

TERMS OF USE

September 16 2008

The Site and the Service (as defined below) are offered under the terms and conditions stated in this Terms of Use (these "Terms") together with the other agreements and documents referenced herein, including any future amendments to any of the foregoing (collectively, the "Agreement"). By using the Site and/or the Service, either as a registered user of BackupAssist™, a registered BackupCare user, or the user of a Centralized Monitoring Console ("you" or "your"), you agree to the Agreement. You agree the Agreement is a binding contract between you and Cortex I.T. Labs Pty Ltd ("Cortex IT"), the company that owns and operates the Centralized Monitoring Console website (the "Site"). If you do not wish to be bound to these Terms, then immediately stop using the Site and the Service.

1. The Agreement. You agree that no contract or agreement is formed and you have no rights to the Service, unless and until Cortex IT has agreed to provide you the Service. You agree that Cortex IT may amend or modify the Agreement at any time, without prior notice. The changes become effective immediately upon posting such amended or modified terms on the Site or if Cortex IT otherwise notifies you of such amended or modified terms. You agree that, if you use the Site and/or the Service after Cortex IT so posts or provides such notice of such amendments or modifications, you have accepted the Agreement as amended or modified. If you do not accept and abide by such amended or modified Agreement, you may not use the Site or the Service. Subject to the terms and conditions of the Agreement, agreement to the Agreement allows you to view the portions of the Site that are generally available and download such portions (but only as strictly necessary to aid in the viewing of the Site and only if all copyright and other proprietary notices are duplicated) solely for use by the User's organization.

2. The Service. The Centralized Monitoring Console Service is a BackupAssist™ software result notification service offered by Cortex IT through the Site, the attributes and functionality of which varies depending on the level of service to which you may subscribe, all as more specifically described in the Site, together with the Support Services (the "Service"). One level of the Service includes accounts for limited Service to registered users and recipients of notifications from a registered BackupAssist™ software, who are not charged fees for use of the Service (each a "Free User"). Other levels of the Service to registered users are obtained by payment of fees (each a "Paid User"). Subject to the other terms and conditions of the Agreement, agreement to the Agreement allows you utilize the Service in accordance with the applicable level specified only for your lawful purposes and only as strictly necessary to utilize the Services. Additional terms and restrictions applicable to use of Content are specified in this Agreement. Except as specifically stated in this Agreement, no other right or license is granted to you for the Site or the Service, and any other use is strictly prohibited.

3. Support Services. During the term and for Paid Users, the Service includes (a) a reasonable amount of assistance in the use of the Service and reasonable diagnosing and attempting to resolve problems with the use or delivery of the Service, and (b) updates and revisions to the Site and Services that Cortex IT elects to provide to provide to Paid Users generally (collectively, the "Support Services"). Support Services are only provided during

Cortex IT's regular business hours and exclude weekends and Cortex IT holidays. Cortex IT may condition the timing and delivery of Support Services in whatever method or manner it chooses, which may include communication via email or through chats or through telephone or through remote session. In order to take advantage of the Support Services, you may be required to purchase additional or different equipment or services from third parties. Cortex IT has no obligation to provide any other assistance, support, maintenance, or other services or to perform any assistance by any other method, such as at your location. If Cortex IT, in its sole discretion, agrees to provide any additional services, such additional service shall be governed by these Terms.

4. Fees and Payment. Paid Users shall be responsible for paying Cortex IT the fees and other charges and expenses as described on the Site for the applicable Services. Cortex IT may modify such fees at its discretion, which shall take effect at the end of the current term of Service. Such fees and expenses are due and payable prior to Cortex IT performing the Service, but if Cortex IT performs the Service prior to receiving payment or if your form of payment is not in good funds or is reversed for whatever reason, your payment is due upon notice from Cortex IT. All such payments shall be paid in full when due, without right of deduction or set-off. You are solely responsible for the payment of any and all taxes resulting from the Service or the Agreement. In addition to any other remedies available to Cortex IT, you agree to pay a charge for any amounts that are more than thirty (30) days past due at the rate of the lesser of one and one-half percent (1.5%) per month or the greatest rate allowed by law. When paying by credit or debit card, Paid User authorizes Cortex IT to charge such card for the full amount authorized, together with any other amounts due and owing to the Company as specified in the Agreement, or in the Site, and Paid User agrees to pay such amounts in accordance with Paid User's agreement with the card issuer.

