

Seagate Recovery Services Reseller Agreement

Terms and Conditions

The following terms and conditions (“Terms”) apply to your ordering, purchase, or receipt of certain data recovery services (“Services”) provided by Seagate Technology LLC, with offices at 10200 South De Anza Boulevard, Cupertino, CA 95014, and its affiliated companies (“Seagate”, “we”, “our” or “us”) upon your enrollment as a participant in the Seagate Recovery Services Reseller and Referral Plan (“Plan”). If you reside in Canada, “Seagate” means Seagate Technology Canada Inc. with offices at 100 Cowdray Court, Suite 100 Toronto, ON M1S 5C8. If you reside in an EU member state, the Middle East, or Africa (collectively “EMEA”) “Seagate” means Seagate Technology (Netherlands) B.V. with offices at Koolhovenlaan 1, 1119NB Schiphol-Rijk, The Netherlands. If you reside in Asia, “Seagate” means Seagate Singapore International Headquarters Pte. Ltd. with offices at 7000 Ang Mo Kio, Avenue 5, 569877, Singapore. Seagate reserves the right to make changes to these Terms at any time. These Terms are effective between you and Seagate upon Seagate’s acceptance of your enrolment in the Plan, evidenced by authorised email confirmation to you from Seagate

1. **Application.** Seagate will promptly review your application to participate in the Plan. We retain the right to approve or deny your application, at our sole discretion. If your application is approved, we retain the right to change or discontinue the Plan or your participation in the Plan at any time, at our sole discretion.
2. **Submissions.** As a Plan participant, you have two options when forwarding a data recovery case to us, as described below. In addition, Seagate may, at its sole discretion, accept purchase orders for Services (including without limitation data recovery case submissions) under this Plan from entities, organisations, persons or companies that are controlled by, under control of, or under common control with you (each, an “Affiliate”), and such Affiliate shall become bound by these Terms and you assume joint and several liability for all obligations relating to such purchase order and Affiliate’s acts and omissions, including, but not limited to, payment thereof.
 - a. **Referral Submission.** You can submit the case as a “referral” to any service location operated by us or our affiliates, in which case the Seagate “customer of record” is your end-customer (“Customer”). To initiate a Referral Submission, you must complete the Referral Submission Form or link the form to your company website. An email will then be sent to your Customer asking him/her to complete a Case Submission Form. Your Customer must consent to our standard Seagate Data Recovery Terms and Conditions (“Customer Terms”) found at <https://services.seagate.com/tsandcs.aspx>.
 - b. **Direct Submission.** You can submit the case directly to any service location operated by us or our affiliates, in which case you are Seagate’s “customer of record” and you intermediate all contact with the Customer (we do not contact your Customer directly). To initiate a Direct Reseller Submission, you must complete a Case Submission Form. In addition, you must secure authorisation from the legal owner of the Device (defined below) and data contained therein (or a representative of the legal owner) to act on its behalf regarding data recovery services.
3. **Data Recovery Service Efforts and Process for Direct Submissions.** You may request us to perform the Services on hard disc drives, flash media, tapes, memory sticks and other similar data storage devices (each, a “Device”).
 - a. **Evaluation and Service Fees.** Upon receipt of a Device submitted in accordance with section 2.b, above, and payment of a non-refundable evaluation fee (if applicable) we will use reasonable efforts to determine whether any data on the Device is recoverable using our existing technology and processes. You acknowledge that existing technology and processes to recover data have limitations and that not all lost data can be recovered.
 - i. **Up-front Pricing Estimate.** By answering a few questions about the Device or using Solution Wizard, our online quotation tool, or Disk-Check, our disc check software, (if these are available to you) or by calling us, or as otherwise agreed by the parties in writing, we will

provide you with a cost estimate for actual recovery work and Services. If you accept the cost estimate, submit your Device and we will apply our existing technology and standard processes and use reasonable efforts to recover the data from the Device. By submitting your Device, you agree to pay the fee quoted.

