



Phone: 1300 BACKUP Fax: 08 8223 4644

Email: mail@backup.com.au Postal Address:

PO Box 3521 Rundle Mall South Australia 5000

www.backup.com.au

BACKUP.COM.AU

MUTUAL CONFIDENTIALITY DEED

Please complete all information required on pages one and four, sign and email to meryl@backup.com.au or fax to (08) 8223 4644





Backup.com.au Mutual Confidentiality Deed

Between

Backup.com.au Pty Ltd as Trustee for the Tod Family Trust [ABN 64 674 051 608 of
PO Box 3521, Rundle Mall, SA, 5000] ("**BCA**")

and

_____ [Company Name] _____ [ABN]
_____ [Address]
 ("**Dealer**")

Background

The parties have agreed to provide information to each other for the purpose of forming a contract under which BCA will provide the Dealer with data backup services (the "**Express Purpose**") This document sets out the terms and conditions on which Confidential Information will be provided by each party to the other. In this document, the Provider is the party providing Confidential Information to the other party and the Recipient is the party receiving Confidential Information from the other party.

Operative Provisions

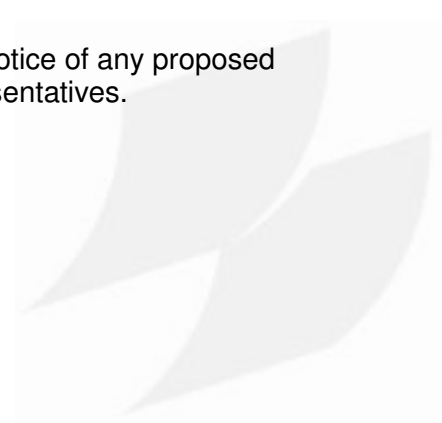
Obligations of Confidence

The Recipient acknowledges that the Confidential Information is valuable to the Provider. In consideration for the Provider providing the Confidential Information to the Recipient for the Express Purpose, the Recipient accepts and agrees to be bound by the terms and conditions set out in this document.

The Recipient must at all times keep the Confidential Information secret and preserve its confidential nature and must not use, disclose or reproduce the Confidential Information for any purpose other than the Express Purpose.

The obligation in clause 1.2 does not apply to the extent that any use, disclosure or reproduction is required to be made to the Representatives of the Recipient who need to know the information for the Express Purpose or to the extent that any disclosure is required by law.

The Recipient must ensure that the Provider is given reasonable notice of any proposed disclosure of the Confidential Information to the Recipient's Representatives.





The Recipient must ensure that all of its Representatives who are provided with Confidential Information:

- a) are made aware of the terms of this document;
- b) maintain the confidentiality of the Confidential Information;
- c) do not use the Confidential Information for any purpose other than the Express Purpose;
- d) sign, if requested by the Provider, a confidentiality deed in terms substantially identical to the terms contained in this document; and
- e) not do anything that would result in a breach of the Recipient's obligations under this document.

The Recipient must take all appropriate measures to protect Confidential Information against unauthorised access, use or disclosure and must immediately notify the Provider of any unauthorised access, use or disclosure, and must comply with any reasonable direction from the Provider in relation to the protection of the Confidential Information.

Confidential Information

The Confidential Information remains the property of the Provider at all times. At the Provider's request the Recipient must immediately return to the Provider or destroy all material containing Confidential Information in its possession, power or control, including any material created or generated by the Recipient.

The Provider makes no representations and gives no warranties in relation to the Confidential Information, including the completeness of any information provided. The Recipient must solely rely upon its own analysis and assessment of the Confidential Information and must satisfy itself as to the accuracy and completeness of the Confidential Information.

To the maximum extent permitted by law, BCA disclaims all liability for any loss or damage suffered by any person using, disclosing, relying or acting on any information disclosed by BCA or any of its Representatives.

This document does not give rise to an expectation or warranty that any subsequent agreements, including a commercial agreement or dealer agreement, will be formed between BCA and the Recipient.

Intellectual Property Rights

The Recipient acknowledges and agrees that all IPR subsisting in the Confidential Information and any other information issued by the Provider to the Recipient for or in any way related to the Express Purpose remains the exclusive property of the Provider.

The Recipient must not cause or permit anything which may damage or endanger the Provider's IPR or title to that IPR or assist or allow others to do so.



General Provisions

The Recipient's obligations contained in this document continue to apply in perpetuity except to the extent that the Provider specifically releases the Recipient in writing from any such obligations.

The Recipient continually indemnifies and holds harmless the Provider against any claim, liability, loss, damage or expense (including legal costs on a full indemnity basis) that the Provider incurs or suffers directly or indirectly as a result of a breach of this document by the Recipient or any of the Recipient's Representatives or any unauthorised disclosure by a person who received Confidential Information from the Recipient or its Representatives.

If a clause(s) of this document is held to be invalid or otherwise unenforceable it will be severed. Severing a clause(s) will not affect the enforceability of the remainder of the document.

This document is governed by the laws of South Australia, and each party irrevocably submits to its exclusive jurisdiction.

Definitions

In this document the following definitions apply:

Confidential Information means any information provided by the Provider or any of its Representatives to the Recipient or any of its Representatives, or otherwise obtained by the Recipient or any of its Representatives, whether obtained before or after execution of this document, in connection with the Express Purpose or the Provider in any way.

Without limiting the above, Confidential Information includes all confidential business information, documents, records, financial information, reports, intellectual property, product specifications, technical information and forecasts which relate to the Provider or its Related Entities or the business, products or processes of the Provider or its Related Entities, the fact that the Confidential Information may be or has been provided and the terms of this document.

Confidential Information does not include information which is in or becomes part of the public domain (other than through a breach of this document or an obligation of confidence owed to the Provider or any of its Related Entities) or which the Recipient can prove was independently acquired or developed by it without breaching this document.

Intellectual Property Rights (or IPR) means copyrights (including all neighbouring rights), patents, designs, trade marks and similar industrial, commercial and intellectual property rights (including semi-conductor and circuit layout rights, formulae, trade secrets and know-how) whether registered or unregistered, and includes the right to register any of the Intellectual Property Rights.

Related Entity has the same meaning as under the Corporations Act 2001 (Cth).

Representative means any director, officer, employee, agent, contractor, financier, professional adviser or Related Entity of a party.



Executed as a Deed

Date:

Signed by **BCA** in the presence of:

.....
Signature of witness
Meryl Klimczak
Business Administrator

.....
Signature of BCA Representative
Michael Klimczak
Managing Director

Signed for and on behalf of

.....
[Insert Company Name]
by its authorised representative in the
presence of:

.....
Signature of Witness

.....
Name of Witness
(please print)

.....
Signature of authorised representative

.....
(please print)

