

TERMS OF SERVICE

ABOUT US

BackPocket Technologies Pty Ltd (ACN 646 493 432) provides software-as-a-service solutions through our online platform. These services are to enable our customers to be provided with a website, an online presence and other digital tools to assist managing and marketing their business.

1 AGREEMENT

1.1 These terms and conditions, together with our Privacy Policy (collectively, the “**Agreement**”), apply to your use of BackPocket Pty Ltd’s (“**we**”, “**our**” or “**us**”) trading as BackPocket:

- (a) website located at <https://backpocket.tech> (“**Site**”);
- (b) mobile application (“**App**”); and
- (c) your use of and access to any templates, products, applications, tools, services and features provided by us.

(Collectively, the “**Platform**”).

1.2 References to “you”, “your” and similar terms are construed accordingly in this Agreement.

1.3 By browsing the Platform or using or accessing the Services, you agree to the terms contained in this Agreement. If you do not agree with the terms of this Agreement, you must not access, browse or use this Platform, and must not utilise any of the Services. If you’re using the Services for or on behalf of an organisation, you’re agreeing to this Agreement on behalf of that organisation, and you represent and warrant that you can do so.

1.4 By accepting the terms in this Agreement, you agree to the obligations imposed on you under this Agreement and, in exchange, we agree to provide you with access to the Platform and use of and access to the Services. If you do not agree to the Agreement, you should immediately cease accessing and using the Platform, and must not use or access the Services.

1.5 We reserve all rights to alter the Agreement at our discretion. Each time you use the Platform or access the Services, it is your responsibility to ensure that you are aware of our current terms of this Agreement. Your continued use of the Platform or Services following the publication of changes to the Agreement is taken to be your acceptance of those changes.

1.6 The Agreement, as amended by us from time to time, continues to apply for as long as you use the Platform and Services or until terminated in accordance with the terms of the Agreement.

2 USING THE PLATFORM AND SERVICES

Establishing an Account

2.1 To access the features of the Platform and to utilise the Services listed or advertised on the Platform, you must become a member of the Platform. To become a member of the Platform you must open a membership account with us (“**Account**”) by providing:

- (a) your name;
- (b) your business name;

- (c) your mobile or telephone number or a valid email address; and
 - (d) nominate a password ("**Password**").
- 2.2 Registration for an Account is free but access to Services will require you to subscribe to either a Monthly Subscription or an Annual Subscription. If you do not provide accurate and complete details, we may not be able to activate your membership, provide access to the Platform or provide the Services to you.
 - 2.3 You will receive an email confirming registration with us shortly after you have created your Account via the Platform.
 - 2.4 You agree to keep your Account and membership details current at all times by updating these details via your Account on the Platform or by contacting us at info@backpocket.tech.
 - 2.5 You may not use one email address to register for multiple Accounts. You may hold more than one Account at the same time, but must register with separate email addresses.
 - 2.6 You warrant and represent that your access to, or use of, the Platform is not unlawful or prohibited by any laws which apply to you. You understand and agree that any suspected fraudulent, abusive or illegal activity may be referred to appropriate law enforcement authorities.
 - 2.7 You agree that you have sole responsibility for any activity that occurs on or using your Account. You agree to notify us immediately if you become aware of any security breach or any unauthorised use of your Password or Account. You must not provide your account username or password to any person. You agree and acknowledge that you shall be solely responsible for the confidentiality and security of your username and password and any use of your account (including unauthorised use).
 - 2.8 We may, in our absolute discretion, terminate your Account, disable your Account or restrict your access to the Platform or Services (temporarily or permanently) where you have breached the Agreement or for any reasonable reason and at any time. Under these circumstances, you may be prevented from accessing all or parts of the Platform or Services, your Account details or any other content associated with your Account. We will not be liable to you or any third party if this occurs. We may impose limits or restrictions on the use you may make of the Platform or Service. Further, we may, for any reason, at any time and without notice to you, withdraw the Platform or Services, or change or remove Platform functionality or amend the Services provided.

