

1. Application

- 1.1 These Terms and Conditions apply to the provision of all data recovery services to be supplied by the Provider to the Customer for the purposes of the Customer's business.
- 1.2 If there is any conflict between these Terms and Conditions and the ¹Data Processing Agreement, the Data Processing Agreement shall prevail.
- 1.3 Save and except as otherwise expressly agreed by the Provider, these Terms and Conditions shall prevail unless expressly otherwise agreed by the Provider.

2. Definitions and Interpretation

- 2.1 In these Terms and Conditions, the following expressions shall have the following meanings:

"Agreement"

the Agreement between the parties, comprising the Terms and Conditions and one or more Schedules, under which the Provider agrees to provide the Services to the Customer.

"Business Day"

any day other than Saturday and Sunday) on which the Provider's offices are open for normal business in the United Kingdom.

"Commencement Date"

the date on which the Agreement is entered into, or such other date as may be agreed in writing between the parties.

"Confidential Information"

any information received or provided by the Customer to the Provider which is proprietary or confidential of the Customer, including Customer's Data contained in any documents, data, software, or other information of that Data as is recovered or restored (whether or not in whole or in part), but not including information which is publicly known other than through the receiving or obtaining Party; b) information received or obtained by the receiving or obtaining Party's lawful disclosure; c) is lawfully disclosed to the receiving or obtaining Party by a third party without the knowledge of the receiving or obtaining Party; d) is independently developed by the receiving or obtaining Party, which independent development is known by written evidence; or e) is required to be disclosed by law, by any court of law, or by any regulatory or governmental authority.

"Customer"

the company or other organisation which enters into the Agreement with the Provider in the Agreement;

¹ Where the Customer is to transfer any "personal data" to the Provider (as both expressions are defined in the Data Protection Act 1998), the Customer (as both expressions are defined in the Data Protection Act 1998) requires them to have first entered into an agreement with the Provider for the purposes of the Data Protection Act 1998.

who will then carry out "processing" for the purposes of the Data Protection Act 1998 (as defined in the Data Protection Act 1998), the Data Protection Legislation requires the Customer to enter into a data processing agreement for that purpose.

“Data”

**“Data Protection
Legislation”**

“Fees”

“Force Majeure”

“Intellectual Property”

“Media”

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electronic form of any description of data as defined by the Data Protection Act 1998 and any computer program, and means data obtained from the Customer [or converted] for it by the Provider but it belongs to the Customer

legislation in force from time to time and applicable to data protection and not limited to, the UK GDPR (the Regulation of the General Data Protection Act 1998 (679), as it forms part of the law of England, Scotland, and Northern Ireland by the European Union (Withdrawal) Act 2018 (and regulations made under the Privacy and Electronic Communications Regulations 2003 as amended

fee and any and all other sums payable by the Customer to the Provider arising out of the Provider's obligations under the

circumstance, or cause beyond the control of the Party whose obligations are affected, event, circumstance, or cause including but not limited to, war, pestilence, rebellion, riot, strike, lock-out or other industrial action (whether involving the workforce of the Party or not), failure of a utility service or communications network, act of God, civil unrest, acts of terrorism, malicious interference with any law, rule or regulation, fire, flood, accident, breakdown of equipment, unavailability of hardware or software, failure of power supply, power failure, fire, flood, storms, and default of suppliers or sub-

registered or unregistered intellectual property rights now or in the future may subsist in the Customer's work but not limited to patents, trade marks, designs, trade secrets, business names, copyrights, database rights, know-how, and inventions, and the right to sue for infringement of any of the foregoing rights;

provided by the Customer to the Provider for the purposes described in the Agreement and including but not limited to, hard disc drives, flash drives or magnetic media;

“Provider”

“Services”

“Service Fee”

“Working Hours”

