

# theProduct® - Web Hosting Services Agreement

[Version 1.1 - Last updated February 2020]

## 1 Application

- 1.1 This is the agreement we use for delivering our web hosting services. We encourage you to read and understand the agreement as it explains what each party is responsible for and is designed to protect you as well as us.
- 1.2 By asking us to start work, signing this agreement or checking the 'I agree' box, you are agreeing to be bound by these terms.
- 1.3 These terms and conditions, together with any other applicable written agreement, define our working relationship with You. Unless otherwise agreed to in writing, these terms apply from the date of our Proposal.
- 1.4 If there is any part of this agreement or our Proposal that you do not understand, please let us know before agreeing to these terms.

## 2 Web Hosting

- 2.1 Depending on the solution required for your business, we may act as a reseller or partner to deliver our hosting services. The benefit of working with us is that we are able to offer services that incorporate multiple different vendors and platforms to create a unified solution for your business, with a single point of contact to resolve any problems that may arise, while also providing you with direct access to infrastructure support channels to deliver 24/7/365 support on select services.
- 2.2 We rely on multiple third-party platforms and providers to deliver our services to you, and we are each bound by the terms and conditions for hosting and services published and updated from time to time by those companies. Please let us know if you require a link to the terms and conditions.
- 2.3 Wherever possible, we will provide notice to you if we intend to move your website to a different hosting provider, server or infrastructure, together with a link to the new hosting services terms and conditions if applicable. In unusual circumstances, we may need to move your website before giving notice and will provide notice as soon as possible after doing so.

## 3 Servers

- 3.1 Hosting services are generally provided as part of a shared server environment. This means that your website may not be the only website residing on a web server connected to the internet. It is possible, although unlikely, that an event affecting another website may impact multiple websites on the same server.
- 3.2 Dedicated servers are not shared server environments and attract different hosting fees. The Proposal will set out if we are providing dedicated server hosting. In the rarest of situations, an event affecting another website or server may impact an entire data-centre or section thereof, including separate dedicated servers.
- 3.3 The hosting service we provide is limited by the service parameters identified by the hosting service, including the steps available to ensure the security of the server and your website. We offer no

guarantee that the server or your website will be free from unauthorised users or hackers. We are not liable for loss or damage arising from a security breach. While many of our services also include regular security updates, patching, maintenance and other proactive security services, we also recommend you also maintain appropriate security.

- 3.4 We reserve the right to change, remove, amend, suspend or terminate your account at any time if your website has a negative impact on the server, other websites on a shared server or on our business. If this occurs, we will assist in promptly transferring your website to a new server, unless we are legally prohibited from doing so. Additional costs may be incurred in this process.
- 3.5 From time to time, the hosting provider may carry out maintenance on its servers, and during that time your website may not be visible to the public. We will endeavour to provide advanced notice of such maintenance windows wherever practical.
- 3.6 We will perform backup on an automated daily basis however offer no warranty that the backup will be available for your use or free from corruption. If this is important to your business structure, we recommend you also perform your own regular backup functions.

#### **4 Format**

- 4.1 Where you are transferring an existing website to us for hosting, it must be provided in the format specified by us. Transfer/migration services are also available, in most situations at no additional cost, so please refer to our support team should you require assistance.
- 4.2 Any website transferred for web hosting must not contain any material (including any viruses or other computer programming routines that are intended to detrimentally interfere with, damage, expropriate or intercept any system, data or personal information) that may be detrimental to theProduct, the server or any other user. This also includes, but is not limited to pirated, nulled, or otherwise unlicensed/illegally distributed software, themes, plugins, scripts, photos or other creative/digital resources that violates the respective licence holder or creators' rights. If you are unsure if this may impact you, please contact our support team. Many hosting services with theProduct include access to a vast array of 3<sup>rd</sup> party resources, so many licencing issues are able to be resolved for the duration that your site is hosted with theProduct at no additional cost to you.

