DATA PROCESSING AGREEMENT

This DPA is made on the date that the last Party has executed this DPA, between the following parties:

1. **Backpack Internet Pty. Ltd. T/A Bento Software (ACN 618 553 129)** of **9 The Serpentine, Bilgola Beach, New South Wales 2107, Australia** (**we**, **us** or **our**); and

2. **[Insert name of counterparty's name] ABN, ACN, NZBN or Company Number [insert]** of **[insert address]** (**you** or **your**),

together the **Parties** and each a **Party**. This DPA supplements the Linked Agreement entered into between the Parties and applies to the provision of Services under the Linked Agreement.

Background

A. The Parties have entered into the Linked Agreement for the provision of Services.

B. In the processing of Company Personal Data in connection with the Linked Agreement, each Party will perform the role/s set out in Annex 1 Part A.

C. The Parties would like to implement this DPA to set out each Party's rights and obligations in connection with the Processing of Company Personal Data under the Linked Agreement.

1. Commencement and Term

1.1 This DPA will commence on the date it is executed between the Parties and will continue for as long as the Linked Agreement remains in effect, or the Processor retains any of the Company Personal Data in its possession or control (whichever is the longer) (**Term**).

1.2 By entering into this DPA, each Party agrees to be bound by the terms and conditions set out in this DPA, in exchange for the other Party also agreeing to be bound by this DPA.

2. Processing of Personal Data

2.1 The Processor agrees to:

(a) comply with all Applicable Data Protection Laws in the Processing of Company Personal Data; and

(b) not process Company Personal Data other than on the Controller's documented instructions.

2.2 The Controller instructs the Processor to process Personal Data in accordance with this DPA (including in accordance with Annex 1).

3. Where and to the extent the Processor is also acting as a Controller (as set out in the roles of the Parties in Annex 1 Part A), it agrees to process the Company Personal Data in accordance with Applicable Data Protection Laws, and to the extent applicable, clause 12 of this DPA.

4. Processor Personnel

4.1 The Processor agrees to take reasonable steps to ensure the reliability of any of the Contracted Processor's Personnel who may have access to the Company Personal Data, ensuring in each case that:

(a) access is strictly limited to those individuals who need to know / access the relevant Company Personal Data, as strictly necessary for the purposes of the Linked Agreement; and

(b) the relevant Personnel are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

5. Security

5.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor agrees to implement appropriate technical and organisational measures in relation to the Company Personal Data to ensure a level of security appropriate to that risk in accordance with Applicable Data Protection Laws, and as further particularized on our GDPR compliance webpage, available here: https://gdpr.bentonow.com/.

5.2 In assessing the appropriate level of security, the Processor agrees to take into account the risks that are presented by Processing, in particular from a Personal Data Breach.

6. Sub-Processing

6.1 The Controller authorises the Processor's engagement of the Sub-Processors already engaged by the Processor at the date of this DPA are further particularized on our GDPR compliance webpage, available here: https://gdpr.bentonow.com/.

6.2 Where the Processor wishes to engage a new Sub-Processor, the Processor agrees to provide written notice to the Controller of the details of the engagement of the Sub-Processor at least 14 days' prior to engaging the new Sub-Processor (including details of the processing it will perform). The Controller may object in writing to the Processor's appointment of a new Sub-Processor within 7 days of such notice, provided that such objection is based on reasonable grounds relating to data protection. In such event, the Parties will discuss such concerns in good faith with a view to achieving resolution. If the Parties are not able to achieve resolution, the Processor may, at its election:

(a) not appoint the proposed Sub-Processor;

(b) not disclose any Company Personal Data it processes on the Controller's behalf to the proposed Sub-Processor; or

(c) inform the Controller that it may terminate the Linked Agreement (including this DPA) for convenience, in which case, clause 14.2 will apply.

6.3 The Controller agrees that the remedies described above in clauses 6.2(a)-(c) are the only remedies available to the Controller if it objects to any proposed Sub-Processor by the Processor.

6.4 Where the Processor engages a Sub-Processor to process Company Personal Data, the Processor agrees to enter into a written agreement with the Sub-Processor containing data protection obligations no less protective that those in this DPA with respect to the Company Personal Data (including in relation to Restricted Transfers), and to remain responsible to the Controller for the performance of such Sub-Processor's data protection obligations under such terms.

7. Data Subject Rights

7.1 Taking into account the nature of the Processing, the Processor agrees to assist the Controller by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligations, as reasonably understood by the Controller, to respond to requests to exercise Data Subject rights under the Applicable Data Protection Laws.

