

APRICORN END USER AGREEMENT

IMPORTANT—READ CAREFULLY: By using or installing the Product (as defined below), You (an end user that is an individual or an entity) agree to be bound by the terms of this End User Agreement (“EUA”). If You DO NOT AGREE to the terms of this EUA, You must NOT INSTALL OR USE the Product. For the Product purchased from Apricorn’s authorized reseller, please contact the authorized reseller for its refund policy. For the Product purchased directly from Apricorn, please contact Apricorn for its refund policy and refer to the WARRANTY AND RETURN POLICY site under the SUPPORT site of the APRICORN WEBSITE.

1. DEFINITIONS.

- 1.1 “**Apricorn IP**” means all worldwide intellectual property rights in or to the Products and all improvements, enhancements, feedback, modifications and derivative works thereof, including without limitation, patents, copyrights, trademarks, service marks, trade secrets, know-how, inventions, confidential information, moral rights, and all other proprietary rights, whether registered or unregistered, including applications, registrations and renewals of any of the foregoing.
- 1.2 “**APRICORN WEBSITE**” means www.Apricorn.com.
- 1.3 “**Documentation**” means product manuals, end user manuals, operating instructions, start guides, installation guides, release notes, and on-line help files regarding the use of the Product that are generally provided to You by Apricorn for the Product. Documentation may be revised by Apricorn from time to time.
- 1.4 “**Limited Warranty**” means Apricorn’s limited warranty, as revised and published by Apricorn from time to time. The Limited Warranty is available at the WARRANTY AND RETURN POLICY site under the SUPPORT site of the APRICORN WEBSITE. The Limited Warranty is incorporated herein by reference.
- 1.5 “**Product**” means Apricorn’s product, including without limitation, Apricorn’s hardware, software, firmware, updates and associated Documentation.
- 1.6 “**RMA**” means return material authorization.
- 1.7 “**Software**” means the software, firmware, updates and associated Documentation of a Product. Any reference to the “purchase,” “sale,” “selling,” or a similar term with respect to any Software shall mean a license in accordance with this EUA.

2. LICENSE; OWNERSHIP.

- 2.1 **Software.** No Software is sold, and Software is only licensed in accordance with this EUA.
- 2.2 **Software License.** Subject to the terms and conditions of this EUA, if You comply with all terms and conditions of this EUA, Apricorn grants You a non-exclusive, personal, revocable, non-transferable, non-sublicensable license to use the Software provided to You by Apricorn or its authorized reseller to allow You to operate the Product purchased by You from Apricorn or its authorized reseller, only for Your internal purpose, in accordance with the associated Documentation.
- 2.3 **Ownership.** All of the Apricorn IP is, and will remain, exclusively and solely owned by Apricorn. Any use of the Apricorn IP will not create any right, title, or interest in the Apricorn IP. All rights not expressly granted by Apricorn to You under Section 2.2 are reserved by Apricorn.

3. USE; RESTRICTIONS.

- 3.1 **Responsible Use.** It is Your responsibility to use reasonable care and prudent practice to ensure that the Product continues to function as expected, and that any security features on the Product are enabled. Any change in the appearance, functionality or operation of the Product may be an indication that the Product has been subject to tampering, or has malfunctioned, and could potentially adversely affect the security and protection of any data or information stored on such Product. Please contact Apricorn immediately if You believe that the security features or functionality of the Product has been changed or altered in any way. You may not combine any Product with any other products that may affect the functionality or the secure nature of the Product.
- 3.2 **Loss of Data or Information.** It is Your responsibility to ensure that all critical, confidential, and other data or information on the Product are duplicated or backed up, or otherwise archived and protected on a separate storage device.
- 3.3 **Restrictions.** You agree that the Product structure, design, organization and any computer or other code embedded in the Product constitute valuable Apricorn IP. Accordingly, except as expressly permitted in Section 2.2 or as otherwise explicitly authorized by Apricorn in writing, You will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer the Apricorn IP, in whole or in part, to any third party; (b) decompile, disassemble, reverse engineer (unless and only to the extent explicitly permitted by applicable law), or otherwise attempt to derive source code from any Product, in whole or in part; (c) copy any Product or the Apricorn IP, in whole or in part; (d) create, develop, license, install, use, or deploy any products or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of any Product described in any Documentation or this EUA; (e) translate,

