences liquidation proceedings, has a receiver or administrator appointed respecting any of its assets, ceases or threatens to cease operations, or otherwise has a serious and reasonable doubt arise respecting its solvency. Magnet Forensics may also terminate this Agreement upon: (i) thirty (30) days written notice to Partner if Magnet Forensics determines that Partner’s marketing or resale of the Software, Support and Training is not meeting Magnet Forensics’ performance requirements (as determined by Magnet Forensics in its sole discretion); (ii) sixty (60) days’ written notice to Partner for any reason.
- 13.3 Except as otherwise expressly set forth in this Agreement, upon expiration or termination of this Agreement, Partner will cease all use of the Software and return to Magnet Forensics, destroy and/or permanently delete all copies of the Software in its possession.
- 13.4 Nothing herein shall be deemed to waive or be a substitution for any other rights and remedies that Magnet Forensics may have in law or equity, and Magnet Forensics shall have no liability to Partner arising from Magnet Forensics’ termination of this Agreement or User license in accordance with section 13.2.

## **14 Injunctive Relief**

- 14.1 Partner agrees that Magnet Forensics will have the right to seek, in addition to any of its other rights and remedies under law and equity, injunctive relief for any violation of these terms and conditions without posting bond or by posting bond at the lowest amount required by law, as the Software is of significant commercial value to Magnet Forensics and inappropriate use of the Software could cause Magnet Forensics irreparable harm. Should Partner become aware of any activities by any third party contrary to this Agreement or the EULA, it will promptly notify Magnet Forensics and shall reasonably assist Magnet Forensics to enforce its rights against such third party.

## **15 Compliance with Export Laws**

- 15.1 Partner 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 country that is on any U.S. or Canadian export control list unless Partner has a valid and applicable permit to do so. Partner acknowledges that the Software may not be used in any nuclear or missile proliferation activity or in any chemical or biological weapons activity. Partner agrees to indemnify Magnet Forensics from any loss, claims, liability or damages arising out of Partner's failure to comply with such laws.

## **16 General**

- 16.1 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.
- 16.2 Notices: Any notices, reports or other communications required or permitted to be given under this Agreement shall be in writing and shall be sufficient if delivered by hand or sent by registered mail, courier, facsimile, or email addressed to Magnet Forensics or Partner at their respective addresses appearing in this Agreement, or to such other address as one party advises the other party in writing. Any such notices, reports, or other communications shall be deemed to have been received by the party to whom they were addressed: (a) upon delivery by hand, (b) five (5) business days after being sent by registered mail, (c) upon delivery by courier, as evidenced by the courier receipt, or (d) upon successful receipt confirmation report after being sent by facsimile or email.
- 16.3 No 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.
- 16.4 Assignment: Magnet Forensics may assign this Agreement without prior notice to Partner. Partner shall not assign or transfer 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 16.4 shall be null and void.
- 16.5 Severability: If any one or more of the provisions of this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, any such provision shall be severable from this Agreement, in which event this Agreement shall be construed as if such provision had never been contained herein.

- 16.6 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.
- 16.7 Magnet Forensic Entity and Governing Law:
- (a) Magnet Forensics Entity. Where Partner's primary address is in the U.S. (including its territories, protectorates or overseas regions), the Partner is contracting with Magnet Forensics USA, Inc., with an office at 2250 Corporate Park Drive, Suite 130, Herndon, Virginia, U.S. 20171. Where Partner's primary address is anywhere other than in the U.S., the Partner is contracting with Magnet Forensics Inc., with an office at 2220 University Avenue East, Waterloo, Ontario, Canada N2K 0A8.
  - (b) 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. If the courts in your jurisdiction will not permit you to consent to the jurisdiction and venue of Ontario, Canada, then your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
  - (c) 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 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.
  - (d) Where Partner's primary address is in Europe (including Greenland), the Middle East, or Africa, then section 16.7(b) is deleted and replaced with:
    - (i) 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 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. If the courts in your jurisdiction will not permit you to consent to the jurisdiction and venue of England then your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply

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 the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

- (e) Where Partner's primary address is in the U.S., then section 16.7(b) is deleted and replaced with:
  - (i) This Agreement, its subject matter, and its formation (and any non-contractual disputes or claims) are governed by and construed under the laws of the State of New York, USA 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. If the courts in your jurisdiction will not permit you to consent to the jurisdiction and venue of the State of New York, USA then your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- (f) Where Partner's 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:
  - (i) 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. 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. If the courts in your jurisdiction will not permit you to consent to the jurisdiction and venue of Singapore then your local jurisdiction and venue will apply to any disputes or claims arising out of or related to this Agreement. You agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. 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.
- (g) If Partner's primary address is not in any of the regions or countries specified in Section 16.7(d), (e) or (f) the Agreement will apply without further amendment.

16.8 **Entire Agreement/Modification:** This Agreement, together with the EULA, constitutes the entire agreement between the parties and supersedes all previous agreements and understandings relating to the subject matter hereof. This Agreement may not be altered, amended, or modified except by a written instrument signed by the duly authorized representatives of both parties. Partner's additional or different terms and conditions, whether on its Order or otherwise, shall not apply. To the limited extent that the terms and conditions contained in this Agreement conflict with the terms and conditions contained in the EULA, the terms and conditions of this Agreement shall prevail.

16.9 **Independent Contractor:** Each party hereto shall be and remain an independent contractor. Nothing herein shall be deemed to constitute the parties as partners, and neither party shall have any authority

to act, or attempt to act, or represent itself, directly or by implication, as an agent of the other or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the other, nor shall either be deemed the agent or employee of the other. This Agreement does not authorize Partner to issue quotes, accept orders, or receive payments referencing any U.S. Government resellers of Magnet Forensics or the contract vehicles of such U.S. Government resellers. Partner shall, at its expense, indemnify, defend, save and hold harmless Magnet Forensics from and against any loss (including lost margin), cost, damage or expense of any kind resulting from any failure by Partner or its employees to act in accordance with this Section 16.9.

- 16.10 Language: It is the express will of the parties that this Agreement, Software, Support, Training and all related business communications be in English. Any interpretation or construction of this Agreement shall be based solely on the English language as used in Canada.
- 16.11 Counterparts: This Agreement may be executed in counterparts, each of which when executed by either of the parties shall be deemed to be an original and such counterparts shall together constitute one and the same Agreement.

[END OF AGREEMENT]