



THE CONDITIONS

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1

Definitions:

Applicable Data Protection

means:

Laws

- (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and
- (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Restore is subject, which relates to the protection of personal data.

Applicable Laws

all applicable laws, statutes, regulation from time to time in force.

Available Services

the services provided by Restore from time to time, including but not limited to relocation, re-imaging, sanitisation and destruction of IT equipment and associated peripherals and components, further details of which are available on request.

BIOS Password

the authentication information that is required to log into a computer's basic input/output system settings before the computer boots up.

Business Day

a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours

the period from 9.00 am to 5.00 pm on any Business Day.

Buyback

the fee in respect of each item of Buyback Equipment, which is based on the fixed price per grade for the applicable asset type, as set out in the Service Document and per grade agreed with the Customer in accordance with clause 6.3;

Buyback Equipment

means any Service Equipment, or categories thereof, identified in the Service Document for which a Buyback may become payable to the Customer in accordance with clause 6.3.

Charges

the sums payable for the Services as set out in the Service Document.

Collection

an event in which Restore collects Service Equipment or Scrap Material from the Customer's site or other designated location (which shall be deemed to have occurred when such items or materials has been loaded into Restore's vehicle), and **Collects** shall be construed accordingly.

Commencement Date

has the meaning given in clause 2.1.

Conditions

these terms and conditions as amended from time to time in accordance with clause 13.5.

Contract

the contract between Restore and the Customer for the supply of Services in accordance with the Service Document and these Conditions.

Control

has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

Customer

the person or firm who purchases Services from Restore as identified in the Contract.

Customer Default

has the meaning set out in clause 4.2.

Customer Equipment

means any Service Equipment, or category thereof, identified in the Service Documentation, which remains the property of the Customer after processing and is to be returned or made available to the Customer after processing in accordance with the instructions in the Service Documentation.

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Customer Materials	any documents, information, items and materials in any form, whether owned by the Customer or a third party, excluding the Service Equipment, which are provided by the Customer to Restore in connection with the Services, pursuant to clause 4.1.3.
Customer Personal Data	any personal data which Restore processes in connection with the Contract on behalf of the Customer as controller.
Data Processing Annex	the Annex to the contract which sets out scope, nature and purpose of processing by Restore, the duration of the processing and the types of personal data and categories of data subject.
Deliverables	an output of the Services to be provided by Restore to the Customer and identified as a Deliverable in the Service Document.
Drive Password	the authentication information that is required to access the information stored in an internal or external hard drive.
EU GDPR	means the General Data Protection Regulation ((EU 2016/679), as it has effect in EU law.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other 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, and rights to claim priority from, 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.
Quotation	the document describing the Service(s) to be provided by Restore and setting out the applicable charges, which is subject to these Conditions.
Rebate	the rebate available to the Customer for the sale of any Rebate Equipment as identified in the Service Document.
Rebate Equipment	means any Service Equipment, or categories thereof, identified in the Service Document for which a Rebate may become payable to the Customer in accordance with clause 6.2.
Rebate Pricing Matrix	the pricing matrix, as may be updated from time to time and notified to the Customer, setting out the rebate available (if applicable) to the Customer in respect of any sold Rebate Equipment.
Reference Charges	the standard charges for the Available Services or the framework for calculating them which is available on request.
Restore	Restore Technology Limited registered in England and Wales with company number 04200502 whose registered office is at Cardington Point, Telford Way, Bedford, MK42 0PQ.
Scrap Material	means all materials and component parts of Service Equipment (excluding Buyback Equipment, Customer Equipment and Rebate Equipment), and any other materials or component parts arising from or connected to the Services which Restore either Collects for disposition or which arises from the scrapping or destruction of any Rebate Equipment (in accordance with clause 6.2.2(b)) or Buyback Equipment or Customer Equipment (as may be requested from time to time).
Service Date	a date on which Restore is due to attend a Customer site (or such other location as may be designated from time to time by the Customer) to perform a Service, including but not limited to a Collection.