THIRD PARTY PROVIDERS

- 2.9 The Platform may contain links to third party websites. Any links to such websites provided on the Platform are for convenience only. We do not represent that we have any relationship with any linked websites nor recommend or endorse any goods, services or third-party content appearing on, or via, other websites linked to this Platform. We are not responsible for any loss or damage that may arise from your access to, and/or use of, third party websites, products and services. Additionally, we are not responsible for the content or privacy practices associated with linked websites. You should make your own enquiries before using and/or accessing third party websites.
- 2.10 In providing the Services, we may create links to third-party services, products, software, or websites (collectively, "**Third Party Materials**"). We are not responsible or liable for any loss or damage incurred as a result of your use, or any of your customer's use, of any Third Party Materials in connection with the Services. We do not endorse or assume responsibility for any

Third Party Materials and makes no guarantee regarding the reliability, accuracy, nature, origin, quality, or use of such Third Party Materials. You are solely responsible for ensuring that your use of any Third Party Materials, including those made available by or through the Platform or Service, is done solely in accordance with all relevant laws, and the terms and conditions of any applicable licenses or other agreement. You may be otherwise required to procure all necessary rights from third parties, which are from time to time required in order for us to be able to provide the Services, to you. In no event shall we be liable to you or any third party for your use or alleged use of any Third Party Materials.

- 2.11 Further, Third Party Materials may be subject to applicable third party terms of service and privacy policies, and you are solely responsible for reviewing, agreeing to, and complying with any such terms before you use any Third Party Materials. We don't control Third Party Services, and we're not liable for Third Party Services or for any transaction you may enter into with them, or for what they do. Your use of any Third Party Materials is at your own discretion and risk. If you do not agree to the third party's terms of service or license agreement, do not download or use the Third Party Materials.
- 2.12 Your use of any Third Party Materials obtained through the Service does not transfer to you any rights, title, or interest in or to the Third Party Materials beyond the terms contained in the third party provider's terms of service or license. Any reference on the Platform to any Third Party Materials is not an approval or endorsement by us of such Third Party Materials.
- 2.13 The respective service provider of each Third Party Material is solely responsible for providing all support, maintenance and technical assistance to you with respect to their services (including their interoperation with your websites). We're not liable for any such suspension, disabling or removal, including without limitation for any loss of profits, revenue, data, goodwill or other intangible losses, or business disruption, costs or expenses you may incur or otherwise experience as a result (except where prohibited by applicable law).

USE OF THE PLATFORM AND SERVICES

- 2.14 You may not use the Platform and Services other than for their intended purpose. You agree that you will not engage in any activity that interferes with or disrupts the Platform or the Services or the servers and networks that host the Platform and Services. You agree not to, circumvent, disable or otherwise interfere with security-related features of the Platform or attempt to do so or otherwise interfere with, or restrict, any person or visitor from accessing or using the Platform.
- 2.15 All Services will be provided based on the information and specifications supplied by you. All information that we provide is supplied in good faith, but we do not warrant or guarantee the accuracy or completeness of any information provided by us or any third party. It is not within the scope of our obligations to enquire as to, or to verify, the accuracy or completeness of information that we receive from you or any third parties.
- 2.16 You will not:
 - (a) modify the Platform or Services or merge any aspect of the Platform or Services with another programme other than as expressly provided under the terms of the Agreement;
 - (e) record, reverse engineer, copy, duplicate, reproduce, create derivate works from, frame, download, display, transmit or distribute any of the Platform or Material therein or the source code of the Platform or Services;
 - (f) use data mining, robots, screen scraping, deep-links, spiders or similar automated data gathering, extraction or publication tools on this Platform or via the Services

(unless it is purposely being made available on your website through use of the Service or with our prior written consent);

- (g) transmit spam, chain letters or other unsolicited email;
- (h) licence, sell, rent, lease, transfer, assign or otherwise commercially exploit the Platform, Services or Material;
- (i) engage in unlawful behaviour, including unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
- (j) access, store, distribute or transmit:
 - (i) viruses, worm, trojan or other malicious code that corrupts, degrades or disrupts the operation of the Services or Platform;
 - (ii) material that is unlawful, unethical, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or a contravention of the rights of any third party;
 - (iii) material that facilitates illegal activity; or
 - (iv) material that abuses or causes damage or injury to any person or property;
- (k) provide Platform login details or passwords, or otherwise provide access to the Platform, to any unauthorised third party and you will take all reasonable steps to prevent unauthorised access to, or use of, the Platform and Services;
- (l) share any features of the Platform or Services that are not publicly available with any unauthorised third party;
- (m) use the Platform or Services other than for its intended purpose; and
- (n) engage in any conduct on the Platform that is in breach of the Agreement (or any other terms mentioned therein).

