

Terms of Service and Strategic Analysis for ITUpcycle LLC

Section 1: Introduction and Scope of Services

This document constitutes the comprehensive Terms of Service ("ToS") for ITUpcycle LLC ("ITUpcycle"), governing all engagements and services provided to its clients ("Customer"). This ToS, together with any associated Statement of Work ("SOW") or ITAD Collection Agreement, forms the entire legally binding contract between the parties. In the event of a conflict between this ToS and a specific SOW, the provisions of the SOW shall prevail, but only to the extent that the SOW expressly states its intent to modify the terms of this master agreement with respect to that specific engagement.

The business model of ITUpcycle LLC, as reflected in its name, is founded on a dual imperative: to provide secure and compliant IT Asset Disposition (ITAD) while simultaneously maximizing value recovery and promoting a circular IT economy. The services outlined herein are designed to address the full lifecycle of retired IT assets, from their initial collection to their final, secure, and environmentally responsible disposition.

The core services offered by ITUpcycle LLC encompass:

- **Secure Logistics:** The secure, documented, and traceable collection and transportation of IT assets from the Customer's location to an ITUpcycle processing facility.
- **Data Destruction:** The complete destruction of all data stored on electronic-storage media, utilizing certified methods and adhering to industry standards.
- **Asset Evaluation and Reporting:** The detailed auditing, inventory management, and reporting of all received data-bearing assets, providing the Customer with a clear and verifiable record.
- **Value Recovery and Remarketing:** The refurbishment, resale, and donation of assets that retain residual market value, with a portion of the value being returned to the Customer prior to, or after, resale (if applicable).
- **Environmentally Compliant Recycling:** The de-manufacturing and recycling of assets that have no value for reuse, ensuring all materials are processed in compliance with environmental regulations.

This ToS is structured to function as a foundational master agreement that standardizes the most critical legal and operational clauses for all client engagements. This approach ensures consistency in risk management, protecting ITUpcycle LLC by standardizing key terms such as liability limits, data security protocols, and indemnification provisions. This

legal framework reduces the need to renegotiate core contract elements for each new project, enabling ITUcycle to operate with greater efficiency and legal clarity.

For the purpose of this agreement, ITUcycle LLC will be referred to as the "Processor" or "Supplier" and the Customer will be referred to as the "Controller" or "Data Controller" where the services involve the processing of personal data.

Section 2: Definitions

The following terms, when used in this Agreement, shall have the meanings set forth below:

- **"Agreement"**: The entire contract between ITUcycle LLC and the Customer, comprising this ToS and any applicable SOWs or Collection Agreements.
- **"Assets"**: All IT equipment, hardware components, and electronic storage media, including but not limited to servers, laptops, desktops, storage devices, mobile phones, and networking gear, provided by the Customer to ITUcycle LLC for disposition.
- **"Services"**: The full scope of IT asset disposition and value recovery activities provided by ITUcycle LLC to the Customer, as detailed in this ToS and any associated SOWs.
- **"Confidential Information"**: All nonpublic information, whether in tangible or intangible form, concerning the business, clients, technology, and strategies of the disclosing party, including but not limited to trade secrets, business plans, financial data, and technical information.
- **"Data Controller" / "Data Controller"**: The legal person, public authority, agency, or other body that, alone or jointly with others, determines the purposes and means of the processing of personal data. The Customer holds this role in this Agreement.
- **"Data Processor" / "Data Processor"**: A natural or legal person, public authority, agency, or other body that processes personal data on behalf of the Data Controller. ITUcycle LLC holds this role in this Agreement.
- **"Chain of Custody"**: The documented chronological record of the sequence of custody, control, transfer, and disposition of Assets. This record is essential to prove the integrity and authenticity of the Assets and the data they contain.
- **"Certificate of Destruction"**: A formal, auditable document provided by ITUcycle LLC to the Customer, certifying that data on specified Assets has been securely and permanently destroyed in compliance with the methods and standards outlined in this Agreement.

Section 3: Client Obligations and Warranties

The integrity and security of the ITAD process are joint responsibilities. This section clearly delineates the Customer's obligations, particularly those that must be met prior to or at the time of asset collection. By addressing these responsibilities upfront, this agreement creates a legal firewall that mitigates risks for ITUpcycle LLC that originate from the Customer's actions or inaction before the Assets are under ITUpcycle's secure custody.