- 2.2 Unless the context or otherwise requires otherwise, each reference in these Terms and Conditions to:
- 2.2.1 “writing”, and any other electronic transmission or communication, includes a reference to any communication in writing or by other electronic transmission or communication;
 - 2.2.2 a statute or regulation, is a reference to that statute or regulation in force at the relevant time;
 - 2.2.3 “these Terms and Conditions”, is a reference to these Terms and Conditions as amended at the relevant time;
 - 2.2.4 “the Agreement”, is a reference to these Terms and Conditions, any schedule, purchase order, order form or other document forming part of the Agreement;
 - 2.2.5 a Schedule is a reference to the relevant Schedule to the Agreement;
 - 2.2.6 a Clause is a reference to the relevant Clause of these Terms and Conditions;
 - 2.2.7 a “Party” or “Parties” means the parties to the Agreement, and where more than one person or more persons such expression shall include two or more persons and each of them and the part of such a Party shall be deemed to be the part of such a Party and several persons.
- 2.3 The headings used in these Terms and Conditions shall have no effect on the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

3. Provider’s Obligations

- 3.1 With effect from the date of the Fees being paid, the Provider shall, in consideration of the Fees being paid, in accordance with the terms of payment in these Terms and Conditions, provide the Services as described in the following Clause 3.
- 3.2 The Provider will use its best skill in performing the Services.

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- 3.4.2 Report the
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- 3.4.3 Retrieve an
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- 3.4.4 Carry out an
assistance)
- 3.5 Upon receipt of
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period, if any, set o
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- 3.6 If the Customer
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or destroy any copy
- 3.7 The Provider shall a
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- 3.7.2 in accordanc
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- 3.7.3 store all suc
- ally] followed by other commercial
& Wales.
- technology, standard processes,
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the Agreement:
- determine the probability of the
luate and identify the Data on the
ge to Data on the Media [and] the
ny, likely to be recoverable and
[such] Data can be converted]
- ner [(including details of any third
Media that the Provider advises is
as described in Clause 3.4.3)];
- onstruct and/or provide access to
nt of recoverable Data and return
[in encrypted form], and where it
e Customer, it will supply it to the
Recovery"); and
- s (e.g. render any technical agreed
- Customer, the Provider shall
out the Services not later than
[hours during Working Hours]
r to] complete the Services on
ner within <<insert number>> of
rs] thereafter or within such other
the Parties agree that time will not
pletion of the Services.
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will supply a duplicate copy of that
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er copy of the Customer's Data in
of such a Customer request within
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in the Provider's possession.
- ustomer with respect to such Data
ustomer which is in the Provider's
- ause 9 maintain the confidentiality
ontained in the Media;
- ecure environment;

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- 3.7.4 take appropriate organisational measures against:
 - 3.7.4.1 the processing of all such Data; and
 - 3.7.4.2 the loss or damage of all such Data and

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- 3.8 Whilst the Provider shall take the measures set out in this Clause 3 as further described in the Agreement:
 - 3.8.1 does not warrant that all or any of the Data will be recovered or useable or that the Data described in Clause 3.4 or that it will achieve the purpose for which it was created; and
 - 3.8.2 shall not have any liability or responsibility for those matters which the Customer expressly undertakes to bear the risk or responsibility of under the Agreement.

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- 3.9 If and in so far as the Data is obtained from and/or supplied by the Customer, the Provider shall only process the Data in accordance with the Data Protection Policy and any lawful instructions reasonable from time to time, and on and in accordance with the Processing Agreement which, for the purposes of the Agreement, the Provider and the Customer shall be deemed to have entered into on or before the date of the Agreement.
- 3.10 If there is any conflict between the provisions(s) of the Agreement and the provisions in Clause 3.9 and/or any other provisions on the one hand and the Data Protection Policy on the other, the latter shall prevail.

4. Customer's Obligations

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- 4.1 The Customer warrants to the Provider that:
 - 4.1.1 the Media and Data supplied to the Customer shall be lawfully and properly in the possession of the Customer;
 - 4.1.2 it is lawful and proper for the Customer to supply and disclose that Media and Data to the Provider;
 - 4.1.3 the Customer shall not use the Media and Data for any other purpose to supply that Media and Data to any other person;
 - 4.1.4 the Customer shall not request the Provider to process the Data, request the Provider to access the Data, request the Provider to receive recovered Data;
 - 4.1.5 the Customer shall not supply to the Provider such Data as is prohibited by law or which the Provider may lawfully deal with such personal data in accordance with the Data Protection Legislation;
 - 4.1.6 the Media and Data shall not contain any defamatory, tortious, defamatory, libellous, or otherwise abusive, or privacy rights, or is abusive, or otherwise unlawful in any jurisdiction, or infringe the Intellectual Property or other rights of third parties, or be in breach of any applicable law or regulations.