5. Your Obligations and Agreements. As a condition for using the Site and/or the Service, you understand and agree:

(a) Account Information. You will provide current, accurate, and complete information when registering for the Service. You will promptly inform Cortex IT if any of your account information changes (such as a change of address, a change of email address, the closing of an email account, the cancellation of a credit card, etc.), and if you do not inform Cortex IT of the change, Cortex IT has the right to take appropriate action to protect its interests. In return, Cortex IT will maintain the information you provide in accordance with our Privacy Policy (as amended from time to time), which is available on the Site.

(b) Use by Minors. The Service is not available to minors. By accepting these Terms, you agree that you are capable of entering into a binding agreement.

(c) Security. You must comply with and not attempt to disable or circumvent any security device or procedure associated with the Site or the Service. You agree you are responsible for maintaining the confidentiality of the password you choose to use in conjunction with the Service. You may not allow anyone else to use your account without prior, written approval of Cortex IT. You agree that Cortex IT will not be liable for any loss you may incur as a result of someone else using your password, either with or without your knowledge. You agree

not to impersonate anyone else, or falsely represent your affiliation with any other person or entity.

(d) Unlawful Use. You will not use the Site or Service, in whole or in part, for any unlawful purpose. It is not the responsibility of Cortex IT to monitor your activities to insure compliance with any federal, state, or local laws or regulations, although Cortex IT reserves the right to do so at its discretion.

(e) Content. You are solely responsible for all your activities when using the Service, including, without limitation, all content you and/or your registered BackupAssist™ software transmit to and through the Site or with the Service. Cortex IT is not responsible for the content and transmission of other persons registered BackupAssist™. Cortex IT does not have an obligation to monitor your activities, your content, or the content of other person, although Cortex IT reserves the right to do so in its sole discretion. Cortex IT may take any action with respect to your activities, your content, or the content of any other person as Cortex IT deems necessary (including, without limitation, accessing, reading, preserving, disclosing, removing, or refusing to distribute the same) in order to (1) respond to requests for Support Services, (2) detect, prevent, or otherwise address acts of technical issues or fraud or security, (3) satisfy any applicable law or governmental order, (4) enforce the Agreement or investigate any potential violation of the Agreement, (5) protect the rights, property, or safety of Cortex IT or any person or preserve any of the foregoing from liability, or (6) exercise any other right or remedy available to Cortex IT.

(f) Interference with Others. You will do nothing to impair the normal operation of the Site or Service, and you will do nothing to restrict or inhibit any other person from using and enjoying the Site and Service. You will do nothing that will damage or disable the Site or Service. You will not attempt to access unauthorized access to information or content belonging to any other party using the Site or Service.

(g) Prohibited Activities. You will not intercept, append, modify or delete the data transmitted between BackupAssist™ software and the Site. Cortex IT may supplement this list of prohibited activities from time to time, which will be effective upon notice to you and/or posting on the Site.

(h) Disclosure of Information. Cortex IT, in its sole discretion, may disclose any information about you, your account, or your activities regarding the Service that Cortex IT deems necessary to enforce the Agreement or satisfy any applicable law, regulation, legal process or governmental request. The Site and the Service is offered, stored, and processed on dedicated in different locations around the world by reputable Managed Hosting providers. By using the Service, you consent to transfer of information outside of your country.

(i) Data Storage. When using the Service, your personal data is temporarily stored on our servers as part of the normal operating process of providing the Service. Regardless of any encryption used, or other precautions taken, you understand that Cortex IT cannot guarantee complete privacy with regard to the files you transmit over the Service. You agree that Cortex IT

has no responsibility or liability for the deletion, corruption, or failure to store any data stored or transmitted by the Service. You understand that Cortex IT does not back up the files on the Site or through the Service, and you agree that you are responsible for keeping back-up copies of all data held in the Service.

