

Please make sure you have read and understand the summary information, Databarracks' terms and conditions and the Restored Data Statement, all set out below.

Summary Information Required by the Consumer Protection (Distance Selling) Regulations 2000:

1. The services are provided by DATABarracks Limited a company registered in Guernsey under Reg # 40662 whose registered office is at Adolphus House, Fort George, St Peter Port, Guernsey, Channel Islands, GY1 2ST ("Databarracks").
2. The service is offsite data backup and storage using software Databarracks supplies and you install on your computer.
3. The services are priced as set out at www.databarracks.com/pricing.asp subject to a 60 day initial free trial including VAT.
4. There is separate charge to you for delivery of the Software.
5. Payments are made monthly in arrears by debit from your credit or debit card, as more particularly set out in the contract below.
6. By signing up you consent to Databarracks commencing provision of the services to you immediately and accordingly you have no statutory 7 day right to cancel under the Consumer Protection (Distance Selling) Regulations 2000. However, Databarracks offers to you the right to cancel on 7 days' notice during the first 60 days of the contract on terms set out in the contract below.
7. The pricing will remain valid until 31 December 2004. See www.databarracks.com/pricing.asp for further details.
8. You may cancel the contract at any time during the first 60 days. After that, you may cancel at any time on at least 7 days' notice to expire on or before the end of the next Charging Period (as set out below). In other words, after the first 60 days, your maximum commitment is one month and 7 days.

IMPORTANT Databarracks advises that you write down your username, password and encryption key (if set) and keep it somewhere safe and secure. Databarracks does not keep your encryption key on file. It is not possible to access your data without it. Databarracks is unable to help you retrieve data if you do not have a record of your password and encryption key (if set).

- 1.5 **Data Processor** As defined in the Data Protection Act 1998
- 1.6 **Working Day** Any day other than a Saturday, Sunday or public holiday in England
- 1.7 **Public Key** The published part of an asymmetric encryption key pair which a person intends third parties to use to encrypt data for the benefit of the person generating the key and which can only be decrypted by the use of the corresponding private key which is kept secure by the key generator
- 1.8 **The Software** The Databarracks client software as updated by Databarracks from time to time
- 1.9 **Usage Fee** is defined in clause 5

2. PROVISION OF SERVICES

- 2.1 In consideration of your payment of the Fee Databarracks agrees to supply you with the Services on the terms and subject to the conditions set out in this Agreement.
- 2.2 You acknowledge that you are responsible for providing your own internet access facilities through your ISP or telecommunications provider which will be payable at additional cost payable to them.

3. TERM

- 3.1 Subject to earlier termination in accordance with this Agreement, this Agreement will continue for the Initial Term and shall continue thereafter unless terminated earlier by notice from one party to the other. Where notice is received 7 days or more before the end of a Charging Period, termination shall take place at the end of the current Charging Period. Where notice is received less than 7 days before the end of a Charging Period, termination shall take place at the end of the next Charging Period (unless Databarracks is able at its discretion to process such termination earlier).
- 3.2 Databarracks starts to provide services to you by allocating storage space as soon as you sign up for the service, and accordingly you have no statutory 7 day right to cancel under the Consumer Protection (Distance Selling) Regulations 2000. However, at any time during the free Initial Term you may terminate this Agreement by notice to Databarracks and you will not be charged.

4. PAYMENT OF FEES

- 4.1** You agree to pay the Usage Fees (as set out in clause 5) and the Additional Licence Fee (as set out in clause 11.2 below) as they become due.
- 4.2** All fees are payable monthly in arrears after the last day of each Charging Period and you hereby authorise Databarracks to use the credit card/debit card entered when you signed up to pay the Fees and other charges under this agreement as they become due (each charge will be processed within 7 days after the end of the relevant Charging Period). Where any of your credit/debit card payments is refused or reverse charged (other than through the fault of Databarracks) Databarracks reserves the right to charge an administration fee of £20 on each and every occasion where this occurs to cover its time and expense. You undertake to notify Databarracks in good time each time your credit/debit card details change or the card expires.
- 4.3** Databarracks reserves the right to charge interest on all late payments at the rate prescribed by Late Payment of Commercial Debts (Interest) Act 1998, whether or not such Act applies to the debt in question.

