

Terms & Conditions

1. Interpretation

The following definitions shall apply:

- **"Conditions"** these terms and conditions as amended from time to time in accordance with clause 14.5.
- **"Confidential Information"** means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing and whether disclosed before or after the date of the Order, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Contract or the applicable Order (including pricing), the Services, business and marketing plans, technology and technical information, product designs, and business processes. Each party shall keep confidential and use any such Confidential Information only to the extent required for the purposes of this Contract and to impose similar obligations to persons who have a right and need to know such Confidential Information (e.g., Authorized Users).
- **"Contract"** the contract between the Supplier and the Customer for the supply of Services to include these Conditions, the Order, and any Specific Terms. If there is inconsistency the order of precedence shall be: Order, Specific Terms, these Conditions.
- **"Control"** shall be as defined in section 1124 of the Corporation Tax Act 2010.
- **"Customer"** means the entity identified in the SOW, or Order, as the party to receive the Services.
- **"Fees"** the charges payable by the Customer for the supply of the Services in accordance with clause 6.
- **"Force Majeure Event"** means any circumstance not within a Party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; and interruption or failure of utility service.
- **"Intellectual Property Rights"** all intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- **"Order"** the Customer's order for Services as set out in the Customer's purchase order form to include, where relevant, the Statement of Work.
- **"Privacy and Data Protection Regulations"** means the UK GDPR (defined below), Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
- **"Processor"** has the meaning set out in the UK GDPR.
- **"Services"** the services supplied by the Supplier to the Customer as set out in the Order.

- **"SOW" or "Statement of Work"** the Statement of Work, where applicable, setting out the detailed requirements for the Services and forming part of the Order.
- **"Specific Terms"** any specific terms relevant to the Services as set out in the Order.
- **"Supplier"** Restore Digital Limited registered in England and Wales with company number 04624743, and trading under the name of Restore Digital.
- **"UK GDPR"** has the meaning given to it in section 3(1) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted.
- 1.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.
- 1.3 A reference to writing or written includes email which in the case of Restore Digital must be sent to commercial@restorescan.co.uk (or as otherwise notified by Restore Digital in writing)

2. Basis of Contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence ("Effective Date").
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer or Supplier seek to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 2.4 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 business days from its date of issue.

3. Term

- 3.1 The term of this Contract will be (subject to earlier termination in accordance with its terms) for an initial term of not less than [12 months] from the Effective Date (the "Initial Term") and will continue thereafter (subject to earlier termination in accordance with its terms) for further consecutive extensions of [12] months (each a "Renewal Term") unless and until Customer provides written notice to terminate to commercial@restoredigital.co.uk. Such notice shall be served no earlier than 3 months prior to the expiry of the Initial term or the then applicable Renewal term.

4. Supply of Services

The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

- 4.1 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

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4.2 The Supplier reserves the right to amend the Statement of Work, if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.

4.3 The Supplier warrants to the Customer the Services will be provided using reasonable care and skill and will conform with applicable law (including without limitation the Bribery Act 2010, the Modern Slavery Act 2015, and sections 45 and 46 of the Criminal Finances Act 2017).

4.4 The arrangement is not exclusive, and the Customer is free to appoint a third party to conduct the Services or similar services.

4.5 If set out in the Order, the Services may be provided by the Supplier or an affiliate under common Control with the Supplier. The Services will be provided to the Customer and, to the extent listed in the Order, to any affiliates under common Control with the Customer, provided the Customer remains at all times responsible for the performance of its obligations under this Contract and for any acts or omissions of those affiliates.

5. Customer's Obligation

5.1 The Customer shall:

5.1.1 ensure the terms of the Order and any information it provides in the Statement of Work are materially complete and accurate. If not, the Supplier may amend the Fees and the terms of the Order, provided that should the Customer disagree with the changed Fees or terms, the Customer may terminate the Order by written notice;

5.1.2 co-operate with the Supplier in all matters relating to the Services;

5.1.3 provide the Supplier, its employees, agents, consultants, and subcontractors, with timely access at no charge to the Customer's premises, parking, systems, office accommodation and other facilities as reasonably required by the Supplier;

5.1.4 provide the Supplier with such complete and accurate information and materials as the Supplier may reasonably require to supply the Services;

5.1.5 obtain and maintain all necessary licenses, permissions, and consents (if any) which may be required for the Services; and

5.1.6 comply with all applicable laws.