(j) Privacy: The Content outlined below is transmitted by BackupAssist™ software to the Site to enable the provision of the Service to you. You agree that Cortex IT may amend or modify the scope of the Content at any time, without prior notice. The changes become effective immediately upon posting such amended or modified terms on the Site or if Cortex IT otherwise notifies you of such amended or modified terms

- (i) For reporting purposes
 - A. The HTML report (same as the report viewable from the BackupAssist Console) and the data contained therein (such as status, start date/time, end date/time, BackupAssist version, computer name, any warning or errors, data size, etc.)
 - B. Backup Engine Type (eg. NTBackup, SQL, Exchange Mailbox, Drive Imaging)
 - C. Job key and execution key
 - D. Next expected run date
 - E. Organization name for the client (to identify them in the reports)
- (ii) For authentication purposes
 - A. Centralized Monitoring Account ID
 - B. Pre-shared Authorization Key (a non-human-readable hash)
 - C. BackupAssist Installation ID (a non-human-readable GUID)
 - D. BackupAssist Product Keys

You provide us permission to use the Content for the purpose of improving our software and services to our client. *For example, periodically we may choose to data mine and rank the most commonly reported errors to try to solve them or streamline the debugging process.*

The Content is not collected for solicitation or sales purposes and the BackupAssist™ Software will not transmit names of contact persons, addresses or contact details.

6. Term, Termination, and Remedies.

(a) Term. If you are a Paid User, the term of the Services and the Agreement is month-to-month beginning at the first day of each calendar month (or, if you subscribed after the first of a calendar month, on the effective date of the beginning of the Services) and ending on the last day of each calendar month.

(b) Termination. Except as stated below, you agree that Cortex IT may modify, suspend, discontinue, or otherwise terminate the Service or the Agreement, on a temporary or permanent basis, at any time, in whole or in part, for any reason or no reason, with or without notice, and without liability to you. For example and without limitation, Cortex IT may terminate or suspend your access to the Service for lack of use; for failure to pay account fees within the period of time designated by Cortex IT; for BackupAssist™ software license agreement breach; for registering more than one free account; for maintenance of the Site or performance of Support Services; for failure to follow the rules posted on the Site or in these Terms; for actions outside these Terms; or for any other reason determined by Cortex IT. Unless you have violated the terms and conditions of the Agreement, if you are a Paid User, a material modification that negatively impacts the Service or a suspension, discontinuance, or other termination of the Service or the Agreement will occur at the end of the current term of the Service. Notwithstanding the foregoing, Cortex IT may make a material modification that negatively impacts the Service or suspend, discontinue, or otherwise terminate the Service or the Agreement at any time by refunding you the prorated portion of the fees you have paid for the current term of the Service through the end of that term. Continuation of the Service by a Paid User after any such material modification or suspension constitutes the Paid User's agreement to waive any claim for any refund of fees.

(c) Other Remedies. In addition or as an alternative to termination, cancellation, or discontinuance of the Site and/or the Service, Cortex IT may take whatever action it deems necessary or convenient, in its sole discretion, in the event of your breach of Agreement. Such actions may include, without limitation, suspending your access to the Site, the Service, or files or content in your account, deleting your account(s), deleting data you or your BackupAssist™ software or your client's BackupAssist™ software have uploaded, blocking your IP address, or any other technical or legal means at Cortex IT disposal.

(d) Your Termination. You may cancel your use of the Services and the Site at any time by providing notice to Cortex IT. Except as otherwise stated in these Terms, you shall have no right to a refund of any fees paid, and you shall be obligated to make any payments due Cortex IT through the end of the term of the Services, if any.

(e) Affect of Termination. Upon expiration, termination, cancellation, or discontinuance of the Site and/or the Service to your right to use the Site and/or Service immediately ceases and you will have no right to access your account or any files or other content contained in your account, although residual copies may be retained in Cortex IT's system. Cortex IT may retain any such files or other content at its discretion. The provisions of Sections 1 through 9 of these Terms shall survive the expiration, termination, cancellation, or discontinuance of the Site and/or the Service.

