All Ontrack Data Recovery goods and services provided by Kroll Ontrack Singapore Pte Ltd (Reg. No. 200001811C) (“Ontrack”) will be governed by the following terms and conditions:

The Engagement.
Customer engages Ontrack to perform certain services to include the evaluation or assessment of Customer’s data loss situation, the repair and/or recovery of any retrievable data, and/or other related services (each a “Service” or collectively, the “Services”) as described in the Service Request.

Confidentiality.
In the performance of the Services, the parties will have access to information which may include information, data or materials relating to a party’s products and services, technology, business plans, prices, financial information, marketing plans, and other trade secret or proprietary information (“Confidential Information”). The party disclosing such information under this Agreement is referred to as “Disclosing Party” and the party receiving such information is referred to as the “Receiving Party.”

Receiving Party agrees to: (i) use such Confidential Information only for the purposes of carrying out its obligations pursuant to this Agreement; (ii) to use the same methods and degree of care to prevent disclosure of such Confidential Information as it uses to prevent disclosure of its own proprietary and Confidential Information but in no event less than reasonable care; and (iii) to disclose Confidential Information to its employees only on a need-to-know basis. Confidentiality obligations shall not apply to any information which (i) enters the public domain through no fault of the Receiving Party; (ii) which was known to Receiving Party prior to receipt from Disclosing Party; (iii) which is disclosed to Receiving Party by a third party (other than employees or agents of either party) which in making such information available to Receiving Party is not in violation of any confidentiality obligation to Disclosing Party; or (iv) which is independently developed by Receiving Party without recourse to Confidential Information. Notwithstanding the foregoing, Ontrack will employ appropriate technical and organizational measures to safeguard personal data and will act only on the instruction of the Customer with respect to such personal data. Ontrack is part of a worldwide organization and Customer hereby agrees to the transfer of Customer’s data, including any personal data, to Ontrack affiliates and suppliers worldwide as needed for the sole purpose of performing the Engagement.

In the event that Receiving Party is served with a subpoena, request for information or documents or similar legal process (“Request”) Receiving Party will provide the Disclosing Party with prompt notice of the Request so that Disclosing Party may seek a protective order or otherwise seek to limit or protect such Confidential Information and/or documents from disclosure. If Ontrack is required to respond to a Request to produce documents or provide testimony in connection with this Engagement, Customer agrees to compensate Ontrack for all costs and expenses incurred, including, without limitation, paying Ontrack’s hourly rates for responding to discovery requests and preparing for and testifying in depositions, administrative proceedings and at trial.

Service Estimates.
Estimates are based on Customer’s description of the damage to or condition of the data, media or equipment and Ontrack’s reasonable range of time to perform the Services pursuant to the initial consultation with Customer. Estimates are exclusive of shipping charges, cost of back-up media or applicable taxes. Additional fees will apply in the event the scope of the project changes or Customer requires or requests additional, specialized or optional services. Ontrack shall document the pricing details for any material change in the scope of the project, or for any additional, special or optional services requested or required.

Authorization.
Upon completion of the evaluation of Customer’s data, media or equipment, Ontrack will confirm the cost to complete the Services and, if applicable to the Services to be performed under this Engagement, provide Customer access to a report of any recoverable data. Customer may be asked to provide authorization for Ontrack to proceed with certain Services at the fees provided by Ontrack. Documented electronic approval of such authorization and the associated fees is effective to bind the Customer and admissible in any court and/or for any lawful purpose. Upon completion of a data loss evaluation in which it is determined that some or all of the data is recoverable and for which Customer declines to proceed with recovery services, Customer shall be responsible for the evaluation fee. In the event it is determined that none of the data is recoverable, Ontrack reserves the right to assess an evaluation fee.

Payment.
Customer agrees to pay Ontrack all sums for the Services, including applicable fees for evaluation and recovery, expenses, shipping, insurance, taxes, if any, and parts or media. Unless otherwise agreed to in advance by Ontrack, all sums are due and payable upon completion of Services, by company check, bank money order, or credit card. Upon credit approval, Services may be invoiced and all sums are due and payable net 30 days from date of invoice. Invoices may be issued upon completion of Services or on a monthly basis for the duration of the project for Services completed within that month. Customer further understands and agrees that in the event the invoice is not paid according to Ontrack terms (1) Customer shall pay a late payment charge which shall be added in the amount of 1-1/2% per month, or the maximum percentage allowable under state law; and (2) Customer shall pay all costs of collection including, without limitation, reasonable attorney’s fees. Customer understands and agrees that payment to Ontrack is not contingent on Customer’s receipt of payment from any third party. To the extent Customer desires Ontrack to present invoices electronically for payment under this Agreement, via Customer’s or a third party’s electronic payment site (“Site”), Ontrack agrees to do so provided that all such costs for requiring Ontrack to submit invoices via the Site will be borne solely by Customer.