#### **5 Acceptable use**

- 5.1 You agree to use the web hosting Services only for legal purposes. If theProduct becomes aware or suspects that your website is being used for illegal purposes, theProduct will be entitled to immediately cease the web hosting services and terminate this agreement.
- 5.2 You agree to comply with our Acceptable Use Policy (as set out in Annexure A to this agreement). We may terminate or suspend hosting services if you do not comply with the Acceptable Use Policy.
- 5.3 Disk Space
- (a) theProduct services provide for hosting for varying capacities of data for each website depending on the plan selected. We will provide notice to you if you are getting close to that limit.
- (b) If you have requested a VPS or dedicated server, higher limits will apply and will be included in your Proposal or notified to you.
- 5.4 The amount of traffic to a website may also affect its hosting. A large number of visits in a short period of time can overload a server. Access to your website will be unavailable if the server is overloaded by

either traffic to your website or by traffic to another website hosted on the shared server. Select services from theProduct include 3<sup>rd</sup> party mitigation solutions such as a Content Delivery Service that reduce, but not eliminate, the chance of this occurring. If your website receives a large amount of traffic, please ensure that you have selected an appropriate plan.

- 5.5 We reserve the right to temporarily suspend your hosting services if your website experiences a higher than usual number of visits in a short period of time. We will notify you if this is required.
- 5.6 If your website is likely to receive a significant burst of traffic (resulting from things such as national press coverage or a large advertising campaign), please let our support team know as early as possible so that we can make appropriate checks, changes and accommodations on your site and on our servers, giving your website the best chance of maximising the exposure, and minimising the risk of downtime/outages. This does not guarantee that you won't have an outage, but it significantly reduces the chance of a negative outcome.

## **6 Domain name**

- 6.1 Domain name registration and hosting are separate things. Hosting is attached to a domain name in order to make website content visible to the public. However, if your domain name expires, your website hosting, emails and all DNS records will be unavailable to the public until the domain is renewed. This is a fundamental mechanism of how domains work and is not something that theProduct can override or change. To continue using your website or emails, you must ensure that the associated domain name remains registered and active.
- 6.2 Unless we have indicated in the Proposal that we are arranging/managing your domain name, you must establish and configure your own account for domain name registration, including the appropriate billing details to be attached to that account. Our team can assist with registering, migrating, managing and renewing domain names – if you are unsure as to what is required, please contact our support team.
- 6.3 You should set up your account so that the registrar (be that theProduct or another provider) will automatically deduct registration renewal costs from your credit card account to reduce the chance of your domain's registration lapsing. You are responsible for ensuring that there are sufficient funds available in your account and your payment details are up to date.
- 6.4 Your contact and WHOIS details can be updated at any time via our account portal or by contacting our support team, however changing the ABN associated with certain domain extensions does incur additional fees (as mandated by auDA Policy).
- 6.5 The registrar requests a check and update of account contact details annually. If theProduct is listed as an administrator contact on that account, we will notify you of any request that require your action received by us on your behalf, and the time frame for response.
- 6.6 There is no guarantee that a domain you wish to register is available or that the domain referenced in a proposal will still be available when you wish to register. Unless we are arranging/managing your domain name, any fees payable to register a domain name are processed by the registrar and any billing enquiries will need to be taken up directly by you with the registrar. We recommend securing your preferred domain name by registering it through our online accounts' portal as soon as possible (even if the associated website project is not ready to begin) – please contact our support team if you require assistance with this process.