5.2 If the Supplier's performance under the Contract is prevented or delayed by any act or omission by the Customer, its agents, subcontractors, consultants, or employees (the "Customer Default") then (a) without limiting any other right or remedy, the Supplier may suspend performance of the Services until the Customer remedies such default, (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay in performing any of its obligations, and (c) the Customer shall reimburse the Supplier on written demand for any costs or losses incurred by the Supplier arising directly or indirectly from the Customer Default.

5.3 If any materials required for the Services are supplied by the Customer in boxes not fit for purpose, the Supplier will be entitled to re-box into an appropriate archive container at a cost of £7.50 per box.

5.4 If the Customer fails to provide an electronic manifest for the contents of boxes sent for scanning that can be used to reconcile against physical files, the Supplier cannot be held responsible for queries resulting from files not present in scanned output.

5.5 Authorisation for the use of Services is limited to those individuals who are employed or otherwise working for or with the Customer or any affiliate under common Control with the Customer. Any use by third parties, including but not limited to users employed by or working for companies that are affiliated with the Customer (and are not under common Control with the Customer), shall require a prior express written agreement with the Supplier.

6. Fees and Payment

6.1 The Fees for the Services shall be as agreed in the Order.

6.2 The Supplier may increase the Fees on an annual basis with effect from each anniversary of the Effective Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Effective Date.

6.3 If the cost of performing the services increases due to any reason outside the control of the Supplier including the National Living Wage, then the Supplier may increase the Fees reasonably to reflect the Suppliers additional costs.

6.4 The Customer shall pay each invoice submitted by the Supplier within 30 days of the date of the invoice in full and cleared funds to a UK bank account nominated in writing by the Supplier. Time is of the essence in the performance of the obligations in this clause.

6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time and the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT.

6.6 If the Customer fails to make a payment by the due date, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, at 4% a year above the Barclays Banks base rate from time to time.

6.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

6.8 The quotation is offered in good faith based on the volume and metrics provided by the Customer. Should any deviation in these volumes and/or metrics following scanning result in a lower sum than quoted the Supplier reserves the right to charge a minimum value equal to at least 75% of the original agreed quotation.

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- 6.9 The Supplier reserves the right to charge for digital or physical storage for any work completed for the Customer, in good faith, which cannot be returned, or destroyed, due to delays attributable to the Customer. Charges will be invoiced monthly in arrears, according to the following table:

Storage Type	Cost per month (30-120 days)	Cost per month (120 days+)
Physical	£0.50 per box*	£1.00 per box *
Digital	£0.50 per 1000 images	£0.50 per 1000 images

*Standard Restore 1.4cu ft box or equivalent.
If longer term storage (physical / digital) is required, alternative options will be agreed in writing.

- 6.10 The Supplier reserves the right to charge for physical storage at the rates in 6.9 above for any work collected from the Customer in good faith, which cannot be processed due to delays attributable to the Customer e.g. awaiting receipt of a signed Statement of Work (SoW).

7. Intellectual Property Rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer and any electronic scans or copies thereof which shall belong to the Customer) shall be owned by the Supplier unless otherwise agreed in the Order.
- 7.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract solely for the purposes of providing the Services to the Customer, in accordance with the signed Statement of Work (SoW).

8. Data Protection

- 8.1 Each party undertakes that it shall comply (and shall require that its Staff comply) with the Privacy and Data Protection Regulations. The parties hereby agree to enter into a separate Data Processing Agreement in line with UK GDPR submitted by the Data Controller which sets out in more detail their rights and obligations of the Data Processor in relation to processing Personal Data (the "Data Processing Agreement").
- 8.2 The terms "Data Controller", "Data Processor", "Personal Data" and "Data Processing Agreement" will be given the meaning ascribed to them in the UK GDPR.
- 8.3 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 8.4 The Supplier warrants that, having regard to the state of technological development and the costs of implementing any measures, it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data.

