

## RESTOREPOINT APPLIANCE CLICK LICENCE AGREEMENT

### PLEASE READ THIS CAREFULLY BEFORE USING THE APPLIANCE

#### **A: PROPERTY OF LICENSOR**

THE RESTOREPOINT HARDWARE, SOFTWARE (INCLUDING UPGRADES AND UPDATES) AND ANY DOCUMENTATION ARE REFERRED TO IN THIS LICENCE AS 'THE APPLIANCE'.

THE COPYRIGHT, DATABASE RIGHTS AND ANY OTHER INTELLECTUAL PROPERTY RIGHTS IN THE APPLIANCE ARE AND REMAIN THE PROPERTY OF RESTOREPOINT LIMITED ('THE LICENSOR') OR ITS LICENSORS. YOU ARE LICENSED TO USE THEM ONLY IF YOU ACCEPT ALL THE TERMS AND CONDITIONS SET OUT BELOW.

UPGRADES AND UPDATES MAY CONTAIN ADDITIONAL LICENCE TERMS THAT YOU WILL BE REQUIRED TO ACCEPT IN ORDER TO USE THEM.

#### **B: LICENCE ACCEPTANCE PROCEDURE**

BY CLICKING ON THE ACCEPTANCE BUTTON WHICH FOLLOWS THIS LICENCE AGREEMENT (MARKED 'I ACCEPT') YOU INDICATE ACCEPTANCE OF THIS LICENCE AGREEMENT AND THE LIMITED WARRANTY AND LIMITATION OF LIABILITY SET OUT IN THIS LICENCE AGREEMENT. SUCH ACCEPTANCE IS EITHER ON YOUR OWN BEHALF OR ON BEHALF OF ANY ENTITY WHICH EMPLOYS YOU OR WHICH YOU REPRESENT ('CORPORATE LICENSEE'). IN THIS LICENCE AGREEMENT, 'YOU' INCLUDES BOTH THE READER AND ANY CORPORATE LICENSEE.

#### **C: LICENCE REJECTION PROCEDURE**

YOU SHOULD THEREFORE READ THIS LICENCE AGREEMENT CAREFULLY BEFORE CLICKING ON THE ACCEPTANCE BUTTON. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU SHOULD CLICK ON THE 'I DO NOT ACCEPT' BUTTON AND YOU ARE NOT PERMITTED TO USE THE APPLIANCE. YOU MUST THEN RETURN THE APPLIANCE TO THE PERSON OR ENTITY FROM WHOM YOU PURCHASED IT PROMPTLY (AND IN ANY EVENT, WITHIN 14 DAYS OF RECEIPT) TOGETHER WITH ANY OTHER ITEMS PROVIDED WITH OR THAT ARE PART OF THE APPLIANCE.

### LICENCE AGREEMENT AND LIMITED WARRANTY

#### **1. Ownership**

The Restorepoint software including Upgrades and Updates and related documentation (together, "the Materials") are copyrighted works of authorship, and are also protected under applicable database laws. The Licensor retains ownership of the Materials all subsequent copies of the Materials, regardless of the form in which the copies may exist. This licence is not a sale of the Materials. The Appliance contains confidential information of the Licensor or its licensors and all intellectual property rights in the Appliance (including the Materials) are the property of the Licensor or its licensors. You own the hardware part of the Appliance other than any intellectual property in the hardware (provided you have purchased it) but not any of the Materials.

The hardware forming part of the Appliance is intended only for the use of the Restorepoint software on it and not for any other purpose.

## **2. Licence**

The licence fee to use the Appliance is included in the price you have paid for the Appliance and this included all Updates and Upgrades for a period of 12 months from purchase. Upgrades are enhancements to the software which include additional functionality. "Updates" are incremental fixes that do not materially increase the functionality of the software. You may renew the right to receive Upgrades and Updates by paying the appropriate licence fee from time to time in force to the Licensor (or its authorised distributor or reseller) but you should be aware that in certain circumstances, Upgrades or Updates may require you to purchase a new Appliance at your own cost.

You are required to maintain an Internet link from the Appliance at your own cost in order to download Upgrades and Updates.

The Licensor grants to you a limited, non-exclusive licence to use the Appliance.