Service Document	means the Quotation, unless superseded by a fully signed Statement of Work, in which case the Service Document means the Statement of Work.
Service Equipment	the computer hardware and other IT equipment, including but not limited to computers, laptops, phones, hard drives, monitors, servers, routers, printers and other associated peripherals and components which Restore shall process (as detailed in the Service Document) as part of the provision of the Services
Services	those Available Services which are provided by Restore as set out in the Service Document.
Statement of Work	a detailed written plan, describing the Service(s) to be provided by Restore, the charges for each Service and, where applicable, the timetable for their performance which, when signed by both Restore and Customer, supersedes the terms of the Quotation.
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
VAT	value added tax chargeable in the UK.

1.2 Interpretation:

- 1.2.1 Unless the context requires otherwise, a reference to any legislation or legislative provision includes:
 - (a) such legislation or legislative provision as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment made after the date of the Contract shall apply for the purposes of the Contract to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party; and
 - (b) all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 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.
- 1.2.3 A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1 Any Quotation given by Restore is only valid for a period of 20 (twenty) Business Days from its date of issue and Restore reserves the right to withdraw a Quotation at any time before acceptance.
- 2.2 The Contract consists of these Conditions and the Service Document, which shall be the Quotation, except where a Statement of Work is signed by both Restore and Customer in which event the Statement of Work will replace and supersede the terms of the Quotation on such date.
- 2.3 The Contract shall commence on the earlier of the Customer's acceptance of the Quotation (in accordance with clause 2.4) or the signing of the Statement of Work by both Restore and Customer (**Commencement Date**).
- 2.4 Acceptance of the Quotation shall be deemed to have occurred on the date the Customer signs and returns the Quotation, or if the Customer does not sign the quotation, the earlier of the date on which the Customer confirms acceptance of the quotation in writing (including over email) or the date on which Restore performs any part of the Services.
- 2.5 The Contract shall expire, unless terminated earlier in accordance with clause 11 (Termination) or further extended by agreement between the parties, on the expiry date set out in the Service Document.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by Restore, and any descriptions or illustrations contained in Restore's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

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- 2.8 If there is an inconsistency between the provisions of the Service Document and the Conditions, the provisions of these Conditions shall prevail unless the conflicting clause in these Conditions is expressly identified and stated to be replaced or amended in the Service Document.

3. SUPPLY OF SERVICES

- 3.1 Restore shall use reasonable endeavours to provide the Services, and deliver the Deliverables to the Customer, in accordance with the Service Document in all material respects.
- 3.2 Restore shall use all reasonable endeavours to meet any performance dates specified in the Service Document, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Restore reserves the right to amend the Service Document if necessary to comply with any applicable law or regulatory requirement, provided the amendment will not materially affect the nature or quality of the Services, and Restore shall notify the Customer in any such event.
- 3.4 Customer shall appoint a representative in respect of the Services who shall be identified in the Service Document (or as replaced from time to time by notifying Restore in advance in writing). That person shall have authority to contractually bind Customer on all matters relating to the Services.
- 3.5 In performing the Services, Restore will sanitise any data-bearing Service Equipment using the methods specified in the Service Documentation. Where no method is specified, Supplier will have sole discretion to determine the appropriate method for the asset type (which shall be in accordance with good industry practice).
- 3.6 To the extent the Service takes place at the Customer's site (including but not limited to a Collection), Restore shall use reasonable endeavours to observe all health and safety and security requirements that Restore has been informed apply to such site. Restore shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- 4.1.1 co-operate with Restore in all matters relating to the Services;
 - 4.1.2 provide Restore, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities or sites as reasonably required by Restore in connection with the Services in a timely manner and at no charge;
 - 4.1.3 provide to Restore in a timely manner any documents, information, items and materials in any form (whether owned by the Customer or a third party) required under the Service Document or otherwise reasonably required by Restore in connection with the Services and ensure that they are accurate and complete in all material respects;
 - 4.1.4 inform Restore in advance of all health and safety and security requirements that apply at any relevant Customer sites;
 - 4.1.5 prepare the applicable Customer site for the supply of the Services;
 - 4.1.6 ensure that all items Restore is due to process as part of the Services are (unless otherwise agreed in writing in advance with Restore):
 - (a) computer hardware, IT equipment or related peripherals only (any items not fitting this description may be refused for Collection or processing or, if collected, may be returned to the Customer at the cost of an additional transportation charge);
 - (b) uninstalled, switched off and disconnected prior to Restore accessing such items; and
 - (c) in respect of Service Equipment for Collection or destruction on site, are grouped in a single location within the applicable Customer site, with a safe, clear and hazard free access route between the applicable items and Restore's vehicle;
 - 4.1.7 take back-up or duplicate copies of any data held on any data-bearing Service Equipment which the Customer wishes to retain before making such items available to Restore, and the Customer confirms its understanding that, unless otherwise agreed in the Service Document, such data may no longer be visible or recoverable once processed by Restore;
 - 4.1.8 not less than 5 Business Days prior to a Service Date, inform Restore in writing whether:
 - (a) any of the Service Equipment weighs over 25kg (and any such Service Equipment should be clearly identifiable at the point of Service); or