- 2.17 Unless otherwise expressly stipulated in this Agreement, you must not copy, adapt, distribute, display, reproduce or transmit any content displayed or published on the Platform or provided through the Services.
- 2.18 You must take your own precautions to ensure that the telecommunications equipment and computer systems used by you to access and use the Platform does not expose your telecommunications equipment and computer systems to any viruses, malicious computer code or other forms of interference which may damage your computer system. We accept no responsibility for any loss or damage to you or anyone else which may arise out of, or in connection with, your access to, and use of, the Platform.
- 2.19 All rights granted to you under this Agreement must not be leased, assigned, sold, licensed, resold or transferred to any third party in any manner whatsoever. You must not in any way encumber or allow the creation of any mortgage, charge, lien or other security interest in respect of the Service.
- 2.20 Any breach of this Clause 3 constitutes a breach of this Agreement and we may, at our absolute discretion, terminate or suspend your access to, and/or use of, the Service, and/or take further actions against you for breach of this Agreement.
- 2.21 Any unique customisation required under the Service may incur additional costs and be subject to separate terms and conditions.
- 2.22 You must not use the Platform or Services in order to promote:
- (a) Nudity in a sexual context, pornography, exposed genitalia or adult themes;
 - (b) Copyrighted content that you do not own or have a licence to use;
 - (c) Hate speech or content that incites or promotes violence against certain individuals or groups (including but not limited to, race, religion, ethnicity, gender or sexual orientation); or
 - (d) phishing, scams or other illegal content.

END USERS

- 2.23 Our Services may assist you in creating your own website or ancillary applications. Your website may have its own visitors, customers and users ("**End Users**"). You understand and agree that:
- (a) your website and your End Users are your responsibility;
 - (b) you're solely responsible for providing products, services and support to your End Users;
 - (c) you're solely responsible for compliance with any laws or regulations related to your website and/or your End Users; and
 - (d) your ability to create, share or otherwise operate your website may be limited by the extent to which your website include licensed content.

We're not liable for, and won't provide you with any legal advice regarding, your Platform or your End Users. This does not limit or affect any liability we may have to you separately for any breach of the other provisions of this Agreement.

3 LEGAL CAPACITY

- 3.1 You must be eighteen (18) years of age or over to register as a member of the Platform or to subscribe for Services on, or via, the Platform.
- 3.2 If you are under the age of 18 years ("**Minor**"), you must immediately cease accessing and using the Platform unless you have permission from a parent or guardian to create an Account in accordance with clause 4.4 of this Agreement. If you are found to be a Minor without permission from a parent or guardian, we are entitled, at our absolute discretion, to cancel or terminate your Account and cancel or terminate any Services made on, or via, the Platform.
- 3.3 Any Services made on, or via, the Platform and your continued use of the Platform is an acknowledgement by you that:
- (a) you are over the age of eighteen (18) years, or have obtained the relevant permission from a parent or guardian to create an Account; and
 - (b) you accept the Agreement and agree that you have entered into a binding legal contract with us in relation to the Agreement.
- 3.4 If you are a parent or guardian permitting a Minor to create an Account, you agree to:
- (a) exercise supervision over the Minor's use of the Platform;
 - (b) assume all risks associated with use of the Platform as outlined in this Agreement;
 - (c) ensure that all content and information that the Minor may encounter on the Platform is suitable and appropriate for the Minor;
 - (d) assume all liabilities resulting from the Minor's use of our web Platform and their Account;
 - (e) ensure the accuracy and truthfulness of all information submitted by the Minor; and
 - (f) provide the consents contained in this Agreement on behalf of the Minor.
- 3.5 We may, at any time, request written confirmation from a parent or guardian that you have permission to access and use this Platform.
- 3.6 We reserve the right to take legal action and/or seek compensation for any loss or damage we may suffer as a result of, or in connection with, any transaction entered into by a Minor or from the parent or guardian of a Minor who causes Services to be provided.

4 CHARGES

SUBSCRIPTION FEE

- 4.1 In consideration for us granting you access to the Platform and our Services, you agree to pay us either:
- (a) the Monthly Subscription Fee on a monthly basis made in advance of each relevant period; or
 - (b) the Annual Subscription Fee on an annual basis made in advance of each relevant period.