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² Where the Customer is to transfer any "personal data" to the Provider (as both expressions are defined in the Data Protection Legislation), the Customer (as both expressions are defined in the Data Protection Legislation) requires them to have first entered into an agreement with the Provider who will then carry out "processing" for the purposes of the Data Protection Legislation, the Data Protection Legislation requires them to have first entered into an agreement with the Provider who will then carry out "processing" for the purposes of the Data Protection Legislation.

obscene or threatening, or is

- will maintain and have maintained on Legislation; and
- ment in the course of its business poses of that business.
- plies with the Data Protection
- which the Media forms part, and the Customer, is or may be, aged or destroyed (physically or Provider;
- Services in accordance with the or destruction or corruption of, or Media and other equipment, and the possible backup any Data before
- has from any third parties for the result become void.
- customer's premises to carry out any reasonable precautions to ensure Customer's premises.
- demnify the Provider against and, actions and proceedings, and all (including without limitation legal costs) arise out of or in connection with:
- customer's provision or disclosure of by the Provider of Data provided the recovery or conversion or other Provider, or the provision or disclosure covered or converted Data, or
- mer; or
- y warranty, undertaking or other

Table 1

- in accordance with Clause 6.
- and provides for additional or other recovery, the Service Fee shall cover in addition Data Recovery.
- When the Provider determines that no Data on any Media would not be recoverable or recoverable in part, the Provider shall notify the Customer. If the Service Fee shall then be payable, and if

- already paid the Service Fee, the Service Fee shall be refunded by the Provider.
- 5.4 If, despite the Provider's best efforts, the Customer's Data is not recovered in accordance with the Agreement, it shall be deemed a total loss and the Provider shall not be responsible for the Data. If the Data is recovered, the Provider shall provide the Data to the Customer as it has recovered; if the Data is not recovered, then none of the Service Fee shall be refunded.
- 5.5 If the Provider recovers the Data, the Provider shall provide the Data to the Customer as it has recovered; if the Data is not recovered, then none of the Service Fee shall be refunded.
- 5.5.1 all or a substantial amount of the Data is recovered; or
- 5.5.2 an insubstantial amount of the Data is recovered, and the Customer chooses to receive the Data as it has recovered; or
- 5.6 If the Provider fails to recover the Data, the Provider shall refund all of the Service Fee to the Customer. If the Provider recovers the Data, the Provider shall provide the Data to the Customer as it has recovered; if the Data is not recovered, then none of the Service Fee shall be refunded.
- 5.6.1 the Provider recovers a substantial amount of the Data, and the Customer agrees to attempt to recover a substantial amount of the Data at a cost to the Customer; or
- 5.6.2 the Provider recovers an insubstantial amount of the Data, and the Customer agrees to attempt to recover a substantial amount of the Data at a cost to the Customer; or
- 5.7 The Provider shall be responsible for all expenses including travel, lodging, and meals for the Provider and the Customer's representative at the Customer's premises and at the Provider's premises, and for third party clearing and recovery of the Media [..] [provided that the type and amount of such cost shall be agreed to by the Customer before the Provider incurs the cost].
- 5.8 The Provider may need to use additional [off-the shelf] media, such as hard disc drives, or adapt the Customer, together with the Provider from a third party, to recover the particular cost of the Data.
- 5.9 The Customer shall be responsible for any additional services provided by the Provider that are not included in the Agreement in accordance with the Agreement in effect at the time of the Agreement. Any such charge for additional services shall be paid by the Customer from the Service Fee.