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- (b) any of the Service Equipment are considered to be, or contain, material which is hazardous, toxic or dangerous or regulated under any Applicable Laws or whether the handling, storage or destruction of such Service Equipment and associated materials is otherwise regulated, restricted or prohibited under any Applicable Law;

and shall ensure that no such items identified under (a) or (b) are included in the Service Equipment on the Service Date without Restore's prior written agreement (and the Customer acknowledges that in respect of any Service Equipment that is made available on the Service Date that is not in compliance with this clause, Restore may refuse to accept and/or perform the Services in respect thereof);

- 4.1.9 obtain, maintain and, where applicable, assign all necessary authorisations, licences, permissions and consents which may be required for the Services (including where applicable, the sale of the Rebate Equipment or Buyback Equipment) and shall comply with all Applicable Laws;

- 4.1.10 in respect of all Rebate Equipment, Buyback Equipment and any Customer Equipment that is to be sanitised or re-imaged, ensure the items are fully unlocked by:

- (a) removing BIOS Passwords, Drive Passwords or any firmware passwords;
- (b) de-registered the item from any IT asset management or inventory management software or organisational policy; and
- (c) in respect of Apple Mac equipment, removing such equipment from DEP registers, disabling cloud lock and removing PRAM passwords.

- 4.1.11 pay all invoices to Restore in a timely manner; and

- 4.1.12 comply with any additional obligations as set out in the Service Document.

- 4.2 If Restore's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 4.2.1 without limiting or affecting any other right or remedy available to it, Restore shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Restore's performance of any of its obligations;

- 4.2.2 Restore shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Restore's failure or delay to perform any of its obligations as set out in this clause 4.2; and

- 4.2.3 the Customer shall reimburse Restore on written demand for any costs or losses sustained or incurred by Restore arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 In consideration of the provision of the Services by Restore, the Customer shall pay the Charges.

- 5.2 Unless otherwise agreed in the Service Document, the Charges shall be calculated in accordance with the Reference Charges.

- 5.3 Where the Charges are calculated on a time and materials basis:

- 5.3.1 Restore's daily fee rates are calculated on the basis of an eight-hour day, worked during Business Hours;

- 5.3.2 Restore shall be entitled to charge an overtime rate on the daily fee rate on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours; and

- 5.3.3 Restore shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services and Restore shall indicate the time spent per individual in its invoices.

- 5.4 Where the Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in the Service Document.

- 5.5 The Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

- 5.5.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Restore engages in connection with the Services; and

- 5.5.2 the cost to Restore of any materials or services procured by Restore from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time.