5. USAGE FEES

- 5.1** Usage Fees are calculated on the basis of the average amount of data held on the Databarracks servers after compression rounded up to the nearest megabyte during the Charging Period as calculated pursuant to the Databarracks standard charging algorithm. Part months are charged pro-rata.
- 5.2** Where Data stored on the Databarracks Servers in compressed form exceeds the current Storage Band, (as calculated pursuant to the Databarracks standard charging algorithm) you will be charged the corresponding charging rate for the Charging Period in question.
- 5.3** Databarracks will notify you of any change in Usage Fees at least 30 days prior to such fees coming into effect. The notification may take the form of a reminder to view the pricing terms on the Databarracks website at www.databarracks.com/pricing.asp. This gives you the opportunity to terminate the Service under the provisions of this Agreement prior to the new pricing coming into effect.

6. AVAILABILITY and SERVICE LEVELS

- 6.1** Databarracks does not undertake to provide the Services 24/7/365 but shall use reasonable commercial endeavours to make the Services available.
- 6.2** Databarracks undertakes to comply with the terms of the Service Level Agreement, if this has been entered into.
- 6.3** Subject always to its obligation to provide the Services with reasonable skill and care, Databarracks shall not, unless you have entered into a separate Service Level Agreement with Databarracks, and subject to the terms of that Agreement,

and the Databarracks Restored Statement v1.0, be liable for failure to provide the Services.

7. ACCEPTABLE USE POLICY

You undertake not to use the Services to store or transmit any data which are obscene, illegal, defamatory or which breach the rights of any third party and to fully and effectively indemnify Databarracks against any cost, claim or expense arising from any breach or suspected breach of such undertaking.

8. OWNERSHIP OF DATA

8.1 You acknowledge and confirm that you own and are permitted to transmit to Databarracks all Data without breach of any law, agreement, arrangement or duty or the rights of any third party.

8.2 You acknowledge that Databarracks has no access to the content of Data transmitted to Databarracks using the Services as all Data is encrypted prior to transmission to Databarracks using an algorithm which Databarracks has no practical means of reversing.

8.3 You undertake never to transfer to Databarracks in whatever form (including but not limited to written or spoken) and for whatever reason any encryption key (except a Public Key), decryption key, password or other access token except only where such encryption key, decryption key or password is itself encrypted as part of the Data in a way which prevents Databarracks from accessing it.

8.4 In no circumstances will Databarracks attempt any processing of any Data supplied to Databarracks under this Agreement other than storage and retrieval of encrypted data blocks.

8.5 So far as Databarracks is aware of the current state of the art, loss of your password or encryption key will result in irretrievable loss of Data and no practical means exists of recovering such Data.

8.6 Databarracks will never attempt to assist the recovery of any Data where loss is caused by the loss of or corruption to any encryption key.

9. DATA PROTECTION

9.1 Databarracks stores the Data within the United Kingdom, but is not a Data Controller in relation to such Data as it has no access to nor ability to process such Data (whether pursuant to your instructions or otherwise) other than to obtain or release such Data pursuant to instructions directed directly at the Databarracks servers by you.

9.2 Databarracks refuses to process or attempt to process any Data other than in accordance with clause 9.1 above.

9.3 You acknowledge that as holder of the decryption keys associated with the Data the security of the Data is entirely within your control. Databarracks will use all reasonable endeavours not to permit anyone who does not have the appropriate access keys to have access to the Data (and then only in encrypted form) and you acknowledge and confirm that this satisfies the requirements of the seventh Data Protection Principle (security).

10. USE OF SERVICE

10.1 You undertake to use the Services only for yourself and not for any third party and not to resell or attempt to resell them.

10.2 You undertake to use the Services and to access the Databarracks equipment solely through use of the Software as supplied to you and unmodified and you acknowledge and confirm that any other use of Databarracks equipment is **UNAUTHORISED AND MAY THEREFORE AMOUNT TO AN OFFENCE UNDER THE PROVISIONS OF THE COMPUTER MISUSE ACT**, and you will not assist or any permit any other person so to access the Databarracks equipment.

11. USE and UPDATING SOFTWARE

11.1 You will be responsible for downloading the Software from the Databarracks servers and installing it on your equipment.