modify or create derivative works based on any Product; (f) permit any use of or access to any Product by any third party; or (g) alter, remove, or obscure any marks, names, product identifications, proprietary notices, copyright notices, or other notices or identifications contained in or on any Product or any of Apricorn’s materials.

- 3.4 **Software Updates.** If Apricorn provides any Software update, Apricorn shall not be obligated to support or maintain any previous versions of the Software.
- 3.5 **Your Responsibilities.** For (a) Your actions and inactions, (b) Your breach of any provision of this EUA, and (c) the warranties disclaimed by Apricorn (collectively, “Your Responsibilities”), Apricorn disclaims all liabilities based thereon, and You assume the entire responsibility and liabilities for Your Responsibilities. Apricorn is not responsible for lost, stolen or misplaced data that You store on or otherwise input into the Product. Apricorn is not liable or responsible for any loss of or damage to data or information that You input into or otherwise store on the Product. You will indemnify, defend, and hold Apricorn harmless from any claims, allegations, damages, liabilities, costs, and expenses, including reasonable attorneys’ fees, arising in connection with any of Your Responsibilities.

4. LIMITED WARRANTY.

- 4.1 **Limited Product Warranty.** You and Apricorn agree to the Limited Warranty. To obtain warranty service, You must follow the instructions and policies for the warranty return and RMA, available at the WARRANTY AND RETURN POLICY site under the SUPPORT site of the APRICORN WEBSITE.
- 4.2 **Disclaimer of Warranties.** Except for the Limited Warranty, to the maximum extent permitted by applicable law, all Products are provided “AS IS,” and Apricorn disclaims all other warranties.

5. LIMITATION OF LIABILITY.

- 5.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APRICORN WILL NOT BE LIABLE FOR—(A) ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, (B) LOSS OF, OR DAMAGE TO, DATA, SOFTWARE OR INFORMATION, (C) LOSS OF BUSINESS OPPORTUNITIES, LOSS OF REVENUE, LOSS OF PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS INTERRUPTION—REGARDLESS OF THE CAUSE OF ACTION.
- 5.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APRICORN’S TOTAL LIABILITY WILL NOT, REGARDLESS OF WHETHER A CLAIM IS BASED ON CONTRACT, EQUITY, TORT, STATUTE, STRICT LIABILITY, OR OTHERWISE, EXCEED THE LESSER OF (A) THE PURCHASE PRICE YOU PAID TO APRICORN FOR THE PRODUCT-AT-ISSUE OR (B) AN AMOUNT OTHERWISE AGREED.
- 5.3 THE LIMITATION OF LIABILITY UNDER SECTION 5 SHALL APPLY REGARDLESS OF WHETHER APRICORN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 5.4 SUBJECT TO APPLICABLE LAW, YOU MAY NOT BRING A CLAIM MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

6. TERMINATION.

- 6.1 **Termination.** Apricorn may terminate this EUA in its entirety effective immediately upon written notice to You if: (a) You breach any provision in Sections 2.3, 3.1-3.3 and 7.5 and do not cure the breach within fifteen (15) days after receiving written notice thereof; (b) You fail to pay any portion of the purchase price for any Product within ten (10) days after receiving written notice that payment is past due; (c) You breach any other provision of this EUA and You do not cure the breach within thirty (30) days after receiving written notice thereof; or (d) You commit a material breach that is not capable of being cured.
- 6.2 **Effect of Termination.** If Apricorn terminates this EUA: (a) any license granted to You under this EUA will immediately cease to exist; and (b) You must promptly discontinue all use of all Products, (destroy all copies) and return, or if requested by Apricorn, destroy, any related Apricorn information in Your possession or control and certify in writing to Apricorn that You have fully complied with these requirements. Any provisions that are intended to survive termination (including Sections 1, 2.1, 2.3, 3.3, 3.4, 3.5, 4.2, 5, and 6-8) will survive termination of this EUA.