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- 5.6 Unless due to a fault of Restore, if Restore attends the Customer site and is prevented or unable to process the Service Equipment on the Service Date Restore may elect to charge the Customer the cost of the wasted journey, which will be determined on a case-by-case basis in accordance with the applicable Customer site and Restore and Customer will agree an alternative Service Date.
- 5.7 If a Collection or other Service that is due to be performed at a Customer site is cancelled or postponed by the Customer less than four Business Days prior to the Service Date, such cancellation or postponement will be subject to the following charge:
- 5.7.1 100% of the agreed Collection or Service fee for cancellation or postponement requests made less than two Business Days prior to the Service Date;
 - 5.7.2 50% of the agreed Collection or Service fee for cancellation or postponement requests made between two to four Business Days prior to the Service Date; and
 - 5.7.3 no fee will be payable for cancellation or postponement with five or more Business Days' advance notice.
- If no Collection or Service fee has been agreed in advance in respect of the Services being performed on that Service Date, the fee for the purposes of this calculation will be £500.
- 5.8 In respect of Service Equipment that is required to be unlocked prior to Collection in accordance with clause 4.1.10, to the extent the Customer fails to do so, Restore reserves the right to charge an additional processing fee for any items that are determined to be locked or still subject to any IT asset management software on inspection. Restore may charge an additional service fee if the Customer elects for Restore to complete the device unlocking process on behalf of the Customer.
- 5.9 On the first anniversary of the date of this Contract, and thereafter not more than once per calendar year, the Restore may increase the Reference Charges and any Charges not calculated in accordance with the Reference Charges on the provision of 30 days prior written notice.
- 5.10 If the cost of providing the Services materially increases due to circumstances outside of Restore's control (including, but not limited to, a change in law), Restore may request an exceptional in-year increase to the Reference Charges and any Charges not calculated in accordance with the Reference Charges. In such event Restore will give not less than 4 (four) week's written notice setting out its reasons for the proposed exceptional increase. Customer may reject this increase by written notice within 2 weeks of receipt of Restore's request, and the parties shall then work together in good faith to agree reasonable alternative charges.
- 5.11 Restore shall invoice the Customer for the Charges at the intervals specified in the Service Document. If no intervals are so specified, Restore shall invoice the Customer at the end of each month for Services performed during that month.
- 5.12 Unless stated otherwise in the Service Document, the Customer shall pay each invoice submitted by Restore:
- 5.12.1 within 30 days of the date of the invoice (subject to satisfactory credit checks in accordance with clause 5.15); and
 - 5.12.2 in full and in cleared funds to a bank account nominated in writing by Restore from time to time, and timing for payment shall be of the essence under the Contract.
- 5.13 All sums payable to Restore under the Contract:
- 5.13.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - 5.13.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.14 If the Customer fails to make a payment due to Restore under the Contract by the due date, then, without limiting Restore's remedies under clause 11, the Customer shall pay interest on the overdue sum at the relevant reference rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998 and subsequent amendments from the due date until payment of the overdue sum, whether before or after judgment.
- 5.15 If a Customer's credit score is below 70 (or equivalent), or deteriorates during the term of the Contract, Restore reserves the right to reduce the payment terms to an appropriate level subject to advance written notification to the Customer.

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6. REBATES AND BUYBACKS

- 6.1 Restore will Collect and process the Rebate Equipment and Buyback Equipment in accordance with the Service Document (including applying the applicable sanitisation methods identified in the Service Document to the data-bearing components of such equipment).
- 6.2 In respect of Rebate Equipment:
- 6.2.1 once Restore Collects the Rebate Equipment, the Customer shall have no further rights in such equipment;
 - 6.2.2 Restore will grade the Rebate Equipment post-processing, and in accordance with such grade, will:
 - (a) make the Rebate Equipment available for sale; or
 - (b) where such Rebate Equipment is graded 'for disposal', securely destroy the data-bearing components of such Rebate Equipment, and thereafter any remaining components of such Rebate Equipment will be deemed Scrap Material and disposed of accordingly; and
 - 6.2.3 in respect of Rebate Equipment made available for sale under clause 6.2.2(a), Restore shall inform the Customer of each item that has been sold and the Rebate available to the Customer, and once payment for the sale has been received by Restore (or as otherwise agreed in the Service Document), the Customer shall be entitled to invoice Restore for the Rebate.
 - 6.2.4 Rebates shall be calculated by either of the following methods, as identified in the Service Document:
 - (a) as a percentage of the actual remarketing sale price of each item of Rebate Equipment, less any costs and expenses incurred as part of the processing and remarketing. The percentage payable by Restore for each item shall be determined in accordance with the Rebate Pricing Matrix; or
 - (b) as a fixed GBP£ value per item of Rebate Equipment which shall be determined in accordance with the Rebate Pricing Matrix.
- 6.3 In respect of Buyback Equipment:
- 6.3.1 Restore will grade the Buyback Equipment prior to processing in accordance with the methodology detailed in the Service Document and will provide a report detailing the grading and Buyback price to the Customer;
 - 6.3.2 unless otherwise agreed in the Service Document, the Customer must approve such report in writing within two Business Days of receipt of such report;
 - 6.3.3 on approval of the report by the Customer, title in the applicable Buyback Equipment will transfer to Restore and the Customer will be entitled to invoice the Buyback for such Buyback Equipment in accordance with the report;
 - 6.3.4 if the Customer disputes the report and Restore and the Customer are unable to reach an agreement in respect of such Buyback Equipment within 14 days of the initial report, such Buyback Equipment will be delivered to the Customer, or made available for collection, and Restore may be entitled to recover the reasonable costs associated with any interim storage and delivery (if applicable).
- 6.4 The parties agree that Restore's decision as to the grade assigned to the Rebate Equipment or Buyback Equipment for the purposes of determining the value of such Rebate or Buyback shall be final and binding.
- 6.5 When the Customer becomes entitled to receive a Rebate or Buyback, the Customer will issue an invoice to Restore, which will be processed as follows:
- 6.5.1 as a payment, with such payment being made within 30 days of Restore's receipt of such invoice;
 - 6.5.2 as a credit, which will be applied against Charges that are currently due from the Customer or, where agreed, against future Charges incurred by the Customer.
- 6.6 The Customer shall indemnify Restore against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Restore as a result of or in connection with:
- 6.6.1 any claim made against Restore by a third party for death, personal injury or damage to property arising out of or in connection with the Rebate Equipment or Buyback Equipment; and
 - 6.6.2 any other claim made against Restore by a third party arising out of or in connection with the supply, sale or use of the Rebate Equipment or Buyback Equipment, to the extent that such claim arises out of the negligence, breach, or failure or delay in performance of this Contract by or of the Customer, its employees, agents or subcontractors.