7.2 The Processor agrees to:

(a) promptly notify the Controller if it receives a request from a Data Subject under any Applicable Data Protection Law in respect of Company Personal Data; and

(b) ensure that it does not respond to that request except on the documented instructions of the Controller or as required by Applicable Data Protection Laws to which the Processor is subject, in which case the Processor shall, to the extent permitted by Applicable Data Protection Laws, inform the Controller of that legal requirement before the Contracted Processor responds to the request.

8. Personal Data Breach

8.1 The Processor agrees to notify the Controller without undue delay upon the Processor becoming aware of a Personal Data Breach affecting Company Personal Data, providing the Controller with sufficient information to allow the Controller to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

8.2 The Processor agrees to co-operate with the Controller and take reasonable commercial steps as are directed by the Controller to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8.3 If the Controller decides to notify a Supervisory Authority, Data Subjects or the public of a Company Personal Data Breach, the Controller agrees to provide the Processor with advance copies of the proposed notices and, subject to Applicable Data Protection Law (including any mandated deadlines under the GDPR), allow the Processor an opportunity to provide any clarifications or corrections to those notices.

9. Data Protection Impact Assessment and Prior Consultation

The Processor agrees to provide reasonable assistance to the Controller with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which the Controller reasonably considers to be required by article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law (to the extent the Controller does not otherwise have access to the relevant information and such information is in the Processor's control).

10. Deletion or return of Personal Data

10.1 Subject to this clause 10, and subject to any document retention requirements at law, the Processor agrees to promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of Company Personal Data (**Cessation Date**), delete and procure the deletion of all copies of those Company Personal Data.

11. Audit Rights

11.1 Subject to this clause 11, where required by law, the Processor shall make available to the Controller on request all information reasonably necessary to demonstrate compliance with this DPA, and shall allow for and contribute to audits, including inspections, by the Controller or an auditor mandated by the Controller in relation to the Processing of the Company Personal Data by the Contracted Processors.

11.2 Where clause 11.1 applies, any audit (or inspection):

(a) must be conducted during the Processor's regular business hours, with reasonable advance notice (which shall not be less than 30 business days);

(b) will be subject to the Processor's reasonable confidentiality procedures;

(c) must be limited in scope to matters specific to the Controller and agreed in advance with the Processor;

(d) must not require the Processor to disclose to the Controller any information that could cause the Processor to breach any of its obligations under Applicable Data Protection Laws;

(e) to the extent the Processor needs to expend time to assist the Controller with the audit (or inspection), will be funded by the Controller, in accordance with pre-agreed rates; and

(f) may only be requested by the Controller a maximum of one time per year, except where required by a competent Supervisory Authority or where there has been a Personal Data Breach in relation to Company Personal Data, caused by the Processor.

11.3 Information and audit rights of the Controller only arise under section 11.1 to the extent that the Linked Agreement does not otherwise give it information and audit rights meeting the relevant requirements of Applicable Data Protection Law.

12. Restricted Transfers

12.1 The Parties agree that where the transfer of Company Personal Data between the Parties is a Restricted Transfer protected by the EU GDPR, it will be subject to the EU SCCs, which shall be deemed to be incorporated into this DPA and form part of this DPA, subject to Annex 1, and are considered an appropriate safeguard.

12.2 The Parties agree that where the transfer of Company Personal Data between the Parties is a Restricted Transfer protected by the UK GDPR, it will be subject to the UK Addendum (and any documents or legislation referred to within it), which shall be deemed incorporated into this DPA, and:

(a) the tables in Part 1 of the UK Addendum shall be populated with the relevant information set out in the Annexes to this DPA; and

(b) the Parties agree that the UK Addendum is considered an appropriate safeguard.

13. Liability

13.1 Despite anything to the contrary in the Linked Agreement or this DPA, to the maximum extent permitted by law, our aggregate Liability to you, arising out of or related to this DPA

(including the SCCs) will be limited to the amount specified in the Linked Agreement.

14. Termination

14.1 Each Party agrees that a failure or inability to comply with the terms of this DPA and/or the Applicable Data Protection Laws constitutes a material breach of the Linked Agreement. In such event, the Controller may, without penalty:

(a) require the Processor to suspend processing of Company Personal Data until such compliance is restored; or

(b) terminate the Linked Agreement effective immediately on written notice to the Processor.

14.2 In the case of such suspension or termination, the Processor shall provide a prompt pro-rata refund of all sums paid in advance under the Linked Agreement which relate to the period of suspension or the period after the date of termination (as applicable).

14.3 Notwithstanding the expiry or termination of this DPA, this DPA will remain in effect until, and will terminate automatically upon, deletion by the Processor of all Company Personal Data covered by this DPA, in accordance with this DPA.

