

Ontrack Data Protection data recovery service plan General Terms and Conditions – November 1st 2018

These terms and conditions (the "**Terms**") govern our supply of Data Recovery Warranty Service (the "**Service**") to you (the "**Customer**" or "**you**"). Please read these Terms carefully before you use the Service. These Terms tell you who we are, how we will provide the Service to you, how you and we may change or end the agreement between us, and what to do if there is a problem and other important information.

These Terms and the Service are provided by KLDISCOVERY Ontrack Limited trading as "**Ontrack**", Global House, 1 Ashley Avenue, Epsom, Surrey, KT18 5AD (registered in England, Company Number 02669766).

1. Description of the Service and Key Terms

The Service is a support service which is provided for a limited time as defined in Clause 2 (the "**Duration of Contract**").

The Service consists of one (1) data recovery attempt performed by Ontrack on an internal or external Hard Disk Drive ("**HDD**"), Solid State Drive ("**SSD**"), smart phone or tablet (the "**Device**") which is property of or leased by you (the "**Customer**"). The Service may be sold as part of a package with other software products. Please be aware that Ontrack is not responsible for any other software products or services other than the Service as described in these Terms.

The Service is available only for single separately registered HDDs, SSDs, smart phones or tablets which may be external or internal (meaning that the drive is or is intended to be a component of a laptop or desktop computer), which does not apply encryption technology integrated by the hardware manufacturer and is subject to these Terms. The Service is therefore not available for all other devices, including but not limited to, multiple HDDs or SSDs in a RAID configuration, tablets, smart phones and USB flash drives ("**Excluded Devices**").

If you provide a Device to Ontrack to use the Service again after the first data recovery attempt performed by Ontrack within the Duration of Contract, the cost of subsequent Service will be discounted by 20% per each data recovery attempt.

Your Device must not be more than five (5) years old, or if it is a smart phone or tablet, maximum of two (2) years old, to qualify for use of the Service. The age of the Device will be verified from its purchase receipt. Should the receipt not be available, Ontrack shall examine the age from the type number or similar code of the Device. Should Ontrack not be able to verify age of the Device, or Ontrack identifies the Devices as more than five (5) years old, or if it is a smart phone or tablet, maximum of two (2) years old, Ontrack shall have no obligation to perform the Service on that Device. You are responsible for taking into account the age of the Device in relation to the Duration of the Contract. Ontrack has no obligation to return fees relation to the Service if the Device is more than five (5) years old or if it is a smart phone or tablet, maximum of two (2) years old during the Duration of the Contract.

Once the Service has been performed successfully, the data recovered (the "**Restored Data**") will be stored on a suitable backup device or made available to you through a cloud service based service at Ontrack's discretion. The cost of delivery of the Restored Data (if any) is included in the price of the Service, however Ontrack shall not return the Device to the Customer unless the Customer specifically requests that it does and agrees to cover any costs associated with its return.

The Service shall be performed at the offices of Ontrack as listed above or at other premises where Ontrack has equipment and expertise to perform the Service.

2. Purchase of the Service and right of withdrawal

A Customer may purchase the Service from an authorised reseller of the Service, such as a electronics retailer (the "**Reseller**"). You may be asked to enter into a separate agreement directly with the Reseller, in which case the agreement with the Reseller and these Terms shall be referred together as the "**Service Contract**". The Duration of Contract shall be as set out in the Service Contract, or where no term is stated, it shall be for a period of one (1) year.

In order to use the Service, you will need to register your Device (further details on this in Clause 3 below). The Reseller will provide you with instructions on how to do this. Until your Device is registered, you have not entered into a binding Service Contract with Ontrack or the Reseller.

If you qualify as a consumer according to the Consumer Rights Act 2015, you have the right to withdraw from the Service Contract. You must confirm your withdrawal within 14 days of entering into the Service Contract. However, by entering into a Service Contract, you are authorising us to perform the Service as soon as we receive a Device and therefore if the Service has already commenced

within this period, you will have to pay us for the portion of the Service completed to the date of your withdrawal (which may be the cost of the whole Service).