## 7 Fees

- 7.1 Web hosting fees are either monthly, quarterly, half-yearly, annual or bi-annually, in accordance with our reseller agreement, and are payable by you in advance. The fee for hosting is set out in the Proposal, along with any applicable minimum commitments. We reserve the right to increase our fees however will endeavour to give you at least 3 months written notice prior to any fee increase taking effect.
- 7.2 Sometimes we include hosting as part of a monthly amount payable by you. If this is the case, these details will be set out in the Proposal. Payment of the monthly fee is due in advance by Direct Deposit (Bank Transfer), Credit Card (via Stripe) or PayPal. Transactions managed by Stripe or PayPal are subject to additional terms and conditions from these providers, which you can find via the links below:
- PayPal: <https://www.paypal.com/au/webapps/mpp/ua/useragreement-full>
  - Stripe: <https://stripe.com/au/ssa>
- 7.3 Each invoice we issue must be paid in full and in accordance with its terms (usually 14 days). We reserve the right to suspend the services (this means your website will no longer be viewable and your emails will no longer be accessible) if payment or part payment is overdue for more than 21 days. You agree this is a reasonable step we may take to ensure we are paid.
- 7.4 If fees remain unpaid after attempts by us to recover payment, we may pursue legal action and/or forward the debt to a collection agency for further action. You agree you will pay for any fees incurred by us for debt collection, administration and/or legal costs.
- 7.5 You agree to pay interest at a rate of 8% per annum calculated from the date of invoice on any outstanding debt (both prior to and after judgement, if applicable).
- 7.6 For payments by credit card or PayPal:
- (a) You must ensure that sufficient cleared funds are available in your nominated account;
  - (b) You hereby authorise us to debit the periodic fee (for example annual or monthly) from your nominated account. If you are on a fixed term plan (example 12 or 24 months), you agree you will not attempt to cancel your nominated account or otherwise stop the monthly payments from being charged to your nominated account;
  - (c) If the relevant financial institution reverses an automatic payment, we will contact you to re-try the payment. If the amount remains outstanding, the charge will be re-processed within 14 days of the reversal;
  - (d) In addition to the outstanding balance, you authorise us to debit your nominated account or payment method an additional amount equivalent to the amount our bank charges for reversal fees or dishonour fees.
  - (e) If payment is declined, you acknowledge we may recover payment by any other means.
- 7.7 The Fees listed in the Proposal are listed Inclusive of GST. You agree to pay an additional amount sufficient to cover the GST applicable to each invoice.

## 8 Cancellation



- 8.1 Unless you have committed to a fixed term agreement with us (eg 12 or 24 months), you may cancel the web hosting services at any time with 30 days' notice, however, please be aware that:
- (a) If you choose to cancel hosting services within the current period paid for, there will be no partial refund of any hosting fee paid in advance.
  - (b) Upon cancellation of this agreement, any unpaid hosting fees or other outstanding amounts you owe us, including the next month's hosting if within the 30 days' notice window, will become immediately due and payable.
  - (c) Any software, plugins, addons or otherwise licenced intellectual property supplied by theProduct as part of your hosting agreement remains the property of theProduct and will need to be removed/deactivated from your website before the cancellation process can be finalised or the website can be transferred to another provider.
  - (d) Upon settlement of outstanding fees in accordance with clause (b), along with the removal of any applicable licences in accordance with clause (c), we will provide you with any account information or credentials necessary to transfer your registration to another provider. You agree to pay any applicable transfer or labour fees incurred by this process.

## 9 Variations

- 9.1 You acknowledge that the online environment is constantly changing and that we may change or amend part of the hosting services if we believe that a product we have previously offered is no longer effective, available or commercially viable, or there is something better than originally proposed. We will advise you of any changes in the services before they take effect.

## 10 Sub-contracting

- 10.1 We may subcontract part of the work or use external suppliers. Any subcontractors or external suppliers will be bound by the terms of this agreement.

## 11 Client responsibilities

- 11.1 You will:
- (a) (If we are not responsible for doing so) keep your domain registration current;
  - (b) Pay our fees on time and in full;
  - (c) Provide timely responses to information or requests for information;
  - (d) Inform us of any changes to your domain name, website, account names, passwords, technical setup or any material information which may affect delivery of the hosting services;
  - (e) Obtain and keep up-to-date virus protection on your computers, web hosting accounts and other electronic hardware;
  - (f) Regularly perform backups of your system data.
- 11.2 You authorise us to access your applicable accounts, databases and applications and you agree to provide us with necessary passwords and all other activities reasonably necessary to complete the services set out in the Proposal, including access to third-party applications and accounts as required.