- 4.2 Both the Monthly Subscription and Annual Subscription start on the date that you sign up for an Account via the Platform and submit payment by providing your payment method details. When you sign up, your first Subscription Cycle will be billed immediately, and payment is made in advance of each relevant period.
- 4.3 By initiating a:
- (a) Monthly Subscription, you authorise us to charge you the Monthly Subscription Fee at the current rate as advertised on the Platform, which may change from time to time; or
 - (c) Annual Subscription, you authorise us to charge you the Annual Subscription Fee at the current rate as advertised on the Platform, which may change from time to time.
- 4.4 Unless we otherwise communicate a different time period to you at the time you create an Account or otherwise, each billing cycle for:
- (a) a Monthly Subscription is one month in length; and
 - (d) an Annual Subscription is one year in length.
- 4.5 A Monthly Subscription automatically renews each month, and we will automatically bill the Monthly Subscription Fee to your nominated payment method, unless your subscription is cancelled or terminated.
- 4.6 An Annual Subscription automatically renews each year, and we will automatically bill the Annual Subscription Fee to your nominated payment method, unless your subscription is cancelled or terminated.
- 4.7 In the event your paid Subscription began on a day not contained in a given month/year, we may bill your payment method on a day in the applicable month/year or such other day as we deem appropriate.
- 4.8 From time to time, we may adjust the pricing of the Services. We will provide at least 30 days' notice of a price increase before it becomes effective (other than any increases due to legal or tax requirements such as the application of GST) by posting a notification on the Platform, sending an email or such other means as we reasonably determine. Changes to the Subscription Fee will not occur retrospectively. If you do not cancel your Subscription, you will be deemed to have accepted these new fees.
- 4.9 The Monthly Subscription Fee and Annual Subscription Fee are exclusive of any third-party expenses. If you require a Service that incurs an additional third-party expense you agree to either:
- (a) pay the third-party expense directly; or
 - (b) reimburse us for the third-party expense.

We will provide you with written notice and seek your consent before incurring any third-party expenses.

DIGITAL LEAD GENERATION

- 4.10 In addition to this Agreement, we may enter into a separate arrangement with you connected to additional digital lead generated services and products. Where you have engaged with us to provide a digital lead generated services or products and additional charge will arise and must be paid in addition to, and at the same time as, your Monthly Subscription Fee or Annual Subscription Fee.

EXTERNAL FEES

- 4.11 Certain services will require Third Party Materials. Third Party Materials purchased via the Services may be subject to different refund or other policies that those Third Party Materials determine, and such Third Party Material may be non-refundable. The purchase terms and conditions for such Third Party Material may be displayed during the purchase process, such as through a link to the purchase terms and conditions. It's your responsibility to verify your ability to purchase, cancel or obtain a refund for a Third Party Material. Unless otherwise stated in this Agreement, we don't offer refunds for purchases of Third Party Material.

OTHER TERMS

- 4.12 Promotional discount codes may be given at our sole discretion on terms and conditions notified at the time of the relevant promotional offer or discount.
- 4.13 We may, in our sole discretion, offer Services for no charge or outside of a Subscription (for example a beta service or a time-limited trial account). Those Services will be marked as beta, preview or early access (or similar phrasing), and may not be as reliable as our other Services. To the extent permissible by law, we do not accept any liability for Services provided under this arrangement and you agree and accept to utilise these services at your own risk.
- 4.14 To the maximum extent permitted by law, we reserve the right to refuse a sale to any customer.

5 REFUNDS

- 5.1 Without limiting our obligations or your rights under law (including the Australian Consumer Law), our Monthly Subscription Fees and Annual Subscription Fees are non-refundable, unless we specifically communicate otherwise. However, we may (in our absolute discretion) elect to return all or part of the most recent Monthly Subscription Fee and Annual Subscription Fees paid by you in the following circumstances:
- (a) if you are cancelling your subscription and requests a refund within 5 business days of the date of making your first payment for your subscription; or
 - (b) if your subscription is cancelled prior to the end of a Subscription Cycle for which you have incurred a charge in error, due to disability or death.
- 5.2 To the maximum extent permitted by law, we will not provide you with a refund for the Services provided to you on, or via, the Platform where:
- (a) the Services are not responsible for any damage caused through your misuse, accident or abnormal use of the Platform or Services; or
 - (b) the Australian Consumer Law or warranty does not apply.

6 PAYMENT

- 6.1 All prices for the Monthly Subscription Fee, Annual Subscription Fee, digital lead generated services and Third Party Materials listed on the Platform are in Australian Dollars and inclusive of goods and services tax ("GST") unless otherwise specified.
- 6.2 You will make all payments for the Subscription fees without any deduction for tax unless a tax deduction is required by law. If you are required to make a tax deduction by law, the amount due will be increased to the amount that (after making the tax deduction) upon deduction of the amount attributable to tax equals the amount which would have been due if no tax deduction had been required.
- 6.3 Payment will be debited from your nominated payment method on a monthly basis for Monthly Subscription Fees and on an annual basis for Annual Subscription Fees in advance of each

relevant period. Payment of the Monthly Subscription Fees and Annual Subscription Fees may include any digital lead generate service fees and Third Party Material fees for the previous Subscription Cycle.