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7. INTELLECTUAL PROPERTY RIGHTS

7.1 In relation to the Deliverables:

- 7.1.1 Restore and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- 7.1.2 Restore grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- 7.1.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 7.1.2.

7.2 In relation to the Customer Materials and the Customer Equipment, the Customer:

- 7.2.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials and Customer Equipment; and
- 7.2.2 grants to Restore a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials and or Customer Equipment for the term of the Contract for the purpose of providing the Services to the Customer.

7.3 In relation to the Rebate Equipment or Buyback Equipment, on transfer of the title to Restore, to the extent such right or licence is not automatically transferred with the transfer of title, the Customer shall as soon as practicable take all such steps as are necessary to transfer or perfect the transfer of any right or licence to use the manufacturer-installed operating system and/or core software associated with such Rebate Equipment or Buyback Equipment.

7.4 The Customer:

- 7.4.1 warrants that the receipt and use in the performance of the Contract by Restore, its agents, subcontractors or consultants of the Customer Materials, Customer Equipment, Rebate Equipment and Buyback Equipment shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- 7.4.2 shall indemnify Restore against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by Restore arising out of or in connection with any claim brought against Restore, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of the Contract of the Customer Materials, Customer Equipment, Rebate Equipment and Buyback Equipment;

7.5 Restore shall:

- 7.5.1 notify the Customer in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 7.4.2 (**IPRs Claim**);
- 7.5.2 allow the Customer, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Customer shall obtain Restore's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 7.5.3 provide the Customer with such reasonable assistance regarding the IPRs Claim as is required by the Customer, subject to reimbursement by the Customer of the Indemnified Party's costs so incurred; and
- 7.5.4 not, without prior consultation with the Customer, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Customer considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of Restore into disrepute.

8. DATA PROTECTION

8.1 For the purposes of this clause 8, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

8.2 Restore and Customer agree that, for the purposes of Applicable Data Protection Laws, to the extent processing of data is applicable to the Services personal data shall be processed in accordance with the Data Processing Annex and that the Customer is the data controller and Restore is the processor of any Customer Personal Data. For the avoidance of doubt if Restore does not perform sanitisation services of data-bearing Service

