

## CORTEX I.T. LABS PTY LTD – TERMS AND CONDITIONS OF PURCHASE

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**THE FOLLOWING TERMS AND CONDITIONS OF PURCHASE APPLY TO THE PURCHASE BY YOU OF ANY SOFTWARE OR OTHER PRODUCTS SOLD OR MARKETED BY CORTEX I.T. LABS PTY LTD ACN (120 499 176). BY PURCHASING ANY SOFTWARE OR OTHER PRODUCTS FROM US, YOU AGREE THAT YOU ARE BOUND BY AND AGREE TO OBSERVE, ALL OF YOUR OBLIGATIONS UNDER THESE TERMS AND CONDITIONS.**

### 1. GRANT OF LICENSE

1.1 Upon payment of the specified purchase price for any computer software sold and marketed by us ("**Software**"), **CORTEX I.T. LABS PTY LTD ACN (120 499 176)** ("**we**", "**us**" and "**our**") agrees to provide you with:

(a) a license to use the then current version of the Software you have purchased in accordance with the terms of its applicable End User License Agreement ("**EULA**") for the Software. The term of the licence will be as follows ("**Licence Term**"):

(i) in the case of BackupAssist, you will have a perpetual licence to use the then current version of the Software you have purchased. This will include the current version of any "add on" functionality which you purchase for use with your copy of BackupAssist;

(ii) in the case of MultiSite Manager, you will purchase a subscription right to use that Software for a 12 or 24 month period (as selected at the time of purchase). At the end of that 12 or 24 month period (and each subsequent renewal period), you may renew your right to use the Software as described under **paragraph 3** below. This will include any "add on" functionality which you purchase for use with your copy of MultiSite Manager; and

(iii) in the case of a SAAS licence or Managed Service Provider or MSP licence (together a "**SAAS Licence**") you will purchase a subscription right to use one or more copies of the Software on a monthly basis (or other period of time specified at the time of purchase) (together the "**SAAS Subscription Period**"). Each "add-on" component for the Software must be purchased separately to the Software as a separate SAAS Licence subscription (and for the purposes of this Agreement, will be treated as a separate item of Software). At the end of the SAAS Subscription Period (and each subsequent renewal thereof), you may renew your right to use the Software as described under **paragraph 3** below.

(b) the right to receive Upgrade Protection (being support and updates)

with respect to the Software for a fixed period of time set out at the time you purchase the Software ("**Support Term**") in accordance with these terms and conditions. The Support Term will vary depending on which Software you have purchased which will be as follows:

- (i) in the case of BackupAssist, the Support Term will be 3 months; and
- (ii) in the case of MultiSite Manager or a SAAS Licence, the Support Term will be the same as your Licence Term.

- 12 By using the Software, you agree to be bound by the EULA for the Software. If you do not agree with the terms and conditions of the EULA, you must not install and/or use the applicable Software. You may also be entitled to a refund of the purchase price for the Software if such a refund is required to be paid to you by law. Copies of the EULAs for our Software may be found at [www.backupassist.com/company/legal-notices](http://www.backupassist.com/company/legal-notices).
- 13 If you purchase a SAAS Licence, then in accordance with the EULA for the Software:
- (a) you may, as specified at the time of purchase, receive the right to use the Software for one or more of your personnel, in one or more locations, or across one or more computers or servers (together the "**Permitted SAAS Users**"). The number and type of Permitted SAAS Users will be specified at the time of purchase;
  - (b) You may transfer a licence for the Software between Permitted SAAS Users. Such transfer may be conducted via a management console provided by Cortex or otherwise contained in the Software. For the avoidance of doubt, you cannot transfer a licence for the Software to a third party.
  - (c) You may increase the number of Permitted SAAS Users by paying any applicable purchase price for the same. You may also reduce the number of Permitted SAAS Users, but any reduction will only take effect from the commencement of the following SAAS Subscription Period. There will be no refund or pro-rata refund for any unused portion of a cancelled licence.
- 14 Your right to use the Software and your right to Upgrade Protection, will only take effect once we receive payment in full of the relevant purchase price for the same.
- 15 You agree that you are responsible for payment of all withholding taxes, import duties or excise, or any other duty, charge or tax which arises in your jurisdiction, as a result of you purchasing the Software or any subscription for the Software ("**Customer Taxes**"). The purchase price which you are required to pay is exclusive of all Customer Taxes and you are responsible for payment of all Customer Taxes in addition to the purchase price. Further, the purchase price for the Software (or a subscription for the Software) as

expressed by us to you is exclusive of all GST, VAT or other sales or usage taxes (“**Sales Taxes**”). You are required to pay us, at the same time as paying the purchase price, an additional amount on account of all Sales Taxes, so that after deduction or remittance of any Sales Taxes, we receive no less than the original purchase price.

## **2. UPGRADE PROTECTION**

- 21 Upgrade Protection entitles the licensee of our Software to receive updates and upgrades (as they are released) during the Support Term. Upgrade Protection also entitles the licensee to receive software support from us. More information on Upgrade Protection can be found here - [www.backupassist.com/classic/backupcare](http://www.backupassist.com/classic/backupcare)
- 22 By purchasing our Software, you will receive Upgrade Protection for the applicable Support Term.
- 23 Upgrade Protection is sold on a subscription basis. At the end of the Support Term, you may renew your subscription in accordance with **paragraph 3**.
- 24 If you do not hold Upgrade Protection, then you do not have a right to receive support, updates or upgrades from us. The provision of any support, updates or upgrades in this regard will be at our sole discretion.