15. General

15.1 **Amendment:** Other than as expressly permitted under this DPA and to the extent permitted by law, this DPA may only be amended by written instrument executed by the Parties.

15.2 **Assignment**: A Party must not assign or deal with the whole or any part of its rights or obligations under this DPA without the prior written consent of the other Party (such consent not to be unreasonably withheld).

15.3 **Confidentiality:** Each Party agrees to keep this DPA and any information it receives about the other Party and its business in connection with this DPA (**Confidential Information**) confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:

(a) disclosure is required by law; or

(b) the relevant information is already in the public domain.

15.4 **Contracts (Rights of Third Parties) Act 1999:** Notwithstanding any other provision of this DPA, nothing in this DPA confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

15.5 **Counterparts:** This DPA may be executed in any number of counterparts that together will form one instrument.

15.6 **Order of Precedence:** In the event of any conflict or inconsistency between the agreements entered into between the Parties, the SCCs shall prevail, then the Annexes, followed by this DPA and then the Linked Agreement.

15.7 **Governing law and disputes:** This DPA is governed by the laws of New South Wales, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales, Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

15.8 **Notices:** Any notice given under this DPA must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

15.9 **Severance:** If a provision of this DPA is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this DPA without affecting the validity or enforceability of the remainder of that provision or the other provisions in this DPA.

16. Definitions and Interpretation

16.1 In this DPA, unless the context otherwise requires, all terms have the meanings given to them in the Appendices and Annexures, and:

Applicable Data Protection Law means the laws and regulations applicable to the processing of Personal Data by the Parties in connection with the Linked Agreement, including:

(a) the EU GDPR;

(b) the UK GDPR; and

(c) the Australian *Privacy Act 1988* (Cth).

Company Personal Data means any Personal Data Processed by a Contracted Processor on behalf of a Controller in connection with the Linked Agreement (and where the Processor is also acting as a Controller, any Personal Data it processes in connection with the Linked Agreement).

Contracted Processor means the Processor or a Sub-Processor.

Controller means the Party specified in the Party Details of Annex 1 as the Controller that performs the role of a Controller as that term is defined under the EU GDPR, or UK GDPR, as applicable.

Data Subject means any individual person that is identified or identifiable by way of Personal Data.

DPA means this Data Processing Agreement and all Annexes attached to it.

EEA means the European Economic Area.

EU GDPR means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation).

EU SCCs means in respect of the EU GDPR, the standard contractual clauses annexed to the European Commission's implementing decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679, as may be amended, superseded or replaced from time to time.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), misrepresentation, restitution, indemnity or otherwise), howsoever arising, whether direct or

indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this DPA or otherwise.

Linked Agreement means the Bento Platform Terms and Conditions, available here: https://bentonow.com/legal/terms.

Personnel means in respect of a Contracted Processor, any of its employees, consultants, and subcontractors.

Processor means the Party specified in the Party Details in Annex 1 as a Processor that performs the role of a Processor as that term is defined under the EU GDPR, or UK GDPR, as applicable.

Restricted Transfer means:

(a) where the EU GDPR applies, a transfer of personal data from an EEA to a country outside of the EEA which is not subject to an adequacy determination by the European Commission; or

(b) where the UK GDPR applies, a transfer of personal data from the United Kingdom to any other country which is not subject to adequacy regulations pursuant to Section 17A of the United Kingdom Data Protection Act 2018.

Services means the services the subject of the Linked Agreement.

Sub-Processor means any person appointed by or on behalf of the Processor to process Company Personal Data on behalf of the Controller in connection with the Linked Agreement.

UK Addendum means the international data transfer addendum to the European Commission's standard contractual clauses for international data transfers implemented by the UK Information Commissioner's Office pursuant to the Data Protection Act 2018, as may be amended, superseded or replaced from time to time.

UK GDPR means the Data Protection Act 2018 and the EU GDPR as incorporated into United Kingdom law by virtue of Section 3 of the United Kingdom's European Union (Withdrawal) Act 2018.

16.2 The terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meaning as in the EU GDPR or UK GDPR, as applicable.

16.3 The terms, "Data Exporter" and "Data Importer" shall have the same meaning as in the EU SCCs and/or the UK Addendum (as applicable).