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- Equipment then Restore will not in the ordinary course of the Services access any Customer Personal Data and therefore no processing for the purposes of Applicable Data Protection Laws will be deemed to take place.
- 8.3 Restore and Customer will comply with all applicable requirements of Applicable Data Protection Laws. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 8.4 Without prejudice to the generality of clause 8.3, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of Customer Personal Data to Restore and lawful collection of the same by Restore for the duration and purposes of the Contract.
- 8.5 In relation to the Customer Personal Data, the scope, nature and purpose of processing by Restore, the duration of the processing and the types of personal data and categories of data subject shall be as set out in the Data Processing Annex.
- 8.6 Without prejudice to the generality of clause 8.3, Restore shall, in relation to Customer Personal Data:
- 8.6.1 process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in the Data Processing Annex unless Restore is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where Restore is relying on Applicable Laws as the basis for processing Customer Personal Data, Restore shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. Restore shall inform the Customer if, in the opinion of Restore, the instructions of the Customer infringe Applicable Data Protection Laws;
 - 8.6.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which are available on request and which the Customer acknowledges are appropriate for the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 8.6.3 ensure that any personnel engaged and authorised by Restore to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 8.6.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Restore), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 8.6.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - 8.6.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless Restore is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 8.6.6 Customer Personal Data shall be considered deleted where it is put beyond further use by Restore; and
 - 8.6.7 maintain records to demonstrate its compliance with this clause 8, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.
- 8.7 The Customer provides its prior, general authorisation for Restore to:
- 8.7.1 appoint processors to process the Customer Personal Data, provided that Restore:
 - (a) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Restore in this clause 8;
 - (b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Restore; and
 - (c) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Restore's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable

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- Data Protection Law, the Customer shall indemnify Restore for any losses, damages, costs (including legal fees) and expenses suffered by Restore in accommodating the objection.
- 8.7.2 transfer Customer Personal Data outside of the UK if required for the Purpose, provided that Restore shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Restore, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

9. TITLE AND RISK

- 9.1 Risk in Service Equipment will pass to Restore on Collection, or in respect of Service Equipment that is to be delivered to Restore by or on behalf of the Customer, when it is delivered in accordance with Restore's instructions during Business Hours. Risk in Service Equipment will pass back to the Customer when the Service Equipment is delivered to the Customer or, where applicable, is collected by the Customer or by subcontractors or agents on the Customer's behalf.
- 9.2 Title in Customer Equipment remains with the Customer.
- 9.3 Title in Rebate Equipment shall pass from the Customer to Restore on Collection.
- 9.4 Title in Buyback Equipment shall pass in accordance with clause 6.3.3.
- 9.5 Title in Scrap Material shall pass from the Customer to Restore on Collection, or at the point such Scrap Material is created during processing of Service Equipment as part of the Services at Restore's premises.

10. LIMITATION OF LIABILITY

- 10.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Nothing in this clause 9 shall limit the Customer's payment obligations under the Contract.
- 10.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 10.3.1 death or personal injury caused by negligence;
- 10.3.2 fraud or fraudulent misrepresentation; and
- 10.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.4 Subject to clause 10.3 (Liabilities which cannot legally be limited), Restore's total liability to the Customer:
- 10.4.1 in respect of destruction of or damage to Service Equipment whilst in the custody or control of Restore which arises from the negligence of Restore:
- (a) for Rebate Equipment and Buyback Equipment which has been graded and assigned a value in accordance with clause 6 and communicated to the Customer, shall not exceed the value of the Rebate or Buyback for that item (with any such liability of Restore pursuant to this clause 10.4.1 shall be payable in accordance with clause 6.5);
- (b) for Customer Equipment, shall be limited to the lesser of the Customer's proven loss and £50 per item, and which shall not exceed £500 in the aggregate for the loss of or damage to multiple items in any one event or series of connected events, unless the Customer elects to pay for extended liability (where the Customer elects to pay for extended liability, subject to receipt of the fees for the extended liability, the liability for such Customer Equipment will not exceed the amount recoverable under the insurance in place for such Customer Equipment); and
- (c) Restore will not be liable for the destruction or damage of any other Service Equipment;
- 10.4.2 for damage to the Customer's premises caused by the negligence of its employees and agents in connection with a Service performed at that premises shall not exceed the lesser of the Customer's proven loss for any one event or series of connected events and £1,000,000 in the aggregate under the Contract; and
- 10.4.3 for all other loss or damages arising under or in connection with this Contract shall not exceed in the aggregate the total Charges paid by the Customer under the Contract in the calendar year in which the event or events giving rise to such liability occurred.
- 10.5 For the avoidance of doubt, Restore gives no advice on the appropriate value of the Customer Equipment and it is the sole responsibility of the Customer as to whether or not to take extended liability.