## **3. SUBSCRIPTION PURCHASES**

### **3.1 What is a subscription?**

- (a) If you have purchased a licence to use Multi-Site Manager or a SAAS Licence, then that purchase will be on a subscription basis. Further, if you have purchased Upgrade Protection, then that purchase will also be on a subscription basis.
- (b) Purchasing Software or Upgrade Protection from us on a subscription basis means that your right to use the Software, and/or your right to use Upgrade Protection, expires at the end of the relevant Licence Term and/or Support Term. At the end of those periods, you may renew your subscription, in the case of a SAAS Licence, for a further SAAS Subscription Period, and in the case of Multi-Site Manager, for a further period of 12 months or 24 months, as nominated by you (and in which case a reference to the Licence Term or Support Term in these terms and conditions, will then be a reference to the renewed term). This renewal option will continue to apply to each successive Licence Term or Support Term.
- (c) Renewal may occur automatically or manually as detailed below.

### **3.2 Automatic Renewal Service**

- (a) Your subscription purchase may include enrolment in our Automatic Renewal Service, the easiest and most convenient way to maintain

your subscription. Without any additional action by you we'll automatically charge your credit/debit card the then-current subscription renewal price (plus applicable Sales Taxes) prior to expiration of your subscription.

- (b) You can cancel the Automatic Renewal Service by emailing us at [sales.msp@backupassist.com](mailto:sales.msp@backupassist.com).
- (c) To enable us to provide you with our Automatic Renewal Service, you agree to provide us with current, complete, and accurate information for your billing account and will promptly notify us if there is any change in your billing address and, where you have paid by credit card, will promptly notify us if there is any change to your credit card number, or credit card expiration date or if your credit card is cancelled (for example, for loss or theft).

### **33 Manual Subscription Renewal**

If you have selected a method of payment other than credit/debit card or opted to cancel the Automatic Renewal Service, your subscription will only be renewed if you provide us with a valid payment prior to the expiry of the then current Licence Term or Support Term. We will email you prior to this date to remind you to renew your subscription. We may also remind you of your pending renewal via functionality in our Software.

## **4. SUPPORT AND UPDATES**

If you have Upgrade Protection, we provide you with software support and updates (as they are made available) for the Software during the Support Term and, upon payment of the applicable renewal fee, during each renewal of the Support Term. Software support will be provided by us (at our discretion) via email or live-chat. Access to support and instant answers to commonly asked support questions are available at [www.backupassist.com](http://www.backupassist.com).

## **5. PRIVACY**

In the course of your purchase of the Software, you will be required to supply us with your contact details and your credit card details. We will use and manage this information in accordance with our Privacy Policy at [www.backupassist.com/company/legal-notice](http://www.backupassist.com/company/legal-notice). By purchasing the Software, you acknowledge that you consent to us using your personal information in accordance with our Privacy Policy.

## **6. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- 6.1 You hereby acknowledge that the Software cannot be guaranteed error free or free of any defects.
- 6.2 You acknowledge that you have exercised your independent judgment in acquiring the Software and have not relied upon any representations made by us which have not been stated expressly in these terms and conditions or upon any descriptions or illustrations or specifications contained in any

document including catalogues or publicity material produced by us.

- 63 You acknowledge that we have not made and will not make any express or implied warranties in relation to the Software or any other goods or services provided by the us under these terms and conditions, other than those warranties expressly contained in these terms and conditions. Subject to **paragraphs 6.6, 6.7 and 7**, any term that would be implied into these terms and conditions, including without limitation any condition or warranty, is hereby excluded.
- 64 Subject to **paragraphs 6.6, 6.7 and 7**, you agree that the we will not be liable in respect of any claim by you (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Software or the provision of any other goods or services by us to you, and whether as a result of any breach or default, by us.
- 65 Our maximum liability under these terms and conditions for any and all breaches of these terms and conditions, and for any negligence in relation to these terms and conditions, will not exceed the lesser of:
- (a) the purchase price paid for the Software by you; or
  - (b) AUD \$10.
- 66 If the *Competition and Consumer Act 2010* (Cth) (or analogous legislation) applies to these terms and conditions and permits the limitation of liability for breach of warranty implied by statute, our liability is limited, at our option to:
- (a) in the case of goods, any one or more of the following:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 67 Any of these terms and conditions which limit or exclude any term, condition or warranty, express or implied, or our liability will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any

implied term of these terms and conditions where such exclusion, qualification or limitation would be prohibited by legislation.

## **7. YOUR RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW**

- 7.1 The EULA for the Software which you purchase, may include certain warranties which are in addition to your rights at law, and may exclude certain implied warranties, to the full extent permitted by law. You also have rights which are in addition to those set out in the EULA. These are set out below.
- 7.2 For Australian Consumers our products come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the products repaired or replaced if they fail to be of acceptable quality and the failure does not amount to a major failure. For more information about your rights please go to [www.accc.gov.au](http://www.accc.gov.au) and click on the link "For consumers".
- 7.3 When you purchase our Software, if you also purchase Upgrade Protection, you will be entitled to receive technical support. The period of technical support will be the Support Term which initially applies to the product you have purchased. If you have a technical problem which we cannot resolve, and which is solely caused by a fault in the Software (and by no other cause), then you may be entitled to a refund under applicable law. To request a refund please send an email to [sales@backupassist.com](mailto:sales@backupassist.com). Any refund will be conditional upon you returning the Software to the relevant place of purchase.

## **8. GOVERNING LAW AND JURISDICTION**

Any and all claims relating to the Software or any services provided by us will be construed in accordance with and will be governed by the laws in force in Victoria, Australia. You irrevocably submit to and accept the exclusive jurisdiction of the Courts of Victoria, Australia.