3.1. Asset Manifest and Accuracy

The Customer must provide a complete and accurate manifest of all Assets to be collected through the online booking system or a mutually agreed-upon SOW. This manifest must include all relevant information required by ITUpcycle LLC, such as asset type, serial number, and quantity. ITUpcycle LLC reserves the right to refuse collection of any equipment not included on the provided manifest or to charge additional fees for processing such unlisted items. The manifest serves as the foundational document for the Chain of Custody; any discrepancy between the manifest and the Assets collected can legally compromise the integrity of the audit trail.

3.2. Site Access and Collection Logistics

The Customer shall provide ITUpcycle LLC, its agents, and its employees with timely, unhindered, and free access to the premises where the Assets are located. The Customer is responsible for ensuring that all Assets are grouped together in a single, easily accessible ground-floor location with step-free pallet access and close to an exit, unless otherwise specified in an SOW. The Customer shall have an authorized representative available at the point of collection to verify the count of Assets against the Collection Note and sign to confirm its accuracy.

3.3. Data Backup and Client Responsibility

The Customer acknowledges and agrees that it is solely responsible for backing up any data it wishes to retain from the Assets prior to collection. The Customer understands and irrevocably confirms that all data on the Assets may be rendered unrecoverable after they are collected by ITUpcycle LLC. The Customer acknowledges that ITUpcycle LLC will not and is not responsible for any logical access to or review of the data stored on any Assets.

3.4. Legal Right of Disposition

The Customer represents and warrants that it is the legal owner of all Assets and has the full legal right, authority, and title to transfer possession of, dispose of, and authorize the destruction of any and all data contained therein. The Customer warrants that it has obtained all necessary consents and rights to transfer any personal data on or in the Assets

to ITUpcycle LLC and to authorize ITUpcycle LLC to perform its contractual obligations hereunder. This clause is a crucial component of ITUpcycle's risk management strategy. By requiring this warranty, the agreement protects ITUpcycle LLC from claims related to the handling of stolen property, infringement of intellectual property rights, or non-compliance with privacy laws due to a client's own failure to meet its legal obligations.

Section 4: Data Security and Destruction

Data security is the paramount concern in IT asset disposition. This section outlines ITUpcycle LLC's rigorous commitment to secure data handling, which is designed to mitigate the most significant risks for both parties.

4.1. Certified Data Destruction Methods

ITUpcycle LLC provides secure data destruction services that are performed prior to any asset remarketing or recycling activities. Unless otherwise specified in a SOW, the standard methods for data sanitization include:

- **Software Wiping:** A process that securely overwrites all data on a functioning storage device to prevent recovery. This process adheres to standards such as NIST 800-88.
- **Degaussing:** The use of a powerful magnetic field to permanently erase data from magnetic media, such as hard drives.
- **Physical Destruction:** The physical shredding, crushing, or disintegration of storage media to render data completely unrecoverable. This method is used for high-security assets, faulty drives, or any device where software wiping cannot be successfully performed.

4.2. Chain of Custody Protocol

ITUpcycle LLC maintains a strict, auditable Chain of Custody for all Assets from the moment of collection until their final disposition. This protocol ensures that every physical transfer of the Assets is documented to prevent tampering or unauthorized access. The process includes:

- **Secure Collection:** Assets are placed in secure, serialized containers or pallets at the Customer's location.
- **Verification and Sign-Off:** An ITUpcycle representative verifies the Asset count against the manifest and obtains a signature from the Customer's representative on the Pickup Confirmation form.

- **Transport and Tracking:** Assets are transported in secure, GPS-monitored vehicles to an ITUpcycle processing facility.
- **Facility Receipt:** Upon arrival, a detailed intake audit is conducted, and a unique identifier is assigned to each Asset for tracking through every stage of processing, sanitization, and disposition.

4.3. Certificates and Auditable Reporting

Upon completion of the data destruction process, ITUpcycle LLC will provide the Customer with a Certificate of Destruction. This document formally certifies that the data on each serialized Asset has been securely and permanently destroyed in accordance with this Agreement's terms. Additionally, the Customer will receive a detailed destruction report that documents the full disposition process for all data-bearing assets.

Section 5: Asset Ownership and Value Recovery

This section precisely defines when legal ownership of the Assets transfers from the Customer to ITUpcycle LLC.

5.1. Transfer of Title and Custody

The physical custody of the Assets shall transfer from the Customer to ITUpcycle LLC at the point of collection upon a signed verification by both parties of the Assets received. However, legal title and ownership of the Assets shall not pass to ITUpcycle LLC until the Assets have been received at ITUpcycle's processing facility, inspected, and their final value has been determined. The Customer bears the risk of loss for all Assets until such time as the Assets are received at an ITUpcycle facility.

