

theProduct® - Services Agreement

[Version 1.1 - Last updated February 2020]

1. Application

- 1.1 This is the agreement we use for delivering our services. We encourage you to read and understand this agreement as it explains each of our responsibilities and is designed to protect you as well as us. Our proposal sets out the services we have agreed to deliver and the fees payable by you. We can assist you with additional services not already identified in the proposal (subject to consultation and scope) however additional services will attract additional costs so please make sure all of the services you are expecting to be included are correctly detailed in the proposal. If you request additional services or work to be included during the term of our agreement with you, we will charge you additional fees for these items.
- 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 related services agreement (for example, our hosting services agreement), define our working relationship with you. Unless otherwise agreed to in writing by both parties, these terms apply from the date of our proposal and cover all the services you ask us to provide.
- 1.4 If you have any questions about the inclusions or charges set out in the proposal or if there is any part of the proposal or this agreement that you do not understand, please let us know before agreeing to these terms.

2. Term

- 2.1 We offer a range of payment agreements for delivery of our services, which we group into the following categories:
 - (a) 12-month fixed term agreement for services delivered across the 12 months with fees for the entire term split into monthly payments;
 - (b) 24-month fixed term agreement for services delivered across the 24 months with fees for the entire term split into monthly payments;
 - (c) Agreed individual or periodic services (for example, one-off consultancy services charged at an hourly rate or ongoing IT support) with fees payable either up-front or upon invoice for work completed; or
 - (d) Individually agreed suite of services with an alternative timeframe and payment arrangement as agreed with you (for example a marketing campaign combined with other services).

Generally, if we manage your domain registration and/or hosting, we allow monthly payments or a combination of upfront and monthly payments. If we do not manage your hosting or domain, then we usually require either a 50% deposit plus instalments or full upfront payment.

Please refer to the proposal for the type of services we have agreed to provide you, such as if we are managing your domain or hosting, when the fees are payable, the term you are committing to, and the services we are providing.

- 2.2 The term for a fixed term agreement starts on the date set out in the proposal (or the date you ask us to start work) and continues for the specified term in the proposal unless terminated earlier in accordance with clause 19. At the end of the fixed term, a fixed term agreement will automatically convert to a month to month agreement unless you give us 30 days' notice prior to the end of the fixed term that you wish to terminate at the end of the term.
- 2.3 All other agreements start on the date set out in the proposal (or the date you ask us to start work) and will remain in place until they are either completed or ended in accordance with clause 19.

3. Fixed term agreements

- 3.1 Your commitment - Under fixed term agreements, you are purchasing our services for a fixed period of time (for example, 12 months) and we calculate our fees for work across the entire term and then split this amount into manageable monthly payments. We find this gives businesses more flexibility with their cashflow. By entering into a fixed term agreement, you are committing to paying the total cost of the full term. Sometimes there is also a set-up or other upfront fee payable, please see the proposal to see if this is applicable. By agreement with you, we may also extend a fixed term period.
- 3.2 Domain registration ownership - When we agree to offer our services under fixed term agreements, we may spend additional time on your project at the start however we average the amount you pay over the entire fixed-term period. We also allocate resources to your project and plan our technicians based on the expected workflow arising from fixed term agreements. To protect our legitimate business risk of a client defaulting under a fixed term agreement, when you agree to these terms and conditions, you agree to us registering the domain name for your website against our ABN and appointing our business as the administrator of the website. We are entitled to do this under the auDA (.au Domain Registration Ltd) rules as the web developer. This means we also have administrative control over your email account. After a fixed term ends, you may have your domain name transferred to your ABN by asking us in writing and paying the transfer fee (if any). We recommend you make the request at least 30 days prior to paying the next domain name renewal fee (Otherwise you may end up paying the domain name renewal fee twice).