## 12 Limitation of liability

- 12.1 We will not be liable for any loss or damage suffered by you as a result of integration with your system or website by third-party applications or for the transfer of data in the setup of your website hosting or for back-up or security of your hosted data, even if we initiated the integration, transfer, change or hosting.
- 12.2 To the fullest extent permissible by law, and without limiting Australian Consumer Law, in the event of any fault in the hosting services, our liability will be limited, at our choice to:
- (a) supplying the services again;
  - (b) repairing any fault in the services caused by us;
  - (c) payment of the cost of having any fault in the services caused by us repaired; or
  - (d) payment of the cost of having the services supplied again.
- 12.3 Notwithstanding any other clause in this agreement, you agree that our total maximum aggregate liability to you for any action or claim or group of actions or claims arising under this agreement, is the amount actually paid by you for hosting services rendered in the three months immediately preceding the date of dispute (or the latest in time dispute if more than one dispute).
- 12.4 Neither party will be liable for lost revenues, profits or savings, nor for any indirect, exemplary, punitive, special or consequential loss or damages of any party, including third parties, even if a party has been advised of the possibility of that loss or damages.
- 12.5 This limitation of liability applies to the fullest extent permitted by law, and survives any termination or expiration of this agreement, or your use of the services.

### **13 Intellectual Property Indemnity**

- 13.1 It is Your responsibility to ensure that you have the right to use and display any content, including without limitation, text, image or photographs ('content'), that you display on your hosted website, and that the content does not infringe upon the intellectual property rights of any other person or entity.
- 13.2 We reserve the right to refuse or suspend hosting services unless you are able to provide adequate proof of permission to use that content. If we receive a take-down notice in relation to any of your content, we reserve the right to remove, or require you to remove, the content referenced in the take-down notice.
- 13.3 You grant us a world-wide, non-exclusive, revokable license to use your content:
- (a) for the purpose of providing the hosting services; and
  - (b) for our marketing purposes. For example, this might include using your data in our 'client lists' and including screenshots of your website in portfolios showcasing our creative works (if your website was also created by theProduct).
- 13.4 You are responsible for managing any intellectual property complaint made in regard to any of the content or operation of your hosted website.
- 13.5 You agree to indemnify us from any liability (including legal fees and costs) threatened or actual, arising from the use of the content hosted on your behalf.

### **14 Termination**

14.1 We may terminate this agreement if:

- (a) We reasonably believe you are in default under this agreement (including not complying with the Reasonable Use Policy); and
- (b) We have given you written notice setting out your breach; and
- (c) You have not rectified your breach within 7 days of the date of the notice.

14.2 We may terminate this agreement immediately without notice:

- (a) if we reasonably believe the breach is not capable of being remedied;
- (b) if we reasonably believe damage may be caused to another party if we do not terminate this agreement;
- (c) if we have issued 2 or more breach notices within the preceding 4-week period (whether these have been remedied or not); or
- (d) Any amount owed by you under this agreement remains unpaid for 90 days.

14.3 Upon notice of termination:

- (a) All fees and other charges will become immediately due and payable;
- (b) If requested by you, we will take necessary steps for the transfer of your website (once all outstanding amounts have been paid by you and all intellectual property belonging to or licenced by theProduct has been removed. We reserve the right to charge a fee for this service). There may be fees payable by you for the transfer;
- (c) You must cancel any direct debit or credit card facilities in place at the time of termination;
- (d) We are not responsible for any 3<sup>rd</sup> party fees incurred after the termination date; and
- (e) We will only hold your data for a maximum period of 90 days (see clause 15).

## **15 Data**

15.1 If the hosting services are cancelled or suspended, we will hold your data for a maximum period of 90 days.

15.2 During the 90 days you may contact us for assistance to transfer your data to a new provider. We may charge a fee for this assistance.