5.2. Value Recovery and Settlement

After the secure data destruction process has been successfully completed, ITUpcycle LLC will evaluate the Assets to determine their potential for value recovery. Assets that can be refurbished, reused, or resold will be remarketed to offset the costs of the Services and potentially provide a financial return to the Customer. ITUpcycle LLC shall provide a Settlement Report to the Customer, if applicable, detailing the disposition of each Asset and any value recovered. The Customer's share of any recovered value, after the deduction of any agreed-upon fees or costs, will be paid as specified in the applicable SOW. The final valuation of the Assets for resale is at the sole discretion of ITUpcycle LLC.

Section 6: Fees, Invoicing, and Payment Terms

This section ensures financial clarity and provides ITUpcycle LLC with the necessary legal mechanisms to enforce payment and recover costs in the event of a breach.

6.1. Pricing and Payment

The Customer agrees to pay all fees and charges for the Services as set forth in the applicable SOW. All undisputed invoices are due and payable within thirty (30) days of the date of receipt. All fees are exclusive of any federal, state, or local taxes, for which the Customer is solely responsible.

6.2. Late Fees and Collection Costs

If the Customer fails to pay an undisputed invoice within fifteen business days from the date payment is due, ITUpcycle LLC may, without prejudice to its other available remedies, assess a late-payment interest of two percent (2%) per month on the overdue balance, or the maximum rate allowed by applicable law, whichever is less. In the event of non-payment, the Customer shall be responsible for all reasonable expenses incurred by ITUpcycle LLC in collecting such overdue amounts, including but not limited to, reasonable attorneys' fees and court costs.

Section 7: Limitation of Liability and Indemnification

This section is the most critical for mitigating legal and financial risk, as it defines the financial exposure of both parties and allocates responsibility for third-party claims.

7.1. Limitation of Liability

In no event shall either party be liable to the other for any indirect, incidental, consequential, special, or punitive damages, including but not limited to lost profits or lost data, even if the party has been advised of the possibility of such damages. If ITUpcycle LLC is found to be liable to the Customer for any damage or loss arising from the Services, ITUpcycle's total liability shall in no event exceed the total compensation paid by the Customer to ITUpcycle LLC in the twelve months prior to the date of the initial claim.

7.2. Mutual Indemnification

Each party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party, its employees, officers, and agents (the "Indemnified Party") from and against any and all third-party claims, liabilities, demands, losses, damages, or expenses (including reasonable attorneys' fees and costs) arising out of or in connection with: (a) a breach of any representation or warranty made by the Indemnifying Party in this Agreement; (b) the Indemnifying Party's negligence, willful misconduct, or failure to comply with any applicable laws.

Section 8: Confidentiality and Data Privacy

This section is paramount for protecting sensitive information and ensuring compliance with a complex web of data privacy laws.

8.1. Confidential Information

Each party may disclose Confidential Information to the other for the purpose of this Agreement. The receiving party shall maintain all Confidential Information in strict confidence and shall use it only as necessary to perform its obligations under this Agreement. The receiving party shall take all reasonable measures to protect the Confidential Information, no less than the measures it takes to protect its own Confidential Information. The parties acknowledge that monetary damages may not be a sufficient remedy for the unauthorized disclosure of Confidential Information, and the disclosing party may seek injunctive or equitable relief.

8.2. Compliance with Data Privacy Regulations

The Customer, as the Data Controller, represents and warrants that it has all legal rights and authority to transfer the Assets, including any personal data contained therein, to ITUpcycle LLC. ITUpcycle LLC, as the Data Processor, agrees to process such data only for the purpose of providing the Services and will not use, sell, or disclose the personal data for any purpose other than the agreed-upon business purpose. ITUpcycle LLC will adhere to all applicable data privacy regulations, including, but not limited to, the General Data Protection Regulation (GDPR), the Health Insurance Portability and Accountability Act (HIPAA), and the California Consumer Privacy Act (CCPA). For any Customer that is a HIPAA-covered entity and provides unencrypted Protected Health Information (PHI) to ITUpcycle LLC, a separate Business Associate Agreement (BAA) must be executed to formalize the relationship and ensure compliance with HIPAA's Privacy and Security Rules.

Section 9: Warranties, Representations, and Disclaimers

9.1. ITUpcycle LLC's Warranties

ITUpcycle LLC warrants that the Services will be performed in a professional manner, using personnel with the requisite skills and experience, and will adhere to the standards and specifications set forth in this Agreement.

9.2. Disclaimers

ITUPCYCLE LLC DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, THAT ARE NOT EXPRESSLY STATED IN WRITING HEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR

NON-INFRINGEMENT.1 THE CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES THAT ARE NOT EXPRESSLY INCLUDED IN THIS AGREEMENT.