- 6.4 Depending on the nature of the digital lead generate service fees and Third Party Material fees, we may decide to invoice you these fees separate to your Monthly or Annual Subscription Fee, but will provide you with an invoice in respect of these fees prior to commencing delivery. All invoices are due and payable within 7 days of being issued and we may process a direct debit payment on that date.
- 6.5 You may edit your payment method details by logging onto the Platform and editing them in your Account settings.
- 6.6 If transfer of the Monthly Subscription Fee or Annual Subscription Fee is not unsuccessful due to expiration, insufficient funds or otherwise, you nonetheless remain responsible for promptly paying the unpaid fees and authorise us to continue billing you via your nominated payment method, as it may be updated, including in the event you attempt to create a new account, reactivate the unsettled account or sign up for a new account. This may result in a change to your payment billing dates. If we cannot charge your account, we reserve the right, but are not obligated, to terminate your access to the Platform and Services.
- 6.7 If payment of the Subscription Fee and any associated fees associated with the digital lead generation or Third Party Materials cannot be debited from your nominated payment method in accordance with clause 7.3 or have not been received by any due date on a tax invoice provided to you, we will be entitled (without prejudice to any other right or remedy available to us under this Agreement or at law) to:
 - (a) withhold provision of the Services, or suspend your access to any or all of the software of the Services, until payment of the outstanding invoice (including interest) is received by us in full;
 - (b) charge interest on the outstanding amount at the rate of eight per cent (8%) per annum;
 - (c) terminate this Agreement by giving you written notice.
- 6.8 You agree and acknowledge that we will treat an electronic instruction as authentic and are under no obligation to investigate the authenticity or authority of persons issuing or transmitting such electronic instructions, or to verify the accuracy and completeness of such electronic instructions.
- 6.9 If your nominated payment method triggers our internal suspect transaction protocols, we may contact you to confirm additional details, or rescind the transaction. In this case, until your payment has passed our fraud prevention protocols your Subscription will not be fulfilled. If you do not provide the requested information within 7 days, your Subscription will be cancelled and your payment will be refunded back to you via the method in which you paid. These information requests are sent to help protect credit card holders from online fraud though we provide no guarantee that we will identify any or all instances of online fraud that may occur in relation to any subscription made on or via the Platform.
- 6.10 Payment processing services for Subscriptions are provided by Stripe and Outseta (collectively, the “**Payment Processors**”) and are subject to the Stripe Connected Account Agreement, which includes the Stripe Terms of Service (collectively, the “**Stripe Services Agreement**”), and to the Outseta Terms of Service. By placing an order and using either of the Payment Processors to process payments you agree to be bound by the Stripe Services Agreement and the Outseta Terms of Service, which may be modified by the Payment Processors from time to time. As a condition of enabling payment processing services through

the Payment Processors, you agree to provide us with accurate and complete information about you and your business, and you authorise us to share it and transaction information related to your use of the payment processing services provided by the Payment Processors.

7 CANCELLATION OF SUBSCRIPTION

- 7.1 You may cancel your Subscription at any time via the account settings on the Site or by providing written notice to us at info@backpocket.tech at least 7 business days before the end of your current Subscription Cycle.
- 7.2 If you elect to terminate your Subscription, you will continue to have access to your Account until the end of your current Subscription Cycle, unless we determine to refund this fee, in which case your access will be terminated immediately.
- 7.3 At the end of your Subscription Cycle you will lose access to the Services, and:
- (a) your site will be taken offline;
 - (b) you will no longer have access to our tools or services;
 - (c) you will no longer receive communications from us related to the Service, this does not include any marketing or other non-Service related communication unless you have opted-out;
 - (d) you will retain ownership of your domain for the period which you have previously paid for any remaining time until it expires with the third party provider. After this time, you will need to process with the respective service provider or transfer it to another service provider;
 - (e) we will archive all of your data and keep it for a period of time before it is deleted, and
 - (f) we will not export your website source code.

8 SERVICE SPECIFICATIONS

- 8.1 Although we endeavour to provide accurate and complete information on the Services and the Platform, we cannot guarantee that the information is up to date, accurate and complete at all times. We reserve the right to (but are not obligated to) make changes or updates to information displayed on the Platform at any time without notice to you.
- 8.2 You may request changes to the Services in writing. We may, but are not obliged to, agree to amend the Services to reflect any requested changes. If a requested change impacts on the cost, timing and any other aspect of the Services we will notify you in writing of the change in price.
- 8.3 All rights granted to you under this Agreement are personal, and these rights must not be leased, assigned, sold, licensed, resold or transferred to any third party in any manner whatsoever without our written permission.