4. Suspension of Services

- 4.1 This clause applies to all of our services including fixed term, month to month work and single services and is in addition to any other rights we have under this agreement.
- 4.2 You agree we may suspend our services if you stop making agreed monthly payments, unlawfully end a fixed term agreement early or do not pay our invoices. The structure we use is our security that we will get paid for the services we provide. It is designed to protect our business interests and help keep our fees lower as we do not have to regularly chase clients for payment of outstanding accounts. Think of it a bit like a lay-buy, you do not expect to own your lay-buy products until you have paid for them in full.
- 4.3 Specifically, if you stop making agreed monthly or other payments or you fail to pay invoices when they are due:

- (a) We may suspend your website and email access. If we do so, your website will no longer be viewable on the internet and emails will no longer be delivered.
- (b) We may suspend your marketing services (where we are providing marketing services). Marketing services regularly involve third parties including Facebook, Google AdWords and Bing Ads. Depending on the campaign/services we're delivering, we may either suspend the ads, revoke your access to your advertising account, and (in only the most severe cases) close, unpublish or remove profiles from the third-party marketing sites. This could include unpublishing a Facebook page or deleting a LinkedIn business page or Google Business Listing.
- (c) We may suspend any other services we were or had agreed to deliver.

4.4 We do not often need to take these steps with clients, and we do provide a written warning first, however it is important that you understand these serious consequences.

4.5 What does this mean for you? If you continue to pay the monthly amounts under your fixed-term or other agreement, we will keep providing the agreed services as set out in the proposal. At the end of the term you may terminate your agreement with us and, once all accounts are finalised, you will own the website content and logo (if applicable) we have developed for you (excluding any 3rd party software/licences being provided by theProduct as part of your ongoing service with us that you have not purchased separately). You will be entitled to have the domain name transferred to you (you must request for this to happen) and can elect to move your website or manage it yourself. There may be a transfer fee payable and you may have to pay costs for data transfer or license or other fees for themes, images, music, plugins, software etc we have used on your website. There may also be a fee to transfer accounts such as Google or Bing.

Alternatively, you might enter into a new fixed fee or other agreement with us to continue the great work we have been doing or opt to continue with us for managed/unmanaged hosting only. We will discuss this with you at the time, to assist you with selecting the best solution for your business requirements and goals.

If, during the fixed term, you change your mind about your web development or have a change in direction or available resources, you are still committed to payment of the monthly fees under the fixed term agreement. If you stop making payments, we will issue you with a warning that your payments are late and, if you do not bring your payments up to date, we may suspend our services and your website will not be viewable on the website and your emails may no longer work. We may keep your services suspended until you pay the outstanding amounts in full. If things escalate, we also have a right of termination under this agreement based on your default. If we terminate this agreement based on your default and you have money outstanding, we may continue to keep your website and emails suspended until you have paid all outstanding amounts. You will then be entitled to have the domain registration transferred to you (there will be a transfer fee and may be license fees for themes, images or music if applicable). We may also have other rights or actions against you.

4.6 We will in no circumstances be liable for actions we take relying on clause 4.

5. Non-exclusivity

5.1 By entering into this agreement, we do not enter into any form of exclusive arrangement with you for the supply of the services. We may at any time supply similar services or the same services to anyone else.

6. Variations

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

7. Payment

7.1 The Fees listed in the proposal are listed inclusive of GST. You agree to pay an amount sufficient to cover the GST applicable to each invoice. If you are exempt from GST, please notify and provide evidence to our team as soon as possible so that we can update any applicable proposals and invoices accordingly.

7.2 Any deposit or setup fee included in the proposal must be paid before work will commence. Finalising a setup fee earlier than the listed due date may enable our team to start your project earlier but does not guarantee it.

7.3 We will provide you with an invoice of monthly fees each month while performing the services, or with progress invoices as outlined 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>

7.4 Each invoice we issue must be paid in full and in accordance with its terms (usually 14 days).

- (a) If payment or part payment is not received within 14 days of the due date, a late fee of \$10 will be payable by you. This fee is a genuine pre-estimate of the amount it costs our business to chase a late payment.
- (b) If payment or part payment is not received within 21 days of the due date, we reserve the right to suspend the services (see clause 4 for the consequences of suspension).

7.5 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 or lawyer for further action. You agree you will pay for any fees incurred by us for debt collection, administration and/or legal costs (on a solicitor and own client basis).

7.6 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).