## **3. Licence Restrictions**

- 3.1 You may not use, copy, modify or transfer the Appliance or Materials (including any related documentation) or any copy, in whole or in part, including any print-out of all or part of any database save that you may copy your own data for backup purposes. If you transfer possession of the Appliance to another person your licence is automatically terminated. You may not translate, reverse engineer, decompile, disassemble, modify or create derivative works based on the Appliance except as expressly permitted by law.
- 3.2 You may not vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Appliance or Material.
- 3.3 You may only use the Appliance for your own business purposes and may not use it as part of the supply of services to a third party.
- 3.4 You may not use the Appliance to compete with Restorepoint.

## **4. No Transfer**

- 4.1 The Appliance is licensed only to you. You may not rent, lease, sub-license, sell, assign, pledge, transfer or otherwise dispose of the Appliance, on a temporary or permanent basis, without the prior written consent of the Licensor. You own only the physical hardware (or authorised replacement) on which the Materials are recorded. You may retain the Appliance on termination of this Agreement. This Agreement applies to the grant of the licence contained in it only and not to the contract of sale of any hardware or the sale of the Appliance.
- 4.2 You may not hold the benefit of this Agreement on trust for any third party nor assign all or any of your rights and obligations hereunder without the prior written consent of the Licensor.
- 4.3 The Licensor shall be entitled to assign the benefit and burden of this Agreement to any third party in its entire discretion and the Licensee shall on request by the Licensor execute a novation agreement in respect thereof in such form as the Licensor shall require.

## 5. Undertakings

You undertake to:

- 5.1 ensure that, prior to use of the Appliance by your employees or agents, all such parties are notified of this licence and the terms of this Agreement;
- 5.2 hold all drawings, specifications, data, software, listings and all other information relating to the Appliance confidential and not at any time, during this licence or after its expiry, disclose the same, whether directly or indirectly, to any third party without the Licensor's consent;
- 5.3 take all reasonable precautions consistent with generally accepted standards to safeguard the confidentiality of the Appliance;
- 5.4 notify the Licensor immediately if you become aware of any unauthorised use of the whole or any part of the Appliance by any third party;
- 5.5 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Licensor or any third party in the Appliance;
- 5.6 inform all relevant employees agents and sub-contractors that the Appliance constitutes and contains confidential information of the Licensor or any relevant third party and that all intellectual property rights therein are the property of the Licensor or such third party and you shall take all such steps as shall be necessary to ensure compliance by your employees agents and sub-contractors with the provisions of this clause;
- 5.7 indemnify and keep indemnified the Licensor against all loss, damage, costs and expenses (including without limitation legal costs and expenses) suffered or incurred by the Licensor arising directly or indirectly as a result of any breach by you of the provisions of this Agreement.

## 6. Limited Warranty

- 6.1 Subject to the limitations and exclusions of liability below, the Licensor warrants that the Appliance will materially conform to any applicable specification during the Warranty Period.
- 6.2 The Licensor's entire liability and your exclusive remedy shall be that if the Licensor is notified of significant errors during the Warranty Period it will correct any such demonstrable errors in the Appliance within a reasonable time or (at its option) provide or authorise a refund of the price paid for the Appliance against return of the Appliance. The Warranty Period is 90 days from the date of delivery to you.
- 6.3 The Licensor shall not be liable under the warranty above if the Appliance fails to operate in accordance with the warranty as a result of:
  - (a) the improper use operation or neglect of the Appliance;
  - (b) the modification of the Appliance;
  - (c) the use of the Appliance in a way in which it was not designed to work;

- (d) the failure by You to implement proper recommendations in respect of or solutions to faults previously advised by the Licensor;
- (e) any repair adjustment alteration or modification of the Appliance by any person other than the Licensor without the Licensor's prior written consent;
- (f) the use of the Appliance for a purpose for which it was not designed;
- (g) accident, neglect or misuse;
- (h) failure or defect of electrical power, external electrical circuitry, Internet access, air conditioning or humidity control;
- (i) failure to have installed the most recent Update or Upgrade.

## **7. No Other Warranties**

The warranty in clause 6.1 is made in lieu of any other warranties, representations or guarantees of any kind, either expressed or implied, including, but not limited to, any implied warranties of quality, merchantability, fitness for a particular purpose or ability to achieve a particular result. You assume the entire risk as to the quality and performance of the Appliance. The Licensor does not warrant that the Appliance will meet your requirements or that its operation will be uninterrupted or error free.