9 DELIVERY OF SERVICES

- 9.1 All Services will be provided based on the information and specifications supplied by you. All information that we provide is supplied in good faith, but we do not warrant or guarantee the accuracy or completeness of any information provided by us or any third party. It is not within the scope of our obligations to enquire as to, or to verify, the accuracy or completeness of information that we receive from you or any third parties.
- 9.2 You acknowledge that our ability to be able to provide the Services to you without delay or interruption is dependent on your full and timely cooperation. You will (and will ensure that any authorised users will):
- (g) co-operate with and assist us in the supply of the Services;
 - (h) promptly provide us with full and accurate information, data and explanations as and when required;
 - (i) comply with all applicable laws, regulations and industry standards with respect to your activities and obligations under the Agreement;
 - (j) ensure that your network and systems comply with the relevant specifications and guidelines provided by us from time to time; and
 - (k) comply with all reasonable directions and guidelines from us as advised from time to time.
- 9.3 We will use reasonable endeavours to ensure that all Services are delivered in a prompt and timely manner but with any software-based product, this cannot be guaranteed. We will not be responsible or liable for any direct or indirect losses or damages suffered or sustained by you as a result of, or in connection with, any interruption or delay in accessing and using the Software or the Services.
- 9.4 You agree and acknowledge that access to the Platform and Services is highly dependent on the proper function of the internet and any other computer networks and infrastructure upon which you and/or the Services operate, interface with, are hosted on or connected to, including the networks, hardware, software or systems.
- 9.5 Except in respect of any Non-Excludable Guarantee, we do not guarantee that the Services, Platform or access thereto will be uninterrupted or error-free and you release and indemnify us in respect of any Losses we may incur and/or claims and/or complaints you (or any of your Related Bodies Corporate and Associated Entities) may have against us in respect of any interruption, error or unavailability of the Platform or Services. You agree that it is your responsibility to make enquiries as to the accuracy or completeness of any information.
- 9.6 To the maximum extent permitted by law, where the benefit of any such condition, warranty or other obligation is conferred upon you pursuant to any of the Acts, our sole liability for breach of any such condition, warranty or other obligation is limited to supplying of the Services again.
- 9.7 We make no representations, warranties or guarantees as to the availability of Services of the Platform or that the Platform or Materials are or will be free from viruses, worm, trojan or other malicious code. You are responsible for taking your own precautions in this respect.
- 9.8 We may engage Consultants to perform our obligations under this Agreement at our discretion.
- 9.9 We deliver the Services by extracting data from third-party systems and applications that are utilised by your organisation on your behalf. To facilitate such extraction on your behalf, you agree to provide us with consistent and uninterrupted access to your IT systems and any

ancillary applications or services. This may necessitate the creation of separate logins and user profiles.

- 9.10 In the provision of Services, we may access your account by relying on Representational State Transfer (REST) APIs. You agree that we may access to your IT systems and any ancillary applications or services in order to provide the Services.

10 INTELLECTUAL PROPERTY

YOUR CONTENT

- 10.1 You represent and warrant that you own all rights to your user content (including, but not limited to any text, photos, images, music, audio, videos, fonts, logos, stickers, code, data, domain and any other materials utilised for the Services) or otherwise have (and will continue to have) all rights and permissions necessary to use, share, display, transfer and license your user content via the Services and in the manner set forth in this Agreement. If we use your user content in the ways described in this Agreement, you represent and warrant that such use will not infringe or violate the rights of any third party, including without limitation any copyrights, trademarks, privacy rights, publicity rights, contract rights, trade secrets or any other intellectual property or proprietary rights ("**Your Content**").
- 10.2 You grant us a worldwide, perpetual, irrevocable, non-exclusive and royalty free license to access and use Your Content that you provide to us, for the purpose of:
- (a) performing our obligations under this Agreement;
 - (l) conducting research and data analytics; and
 - (m) improving our products, services and offerings.
- 10.3 If you enable any third-party applications in conjunction with the Software, you agree that your Content may be accessible by those third-party applications in order for such applications to functions correctly. You will be bound by the terms of such third-party providers regarding the use of Your Content and we will not be held responsible for the disclosure, modification or deletions of Your Content by such third-party applications.

OUR INTELLECTUAL PROPERTY

- 10.4 We retain ownership of all Intellectual Property Rights in the Platform, Services and in all Material published on the Platform or provided under the Services, and that was already in existence before the commencement of any Services or that develops independently, without the use of any of your material or other intellectual property, and that is not developed pursuant to the Services ("**Background IP**"). All modifications, enhancements and improvements to the Background IP are also to be treated as Background IP and we will retain ownership of any such developed material. Provision of the Services does not transfer any ownership or rights, title or interest in and to the Background IP. You must not represent to anyone or in any manner whatsoever that you are the proprietor of the Background IP.
- 10.5 We retain all rights, title and interest in the Platform, Services and Material (including Intellectual Property Rights contained therein) irrespective of any licence we may grant to you to access, and use, the Platform or access the Services.
- 10.6 Save for any Background IP, all Intellectual Property Rights in any material discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in

connection with, the provision of any Services or the delivery of the Deliverables under this Agreement (“**Developed IP**”) will automatically vest in, and are assigned to us.