3. Device registration procedure and service activation

In order to enter into a Service Contract, you have to register your Device according to the instructions provided to you by the Reseller. If a Device is not registered, or not correctly registered, no Service Contract will be entered into. A Reseller may register a Device on your behalf, but that will be up to the individual Reseller. Ontrack accepts no responsibility for any incorrectly registered Devices performed by a Reseller. Registration may include installing software onto the Device, which will be a requirement of the registration process.

Where a Customer registers the Device, registration must take place within fourteen (14) days of providing the Device to the Reseller for the Service. If registration does not happen within that period, Ontrack reserves the right to refuse to perform the Service (see Clause 6 below).

At any time within the Duration of Contract, you can request the Service to be performed on the registered Device. In order to activate the Service, please contact the Reseller you purchased the Service Contract through (or alternatively, please contact Ontrack's customer services using the contact details below). You will be provided with instructions on how to ship the Device to Ontrack to perform the Service, which shall include an order form to be filled out and enclosed with the Device in a parcel to be sent by post. Any Device shipped to Ontrack without an Order Form or with an Order Form that is not correctly completed or signed may be returned to you with your Device without any Service being performed.

4. Customer Acknowledgements

You hereby acknowledge and warrant to us that:

- a) you are legally capable of entering into binding contracts;
- b) all the information that you provide to the Reseller or Ontrack, during the registration process and on any order form is true, accurate, complete and not misleading;
- c) you are the owner of the Device and/or have the permission from the owner of the Device for us to perform the Service;
- d) your supply of the Device and any data thereon will not breach any obligations or rights of any third parties;
- e) your supply of your Device and any data thereon will not breach any applicable law;
- f) you are legally permitted to grant access to the data on the Device;
- g) your Device does not contain any material (including without limitation any data) which may infringe the Intellectual Property Rights of any third party; and
- h) your Device does not contain any material which will breach applicable law.

Ontrack reserves the right to request documentary evidence of your ownership or legal right to the Device in order to authorise the Service. If no such evidence is provided, Ontrack reserves the right to suspend or not commence the Service until receipt of such evidence is received.

You warrant that the Device subject to the Service is fully functioning at the time the Service Contract is entered into and where the Device subsequently suffers data loss, such loss has occurred after the Service Contract was entered into. Should you provide the Device to Ontrack for the Service, Ontrack is entitled to verify (by checking the file dates) whether the Device has been used after the conclusion of the Service Contract in order to establish when the data loss occurred. If it can be established that the data loss has occurred at the time of (or before) entering into the Service Contract, Ontrack reserves the right to either (i) refuse to perform the Service, or (ii) charge further fees for the Service.

You hereby acknowledge that your Device and any data on it may already be damaged prior to our receipt of it. You further acknowledge that Ontrack's efforts to complete the Service may result in the destruction of, or any further damage to, your Device and/or the data on it. Ontrack will always take reasonable care in performing the Service, but will not, save as specified in Clause 9 of these Terms, bear any responsibility for existing or additional damage that may occur to your Device and/or the data on it during our performance of the Service.

5. Ontrack's obligations, the Service and limitations

Where a Customer has: (i) correctly registered a Device in accordance with Clause 3, and (ii) has validly activated the Service in accordance with Clause 4, Ontrack will perform one single attempt to recover the data stored on the Device within ten (10) days of receipt of the Device. The Service covers the user files, but licensed software or files (like operating systems or application software) will not be recovered.

The Service will take place in Ontrack's laboratory, using the latest proprietary tools and technologies for the highest chance of success. Such chances are however influenced by the nature and seriousness of the technical issue experienced by the Device. Ontrack will perform the Service with care and using best industry practices, however due to the nature of the Service, Ontrack cannot guarantee that the achieved result will be the result desired by the Customer.

Ontrack does not guarantee that any specific data will be recoverable and it cannot and does not guarantee which data files are on the media. Data recovery shall be strictly limited to whatever files are restorable or recoverable on the Device. In case of complete or partial success of the Service, the Recovered Data will be either (at the discretion of Ontrack):

- a) saved on an external backup device which will be sent to the Customer; or
- b) made available to the Customer through a secure cloud service, in which case Ontrack shall provide the Customer with all requisite details in order to access the Recovered Data.

