

DataBarracks Restored Data Statement

In this statement, "Databarracks" means Databarracks Limited, a company registered in Guernsey under number 40662 whose registered office is at Adolphus House, Fort George, St. Peter Port, Guernsey, Channel Islands, GY1 2ST and "you" means the person (including a company, firm or other body) who has contracted with Databarracks for the provision by Databarracks of its remote backup solution ("the Backup Contract").

Databarracks will pay you compensation for lost data which was backed up using the Databarracks system ("the Databarracks System") and which cannot be recovered, to the extent that such loss is caused by the negligence of Databarracks subject to the terms and conditions set out below. Note that we cannot know the content of the data we store for you and we have therefore limited the compensation available to £1,000,000 per claim. Business interruption insurance is generally available to cover losses of this sort.

This statement is in addition to your statutory rights as a consumer.

1. Background

- 1.1** The Databarracks software and system is only capable of backing up and restoring binary computer files exactly as they were backed up. It encrypts the files you select and transfers them to the Databarracks secure storage facility using your internet connection. The encryption is based on your secret password and passphrase. On successful receipt of each block of selected files at the Databarracks secure storage facility, the Databarracks software verifies receipt and sends you an email. The Databarracks system using a mathematical technique to ensure that the files it receives are the same as the files which were sent. If a file is corrupted en-route from your computer to the Databarracks secure storage facility, the Databarracks software will re-send the file, failing which, the transmission will be flagged as an error in the confirmation email sent to you by the Databarracks software.
- 1.2** When you restore the data using the Databarracks system, it retrieves the files from the Databarracks secure storage facility in encrypted form and using secret password and passphrase you entered when you first installed the Databarracks software, it un-encrypts them, on your computer, into a file identical to the one which you backed up on a bit-by-bit basis.
- 1.3** The Databarracks system has no way of knowing the content of the data which you send to Databarracks, because it is impossible for Databarracks to reconstitute the data itself without access to your password and passphrase (which you are under a contractual obligation to keep secret and confidential and not to reveal to Databarracks). Without the password and passphrase, the data received by Databarracks is indistinguishable from random data. For this reason, if you back up a corrupted file using the Databarracks system, when it is restored, you will receive an identically corrupted file. In common with other backup-and-restore systems currently available (including disk, tape and off-site storage) the Databarracks system is designed to back-up all files stored on you hard disk exactly as they are read by the operating system and restore them on

bit by bit basis, as they were originally backed up, including any errors and corruption contained in them.

- 1.4 Databarracks believes its users would not appreciate receiving restored files which are even minutely different from the files they have backed up, and for this reason the system is designed only restore files exactly as they are backed up (in computer terminology this is called "a bit-by-bit copy"). In this statement, the words "backup" and "restore" should be understood in this context.
- 1.5 You should therefore make sure (as is universally recommended practice in IT departments worldwide) that you carefully select the data you want to back up to ensure that it is the data you would want to restore in the case of a system failure or file corruption. For example, in the case of word processing documents, rather than over-writing the original file whenever you make changes, consider saving the changed version under a different file name and backing up the previous versions alongside the current version, so that you can revert to any previous version in the case of corruption.
- 1.6 Note also that in the case of a major system failure, you will have to reinstall your system (e.g. operating system and applications, including the Databarracks system) onto the same or a new computer at which point you will be able to use the Databarracks system (assuming you have correctly entered your private passphrase and password!) to restore the individual files you have backed up. You are responsible for reinstalling your system in this way, not Databarracks.

You should be aware that that even if you attempt to restore some system files on a bit-by-bit basis (for example the system registry) onto a computer that has even a minutely different configuration to the one from which the backup was taken this may cause extremely serious and total system failure. The Databarracks system is designed to backup and restore individual files on a bit-by-bit basis, and will therefore (unless you use the optional Databarracks "open files" module) only work on closed data files (such as word processing, image and spreadsheet files which are not currently open in an application) rather than system files (such as the registry) or files which are currently open and in use (such as open .pst files, or active directory databases).