15.3 If you do not contact us to transfer your data, we may delete your data from our systems at the end of the 90-day period. We will not be responsible for data loss.

## **16 Third Party Platforms**

16.1 The hosting services that we provide rely upon the continued operation of online facilities that we use. We will not be liable for any third-party failures affecting the provision of the hosting services.

16.2 All third-party platforms used in the provision of the services are available pursuant to their own terms and conditions of service. You agree to adhere to those terms and conditions and agree that any liability arising from the use of those platforms remains your sole responsibility.

16.3 You acknowledge that third party platforms may change their policies, algorithms, regulations or systems at any time. We are not liable for loss or damage incurred by you as a result of changes made to third party platforms, this includes for example, our inability to provide the services as planned or the closure of an account by the platform provider without notice or explanation.

## 17 Force Majeure

17.1 Other than payment of amounts owing, neither party will be liable for delay or failure to perform its obligations under this agreement if that delay or failure is due to a Force Majeure Event.

17.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to a Force Majeure Event, the performance of that party's obligations will be suspended.

17.3 If a delay or failure by a party to perform its obligations due to a Force Majeure Event exceeds 60 days, either party may immediately terminate the agreement by providing notice in writing to the other party.

## 18 Assignment

18.1 Either party may assign or transfer its rights or obligations under this agreement provided that all services and payments are up to date and the party seeking to assign their rights has provided prior written notice to the other party.

## 19 Definitions and interpretation

19.1 In this agreement the following definitions apply:

- (a) **You** means you, our client as identified in the Proposal, and includes your successors and assigns.
- (b) **Fees** means the amount payable by you to us for the provision of hosting services as set out in the Proposal and/or as updated pursuant to clause 7.1.
- (c) **Force Majeure Event** means an event that is beyond a party's control, including but not limited to, fire, earthquake, labour dispute, act of God, death, unavailability of any electricity or other utilities, or unavailability or material change in any third party technologies or platforms (or the rules governing such technologies or platforms) and any local, state, federal, national or international law or governmental order.
- (d) **Monthly Fee** means the amount of any fee paid monthly by you to us.
- (e) **Proposal** means a document prepared specifically for you outlining the scope of work to be undertaken by us, as well as an estimate of fees to be charged for that work.
- (f) **Services** means the hosting services we are to provide to you as specified in the Proposal.
- (g) **We, our, us or theProduct** means Lazy bear Pty Ltd ABN 31 459 636 031 trading as theProduct<sup>®</sup> and includes its officers, employees, contractors, successors and assigns.

19.2 In the interpretation of this document the following provisions apply unless otherwise stated:

- (a) Headings are inserted for convenience only and do not affect interpretation.
- (b) A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Queensland, Australia.



- (c) If the day on which any act, matter or thing is to be done is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference to dollars or \$ means Australian dollars and all amounts payable are payable in Australian dollars, unless otherwise specified in the Proposal.
- (e) A reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns.

## 20 General

### 20.1 Notices

- (a) Any required notice between the parties, including a notice of dispute, may be provided electronically in writing to the email contact details notified in the Proposal, or later notified in writing.
- (b) Notices sent electronically are deemed to have been received on the same business day if sent prior to 4.00pm on that business day and otherwise, the next business day.

### 20.2 Severability

If any of these terms and conditions are determined to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed replaced by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the terms and conditions will continue in effect.

### 20.3 Waiver

Any time or other indulgence granted by us will not in any way amount to a waiver of any of our rights or remedies under this agreement.

### 20.4 Counterparts

This agreement may be executed in several counterparts (including facsimile or email copies (in PDF or other agreed format)), all of which when signed and taken together constitute a single agreement between the parties.

### 20.5 Entire Agreement

Whatever ends up in this document, the Proposal or any related written agreement between us is the agreement between the parties and anything else discussed beforehand or afterward is not part of the agreement or fees charged, unless it was included.