- ii. ***Evaluation Report and Authorisation of Recovery.*** If prior to Device submission an upfront pricing estimate has not been provided for the Services as described in section 3.a.i. above, following Device evaluation we will inform you of our assessment and a cost estimate for the actual recovery work. If you authorise us to perform the Services, we will apply our existing technology and standard processes and use reasonable efforts to recover your data.
 - b. ***Device Shipments.*** You are responsible for making arrangements to send Devices to Seagate and, if applicable, from Seagate. You will dispatch Devices, or cause Devices to be dispatched, to Seagate by Seagate's designated carriers, so that risk of loss transfers to Seagate upon documented receipt by Seagate. The parties agree that, regardless of either party's order forms, risk of loss for the Devices dispatched to Seagate will not transfer until documented receipt by Seagate and that risk of loss for Devices delivered by Seagate to you or any other designated person will transfer to you when the Device leaves Seagate's facility.
 - c. ***Successful Recovery Effort.*** If we are able to successfully recover the data, Seagate will notify you and invoice you for the applicable fee. You agree that recovery of eighty per cent or more of the data files requested for recovery from a Device constitutes a "successful recovery" of data for which payment is due. The data recovered will be returned to you on an external drive; provided that, if the total capacity of recovered data is less than a capacity as designated by Seagate at its sole discretion, the data recovered may be returned to you on a DVD instead of HDD, or otherwise made available to you through other media. Seagate will return recovered data to you on media that is provided by Seagate at no additional cost.
 - d. ***Unsuccessful Recovery Effort.*** If we are unable to recover any data, we will inform you accordingly, and you will not be charged for our efforts. If we are able to recover part of the data but not all of the data needed for a "successful recovery", we will inform you accordingly and you may choose to receive the recovered data for the agreed fee. If you choose to receive the recovered data, we will charge you the applicable fee on the invoice.
 - e. ***Return of Device.*** Regardless of the outcome of the recovery work, we will retain the Device. Notwithstanding the foregoing, at your request in writing at the time of submission, we will return a Device to you at your expense which will include return carriage and a re-assembly processing fee as designated by us.
 - f. ***Disposal of Abandoned Device or Data after 90 Days.*** Any Device or data left with us without full payment after 90 days from the date of our receipt will be disposed of at our discretion; and you release us from any and all obligations related to the Device and data.
4. **Fees and Terms of Payment.** The applicable evaluation fee is due in full at the time the data storage device or media is submitted to us for testing and evaluation, unless such fee is waived by us. In the case of a Referral Submission, we will bill the Customer directly for all applicable recovery fees and costs. In the case of a Direct Submission, we will bill you for all applicable recovery fees and costs. Such amounts are due and payable to us regardless of whether you collect from your Customer. With respect to each case, all amounts must be paid in full before we will release the recovered data and pay any applicable commissions. Unless another payment method is approved by Seagate, you shall pay all applicable fees by cheque or wire transfer in the currency designated in the price estimate described in Section 3 above. Where payment is made by credit card, such payment is subject to the approval of the financial institution issuing the credit card, and we shall not be liable in any way if such financial institution refuses to accept or honour the credit/debit card for any reason.
 5. **Sale and Other Taxes.** We will withhold all taxes where we are required to do so by law. You will be responsible for all other applicable taxes not collected by us.

6. **Carriage Costs.** All costs for sending the data storage device or media to and from Seagate will be your Customer's responsibility in the case of a Referral Submission or your responsibility in the case of a Direct Submission, unless we agree to assume such costs pursuant to a special promotion.
7. **Commissions.**
 - a. As of the second paid recovery service case, you are entitled to a 5% discount, not to be used in conjunction with other offers. For Direct submissions, your discount can be deducted from your case's total invoice. For referral submissions, your rebate will be paid to you as a commission payment.
 - b. As a Premier Partner, you may earn a 15% commission on the "recovery fee" portion of each paid case from the Referral Submissions and Direct Submissions you submit if you meet the minimum case submission requirement.
 - c. Commissions will be paid quarterly. After the first quarter that you meet the minimum requirement, commissions earned can be paid as a pre-applied discount of 15% on subsequent data recovery cases submitted to us as long as you continue to meet the minimum requirements. Every quarter, Seagate will issue a communication to advise you of your discount entitlement status for the following quarter. Seagate reserves the right to discontinue the discount at any time should you not meet the minimum requirements outlined in the letter. It is your responsibility to make sure your email address and other contact information is updated in the Partner Portal in order to ensure timely communication between you and Seagate.
 - d. No commissions will be paid to Plan participants for the following submissions: (i) cases when no recovery fees are paid or where the quoted recovery fee is discounted due to the quality or quantity of the recovered data; or (ii) cases subject to Flat Rate pricing or "Special" prearranged pricing.
8. **Service Limitations.** We cannot and do not promise any particular results. We will provide reasonable efforts and the application of our existing technology and standard processes. We do not guarantee that any data will be recovered. Also, our attempt to recover the data may result in damage to the Device or data, and may even render any data unrecoverable. To the extent possible, you should attempt to back up any available data before submitting it to us.
9. **Sales Programmes.** Seagate may, from time to time, offer Sales Programmes (defined below) on a one-time or periodic basis. Seagate may modify or cancel Sales Programmes and Policies at any time. Sales Programmes may only be offered by authorised representatives of Seagate and are void where prohibited. "Sales Programmes" means any sales incentive programmes with terms approved by an authorised representative of Seagate and offered by Seagate on a one-time or periodic basis as updated from time to time by Seagate.
10. **Diagnostic Software (available only through specified Sales Programmes and/or to eligible Premier Elite Partners).**
 - a. ***Licensed Software.*** Seagate may at its sole discretion provide certain software (the "Licensed Software") to eligible Plan participants for the purpose of performing diagnostic testing on Devices submitted by your customers; generating a diagnostics report identifying the health of the Device (*e.g.*, hardware, software, operating system); and determining the recovery level required in connection with the Services. Diagnostics reports will be available to eligible Plan participants in printable format and will be electronically communicated to Seagate as a pending data recovery case. Seagate retains all right, title and interest, including all intellectual property rights, in and to the Licensed Software.
 - b. ***Licence Grant.*** Where Seagate provides the Licensed Software to a plan participant Seagate grants such plan participant ("Licensee") a non-exclusive, non-transferable, limited licence to use the Licensed Software solely in connection with the Devices submitted to the Licensee by its customers for recovery of data as described in these Terms.
 - c. ***License Restrictions.*** Licensee may not modify, reverse-engineer, rent, sell, distribute, transfer or