2. Your Obligations

- 2.1 Databarracks shall only pay you the Compensation if you have fulfilled the following obligations:
 - 2.1.1 All payments due from you to Databarracks have been made;
 - 2.1.2 You are not in breach of your Backup Contract, nor have you been since the date on which you backed up the data you are attempting to restore ("the Data");
 - 2.1.3 You have backed up the Data using the Databarracks System and have followed all relevant instructions from Databarracks;
 - 2.1.4 You have received confirmation from your Databarracks software that the Data was backed up correctly without any errors;

- 2.1.5 You have correctly retained details of your Password and Passphrase (this is critical: without your password and passphrase entered exactly as you originally entered them, it will be impossible to restore your Data and it will be irretrievably lost without any liability on the part of Databarracks);
- 2.1.6 The Data was backed up from a compatible system (being any Intel or Intel-compatible computer system running and compatible with Microsoft Windows 98, Windows 98SE, Windows ME, Windows NT, Windows 2000 or Windows XP) and you have retained a copy of the email confirmation from the Databarracks software that the Data was backed up without error;
- 2.1.7 You have kept your copy of the Databarracks software up-to-date by downloading and installing the latest versions within 21 days of notification that such a version is available;
- 2.1.8 You have contacted Databarracks Technical Support using telephone or email within 7 days of attempting and failing to restore the Data and have given them all relevant information and co-operated with them in all respects in attempting to restore the Data, but they have been unable to do so within 30 days of receiving the request. In particular, if the system on which you backed up the Data has failed Databarracks may require you to have available a similarly configured system (with sufficient disk space to take a restored Data) with the Databarracks software correctly installed and configured (including containing the correctly-entered passphrase and password and internet access) to enable Databarracks to assist you with the restore process.
- 2.1.9 You confirm and agree that by backing up and restoring the Data you (and Databarracks) are not in breach of the rights (copyright or otherwise) of any third party and you agree to indemnify Databarracks against any claim that you (or it) is in breach of any such rights.

2.2 Claim Process

If you are in compliance with the obligations set out in clause 2.1 above, Databarracks will compensate you for loss caused by the negligence of Databarracks up to a ceiling of £1,000,000 PROVIDED THAT:

- 2.2.1 You notify Databarracks in writing within 30 days of the expiry of the period set out in clause 2.1.8 above that you are making a claim, heading your notification "Data Loss Claim" and giving details of the circumstances surrounding the claim, evidence reasonably acceptable to Databarracks that the Data in question was correctly backed up and setting out details of your losses (and you respond promptly and accurately to any reasonable queries which Databarracks may raise in relation to such notification);
- 2.2.2 You take all reasonable steps to mitigate your loss and to assist Databarracks in doing so;

2.2.3 The losses which are covered under this Statement are those which are a reasonably foreseeable consequence of the failure of Data backed up to be restored and includes (to the extent that they are so reasonably foreseeable) loss of profits, loss of anticipated savings, loss of staff time and remedial costs, but not lost opportunity costs;

2.2.4 Any payment made under this clause 2.2 is deemed to be in full and final settlement of any claims which are or may in the future be made by you against Databarracks in relation to the loss of such Data.

2.2.5 Should clause 2.2.4 be deemed by a court to be unenforceable, any payment made to you by Databarracks under this clause 2.2 shall be deemed to be credited against any award made by any court.

3. General

3.1 This statement is part of and should be read in conjunction with the contract between you and Databarracks for the provision of data backup services and software. Where there is a conflict between that agreement and this statement, this statement shall prevail

3.2 This statement is to be governed in all respects in accordance with English Law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

3.3 Databarracks acknowledges that the word Intel is a trademark (and may be a registered trademark) of Intel Corporation or its subsidiaries, and that the words Microsoft, Windows, Windows 98, Windows 98SE, Windows ME, Windows NT, Windows 2000 and Windows XP are trademarks (and may be registered trademarks) of Microsoft Corporation.