### 20.6 No Relationship

We provide the services to you as an independent contractor and nothing in this agreement should be interpreted to suggest otherwise.

### 20.7 Governing Law

This agreement is governed by the laws of Queensland, Australia and the parties agree to be subject to the jurisdiction of the courts of Queensland, Australia.

# Annexure A – Acceptable use Policy

This acceptable use policy sets out the reasonable limits on your use of our hosting services. You must comply with all parts of our policy.

## 1 Definitions

1.1 In this Annexure A, the following words have the following meanings:

- (a) **Your content** means the website and all related content we host for you pursuant to this agreement including your website content (either directly yours or posted by others to your website), programs and apps used or accessed by your website (either yours or third party plug-ins), images/video/audio (including graphics, video, interactive media, photographs) and links (including URL links, meta tags), and email data.
- (b) **Host site** means any third-party hosting sites we use to host some or all of your content and includes any of our systems used in providing the hosting services or related services (such as Content Delivery Networks).

## 2 No prohibited use

2.1 You remain solely responsible for your content and your (or users of your website's) use of the host site.

2.2 You agree you will not use your content and/or the host site for any purpose that:

- (a) Is illegal or immoral (under the laws of any jurisdiction);
- (b) Displays, references or encourages gambling;
- (c) Displays, references or refers to adult only (18+ or X-rated) content, including pornography;
- (d) Damages our reputation, good will or any other user of our services or any third-party;
- (e) Infringes the intellectual property of any other person or entity;
- (f) Harms or overloads the host site;
- (g) Disseminates, shares or causes to be stored any harmful content including viruses, trojan horses, worms, time bombs, crypto-lockers, crypto-mining, cancelbots or any other computer programming routine that may damage, interfere with, surreptitiously intercept or expropriate any system, program, data or personal information;
- (h) Involves fraudulent goods, services, schemes or activities or any practice that could be interpreted as unfair or deceptive;
- (i) Involves the unlawful collecting, harvesting, funnelling or sharing of personal information;
- (j) References, displays or refers or links to material that are anti-political, anarchist, hateful, racist or encourages terrorist activities, aggression, violence against others or violent or harmful protests. While we respect the right to free speech, content we deem encourages violent or illegal activities or prevents the rights or free speech of others, is not permitted;

- (k) Results in excessive use of host site resources. This includes, as determined in our sole discretion, excessive use due to chat scripts or other uses that put stress on the host site and/or violation of bandwidth/storage allowances;
- (l) Violates security of the host site (for example hacking, interception, intentional interference, falsification of origin or identity, avoidance of system restrictions). We will co-operate with law enforcement agencies if we suspect security violation or other unlawful activity;
- (m) Involves unsolicited email, promotions, advertising or solicitations (spam). You may not use our mail servers, or the email servers of the 3<sup>rd</sup> party providers (such as Microsoft Office 365 and Google G Suite) that we provide access to as part of your service, in an unlawful manner. Posting the same or similar message to one or more newsgroups or sites is also prohibited. To be clear, you may not offer any mail services that do not relate to the reasonable email usage within your own business;
- (n) Involves selling, renting, assigning or distributing any of your rights under this agreement, acting as a service bureau, or in any other way allowing others to access use of our services via your account without our express written permission; or
- (o) In any other way reduces the peaceful enjoyment of any other person on the internet, our services or any person's own email services.

### 3 General

3.1 We reserve the right (however have no obligation to):

- (a) to investigate any violations of this policy;
- (b) notify any law enforcement authority or regulatory body of unusual or suspicious activity (including the disclosure of personal or account information);
- (c) remove content (or require you to remove content) we reasonably believe violates this policy;
- (d) suspend or terminate the hosting services if we reasonably believe you are in violation of this policy.

3.2 We will also co-operate with any law enforcement or regulatory body if lawfully required to do so (including disclosing account and/or personal information).

3.3 We may identify you for any reason by using your IP address and other supplied identifiable information and may share this information in accordance with our privacy policy.

End.