make derivative works of the Licensed Software in whole or in part. Licensee shall not alter or copy the software.

- d. THE LICENSED SOFTWARE IS PROVIDED AS-IS WITHOUT ANY WARRANTY. SEAGATE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, ORAL OR WRITTEN, TERMS, CONDITIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE ABOVE, LICENSEE ACCEPTS THAT THE SOFTWARE MAY NOT MEET LICENSEE'S REQUIREMENTS, OPERATE ERROR FREE, OR IDENTIFY ANY OR ALL ERRORS OR PROBLEMS, OR DO SO ACCURATELY.
11. **No Trademark Licence.** You will refer to our service as "Seagate Data Recovery Service" but you may not otherwise use any of our names, trademarks, symbols or identifiers, or hold yourself out as somehow affiliated with Seagate, beyond the relationship described herein. The names, trademarks, promotional images and text, forms and other business content used by Seagate are the property and copyright of Seagate. Copyright material, including Web and printed content, may not be used by you in any advertising, publicity or promotional activity without our explicit prior written consent.
 12. **Non-Exclusive.** This is a non-exclusive agreement and may be terminated at any time with or without cause by either party.
 13. **Legal Rights.** You warrant that you are the authorised representative of the legal owner of the Device and data contained thereon, that the data on the Device is legal and that you have the legal right (a) to send Seagate the Device and data; (b) to have the data recovered; and (c) to receive the recovered data. You will defend and indemnify Seagate from any claims or actions relating to the Device or data, and your rights or lack of rights thereto, in accordance with these Terms.
 14. **Authorisation.** You authorise Seagate and its employees, agents and delegates to conduct testing, evaluation, access, recovery attempts and processing on each Device that you submit to us.
 15. **Confidentiality** We will protect the confidentiality of your data or your customer's data against unauthorised disclosure using the same degree of care as we use to protect our own confidential information.
 16. **Disclaimer of Warranties, Representations and Guarantees.** We perform this Service "AS IS" with all faults, at your sole risk. WE DO NOT EXTEND ANY EXPRESS WARRANTIES, REPRESENTATIONS, CONDITIONS OR GUARANTEES REGARDING OUR SERVICES OR THEIR RESULTS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, WE EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF ACCURACY OR COMPLETENESS.
 17. **LIMITATION OF LIABILITY.**
 - a. WE WILL NOT BE LIABLE FOR ANY HARM CAUSED, UNLESS YOU PROVE THAT WE CAUSED DAMAGES INTENTIONALLY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE WILL NOT BE LIABLE FOR THE CONDITION, EXISTENCE, OR LOSS OF THE DATA YOU SEND US OR THE DATA WE RECOVER; ANY LOSS OF REVENUE, LOSS OF PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS DISCLAIMER SHALL APPLY TO ANY AND ALL DAMAGES, REGARDLESS ON THE LEGAL THEORY ON WHICH THEY ARE ASSERTED (INCLUDING, WITHOUT LIMITATION, CONTRACT, BREACH OF CONTRACT, AND TORT), AND REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF LOSS OR DAMAGES - UNLESS YOU PROVE THAT SEAGATE CAUSED DAMAGES TO YOU INTENTIONALLY.

