

# DATA RETRIEVER - Terms & Conditions

(17A Tyrone Ave, Macleod VIC 3085; 1300 749 443; [info@dataretriever.com.au](mailto:info@dataretriever.com.au))

## 1. Authorisation and cost of recovery

This Agreement which is entered into and accepted between Data Retriever (hereinafter referred to as DR) and the Client, agree that the following terms and conditions will cover all goods and services provided by DR for this engagement. The Client authorises DR to conduct an evaluation of the media or data to determine the nature of the damage and provide a quotation for the recovery thereof, timing and estimated success rate. The evaluation is free and no work beyond this evaluation will be charged without explicit Client approval. Facsimile signatures for this Agreement and any subsequent exhibits are effective to bind the signing party and are admissible in any court and or for any lawful purpose. Similarly, approval of this Agreement via email message shall also be legally binding. This Agreement together with any exhibits or attachments constitutes the entire Agreement between the parties in relation to this subject matter.

## 2. Legal rights

The CLIENT acknowledges that he is the legal owner, representative or otherwise has legitimate rights to the property and all data contained therein sent to DR. Any property left with DR unclaimed for 90 days will be disposed of and DR shall have no liability to the client or any third party.

## 3. Liabilities

DR shall not be liable for any claims regarding the physical functioning of the equipment/media or the condition or existence of data stored on the media supplied before, during or after services. In no event will DR be liable for any loss of data or loss of revenue or profits before, during or after services even if DR has been advised of the possibility of damages or loss to persons or property. DR's liability of any kind with respect to the services, including any negligence on its part, shall be only limited to the contract price for the services. The Client and DR agree that the sole and exclusive remedy for unsatisfactory work or data shall be at DR's sole discretion, additional attempts by DR to recover satisfactory data or issue a refund of the amount paid by the client. The Client is aware of the inherent risks of damage to media that is involved when undergoing data recovery process, including without limitation, risks due to destruction or damage to the media and/or data stored and inability to recover data, or inaccurate or incomplete data recovery, including those that may result from the negligence of DR, and assumes any and all known property damage that may result.

## 4. Acknowledgement of existing Condition

The Client acknowledges that the equipment/data/media may be damaged prior to DR's receipt, and the Client further acknowledges that the efforts of DR and/or its suppliers to complete the engagement may result in the destruction of or further damage to the equipment /data/ media. DR for itself and its suppliers does not assume responsibility for additional damage that may occur to the Client's Equipment/Data/Media during or as a result of DR's efforts to complete the engagement.

## 5. Client confidentiality

DR will use any Information provided by the Client only for the purpose of fulfilling the engagement and will use its best efforts to hold the Client's information in the strictest confidence. Confidentiality shall not apply to any information which entered the public domain through no fault of DR, which was known to DR prior to receipt from the Client, which is disclosed to DR by a third party (other than employees or agents of either party), which in making such information available to DR is not a violation of any confidentiality obligation to the disclosing party; or which is independently developed by DR without recourse to the Client's information.

## 6. Payment

The Client agrees to pay DR all sums authorised from time to time by the Client, which will include charges for DR's services, if any, for parts, media and/or off-the-shelf software used in the Engagement. Unless otherwise agreed to in advance by DR in writing, all invoiced sums ('Accounts') are due and payable upon invoice, prior to release of the equipment/data/media by cheque, direct transfer, credit card/PayPal or bank money order. An Account Keeping Fee of \$15.00 per month will be imposed on overdue Accounts. Invoiced sums overdue by more than 30 days will be subject to interest prescribed by the Penalty Interest Rates Act (Vic) plus 2% from the date payment is due until the date payment is made. Accounts referred to a Collection Agency or Solicitor will have all legal costs and commissions added to the amount due.

## 7. Charges not paid for and Security Interest

In the event that there are any unpaid charges, the Client grants DR a security interest in and to the equipment/data/media to secure the payment of the charges incurred hereunder, which if unpaid, shall after the due date bear interest at the rate of 2% per month (24% per annum). Any items which have not been claimed and/or paid for within thirty (30) days after the completion of the engagement will be considered abandoned by the Client and may be disposed of (including all data/media containing data) in the sole discretion of DR, the proceeds of such disposition to be used toward satisfaction of DR's account after payment of all expenses of disposition.