- 5.10 All sums payable by the Customer to the Provider in connection with the Agreement are exclusive of any value added or other taxes. The Customer and the Provider shall be additionally liable.
- 6. Payment**
- 6.1 Unless otherwise agreed, the Service Fee shall be payable upon completion of Data Recovery and the return of the Media and the Data recovered [and the Media converted].
- 6.2 The Service Fee and the Service Charge shall be required to be made pursuant to the Agreement by either Party within <<insert number>> Business Days of the date of completion of the Service without any set-off, withholding or deduction except as may be required by law or tax as that Party is required to observe.
- 6.3 Payment shall be [by cheque][or][bank transfer][or][credit card][or][debit card][or][cash].
- 6.4 The time of payment shall be as specified in the Agreement of these terms and conditions. If the Customer fails to pay the Service Fee on the due date in respect of any Service, the Provider shall have the right to refuse to return Media and Data to the Customer until payment has been made within 60 Business Days of the due date. If payment is not made within 60 Business Days without liability delete/destroy the Media and Data thereafter unless in the interim the Customer has received the Media and Data received; and
- 6.4.1 the Provider shall have the right to demand on the overdue amount at the rate of [Full Name Of Bank]'s base rate of interest per annum to accrue on a daily basis from the due date until the amount is paid in full or after judgment of the court. The Customer shall pay the interest together with the overdue amount.
- 6.4.2 the Customer shall be deemed to have agreed to pay the interest on the overdue amount at the rate of [Full Name Of Bank]'s base rate of interest per annum to accrue on a daily basis from the due date until the amount is paid in full or after judgment of the court. The Customer shall pay the interest together with the overdue amount.
- 7. Termination**
- The Provider may terminate the Agreement if:
- 7.1 the Customer is in breach of the terms and conditions hereunder;
- 7.2 the Customer has been declared insolvent (other than for the purposes of a bona fide amalgamation or reconstruction), whether compulsory or voluntarily, or has an administrator, receiver, liquidator or trustee appointed over all or a substantial part of its assets;
- 7.3 the Customer has been declared unable to pay its debts by virtue of the Insolvency Act 1986;
- 7.4 the Customer ceases to carry on business; or
- 7.5 despite any extension of time, the Provider concludes that the occurrence of Force Majeure affects the ability of the Customer to carry out or complete the Services before or after the end of the extension period.
- 8. Liability**
- 8.1 The Provider does not accept responsibility or liability for, or damage to, or destruction of, the Media and Data recovered.

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Customer's Data or in respect of, Data acknowledged by the Provider or invalidation of any warranties of the equipment of the Customer (as set out in Clause 3) either:

8.1.1 prior to Provision of the Services; or

8.1.2 in the course of providing the Services where such damage, destruction or invalidation arises from the Provider failing to comply with its obligations under Clause 3 of the Agreement.

8.2 The Customer acknowledges that the Service Fee takes fully into account the limits of the Provider's financial liability (set out below) for the Services, the Customer's liability for the Services, and for anything else in connection with the Services.

8.3 Nothing in the Agreement shall limit the liability of the Provider for:

8.3.1 death or personal injury caused by the Provider's negligence; or

8.3.2 direct damage caused either by any breach of the Agreement by the Provider limited to £[500,000] for any one event.

8.3.3 fraud or fraudulent misrepresentation.

8.4 Subject to clause 8.3, the Provider excludes all liability, whether in contract, tort (including breach of statutory duty), or for negligent or innocent misrepresentation, or otherwise, for:

8.4.1 loss of business, anticipated savings, or business interruption, consequential loss, damage, cost or expense, if it is direct, special, or indirect or

8.4.2 any other special, consequential loss, damage, cost or expense.

8.4.3 loss or corruption of Data for any one event or series of events, such as the loss of Data, <<the total amount paid or payable by the Customer for the Services>> <<[1.5 times the total amount paid or payable by the Customer for the Services]>> or the loss of the Services.

8.5 Subject to clause 8.3, the Provider's liability for breach of the Agreement or tort (including negligent or innocent misrepresentation) shall be limited in aggregate to <<[2][2.5][3] times>> the total amount paid or payable by the Customer for the Services by the Customer.

8.6 The limitations and exclusions in Clause 8 are cumulative.

9. Confidentiality

9.1 During the term of the Agreement for any period of <<insert period>> starting on <<date>>], the following provisions shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').