11.2 Installation on additional computers will attract a fee equal to the Additional Licence Fee per computer.

11.3 You undertake to update the Software promptly on notification by Databarracks as subsequent versions are released.

11.4 You acknowledge that the Software's feature set may vary from release to release.

11.5 Databarracks accepts no liability for any failure in the Services where:

11.5.1 you attempt to access them with a version of the Software which is not current (i.e. where you have not downloaded and installed the latest version of the Databarracks software within 21 days of receiving notification from Databarracks to do so);

11.5.2 the Software fails owing to:

11.5.2.1 your failure to follow instructions correctly (provided that the instructions given to you were reasonably clear);

11.5.2.2 failure of the Software to interoperate with other software (including firmware); or

11.5.2.3 hardware malfunctions

11.5.3 there is any corruption or failure of encryption or decryption key caused other than by Databarracks;

- 11.5.4 the loss or corruption of any password or other identification token caused other than by Databarracks;
- 11.5.5 loss of or corruption of data caused while the data is in transit to or from the Databarracks storage facility; or
- 11.5.6 you are frozen out of access to the Services owing to a denial of service attack

because in each case these are occurrences which are beyond our reasonable control.

12. LICENCE TO SOFTWARE

- 12.1 For such period as Databarracks is contracted to provide the Services, the Software is licensed to you pursuant to the End User Licence Agreement as amended from time to time.
- 12.2 The End User Licence Agreement is incorporated into this Agreement.
- 12.3 The licence referred to in Clause 12.1 above extends to any amendments, modifications bug fixes or version releases that may be issued from time to time.

13. SUSPENSION OF SERVICES

- 13.1 Without prejudice to any other remedy it may have Databarracks is permitted to suspend the services
 - 13.1.1 if you are in material breach of any term of this Agreement (including the End User Licence Agreement);
 - 13.1.2 if you owe any money to Databarracks (whether under this Agreement or otherwise) and such sums are due and payable;
 - 13.1.3 where Databarracks reasonably suspects that you are in material breach of any term of this Agreement or reasonably anticipates that you will be; or
 - 13.1.4 where Databarracks reasonably suspects that the security of its systems is or is about to be compromised.
- 13.2 Should Databarracks revoke such suspension, it does not guarantee the retention or integrity of any data stored pursuant to the Services while such suspension is in place.
- 13.3 Your licence to use the Software is suspended for such time as the Services are suspended pursuant to clause 13.1 above.
- 13.4 Fees continue to accrue and be payable at any time while the Services are suspended pursuant to clause 13.1 above.

14. REFERENCES TO LEGISLATION

Any reference to a statutory provision shall include that provision as from time to time modified or re-enacted provided that in the case of modifications or re-enactments made after the date of this Agreement the same shall not have effected a substantive change to that provision.

15. SINGULAR AND PLURAL AND GENDER

The singular includes the plural and vice versa and any gender includes any other gender.

16. HEADINGS

The headings of this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

17. GOOD FAITH

The Parties agree to deal with each other under this Agreement and in all respects in good faith.

18. FORCE MAJEURE

18.1 Databarracks shall not be liable for delay in performing or failure to perform obligations under this Agreement if the delay or failure results from force majeure.

18.2 For the purposes of this Agreement "force majeure" shall mean any Act of God war riot act of terrorism outbreak of hostilities strike or other industrial action of any kind malicious damage default of suppliers or sub-contractors accident failure or breakdown of plant or machinery (including internet service provision) fire flood explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the Parties.

18.3 In the event of any delay or failure under this Agreement resulting from force majeure a Party may rely on the provisions of this clause for exemption from liability for non-performance part performance defective performance or delay and in the event that any such delay or failure continues for a period in excess of 30 consecutive days a Party shall have the right to terminate this Agreement with immediate effect.

18.4 In the event of any force majeure (including a sequence of events of force majeure) which has lasted or is likely to last for longer than 14 days the Parties agree to discuss in good faith whether the respective rights and obligations of each Party under this Agreement can be amended in order to alleviate the effects of the force majeure and best bring into effect the original intentions of the Parties.

19. VARIATION

This Agreement may be modified or amended from time to time by the mutual agreement of the Parties provided however that no such modification or amendment shall be effective until reduced to writing signed by the Parties

20. SUCCESSORS AND ASSIGNS

References in this Agreement to the Parties shall include their respective heirs successors in title permitted assigns and personal representatives.