## **8. Limitation of Liability**

8.1 IN NO EVENT WILL LICENSOR OR ITS LICENSORS BE LIABLE FOR ANY LOST REVENUE, PROFIT, BUSINESS OPPORTUNITY, GOODWILL OR DATA, OR FOR SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL LOSS WHETHER ARISING IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) BREACH OF STATUTORY DUTY OR OTHERWISE HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THE USE OF OR INABILITY TO USE THE APPLIANCE, EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR IF IT WAS REASONABLY FORSEEABLE. IN NO EVENT WILL LICENSOR'S LIABILITY TO YOU, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, EXCEED THE AMOUNT PAID BY YOU FOR THE APPLIANCE.

8.2 THE LICENSOR WILL NOT BE LIABLE FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

8.3 Nothing in this Agreement limits or excludes liability for fraudulent misrepresentation, for death or personal injury arising as a result of the Licensor's negligence or where the law does not permit liability to be excluded or limited.

## **9. Trade Marks and Logos**

You acknowledge and agree as between you and the Licensor that the Licensor owns all rights of whatever nature in the Restorepoint trade names and all related trademarks, service marks, logos and other brand designations and all goodwill in those marks shall belong to and vest in the Licensor upon creation.

## **10. Your Statutory Rights**

Any rights that you may have as a consumer are not affected.

## 11. Term

- 11.1 This Agreement and the licence in it is effective until terminated. You may terminate it at any time by giving written notice to the Licensor. It will also terminate upon conditions set out elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to return the Appliance to us or our nominee if we request.
- 11.2 If you breach clause 3 or 4 of this Agreement, this Agreement and the licence in it, it shall automatically terminate.
- 11.3 This Agreement and the licence in it may be terminated:
- (a) immediately by the Licensor if you commit any material breach of any term of this Agreement;
  - (b) forthwith by the Licensor if you shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if you shall be unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of yours or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for your winding up or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
  - © forthwith by the Licensor if any petition is presented to any court of competent jurisdiction for your bankruptcy or if any voluntary arrangement is proposed by you pursuant to Part VIII of the Insolvency Act 1986 or if any arrangement, scheme or arrangement or compromise or composition is proposed with the general body of your creditors or any part of the same; and
  - (d) if anything similar to the matters described in (b) or (c) above occurs in any jurisdiction.
- 11.4 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Without limitation, all rights in this Agreement concerning intellectual property and confidentiality of the Licensor or its licensors survive termination of this Agreement.
- 11.5 Unless this Agreement terminates in circumstances where you are in breach of any of the terms of this Agreement, your rights to use the Appliance automatically cease and you must return it to us or our nominee if we request. In other circumstances, you may retain and continue to use the Appliance but will cease to be entitled to any Upgrades or Updates.

## 12. Export

You will comply with all applicable laws, rules, and regulations governing export of goods and information, including the laws of the countries in which the Appliance was created. In particular, you will not export or re-export, directly or indirectly, separately or as a part of a system, the Appliance or other information relating thereto to any country for which an export licence or other approval is required, without first obtaining such licence or other approval.

## 13. General

- 13.1 You agree that the Licensor shall have the right to audit any computer system to which the Appliance is connected in order to verify compliance with this Agreement.
- 13.2 The Licensor may vary this Agreement from time to time by requiring you to accept new terms and conditions supplied with Upgrades or Updates.
- 13.3 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to resolve any controversy or claim of whatever nature arising out of or in relation to this Agreement. This Agreement shall be governed by English Law.
- 13.4 The Licensor may publicise your name as being a customer of Restorepoint.
- 13.5 This Agreement constitutes the complete and exclusive statement of the Agreement between the Licensor and you with respect to the subject matter of this Agreement and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between us relating to that subject matter.
- 13.6 Any reseller or distributor from whom you purchase the Appliance is not authorised to enter into any contract or give any representation, warranty or guarantee on behalf of the Licensor nor bind the Licensor in any way.
- 13.7 Any clause in this Agreement that is found to be invalid or unenforceable shall be deemed deleted and the remainder of this Agreement shall not be affected by that deletion.
- 13.8 Failure or neglect by either party to exercise any of its rights or remedies under this Agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this Agreement nor prejudice that party's right to take subsequent action.
- 13.9 This Agreement is personal to you and you may not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the Licensor's prior written consent.
- 13.10 A person other than a licensor of the Licensor who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement or otherwise but this does not affect any right or remedy of a third party which exists or is available apart from the Act and no party can declare itself a trustee of the rights under this Agreement for the benefit of such person.

Should you have any questions concerning this Agreement you may contact us through our website at [www.restorepoint.com](http://www.restorepoint.com).



Restorepoint Limited is a company incorporated in England under company number 06500417. Its registered office is at 4 Tannery Lane, Send, Woking, Surrey GU23 7EF.