9.2 Subject to sub-Clause 9.1, the Disclosing Party:

- 9.2.1 may not use the information for any purpose other than the performance of the Agreement;
- 9.2.2 may not disclose the information to any person except the Disclosing Party; and
- 9.2.3 shall make no attempt to prevent the use or disclosure of the Confidential Information.
- 9.3 The obligations of confidentiality under the provisions of this Clause shall not apply to any Confidential Information which:
- 9.3.1 is in the public domain prior to the disclosure by the Receiving Party or is in the public domain before its receipt by the Receiving Party;
- 9.3.2 is or becomes publicly known through no fault of the Receiving Party;
- 9.3.3 is required to be disclosed by applicable law or regulation;
- 9.3.4 is received in confidence by the Receiving Party from a third party who, at the time of disclosure, does not claim to have no obligation of confidence upon the Receiving Party.
- 9.4 Without prejudice to the remedies the Disclosing Party may have, the Receiving Party agrees that, in the event of breach of this clause by the Receiving Party, the Disclosing Party shall, without proof of special damage, be entitled to recover such sums as may be threatened or actual damages or other remedies of this clause in addition to any remedies to which it may be entitled.
- 9.5 Without prejudice to the remedies the Provider may have, where any of the Data or other Material on the Media received by it from the Customer falls within the scope of Clause 4.1.5, or the Provider has reasonable grounds to believe that the Customer is in breach of Clause 4.1.5, or that the Customer may be the case and that as a result the Provider has reasonable grounds to believe that it (or any copies of it) to and disclose it to the police, any other relevant authority, or any other person whose Intellectual Property may be infringed, or that it is in the interests of protection of the Provider to so disclose it and the Provider is entitled to do so;
- 9.6 The obligations of confidentiality under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.
- 10. Sub-Contracting and Assignment**
- 10.1 The Agreement is personal to it, and it agrees not to assign, sub-contract, or otherwise dispose of the Services, or except for the purposes of the Agreement, make any commercial use of the Services.
- 10.2 The Customer's request for the Services shall be made available to a third party all or any part of the Services.
- 10.3 The Provider may charge (otherwise than by floating charge) or sub-license any of its rights under the Agreement.

Agreement, or sub-
the Agreement [with
to be unreasonably

delegate any of its obligations under
of the Provider, such consent not

11. Force Majeure

Neither Party shall be liable
such failure or delay results
Majeure occurs, the affected
for performing those obliga

in performing its obligations where
subject to Clause 7.5, where Force
to a reasonable extension of time

12. Waiver

12.1 No failure or delay
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will be deemed to b

s rights will prejudice or restrict its
y breach of any contractual terms
ght or of any later breach.

12.2 A waiver of any t
effective only if give
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y the waiving Party and then only
any waiver is given.

13. Severance

In the event that one or
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be valid and enforceable.

of the Agreement is found to be
those provision(s) shall be deemed
remainder of the Agreement shall

14. Third Party Rights

No part of the Agreement
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Agreement.

rights on any third parties and
) Act 1999 shall not apply to the

15. No Partnership or Agency

Nothing in the Agreement
joint venture, agency, or c
the contractual relationship

deemed to constitute a partnership,
p between the Parties other than
n the Agreement.

16. Notices

16.1 All notices under th
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16.2 Notices shall be de

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return receipt

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In each case notice
address notified to

the most recent address or e-mail

17. Entire Agreement

17.1 The Agreement con
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ent and understanding between the
ement between them with respect
modified except by an instrument in
entatives of the Parties.

17.2 Each Party acknow
any representation,
or negligently) exce
or given fraudulently

ne Agreement, it does not rely on
other provision (made innocently
in this Agreement except if made

17.3 Except as express
provided under the
rights or remedies p

reement, the rights and remedies
tion to, and not exclusive of, any

17.4 Except as express
warranties or guar
Services, and all s
conditions, undertak
by statute, common
hereby excluded f
applicable law.

reement, the Provider gives no
representations concerning the
ees and representations, and all
ny other terms whatsoever implied
urse of dealing or otherwise, are
the fullest extent permitted by

18. Law and Jurisdiction

18.1 The Agreement (inc
therefrom or assoc
accordance with, th

ual matters and obligations arising
e governed by, and construed in
ales.

18.2 Any dispute, contro
this Agreement (inc
therefrom or associ
of England and Wal

aim between the parties relating to
ual matters and obligations arising
within the jurisdiction of the courts