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**CONTRACT BETWEEN
COUNTY OF GLOUCESTER
AND
MAGNET FORENSICS USA, INC.**

THIS CONTRACT is made effective the 2nd day of April, 2018, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "County", and **MAGNET FORENSICS USA, INC.**, with offices at 2250 Corporate Park Drive, Suite 230, Herndon, VA 20171, hereinafter referred to as "Vendor".

RECITALS

WHEREAS, there exists a need for the County of Gloucester to contract digital investigative technology for forensic extraction of any internet history or data of evidentiary value; and

WHEREAS, the Vendor represents that it is qualified to provide goods and desires to so perform pursuant to the terms and provisions of this contract.

NOW THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Vendor do hereby agree as follows:

TERMS OF AGREEMENT

1. **TERM.** This Contract shall be effective from April 2, 2018 to March 30, 2019.

2. **COMPENSATION.** Vendor shall be compensated in an amount not to exceed \$9,823.00 as per Vendor's Quote #Q-53975-1. Use of the Vendor's software by the County shall be governed by the End User License Agreement posted at www.magnetforensics.com/legal (the "EULA")."

Vendor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Vendor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this Contract.

3. **DUTIES OF VENDOR.** The specific duties of the Vendor shall be as set forth in: (1) this Contract, (2) the Vendor's Quote #Q-53975-1 which is annexed hereto as Attachment A, including the End User License Agreement, which specifies the use of the Vendor's software. All of which is made a part of this contract, together with any other specifications issued by the County in connection with this Contract.

4. **FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the Vendor agrees as follows:

The Vendor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Vendor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Vendor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Vendor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Vendor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Vendor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Vendor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. **LICENSING AND PERMITTING.** If the Vendor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to provide goods which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Vendor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of

this Contract.

Vendor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Vendor or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the Bid Specifications or in the Request for Proposals, if any, as the case may be, which are specifically referred to and incorporated herein by reference.

B. If Vendor is required to be licensed in order to provide goods which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Vendor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Vendor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Vendor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Vendor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Vendor under this Contract, shall be forthwith delivered to the County.

D. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Vendor. If the Contract is terminated by the County as provided herein, the Vendor will be paid to provide goods rendered to the time of termination.

E. Notwithstanding the above, the Vendor or subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Vendor, and the County may withhold any payments to the Vendor for the purpose of set off until such time as the exact amount of damages due the County from the Vendor is determined.

F. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Vendor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

8. **INDEMNIFICATION.** The Vendor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Vendor's provided goods or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent Vendors, or from the Vendor's failure to provide for the safety and protection of its employees, or from Vendor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Vendor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

9. **INSURANCE.** Vendor shall, if applicable to the provided goods, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Vendor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Vendor is a member of a profession that is subject to suit for professional malpractice, then Vendor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. Vendor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Vendor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

10. **SET-OFF.** Should Vendor either refuse or neglect to provide goods that Vendor is required to provide in accordance with the terms of this Contract, and if expense is incurred by County by reason of Vendor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Vendor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

11. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Vendor shall be suspended without liability for the period during which the County is so prevented.

12. **METHODS OF WORK.** Vendor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

13. **NONWAIVER.** The failure by the County to enforce any particular provision of this

Contract, or to act upon a breach of this Contract by Vendor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

14. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

15. **CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

16. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

17. **GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

18. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Vendor is an independent Contractor and is not an agent of the County.

19. **CONFLICT OF INTEREST.** Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with providing the goods pursuant to this Contract. The Company further covenants that in the performance of this Contract, no person having any such interest shall be employed.

20. **CONFIDENTIALITY.** Vendor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

21. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

22. **CONTRACT PARTS.** This Contract consists of this document and those referenced in Paragraph 3 above.

THIS CONTRACT is made effective the day and year first above written.

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Purchasing Director and Vendor has caused this instrument to be signed and attested by its properly authorized representative(s).

ATTEST:

COUNTY OF GLOUCESTER



ANDREA LOMBARDI,
ADMINISTRATIVE CLERK



PETER M. MERCANTI, DIRECTOR
PURCHASING DEPARTMENT

ATTEST:

MAGNET FORENSICS USA, INC.