Where the performance of the Service does not result in any Recovered Data, Ontrack will inform the Customer by email. The Customer can request the return of the Device at his or her own expense, or request in writing (including return email) that Ontrack disposes of the Device in a secure manner and in accordance with applicable law.

6. Denial of the Service and contract termination

Ontrack reserves the right to refuse to perform the Service on a Device in the following circumstances:

- a) The Device has not been registered, has been incorrectly registered or has been registered after the fourteen (14) day deadline has expired;
- b) Where the Device received by Ontrack does not match the information entered during the registration process;
- c) Devices on which any kind of data recovery attempt has already been performed by the Customer or by third parties, with the exception of the Reseller diagnostics using a specific software tool provided and authorised by Ontrack;
- d) The files stored in the Device are encrypted, or the Device is locked and the Customer does not provide the necessary credentials, passcode or other related information for decryption;
- e) Devices which have been tampered with (i.e. a Device has previously been opened or is otherwise not intact, for example if the seals or labels applied by the manufacturer have been removed or there are other signs of tampering).
- f) The Device, smart phone or tablet, has been factory reset;
- g) Excluded Devices (as defined in Clause 1 above);
- h) Where the Customer has not paid its payments under the Service contract in full; or
- i) Where the Service activation request is made after the expiry of the Duration of Contract.

Where a Customer can remedy the circumstances that give rise to the refusal to perform the Service, Ontrack reserves the right to allow the Customer to remedy the circumstance in order for the Service to be performed. For the avoidance of doubt, the circumstances described in paragraphs (c), (e), (f) and (h) are circumstances that are not capable of remedy.

Where the circumstance above, except point (i) cannot be remedied by the Customer or the Customer does not remedy the circumstance within fourteen (14) days of notice from Ontrack, Ontrack shall have the right to terminate the Service Contract. In the event that the Device has already been sent to Ontrack, the Customer can request the return of the Device at his or her own expense, or ask in writing that Ontrack disposes of the Device in a secure manner and in accordance with any applicable laws.

7. Data Protection

We will use any personal data you provide to us to supply the Service to you and to process your payment for the Service. Only with your express consent shall we use your personal data for marketing purposes. If you are a consumer, you agree to the storage and use of your personal data according to the terms of our privacy policy which is available at: www.ontrack.com/uk/privacy/. If you are a business customer, we shall process your personal data pursuant to the terms of our Data Processing Agreement, which is available at <https://www.ontrack.com/uk/terms/>.

8. Confidentiality

For the purposes of these Terms, any information of a confidential nature (however recorded or preserved) disclosed by either party to the other party in connection with the Service, including but not limited to the data on the Device, any Ontrack data and any information that would be regarded as confidential by either party shall be referred to as the "Confidential Information".

Each party agrees to not disclose any Confidential Information of the other party to any third party without the prior written authorisation of the party disclosing the Confidential Information and to: (i) use such Confidential Information only for the purposes of carrying out its obligations pursuant to these Terms and any Service Contract; (ii) 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) disclose Confidential Information to its employees and approved third parties, only on a need-to-know basis provided that all such persons are bound by duties of confidentiality no less onerous than are set out in these Terms.

Confidentiality obligations shall not apply to any Confidential Information: (i) which enters the public domain through no fault of the recipient party; (ii) which was known to the recipient party prior to receipt from the other party; (iii) which is disclosed to the recipient party by a third party (other than employees or agents of either party) in circumstances that such disclosure is not in violation of any confidentiality obligation to the party disclosing the Confidential Information; or (iv) which is independently developed by the recipient party without recourse to Confidential Information.

9. Intellectual Property

Your Equipment and Data shall at all times remain your property, and we shall have no right, title or interest in or to them (except the right to possession and use of your Equipment and Data to perform the Services). We retain all right, title and interest in the provision of the Services, including any improvements or enhancements made to the Services.

10. Shipping costs and connected risks

The costs of sending a Device to Ontrack pursuant to the Service are included in the fees for the Service. Any other shipping costs, for example for the return of a Device after the Service has been performed are to be paid by the Customer.

The Customer bears any risks of loss or destruction of the Device and/or of the data stored in it which may occur during shipping to and from Ontrack (or to any sub-contractor) except where such loss or destruction is caused by Ontrack's gross negligence. Upon request of the Customer, transportation insurance can be arranged. Such insurance will be fully payable by the Customer.