Section 10: Termination and Remedies for Breach

10.1. Grounds for Termination

Either party may terminate this Agreement upon written notice to the other party in the event of a material breach of this Agreement, including but not limited to the Customer's failure to pay any undisputed invoice when due or the unauthorized disclosure of Confidential Information.

10.2. Consequences of Termination

Upon the termination or expiration of this Agreement, the Customer shall pay all outstanding fees and charges for the Services provided up to the effective date of termination. ITUcycle LLC shall promptly return to the Customer or, at the Customer's written request, securely destroy all of the Customer's Confidential Information and provide a written certification confirming such destruction.

Section 11: General Provisions

- **Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of, without regard to its conflict of law principles. Any controversy, claim, or dispute arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in.
- **Dispute Resolution:** Any dispute or claim arising from this Agreement shall be subject to a good-faith negotiation between the parties. If an agreement cannot be reached, the dispute may be resolved through mediation or litigation as determined by the parties.
- **Entire Agreement:** This Agreement, including any SOWs, constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, and understandings, whether oral or written.
- **Force Majeure:** Neither party shall be liable for any failure or delay in performance under this Agreement due to causes beyond its reasonable control, including but not limited to acts of God, war, terrorism, natural disasters, or government regulations.

Section 12: Expert Commentary and Analysis

The Terms of Service presented herein are not a static legal template but a dynamic, strategic document designed to manage the full spectrum of legal, financial, and reputational risks inherent in the ITAD industry. The clauses are carefully structured to reflect ITUpcycle LLC's unique business model while ensuring the company operates with the highest standards of professionalism and legal compliance.

A foundational principle embedded in this agreement is the allocation of responsibility at each stage of the ITAD lifecycle. The following table provides a clear breakdown of the service model, visually mapping ITUpcycle's services and the corresponding responsibilities of both the company and the Customer.

ITAD Service Model	Primary Responsibility	Key Operational and Legal Actions
Pre-Collection	Customer	Legal: Client warrants ownership and right to dispose of assets and data. Operational: Client prepares an accurate manifest and the collection site.
Secure Collection	ITUpcycle LLC	Legal: Physical custody transfers. Operational: Assets are counted, verified against manifest, and secured in a transport vehicle.
Transport	ITUpcycle LLC	Legal: Custody maintained, but Customer bears risk of loss. Operational: Assets are transported in a secure, GPS-monitored vehicle to the ITUpcycle facility.
Processing	ITUpcycle LLC	Legal: Legal title to assets may transfer after inspection. Operational: Assets are audited, inventoried, and data destruction is performed.
Data Destruction	ITUpcycle LLC	Legal: ITUpcycle processes data as a Data Processor. Operational: Data is securely wiped, degaussed, or physically destroyed according to certified methods.

ITAD Service Model	Primary Responsibility	Key Operational and Legal Actions
Value Recovery & Disposal	ITUpcycle LLC	Legal: Ownership transfers. Operational: Assets are refurbished, resold, or recycled. Reporting is provided.
Post-Disposition	ITUpcycle LLC	Legal: Provides Certificates of Destruction and audit reports for client compliance.

Ultimately, the most effective way to manage ITAD risk is through a proactive, preventative approach. This ToS is designed to provide ITUpcycle LLC with the legal framework to do just that. The following table summarizes the key risks and the corresponding clauses in this Agreement that are specifically designed to mitigate them.

Common ITAD Risks	Corresponding ToS Clauses	How the Clause Mitigates Risk
Data Breach	Data Security & Destruction, Warranties & Representations, Indemnification	Commits to certified destruction methods and standards, provides a legal framework for accountability, and outlines remedies for breach.
Legal Non-Compliance	Data Privacy Regulations, Client Obligations & Warranties	Explicitly addresses compliance with GDPR, HIPAA, and CCPA, and shifts the burden of pre-collection legal compliance to the client.
Financial & Reputational Damage	Limitation of Liability, Indemnification, Termination	Caps financial exposure, allocates risk for third-party claims, and provides a clear mechanism for ending the business relationship.

Common ITAD Risks	Corresponding ToS Clauses	How the Clause Mitigates Risk
Environmental Violations	Services, Warranties & Representations	Commits to environmentally responsible recycling practices and provides a legal basis for auditing and accountability.
Disputes Over Ownership	Asset Ownership and Value Recovery	Clearly distinguishes between physical custody and legal ownership, and manages client expectations regarding asset valuation.
Failed Audits & Legal Challenges	Chain of Custody Protocol, Certificates & Reporting	Establishes a rigorous, auditable trail from collection to final disposition, ensuring all actions are documented and defensible in court.