By: ADAM BELSHER
Title: CEO

Reviewed by Legal
Chris Runstedler

This Agreement to Amend the certain legal agreements located at www.magnetforensics.com/legal ("**Amending Agreement**") between MAGNET FORENSICS USA, INC. ("**Magnet Forensics**") and COUNTY OF GLOUCESTER ("**Gloucester**") is effective as of the date of the last signature below ("**Effective Date**"). Gloucester is licensing certain software and acquiring related software support and training services from Magnet Forensics as identified in Magnet Forensics' quotation Q-53975-1 ("**Products**") and has requested specific amendments to certain legal agreements located at www.magnetforensics.com/legal ("**Magnet Contracts**"). In consideration of proceeding with purchase and the covenants herein contained, the adequacy of which is hereby acknowledged by each of Gloucester and Magnet Forensics, Magnet Forensics agrees to amend the Magnet Contracts in accordance with the terms of this Amending Agreement.

1. **End User License Agreement ("EULA")**

- a. Section 2.3. Section 2.3 of the EULA shall be deleted in its entirety and replace with the following:

Functionality. You acknowledge that use of the Software may result in your collection of information obtained from third parties, that such third party information is not under the control of Magnet Forensics, and Magnet Forensics is not responsible or in any way liable for the performance and non-performance of the Software to collect 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. Magnet Forensics has no special relationship with or fiduciary duty to you, and 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 information and material you access through the Software; (b) how you may interpret or use the information and materials accessed through the Software; or (c) what actions you may take as a result of having been exposed to information and materials obtained through the Software.

- b. Section 9. Section 9 of the EULA shall be deleted in its entirety.

- c. Section 12.2. Section 12.2 of the EULA shall be deleted in its entirety and replace with the following:

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 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.

- d. Section 16.2. (a) Section 16.2.(a) of the EULA shall be deleted in its entirety and replace with the following:

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 the State of New Jersey, U.S., 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.



AGREEMENT TO AMEND THE END USER LICENSE AGREEMENT

2. Training Course Registration Terms and Conditions ("Training Terms")

a. Section 12.2. Section 12.2 of the Training Terms is deleted in its entirety and replaced with the following:

12.2 in U.S., then the following amendments apply to this Agreement:

12.2.1. The first sentence of Section 9 is deleted in its entirety and replaced with the following:

9. Governing Law. These terms and conditions, its subject matter, and its formation (and any noncontractual disputes or claims) are governed by and construed under the laws of the State of New Jersey, U.S. ...

3. The foregoing amendment(s) to the Magnet Contracts shall be applicable only to: (a) the Products, and (b) the products and transactions set forth in any other purchase orders or quotations that specifically reference this Amending Agreement as being applicable and that are expressly accepted in writing by both Gloucester and Magnet Forensics. For greater certainty, the foregoing shall not require Magnet Forensics to reference this Amending Agreement in any future quotations to Gloucester, nor to accept the applicability of this Amending Agreement to any future purchase order or like document offered by Gloucester.

4. Except as expressly modified by this Amending Agreement, all terms and conditions of the Magnet Contracts shall continue in full force and effect and are hereby incorporated herein by this reference. To the extent of any conflict between this Amending Agreement and the Magnet Contracts, the terms and conditions of this Amending Agreement shall prevail. Neither this Amending Agreement nor the Magnet Contracts may be altered, amended, or modified except by a written instrument signed by the duly authorized representatives of both parties.

5. This Amending Agreement may be signed in two or more identical counterparts each of which will be deemed to be an original and all of which together will constitute one and the same instrument. Signing of this Amending Agreement and transmission as an attachment by email shall be acceptable and binding upon the parties hereto.

The parties executed this Amending Agreement on the date(s) set out below. Each party represents and warrants that its respective signatory is duly authorized to execute this Amending Agreement on its behalf.

MAGNET FORENSICS USA, INC.

COUNTY OF GLOUCESTER

Per: Adam Belsher
Name: ADAM BELSHER
Title: CEO
Date: April 11, 2018

Per: Peter Mercanti
Name: PETER MERCANTI
Title: Purchasing Director
Date: 4-13-18

Reviewed by Legal
Chris Runstedler