7. GENERAL.

- 7.1 **Assignment.** Except to the extent permitted by applicable law, this EUA, and any of Your rights or obligations thereunder, may not be assigned, subcontracted or transferred by You, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without the prior written consent of Apricorn. Mergers and change of control are considered a transfer. Any attempted assignment, subcontract or transfer in violation of the foregoing will be null and void. Apricorn may assign, subcontract, or transfer this EUA or any of its rights or obligations without Your consent.

- 7.2 **Waiver.** The waiver of a breach of any provision of this EUA shall not constitute a waiver of any other provision or any subsequent breach.
- 7.3 **Severability.** If any provision of this EUA is held to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this EUA will remain in full force and effect.
- 7.4 **Government End User.** All Software is a “commercial item,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. government end users acquire the Software with only those rights explicitly set forth herein.
- 7.5 **Compliance with Laws; Export Control.** You shall comply with all laws applicable to the actions contemplated by this EUA. You acknowledge that all Products are provided subject to the U.S. Export Administration Regulations and the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (a) You are not, and are not acting on behalf of, (1) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; (b) You will not use any Product, and will not permit any Product to be used, for any purposes prohibited by law, including, any prohibited use, development, design, manufacture or production of missiles or nuclear, chemical or biological weapons; and (c) You will not use any Product, and will not permit any Product to be used, for any “critical applications,” such as life support systems, medical applications, commercial transportation, or any other applications where product failure could lead to injury to persons, death, or catastrophic property damage.
- 7.6 **Governing Law.** This EUA shall be construed and governed in accordance with the laws of the State of California without regard to the conflicts of law provisions thereof and to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or proceeding may be instituted. All actions arising in connection with this EUA shall be brought exclusively in the state or federal courts located in the County of San Diego. Each party (a) submits to the exclusive jurisdiction of the above-named courts and (b) irrevocably waives, and agrees not to assert by way of motion, defense, or otherwise, in any action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this EUA may not be enforced in or by any of the above-named courts. The United Nations Convention for the International Sale of Goods shall not apply.
- 7.7 **Injunctive Relief.** You agree that Apricorn would be irreparably damaged if any provision of this EUA was not performed in accordance with its specific terms or was otherwise breached and that any non-performance or breach of this EUA by You could not be adequately compensated by monetary damages alone and that Apricorn would not have any adequate remedy at law. Accordingly, Apricorn shall be entitled to seek an injunction or injunctions to prevent breaches of this EUA and to enforce specifically the performance of the terms of this EUA to prevent breaches or threatened breaches of any of the provisions of this EUA without posting any bond or other undertaking, in addition to any other remedy at law or in equity. Notwithstanding Section 7.6, Apricorn may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.
- 7.8 **Force Majeure.** Notwithstanding any other provisions in this EUA, Apricorn shall be excused from the fulfillment of any obligation under this EUA to the extent such fulfillment may be hindered, delayed or prevented as a result of any acts of God, fire, flood, accident, riot, earthquake, severe weather, natural disaster, embargo, war, terrorism, strike, shortage of materials, supplies, labor, fuel, transportation, or power, acts of third parties, governmental action, or any other cause or causes beyond Apricorn’s control.
- 7.9 **Entire Agreement.** This EUA contains the entire agreement of the parties with respect to the subject matter of this EUA and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. The headings are inserted for convenience only and shall in no way affect the interpretation of any of the provisions of this EUA.

8. CONTACT INFORMATION.

Please direct legal notices or other correspondence to Apricorn, 12191 Kirkham Road, Poway, California 92064 U.S.A., or You may call the toll free number 800-458-5448, or fax to Apricorn at 858-513-2020.