## 8. Media Guarantee

DR guarantees media with recovered data against damage or defect up to fourteen days from date of collection or delivery. DR will store the client's recovered data for a period of fourteen days after collection or delivery as insurance against damage or defect.

## 9. Equipment in transit

The CLIENT acknowledges that DR will not be held liable for any damages or losses incurred while equipment is in transit or for any cause whatsoever including fire or theft.

## 10. No Warranties and Disclaimer of all warranties

DR, FOR ITSELF AND ITS SUPPLIERS, MAKES AND THE CLIENT RECEIVED NO WARRANTIES OR CONDITIONS FOR ANY GOODS OR SERVICE,S EXPRESS, IMPLIED, STATUTORY, OR IN ANY COMMUNICATION WITH THE CLIENT, DR, FOR ITSELF AND ITS SUPPLIERS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ARISING FROM USAGE OF TRADE IN THE COURSE OF DEALING OR PERFORMANCE.

## Limitation of Liability and Limitation of Damages.

In no event will DR or its suppliers be liable for any damages whatsoever, including, without limitation, damages for loss of data, loss of business profits, business interruption, or other pecuniary loss, or incidental, consequential, or indirect damages arising from the engagement event if DR or any authorised representative has been advised of the possibility of such damages. The Client acknowledges that the estimated and actual fees and charges reflect this limitation of liability and allocation of risk. The total liability of DR or its suppliers to the Client under this agreement shall in no event exceed the total sums paid by the Client to DR.

## The Client's Representation and Indemnification.

The Client warrants to DR that it is the owner of, and/or has the right to be in possession of, all equipment/data/media furnished to DR and the Client will defend, at its expense, indemnify, and hold DR harmless against any damages or expenses that may occur (including reasonable lawyers' fees), and pay any cost, damages, or attorney's fees awarded against DR resulting from the Client's breach of this section.

## Uncontrollable Circumstances.

Either party's performance of any part of this agreement shall be excused to the extent that such performance is hindered, delayed, or made impractical by: (a) the acts of omissions of the other party; (b) flood, fire, strike, war or riot; (c) unavailability of parts of software; (d) any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of either party. Upon the occurrence of any such event(s), the party whose performance is so affected shall notify the other party of the nature and extent of the event(s) so that decisions to mitigate the negative effect(s) of any such event(s) may be promptly made.

## Miscellaneous.

The parties agree that this agreement shall be construed and the relations of the parties shall be determined in accordance with the laws of the state of Victoria, Australia 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 the remainder of the Agreement shall remain in full force and effect. The place of adoption of this Agreement is deemed to be the principal place of business of DATA RETRIEVER (DR), 17A Tyrone Ave, Macleod, VIC 3085. Any revision or modification of this Agreement shall be effective only if it refers to this Agreement, is in writing, and is signed by an authorised representative of each party to this agreement.

## Agreement.

Facsimile signatures for this Agreement and any subsequent exhibits are effective to bind the signing party and are admissible in any court and/or for any lawful purpose. This Agreement, together with any exhibits or attachments, constitutes the entire Agreement between the parties in relation to this subject matter.

**I the undersigned being the client, or his authorised representative, have read and understand the contents of this document and hereby authorise DATA RETRIEVER to proceed at attempting to recover the data.**

\_\_\_\_\_  
Client Name (and Company Name, if applicable)

\_\_\_\_\_  
Authorised Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address (Unit/Number, Street, Town, Post Code)

\_\_\_\_\_  
Phone/Mobile (Preferred Daytime Number/s)

\_\_\_\_\_  
Email Address (Please print clearly; your quote, invoice & job updates will be sent to this address.)

**Privacy Notice:** Data Retriever respects your privacy. The above information will be kept strictly confidential, will not be shared with any third party (except where we are required to do so by law), and will be used solely for communication between DR and the Client for the purpose of this engagement.