7. No Warranty; Limitation of Liability.

7.1. You acknowledge that the Site and/or the Service is provided on an "as is" basis without warranty of any kind. Cortex IT makes no representations or warranties regarding the use or performance of the Site and/or the Service. Cortex IT expressly disclaims the warranties of merchantability and fitness for a particular purpose.

7.2. Where Australian legislation implies in this Agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such contract or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of Cortex IT for any breach of such condition or warranty shall be limited, at the option of Cortex IT to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such 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) if the breach relates to the Site or the Service:
 - (i) the supply of the Service again;
 - (ii) the payment of the cost of having the Service supplied again;
 - (iii) the payment of the cost of the current month's Service fees paid; or
 - (iv) the restoration of the Site;

7.3. Cortex IT shall have no liability to customer or any third party for any loss or damage caused, directly or indirectly, by the Site and/or participation in the Service, including, but not limited to, any interruption, suspension, or termination of the Service, presence of viruses or harmful components, your inability to use the Service, inaccurate data transmission, loss of business, loss of data, breach of security, or special, consequential or incidental damages.

7.4. You shall at all times indemnify and hold harmless Cortex IT and its officers, employees and agents ("Those Indemnified") from and against all loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of Those Indemnified arising from any proceedings against Those Indemnified where such loss or liability was caused by:

- (a) a breach by you of your obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of you.

7.5 Under no circumstances, shall Those Indemnified be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, Internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, non-performance of third parties, or loss of or fluctuations in heat, light, or air conditioning.

8. Intellectual Property Rights. Except as stated herein, you acknowledge that Cortex IT owns all right, title, and interest in and to the Site and Service, including, without limitation, all content and intellectual property rights therein, which are protected by Australian and international intellectual property laws. BackupAssist™ is a trademark of Cortex IT and Cortex IT is a registered company in Australia. Other product and company names mentioned herein may be the trademarks or service marks of their respective owners. You agree that you will not in any way, directly or indirectly adapt, copy, reproduce, store, produce, distribute, transmit, alter, modify, or create derivative works from any part of the Site, the Service, or any content therein or commercialise any information, products or services obtained from any part of the Site except with our written permission.

9. General.

(a) Choice of Law; Venue. Venue. You agree that this agreement shall be governed by the laws of the state of Victoria, Australia. You hereby irrevocably consent to the exclusive jurisdiction and venue of courts in Victoria, Australia in all disputes arising out of or relating to the use of the Site or Service.

(b) Beneficiaries. You are not a beneficiary of any obligation Cortex IT owes to a third party, and no other person is a beneficiary of any obligation Cortex IT owes to you.

(c) Relationship. You agree that no joint venture, partnership, employment, or agency relationship exists between you and Cortex IT as a result of the Agreement, or the use of the Site or Service.

(d) Indemnification. You agree to indemnify and hold Cortex IT, its owners, subsidiaries, affiliates, officers, directors, and employees, harmless from any claim, demand, or damage, including reasonable attorneys' fees, asserted by any third party due to or arising out of your use of or conduct in the use of the Site and/or Service.

(e) Severability. Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration will have no effect on the remaining terms hereof.

(f) No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

(g) No Assignment. You may not assign or transfer any right or duty under the Agreement, including, without limitation, the Service, and any attempt to the contrary is void.

(h) Integration; Amendment. The Agreement is the entire understanding and agreement between you and Cortex IT with respect to the subject matter hereof. When in conflict, these Terms control over other provisions of the Agreement. Except as specified herein,

no amendment may be made to the Agreement unless the same is in writing and signed by an authorized representative of Cortex IT.

(i) Headings. The section titles in these Terms are for convenience only and have no legal or contractual effect.

(j) Copies. A printed version of this agreement shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

The Centralized Monitoring Console service is operated by Cortex I.T. Labs Pty Ltd, Box Hill 3128 Australia.

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Email for Complaints or Notices: sales@BackupAssist.com

[End of Terms]