- b. To the maximum extent permitted by applicable law, the amount of our liability will not exceed the total price you actually pay us for the Services. The essential purpose of this limitation is to limit our liability for performing the Services; this allocation of risk is reflected in our prices. This paragraph will apply notwithstanding any other provisions in this agreement, or the failure of any remedy.
18. **INDEMNITY** You will defend and hold harmless Seagate, including directors, officers, agents, employees and customers (each, an “Indemnified Party”) against any alleged claim or action (collectively, a “Claim”) and will indemnify each Indemnified Party against all damages, claims, losses, liabilities, costs and expense of any kind or nature, including without limitation reasonable attorney’s fees and court costs (“Losses”) arising from your material breach of your obligations under these Terms and your actual or alleged negligence or wilful misconduct.
19. **Exclusive Remedy**. Your exclusive remedy for unsatisfactory work or data will be, at Seagate’s option, additional attempts by Seagate to recover satisfactory data or refund of the amount paid by you. You acknowledge that the price of Seagate’s Services would be much greater if Seagate undertook more extensive liability.
20. **Use of this Site and Your Account**. By using this site and through the use of our Services, you are subject to and agree to be bound by the privacy policy available at the following link <http://www.seagate.com/about/legal-privacy/privacy-statement/> and other terms and conditions of this site. You agree that you will take reasonable precautions to protect your account against unauthorised use and that you will be fully responsible for any activity on your account, whether authorised or unauthorised. We may terminate or suspend your access to or use of our site, without notice, for any conduct that we believe is disruptive or in violation of any applicable law or our terms and conditions.
21. **International Processing and Transfer of Data**. Given that we are an international business, our use of information necessarily involves the transmission and processing of data on an international basis (including in and to the United States and countries other than the country where the data was collected from you, which may not have data protection laws as stringent as those that exist in your country of residence). By using this website and/or the Services, or providing personally identifiable information to Seagate, you consent to the collection, processing, maintenance and transfer of such information in and to the United States and other applicable territories outside the country where the data was collected from you.
22. **DISPUTE RESOLUTION**. The parties will attempt to resolve any dispute related to this plan or the data recovery services through good faith negotiation. If the parties are unable to resolve the dispute through good faith negotiation, then the dispute will be submitted to final and binding arbitration with the Judicial Arbitration and Mediation Services (“JAMS”). Each party will bear their own costs in arbitration. **Both parties waive their rights to a jury trial.** All proceedings will take place in Santa Clara County, California, USA. The laws of the State of California will exclusively govern our provision of the data recovery services, without regard to California’s conflicts of laws rules. You consent to exclusive jurisdiction of the courts located in Santa Clara County, California, USA.
23. **Miscellaneous**.
- a. ***Compliance with Laws***. You agree to comply with all applicable laws, statutes, ordinances and regulations regarding your use of this site, including without limitation this site’s membership, purchase or return features. Seagate may, at Seagate’s sole discretion, report actual or perceived violations to law enforcement or appropriate authorities. If Seagate becomes aware, through a complaint or otherwise, of any potential or suspected violation of these Terms or the terms and conditions of the Site, Seagate may (but is not obligated to) conduct an investigation to determine the nature and extent of the suspected violation and the appropriate enforcement action, during which investigation Seagate may suspend services to you if you are implicated and/or remove any material from Seagate’s servers. You agree to co-operate fully with any such investigation. You acknowledge that violations of these Terms or the terms and conditions of the Site could be subject to criminal or civil penalties. You may not assign your rights or obligations under these Terms without Seagate’s express written consent.

- b. ***International Trade Compliance.*** The goods licensed or sold, or services provided, through this site, which may include technology and software, are subject to the customs and export control laws and regulations of the USA and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured or received. Furthermore, under US law, such goods may not be sold, leased or otherwise transferred to restricted countries, or used by a restricted end user or an end user engaged in activities related to weapons of mass destruction including, without limitation, activities related to designing, developing, producing or using nuclear weapons, materials or facilities, missiles or supporting missile projects, or chemical or biological weapons. You acknowledge that the Devices being submitted are not those of restricted end-users or involved in any of the restricted activities above, and that you will comply with and abide by these laws and regulations. Seagate reserves the right to refuse service to or the return of any storage devices that have been determined to violate these regulations.
- c. ***Notices and Communications.*** All communications relating to the Services, including cost estimates and invoices, will be available on our web site in your secure account and sent via email to the address you provide to us unless you request, in writing, to receive such communications via postal service. All notices must be delivered to the address designated above or to new or additional addresses as the parties may be advised in writing. Any notice required or permitted to be given under these Terms, except invoices, shall be in writing and shall be deemed to have been given on the date of delivery if delivered personally or sent by private delivery service or on the third day after mailing by United States mail, registered or certified, postage prepaid and correctly addressed.
- d. ***Independent Contractor.*** You are an independent contractor and not an agent, employee or partner of Seagate. Nothing contained herein shall be deemed to create any relationship between Seagate and you other than that of principal and independent contractor.
- e. ***Severability.*** If any provision of these terms and conditions is held invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not be affected thereby.
- f. ***Legal Effect.*** These terms and conditions describe certain legal rights. Licensee may have other rights under applicable law. These terms and conditions do not change your rights under applicable law if such laws do not permit these terms and conditions to do so.
- g. ***ENTIRE AGREEMENT.*** This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.