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- 10.6 Restore will not be liable for any loss or damage to Customer Equipment to the extent that loss or damage is covered by a policy of insurance effected by the Customer or for any losses arising by reason of any insurance excess or deductible or shortfall in the amounts payable under such policy.
- 10.7 Subject to clause 10.2 (No limitation of customer's payment obligations) and clause 10.3 (Liabilities which cannot legally be limited), and save in respect of the indemnities under clauses 6.6, 7.4.2, and 10.9, this clause 10.5 specifies the types of loss that are wholly excluded:
- 10.7.1 loss of profits;
 - 10.7.2 loss of sales or business;
 - 10.7.3 loss of agreements or contracts;
 - 10.7.4 loss of anticipated savings;
 - 10.7.5 loss of use or corruption of software, data or information;
 - 10.7.6 loss of or damage to goodwill; and
 - 10.7.7 indirect or consequential loss.
- 10.8 Each party shall use all reasonable endeavours to mitigate its losses under or in connection with this Agreement, including under any indemnity.
- 10.9 In the event the Customer is procuring some or all of the Services for or on behalf of one or more third parties (each an **End User**), then the Customer shall indemnify Restore and hold it harmless from and against any and all liability to an End User where such liability is:
- 10.9.1 a duplication of liability owed by Restore to the Customer; or
 - 10.9.2 in excess of the liability that Restore would owe to the Customer if the Customer were in the position of the End User.
- 10.10 Restore has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.11 Unless the Customer notifies Restore that it intends to make a claim in respect of an event within the notice period, Restore shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.12 This clause 10 shall survive termination of the Contract.

11. TERMINATION

- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than three months written notice which shall not take effect prior to the first anniversary of the Commencement Date, unless otherwise set out in the Service Document.
- 11.2 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:
- 11.2.1 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 14 days of that party being notified in writing to do so;
 - 11.2.2 the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - 11.2.3 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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;
 - 11.2.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or



- 11.2.5 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 has been placed in jeopardy.
- 11.3 Without affecting any other right or remedy available to it, Restore may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 11.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- 11.3.2 there is a change of Control of the Customer.
- 11.4 Without affecting any other right or remedy available to it, Restore may suspend the supply of Services under the Contract or any other contract between the Customer and Restore if:
- 11.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 11.4.2 the Customer becomes subject to any of the events listed in clauses 11.2.3, 11.2.4 or 11.2.5, or Restore reasonably believes that the Customer is about to become subject to any of them.

12. CONSEQUENCES OF TERMINATION OR EXPIRY

- 12.1 On termination or expiry of the Contract:
- 12.1.1 the Customer shall immediately pay to Restore all of Restore's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Restore shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.1.2 Restore shall on request return any of the Customer Materials or Customer Equipment not used up in the provision of the Services.
- 12.2 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.
- 12.3 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.
- 12.4 For the avoidance of doubt, where the Agreement is terminated or expires (for any reason), Restore will continue to be able to process and sell such Rebate Equipment in accordance with clause 6.

13. GENERAL

- 13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 13.2 **Assignment and other dealings.**
- 13.2.1 Restore may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 13.3 **Confidentiality.**
- 13.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3.2.
- 13.3.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 13.4 **Entire agreement.**

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- 13.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 13.5 **Variation.** 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 (or their authorised representatives).
- 13.6 **Waiver.** 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 right or remedy. 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. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.8 **Notices.**
- 13.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the address specified by each of Restore and Customer from time to time.
- 13.8.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (c) if sent by email at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 13.8.3 This clause 13.8 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.
- 13.9 **No partnership or agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party and each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.10 **Third party rights.**
- 13.10.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.10.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.11 **Governing law.** 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.
- 13.12 **Jurisdiction.** 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.



ANNEX: DATA PROCESSING

This Annex describes the processing that Restore will perform on behalf of the Customer.

Categories of data subjects whose personal data is processed:	Any individuals whose personal data is present on the devices being sanitised.
Types of personal data processed:	Any personal data present on the devices being sanitised.
Subject matter of the processing:	Data sanitisation services
Scope, Nature and Purpose of the processing:	Data sanitisation services to be applied in respect of devices provided by the Customer, for the purposes of fulfilling the obligations set out in the Service Document and in accordance with the terms of the Contract.
Duration of the processing:	In respect of each device, the period from Restore taking possession of the device until its sanitisation.