16.4 The word include shall be construed to mean include without limitation.

EXECUTION

SIGNED by Jesse Hanley for and on behalf of Backpack Internet Pty. Ltd. T/A Bento Software:
Signature
Date

SIGNED by **[insert other party's name]** for and on behalf of **[insert other party's company name]**:
Signature
Date

ANNEX 1

PART A: LIST OF PARTIES

we, us or our	**Backpack Internet Pty. Ltd. T/A Bento Software (ACN 618 553 129)** **Address:** 9 The Serpentine, Bilgola Beach, New South Wales 2107, Australia **Phone:** 0419465011 **Email:** jesse@bentonow.com **Key contact person's contact details and role:** Jesse Hanley, CEO (details listed above) **Role:** Where you provide personal data to us to sign up to our Services, we are acting as a data controller. Where you input personal data into the Services and we process it on your behalf, we are acting as a data processor. We are the data importer.
you or your	**[insert other party's name] (Company Registration Number [insert] or ABN [insert] or ACN [insert] or NZBN [insert])** **Address:** [insert] **Phone:** [insert] **Email:** [insert] **Key contact person's contact details and role:** [Name, Role, Email, Mailing Address] **Role:** Where you provide personal data to us to sign up to our Services, we are acting as a data controller. Where you input personal data into the Services and we process it on your behalf, we are acting as a data processor. You are the data exporter.

PART B: DESCRIPTION OF TRANSFER

Personal Data Transferred	• Log data: When you visit our website, our servers may automatically log the standard data provided by your web browser. It may include your computer's Internet Protocol (IP) address, your browser type and version, the pages you visit, the time and date of your visit, the time spent on each page, and other details. • Device data: We may also collect data about the device you're using to access our website. This data may include the device type, operating system, unique device identifiers, device settings, and geo-location data. What we collect can depend on the individual settings of your device and software. We recommend checking the policies of your device manufacturer or software provider to learn what information they make available to us. • Personal information: We may ask for personal information, such as your Name, Email, Social media profiles, Date of birth, Phone/mobile number, Home/Mailing address, Work address, and/or Payment information. • Client data: We will collect and process the data that you feed into our system in accordance with your instructions, including your customer lists, names, emails, marketing preferences etc.
Special Categories of Personal Data and criminal convictions and offences	Special Categories of Data will not be processed

Relevant Data Subjects	Anyone about whom personal data is input into the Service.
Frequency of the transfer	Ad hoc, on the Controller's instructions.
Nature of the transfer	As specified in the Linked Agreement, this DPA and as instructed by the Data Controller, including without limitation: • use by us of Company Personal Data to provide the Services; • collection, organisation, storage (hosting), retrieval and other processing of Company Personal Data by us, as necessary to provide, maintain and improve the Services; and • transmission, disclosure and dissemination of Company Personal Data to provide the Services in accordance with the Linked Agreement or as compelled by law.
Purpose of processing	The purpose of the transfer and processing are as specified in the Linked Agreement and this DPA.
Duration of the Processing	The term of the Linked Agreement and for a period of 30 days after termination or expiry of the Linked Agreement.

PART C: COMPETENT SUPERVISORY AUTHORITY

(a) If the EU SCCs apply, the competent supervisory authority is the Data Protection Commission of the Republic of Ireland.
(b) If the UK Addendum applies, the competent supervisory authority is the UK Information Commissioner's Office.

PART D: INFORMATION REQUIRED FOR THE EU SCCs AND/OR THE UK ADDENDUM

Information required for Sections I – IV of the SCCs						
Module	**Module in operation**	**Clause 7 (Docking Clause)**	**Clause 11 (Option)**	**Clause 9a (Prior Authorisation or General Authorisation)**	**Clause 9a (Time period)**	**Is personal data received from the Importer combined with personal data collected by the Exporter?**
1	✗	Incorporated	Not incorporated			
2	✓	Incorporated	Not incorporated	General authorisation	14 days	
3	✗	Incorporated	Not incorporated	General authorisation	14 days	
4	✓	Incorporated	Not incorporated			Yes
Clause 17 of the EU SCCs (Governing Law)	The governing law for the purposes of clause 17 shall be the (i) the laws of the Republic of Ireland where the relevant transfer falls within the territorial scope of application of the EU GDPR; or (ii) the laws of England & Wales where the relevant transfer falls within the territorial scope of the UK GDPR.					

Clause 18 of the EU SCCs (Choice of forum and jurisdiction)	The choice of forum and jurisdiction for the purposes of clause 18 shall be (i) the courts of the Republic of Ireland where the relevant transfer falls within the territorial scope of application of the EU GDPR; or (ii) the courts of England & Wales where the relevant transfer falls within the territorial scope of the UK GDPR.

Information required for Table 4 of the UK Addendum	
Ending this Addendum when the Approved UK Addendum changes	Which Parties may end this Addendum as set out in Section 19 of Part 2 of the UK Addendum: ☐ Importer ☐ Exporter ☒ Neither Party