11. Disclaimer of warranty and limitations of liability

The Customer acknowledges that the Device may be damaged prior to Ontrack's receipt. Ontrack does not guarantee that the Service will result in full data recovery each time. Ontrack is only obliged to use its current defined procedures to perform the Service. Data recovery is based upon the data that is physically recoverable on the Device, which is not necessarily the full amount of data that originally was stored. Ontrack makes no warranties in terms of usability of Recovered Data, even though files seem to be 100% logically correct and recovered.

Ontrack is not liable for the economic value of data contained on a Device and for any damage to the Device or the data contained on it caused by the Customer or any third-party. Ontrack is not liable for any incorrect information sent to Ontrack.

Ontrack's entire liability under these Terms and any Service Contract shall be limited to 100% of the price for the Service undertaken by Ontrack and which gave rise to the actual claim. In no event shall Ontrack be liable for loss of data, loss of profits, insurance related costs or any special, indirect, incidental or consequential damage or loss arising from the Service, these Terms and any Service Contract. The limitations will apply regardless of the form of action whether under statute or contract or tort including negligence or any other form of action.

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes our liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; and for customers who qualify as consumers under the Consumer Rights Act 2015, for breach of your legal rights in relation consumer protection laws.

12. Data encryption and backup device warranty

In accordance with Clause 5 above, any Recovered Data will be stored on a suitable external backup device or made available to the Customer through a cloud service based on Ontrack discretion.

Where Ontrack elects to provide the Recovered Data on an external backup device, the Customer:

- a) accepts and agrees to be bound by all the terms and conditions of any license relating to the external backup device and for the third party encryption software on the backup device containing the Recovered Data; and
- b) acknowledges that the conditions of warranty that apply to the backup device used by Ontrack for the Recovered Data are provided by the manufacturers and/or suppliers of the backup devices.

Where Ontrack elects to provide the Recovered Data available via a secure cloud service, the Customer acknowledges that:

- a) authentication will be required upon access to the cloud service via the internet and the credentials for authentication will be provided by Ontrack via email to the Customer only;
- b) the Recovered Data will be made available to the Customer for 30 (thirty) days from the supply of the access credentials, and the Customer will have to make his or her own arrangements to copy the data and save it on another device;
- c) no additional warranties in respect of the use of the cloud service are provided by Ontrack and if the Customer fails to extract the Recovered Data within thirty (30) days of receipt of the access credentials, Ontrack reserves the right to remove the Recovered Data from the cloud service with no liability to the Customer.

Irrespective of the method for providing the Recovered Data to the Customer, Ontrack stores a copy of Recovered Data for thirty (30) days after the data is delivered or made available to the Customer. After that period, all Recovered Data will be erased if not otherwise agreed in writing with Ontrack.

The Customer acknowledges that Ontrack does not perform any antivirus scan on the Recovered Data. Under no circumstances Ontrack can be held responsible for the identification and removal of viruses and any resulting damage.

13. Location of the activities.

Ontrack reserves the right to perform any activities that are necessary for the supply of the Service, or part of them in any of its branches, associates or offices. The risk of loss or destruction of the Device and/or of the data on the Device during transportation is governed by Clause 7 of these Terms.

14. General

These Terms are governed by English law and each party may bring legal proceedings in the courts of England and Wales.

These Terms establish a contract between you and us. No other person shall have any rights to enforce these Terms. Please be aware that you may also enter into an agreement with the Reseller. Any breach of the agreement with the Reseller shall not give rise to any liability on the part of Ontrack.

Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful and/or unenforceable, the remaining paragraphs will remain in full force and effect. If we delay in taking steps against you in respect of your breaching these Terms, this will not prevent us taking steps against you at a later date.

We may change the Service to reflect changes in relevant laws and regulatory requirements and to implement minor technical adjustments and improvements, for example to address a security threat. These changes will not affect your use of the Service. In addition, we may make more material changes to these Terms or the Service, but if we do so we will notify you and you may then contact us to end the Service Contract before the changes take effect and receive a refund for any Service paid for but not received.