- 10.7 You may access and use the Platform and Services (including Intellectual Property Rights contained therein) for your personal and commercial use. You must not in any form or by any means reproduce, modify, distribute, store, transmit, publish, use or display the Material on another website or create derivative works from any part of the Platform, Services or the Material or commercialise any information obtained from any part of the Platform, Services or Material without our prior written consent.
- 10.8 We reserve the right to terminate any licence granted to you under the Agreement at any time, for any reason and without notice to you.
- 10.9 You agree that you will not modify or copy the layout or appearance of the Platform nor any computer software or code contained in the Platform, and that you will not decompile, disassemble, reverse engineer or otherwise attempt to discover, interfere with or access any source code related to the Platform.
- 10.10 You agree that we may refer to you, your business name, publish your logo and/or trade mark and refer to you as a customer of ours in any communications or publications for the purposes of marketing or promoting our business.

11 LINKING TO THE PLATFORM

- 11.1 You must not establish a link to the Platform in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 11.2 You must not establish a link to the Platform from any website that is not owned by you.
- 11.3 This Platform must not be framed on any other website and you must not create a link to any part of this Platform other than the home page. We reserve the right to withdraw linking permission at any time without written notice.

12 INDEMNITY

- 12.1 You agree to indemnify us and our officers, directors, employers or contractors (collectively, the “**Indemnified**”) and to keep indemnified and hold harmless the Indemnified from and against any and all actions, claims, demands, losses, damages, taxes, liabilities, costs and/or expenses that may be incurred by, or sustained by, the Indemnified arising out of, or in connection with, your access to, and use of, the Materials, the Platform, any breach by you of this Agreement or your or anyone else’s use of the Services.

13 LIABILITY

- 13.1 We make no representations, warranties or guarantees:
 - (a) that content produced by or via, the Services is accurate, complete, reliable, current, error-free or suitable for any particular purpose. This content is provided on an ‘as is’ basis and you acknowledge and agree that you exercise absolute discretion in choosing how to use this content; or
 - (n) as to the availability of the Services is or will be free from viruses, worm, trojan or other malicious code. You are responsible for taking your own precautions in this respect.
- 13.2 To the maximum extent permitted by law, we exclude all:
 - (a) conditions, guarantees or warranties expressed or implied by law; and

- (b) any liability to you or to any third person however arising (and whether arising under statute, negligence or otherwise) for any personal injury or death to you or any third person, or for any special, direct, indirect or consequential loss or damage (including, but not limited to, loss of income or revenue, loss or interruption of business, loss of profits, revenue or contracts, loss of anticipated savings, loss of data, loss of use, loss of privacy or loss of goodwill),
 - (c) arising out of, or in connection with, access and/or use of the Material, the Platform, or any Services provided on, or via, the Platform and this Agreement.
- 13.3 Without limiting the generality of the foregoing, you agree that in no event shall our maximum aggregate liability exceed the total amount paid to us by you (excluding GST and expenses) to access and use the Services in the twelve (12) months immediately prior to the event. You acknowledge and agree that the limitations of liability contained in this clause are a fair and reasonable allocation of the commercial risk between the parties.
- 13.4 To the maximum extent permitted by law, all typographical, clerical or other errors or omissions in sales literature, quotations, price lists, acceptances or offers, invoices or other documents or information issued by us will be subject to correction without any liability on our part.
- 13.5 We will have no liability for any losses suffered or any damage caused by errors or omissions in any information or instructions provided to us by you in connection with the Services or any actions taken by us at your direction.
- 13.6 In no event will we be liable to you or any third party for any:
 - (a) loss of profits, revenue, goodwill or business, business interruption, corruption, loss or alteration of data, downtime costs, loss of use, failure to realise anticipated savings or for any indirect or consequential loss or damage of whatsoever nature, however caused;
 - (d) breach by you, or any third party of the Intellectual Property Rights of a third party or any laws, regulations or any relevant industry codes;
 - (e) viruses, worm, trojan or other malicious code introduced into, or transmitted to, you or any third party during the course of using the Services; or
 - (f) loss of or damage to any property belonging to you, or any third party or any personal injury or death arising out of or in connection with this Agreement.
- 13.7 For the avoidance of doubt, you agree that we will not be liable for any indirect, consequential, special or exemplary losses, expenses or liabilities, or loss of profits, loss of revenue, economic loss, loss of goodwill, corruption or alteration of data, failure to realise anticipated savings, loss of opportunity, expectation loss or loss of production, arising out of, or in connection with, the provision or use of the Services, the Platform, or the Agreement.
- 13.8 Nothing contained in the Agreement excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any liability under the *Competition and Consumer Act 2010* (Cth) or any other national, state or territory legislation where to do so is unlawful.
- 13.9 This clause 13 survives termination or expiry of the Agreement.