Acknowledgment of Existing Conditions.
Customer acknowledges that any data storage devices or equipment subject to analysis or processing hereunder may have pre-existing damage or other problems, and that Ontrack cannot, due to such pre-existing damage, assume responsibility for such damage or further problems resulting therefrom. Customer acknowledges and agrees that the provision of the services by Ontrack may not result in the complete recovery of the data.

NO WARRANTIES; IMPLIED TERMS.
EXCEPT WHERE REQUIRED BY LAW, ONTRACK WILL BE UNDER NO LIABILITY TO THE CUSTOMER IN RESPECT OF ANY LOSS, COST, EXPENSE OR DAMAGE (INCLUDING CONSEQUENTIAL LOSS OR DAMAGE, LOSS OF PROFITS OR ECONOMIC LOSS) WHICH MAY BE SUFFERED OR INCURRED DIRECTLY OR INDIRECTLY IN RESPECT OF ANY SERVICES SUPPLIED UNDER THIS AGREEMENT; AND ANY CONDITION OR WARRANTY WHICH WOULD OTHERWISE BE IMPLIED IN THIS AGREEMENT IS HEREBY EXCLUDED.
Terms and Conditions

LIMITATION OF LIABILITY; LIMITATION OF DAMAGES.
TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL ONTRACK BE LIABLE FOR ANY DAMAGES FOR LOSS OR DAMAGE OCCURRING IN TRANSIT, LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS, OR INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM THE ENGAGEMENT, EVEN IF ONTRACK OR AN AUTHORISED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THE ESTIMATED AND ACTUAL FEES AND CHARGES REFLECT THIS LIMITATION OF LIABILITY AND ALLOCATION OF RISK. THE PARTIES AGREE THE TOTAL LIABILITY OF ONTRACK OR ITS SUPPLIERS TO CUSTOMER UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL SUMS PAID BY CUSTOMER TO ONTRACK.

Customer's Representation.
Customer represents and warrants that: (i) it has the right to be in possession of, or grant Ontrack access to the data, media, or equipment ("Data") that is the subject of this engagement; (ii) such Data is furnished for a lawful purpose, and (iii) where applicable, collection, possession, processing and transfer of such Data is in compliance with any and all applicable laws, regulations and company policies, including without limitation, data privacy laws and the obtaining of consents of individual owners of such Data if necessary. Customer will defend, indemnify, and hold Ontrack harmless against any damages or expenses that may occur (including reasonable attorneys' fees), and pay any cost, damages, or attorneys' fees awarded against Ontrack resulting from Customer's breach of this section. Customer further represents and warrants that all items provided to Ontrack under this Agreement: (i) are not subject to any United States or applicable export licensing requirements or that Customer has obtained all required licenses; and (ii) all such items are freely exportable by Ontrack, as applicable, without restriction. To the extent Customer selects Data Erasure or Media Disposal Services, Customer understands that the strong magnetic field used in the degaussing process will render the equipment/media unusable and may void the manufacturer's warranty.

Intellectual Property Rights.
Ontrack retains all right, title and interest in and to all computer software, computer code, technology, know-how, tools, inventions, discoveries or processes used or developed to perform the Services under any Engagement.

Software License to Access Data.
To the extent Ontrack requires access to or use of any software owned and/or licensed by Customer in order to access Customer's data ("Software"), Customer grants to Ontrack a limited, non-exclusive, revocable license to use such Software on Customer's data storage devices provided to Ontrack hereunder solely for the purpose of enabling Ontrack's access to such data in order to perform the requested Services. Such Software and any associated access keys or codes shall be considered Confidential Information hereunder.

Miscellaneous.
This agreement will be construed in accordance with and will be governed by the laws in force in the Republic of Singapore. Each of the parties irrevocably submits to and accepts the exclusive jurisdiction of any of the Courts of the Republic of Singapore and any courts of appeal from these courts; provided, however, that if any provision of this Agreement is in violation of any applicable law, such provision shall to such extent be deemed null and void and severed herefrom, and the remainder of the Agreement shall remain in full force and effect. Except for the Customer's obligation to make payments, either party's performance shall be excused to the extent performance is hindered, delayed or made impractical due to causes beyond such party's reasonable control. This Agreement, together with any exhibits or other attachments provided by Ontrack, constitutes the entire Agreement between the parties in relation to this subject matter, unless the parties have entered into a previously written master services agreement, in which case the master agreement shall govern with respect to any conflicting terms hereunder. The terms and conditions of any Customer issued Purchase Order, or terms contained on the Site, are specifically excluded from and superseded by the terms and conditions contained in this Agreement. Any items which have not been claimed within ninety (90) days after the date of completion of the evaluation of Customer's data, media or equipment, whether or not any Services performed have been paid for, will be considered abandoned by the Customer and will be disposed of (including all data/media containing data) in the sole discretion of Ontrack.