- 8.5 As the Supplier will act as Processor the Customer acknowledges the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a data subject arising from any action or omission by the Supplier, to the extent such action or omission resulted directly from the Customer's instructions.

- 8.6 The Supplier may not authorise a third party to process the Personal Data without the Customer's written consent.

9. Confidentiality

- 9.1 As used herein, Confidential Information does not include information which (and only to the extent that) the Receiving Party can establish through documentary evidence such information:
- 9.1.1 was rightfully received without restrictions from third parties who owe no obligations of confidentiality to the Disclosing Party with respect to such information;
 - 9.1.2 was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
 - 9.1.3 was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or
 - 9.1.4 was already publicly known at the time of disclosure or subsequently becomes publicly known through no breach by the Receiving Party of its obligations under this clause.
- 9.2 Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).
- 9.3 If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 9.4 If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

10. Limitation of Liability

- 10.1 Nothing in the Contract shall limit or exclude a party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors or any liability that cannot be excluded by law.

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10.2 Subject to clause 10.1, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of damage to goodwill; and any indirect or consequential loss.

10.3 Subject to clauses 10.1 and 10.2 each party's total liability to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the average annual Fees paid by the Customer under the Contract

10.4 This clause 10 shall survive termination of the Contract.

10.5 During this Contract the Supplier shall maintain in force insurance policies with reputable insurance companies, against the types of risks that would normally be insured against by a prudent businessperson in connection with the risks associated with this Contract and produce to the Customer on demand full particulars of that insurance.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

11.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

11.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to continue all or a substantial part of its business; or

11.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract is in jeopardy.

11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any undisputed amount due under the Contract on the due date for payment (provided that the Supplier shall give the Customer no less than fourteen days' notice in writing of its intention to exercise this right, and such right shall lapse should the Customer pay the undisputed amount during the period of notice) .

11.3 On termination of the Contract the Customer shall pay to the Supplier all the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, all such invoices shall be payable by the Customer in accordance with clause 6.

11.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. Force Majeure

12.1 Provided it has complied with clause 12.2, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

12.2 The Affected Party shall:

12.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Contract; and

12.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.3 If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the Party not affected by the Force Majeure Event may terminate this Contract by giving 14 days' written notice to the Affected Party.

13. EXIT

13.1 The following provisions shall apply on termination or expiry of the Contract for any reason.

13.2 In the event costs and liability for the use of 3rd party software, application, hardware, or license required for the delivery of Services to the Customer extend beyond the termination date the Customer shall be responsible for the respective charges associated with said use until liability has been discharged.

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13.3 The Customer shall be responsible for the reasonable costs of the Supplier implementing the Exit Plan. To the extent the Supplier allocates additional resources over and above the resources already allocated to provide the Services on an ongoing basis as is reasonably necessary for the purpose of implementing the Exit Plan, the Customer shall contribute an amount of £1050 per day for each Supplier employee the Supplier allocates ("Exit Fees") together with payment for materials used (all of which Exit Fees and costs must be pre-approved by the Customer, in writing, approval not to be unreasonably withheld).

13.4 If at the end of the notice period full payment for additional resources required has not been made, return of any physical and electronic items to the Customer may be withheld until all undisputed outstanding charges are paid.

14. General

14.1 Neither party may assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all its rights and obligations under the Contract without the other party's prior written consent, save that either party may assign the contract in whole to an affiliate under common Control with that party.

14.2 Unless agreed in writing by authorised representatives of each party, this Contract constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

14.3 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties.

14.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

14.5 If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable.

14.6 Any notice given to a party under or in connection with the Contract shall be in writing and delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business or to such email address notified by the other party. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.7 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999, save that affiliates of the Customer under common Control with it shall have the right to enforce the terms of the Contract against the Supplier.

14.8 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14.9 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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