14 PRIVACY

- 14.1 We are committed to protecting your privacy and personal information. Please see our [Privacy Policy](#) for further details about our practices relating to the collection, use, disclosure and storage of your personal information.

15 GENERAL

- 15.1 We reserve the right to make changes to this Agreement without notice to you. Any amendments to this Agreement will have immediate effect from the time that they are published on the Platform.
- 15.2 There are certain situations or events that may occur which will not be within our reasonable control. Where this occurs, we will notify you of these circumstances and attempt to recommence providing the Services (as applicable) as soon as we are able. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue performing the Services.
- 15.3 Although we do our best to provide the most up-to-date information on the Platform as this becomes available, we cannot warrant the accuracy or completeness of the information provided.
- 15.4 Any provision of this Agreement which is void or unenforceable may be severed from this Agreement without affecting the enforceability of other provisions.
- 15.5 A failure or delay by us to exercise a power or right under this Agreement does not operate as a waiver of that power or right, and the exercise of a power or right by us does not preclude our future ability to exercise that or any other power or right.
- 15.6 This Agreement is governed by, and must be construed according to, the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction there.

16 INTERPRETATION

- 16.1 In this Agreement:

“Account” means an account created on the Platform for the use of the Services;

“Agreement” has the meaning in clause 1.2;

“Annual Subscription” means that the Customer will pay an Annual Subscription Fee and we will provide the Services on an annual basis until the Account is cancelled or terminated;

“Annual Subscription Fees” means the annual fees as advertised on the Platform that we charge on an annual basis for access and use of the Services via the Platform;

“Australian Consumer Law” means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

“Business Day” means 9:00am – 5:00pm Monday to Friday, excluding Saturdays, Sundays and public holidays in Victoria, Australia;

“Consumer Guarantee” has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law;

“Customer” means the person or legal entity listed on the purchase invoice or sales document and includes anyone acting on their behalf or with their express or implied authority;

“End Users” has the meaning given in clause 3.23;

“Intellectual Property” means all present and future intellectual or industrial property rights (whether or not registered) throughout the world, including, without limitation, in respect of patents, copyright, moral rights, trade names, trade marks, logos, systems, circuit layout,

designs, software, plant breeder's rights, domain names, trade secrets and confidential information;

"Invitee" has the meaning given in clause 2.1;

"Losses" means all losses, costs, damages, expenses, penalties, third party claims and other liabilities and including all legal and other professional expenses on a solicitor client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding and also includes all foreseeable and consequential loss;

"Material" means any information, data, source codes, drawings, content, text or images in any form (whether visible or not), audio recordings, video recordings, lists, sound, video, links, layout, look and feel, control features and interfaces contained on the Platform, or otherwise displayed, uploaded or published on, or via, the Platform;

"Monthly Subscription" means that the Customer will pay a Monthly Subscription Fee and we will provide the Services on a monthly basis until the Account is cancelled or terminated;

"Monthly Subscription Fees" means the monthly fees as advertised on the Platform that we charge on a monthly basis for use of the Services via the Platform;

"Non-Excludable Guarantee" means a non-excludable guarantee implied by the Australian Consumer Law;

"Privacy Policy" means our privacy policy available at backpocket.tech/privacy;

"Services" means the services listed or advertised on the Platform including, but not limited to, use of and access to the Platforms, templates, products, applications, tools, services and features created by us;

"Platform" has the meaning in clause 1.1;

"Subscription" means an Annual Subscription and a Monthly Subscription;

"Subscription Cycle" means each billing cycle which is either one month in length for a Monthly Subscription or one year in length for an Annual Subscription unless we communicate a different time period to you in writing at the time of sign up; and

"Third Party Materials" has the meaning given in clause 3.10;

"you" or **"your"** means the person or entity accessing, using or relying upon the Platform and includes, when applicable, the Customer; and

"Your Content" has the meaning in clause 11.1.

- 16.2 Any reference in this Agreement to the singular includes the plural, to any gender includes all genders, to any act or statute includes any Act or statute which supersedes, replaces or modifies any earlier Act or statute, to persons includes all bodies and associations both corporate and incorporated and vice versa. Paragraph headings are for reference purposes only and all references to clauses are to clauses in this Agreement unless otherwise specified.