21. WAIVER AND FORBEARANCE

If any Party fails to rely on its rights under this agreement or otherwise, that shall not prevent it from relying on those (or similar) rights in the future.

22. CUMULATIVE REMEDIES

22.1 The provisions of this Agreement, and the rights and remedies of the Parties under it are cumulative and are without prejudice and in addition to any rights or remedies a Party may have at law or in equity.

22.2 No exercise by a Party of any one right or remedy under this Agreement, or at law or in equity, shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

23. WARRANTY

Subject to Clause 24 below, Databarracks expressly warrants that it will carry out the Services with reasonable skill and care.

24. LIABILITY

24.1 Except as expressly stated in this Agreement, or in the Databarracks Restored Data Statement version 1.0 which is expressly incorporated into this Agreement by reference, Databarracks shall have no liability to you for any loss or damage whatsoever arising out of or in connection with this Agreement or the supply of Services hereunder whether arising in contract, tort (including negligence and breach of statutory duty) or otherwise. Subject to the Databarracks Restored Data Statement and Clause 24.3 below Databarracks's total aggregate liability to you in connection with this Agreement other than its liability under Clause 6.2 in any one calendar year shall not exceed 125% of the amount received by Databarracks (excluding VAT) from you under this Agreement in such calendar year.

24.2 Except to the extent referred to in the Databarracks Restored Data Statement, neither Party shall, in any event, be liable or responsible to the other for any indirect, incidental, special or consequential loss, damage, cost or expense of any

kind whatsoever and howsoever caused whether arising under contract, tort (including negligence and breach of statutory duty) or otherwise, including without limitation, loss of documentation, loss or corruption of data, loss of profits or of contracts, remedial costs, loss of operation or staff time, costs of obtaining substitute goods or services and loss of goodwill or anticipated savings, even if it has been advised of the possibility.

- 24.3 The above exclusions and limitations shall apply to the fullest extent permissible at law but neither Party excludes or limits liability for death or personal injury caused by its negligence or that of its employees or agents and for which it is responsible, or for fraud or wilful deceit and nothing in this clause 24 shall have the effect of derogating from the statutory rights of a consumer as defined in the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended).
- 24.4 You acknowledge that the exclusions and limitations of liability set out in this Agreement are reasonable notwithstanding that they may have the effect of protecting Databarracks from losses for which it may be insured (and the Parties acknowledge that there are sound commercial reasons for so doing, such as maintaining a good insurance claims record)
- 24.5 No indemnity in this Agreement shall be effective to the extent that it has the effect of excluding or restricting liability as set out in Clause 24.3 above.

25. SEVERABILITY

If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable

- 25.1 that provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect; and
- 25.2 the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for that provision.

26. WHOLE AGREEMENT

- 26.1 Subject to clause 26.3 below this Agreement (including the documents and instruments referred to in it) supersedes all prior representations, arrangements, understandings and agreements between the Parties relating to its subject matter and is the entire complete and exclusive agreement and understanding between the Parties relating to its subject matter.
- 26.2 Each Party acknowledges that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement
- 26.3 Clauses 26.1 and 26.2 above shall not apply to the extent that they relate to any warranty, representation or undertaking made fraudulently in which case the other Party shall be entitled to all the remedies available under English law.

27. ASSIGNMENT

You may not assign transfer sub-contract or otherwise dispose of any rights or obligations under this Agreement without the prior written consent of Databarracks.

28. NOTICES

Any notice given under this Agreement shall be in writing and shall be delivered or sent by pre-paid registered post or by email to the address (where Databarracks sends notices to you) as disclosed by you to Databarracks during the sign-on process, or (where you send notices to Databarracks) to Adolphus House, Fort George, St Peter Port, Guernsey, Channel Islands, GY1 2ST or notices@databarracks.com, or to such address as subsequently notified to the other party pursuant to this clause. In the case of post, the notice shall be deemed to have been received 72 hours after it was posted, and in the case of fax, as soon as it has finished being sent, provided that the sending machine confirms that the receiving machine has received the notice error-free. In the case of email, the notice shall be deemed to have been received only where the sender receives an acknowledgment of receipt, provided that the recipient agrees to send a prompt acknowledgment to the sender.

29. RIGHTS OF THIRD PARTIES

This Agreement is not intended to convey a benefit on any person not a party to it and accordingly the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.

30. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

DATABarracks Restored Data Statement v1.0

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 ("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 Databarracks cannot know the content of the data it stores for you and Databarracks has therefore limited the Compensation available to £1,000,000 per claim. You should be aware that Business interruption insurance is generally available to cover losses of this sort and any good insurance broker will be able to advise you as to the availability and scope of policies in this area should you require cover which goes beyond the scope of the liability accepted by Databarracks in this Agreement. An insurance company is in a

better position to provide appropriate cover than Databarracks because it has expertise in assessing risk based on information provided to it by you.

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

0. Background

- 0.1** 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.
- 0.2** 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.
- 0.3** 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.
- 0.4** 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.
- 0.5** 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.

- 0.6 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.
- 0.7 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).

1. Your Obligations

1.1 Databarracks shall only pay you the Compensation if you have fulfilled the following obligations (with explanations in brackets after each obligation which are for clarity but do not form part of the legal agreement):

- 1.1.1 All payments due from you to Databarracks have been made (because it is only reasonable that you fulfil your obligation to pay before Databarracks is liable to pay Compensation to you);
- 1.1.2 You are not in material 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") (because if you have been in material breach then, reasonably enough, Databarracks is not under an obligation to retain your backups and therefore cannot be required to compensate you if they cannot be restored);
- 1.1.3 You have backed up the Data using the Databarracks System and have taken all reasonable steps to follow all relevant instructions from Databarracks (because the system is designed to operate only with software provided by Databarracks and, crucially, can only verify correct backing up of data which has been backed up using the Databarracks System);
- 1.1.4 You have received confirmation from your Databarracks software that the Data was backed up correctly without any errors (because failure to receive a confirmation that backup is successful alerts you immediately to the fact that the data may not have been backed up successfully - whether due to the failure of the software or for any reason beyond the control of Databarracks - and that therefore you should immediately

take steps to determine source of the fault and back up using an alternative technique);

- 1.1.5 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);
- 1.1.6 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, Windows XP or Windows 2003) and you have retained a copy of the email confirmation from the Databarracks software that the Data was backed up without error (because the system is only designed to operate with hardware and software meeting that specification, and the confirmation email allows Databarracks to verify that the backup was verified, and gives Databarracks important information to enable it to assist in restoring the data through technical support);
- 1.1.7 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 (because Databarracks strives to improve its service constantly, and since software updates are free of charge and easily implemented it is a relatively small obligation on you to keep your copy of the software up-to-date, in comparison with an obligation on Databarracks to keep a multitude of different software versions supported);
- 1.1.8 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 (because (1) the sooner you contact Databarracks Technical Support the more likely it is that they will be able to assist in restoring the data, (2) it is only reasonable that you provide them with all the information they reasonably require to assist them in restoring the data (so they can determine why you were unable to restore it yourself); (3) they must be given a reasonable opportunity to try to restore it for you; and (4) the data can only be restored to a similarly configured system as it may not fit or interoperate correctly with a materially different system – and other than operating system incompatibility, Databarracks does not try to impose any specifications as to the system you can use – and (5) it

is technically impossible to restore the data without an identical passphrase and password to those used to back-up the data).

- 1.1.9 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 (because Databarracks has no control over the type of or source of the Data you store on the system, or any way of determining itself whether any rights have been violated).

1.2 Claim Process

If you are in compliance with the obligations set out in clause 1.1 above, Databarracks will compensate you for loss caused by the negligence of Databarracks up to a ceiling of £1,000,000 PROVIDED THAT:

- 1.2.1 You notify Databarracks in writing within 30 days of the expiry of the period set out in clause 1.1.8 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);
- 1.2.2 You take all reasonable steps to mitigate your loss and to assist Databarracks in doing so;
- 1.2.3 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;
- 1.2.4 Any payment made under this clause 1.2 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.
- 1.2.5 Should clause 1.2.4 be deemed by a court to be unenforceable, any payment made to you by Databarracks under this clause 1.2 shall be deemed to be credited against any award made by any court.

(because in each case these are steps which are reasonable to enable Databarracks to control its own losses, and to determine whether you have a reasonable claim or not).

2. General

- 2.1 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

- 2.2 This statement is to be governed in all respects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 2.3 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, Windows XP and Windows 2003 are trademarks (and may be registered trademarks) of Microsoft Corporation.