- 7.7 Fees once paid are not refundable. Fees that are due will still be due even if you change your mind about the project, decide you do not have the time or resources to commit to the project, become unresponsive or miss scheduled meetings.
- 7.8 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 direct debit the periodic amount (for example annual or monthly) from your nominated account. If you are on a fixed term plan (for 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.

8. What is not included

- 8.1 Unless otherwise specified in the Proposal, our fees do not include disbursements or actual costs for items including pay per click, ad spend, licenses, marketing tools, media, printing, software/subscriptions and advertising costs. These will require your additional expenditure.

9. Sub-contracting

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

10. Promotion

- 10.1 By entering into this agreement, you consent to our use of your name, business name and logo, the work we completed for you and/or any testimonial provided by you for the ongoing promotion of our business.

11. Client responsibilities

- 11.1 You agree you will:
- (a) pay our Fees on time and in full;
 - (b) co-operate with us so that we can complete the services in a timely and efficient manner;
 - (c) provide timely responses to information or requests for information;
 - (d) inform us of any changes to account names, passwords, technical setup or any material information which may affect delivery of the services;
 - (e) obtain and keep up-to-date virus protection on your computers and other electronic hardware;

- (f) check the work we have completed for accuracy in all respects.
- (g) attend all agreed meeting times and dates or give at least 3 business days' notice if it is necessary to reschedule a meeting. We cannot guarantee that a new meeting time will be available if a meeting time is missed without notice.
- (h) immediately tell us about any information (existing or new) that could have an impact on the success of the services we are providing so that rapid action can be considered.
- (i) not request us to complete work for you that we reasonably believe is either immoral or unlawful. We reserve the right to refuse to complete work in this scenario and our refusal will not be considered to be a breach of this agreement.

11.2 You authorise us to access your accounts, databases and applications that are relevant to the services and you agree to provide us with necessary passwords and all other resources of yours that we reasonably require to complete the services set out in the proposal, including access to third-party applications and accounts as required.

12. Revisions

12.1 There will be certain stages in the services where we will produce creative work or content ('pending content') for your approval. This is the process we use for approvals:

- (a) We will provide the pending content to you in draft and will allow you 10 days to provide your feedback, comments or requested amendments. If no feedback is received, we will proceed on the basis you have approved the pending content and will proceed to the next stage of the services. Your feedback and/or requested amendments must be collated into a single response. If we receive multiple responses from within your business, we will count each individual response as a revision round. If amendments are required, we will complete the amendments.
- (b) Once the stage 1 amendments are completed, we will provide you with the amended pending content and allow you a further 10 days to provide your feedback/requested minor amendments. Again, if no feedback is received, we will proceed on the basis you have approved the amended pending content and will proceed to the next stage of the services. Your feedback and/or requested amendments must be collated into a single response. If we receive multiple responses from within your business, we will count each individual response as a revision round. If final amendments are required, we will complete the final amendments.
- (c) If more than 2 rounds of revisions are required, or the revisions required depart substantially from what you asked us to design, we reserve the right to charge you at our hourly rate for these items, as they are outside the scope of our proposal.
- (d) If we provide content to you and you ask us to either 'delay publishing the content' or to 'not publish the content', you agree our fees are still payable for the work we have completed and you accept responsibility for your actions as they may impact on our ability to successfully deliver other parts of our services.
- (e) If you stall a project (for example by asking us to delay something or because services have been suspended) and then ask us to reinstate or continue your service(s), we may charge an additional fee for reinstating or continuing your service.

13. Deemed acceptance

- 13.1 If we request guidance for topics, themes or content or project direction in relation to the services to be provided, and you either do not provide this information within 10 days of our request or ask for unreasonable or repeated extensions of time, you agree we are authorised to continue in the direction set out in the original proposal (or the latest direction or brief previously provided by you, if applicable).
- 13.2 If any other thing or material is submitted to you for approval and your approval is not provided within 10 days, it will be deemed that you have approved the submitted item as presented and do not require any changes.
- 13.3 We will in no circumstances be liable for actions we take relying on clause 12 or 13.

14. Your Data

- 14.1 Title to and proprietary rights in the material you supply us, including your intellectual property in your business name, logo, content and videos, any personal information about your customer's (your data), remains your property.
- 14.2 You grant us a license to use, copy, transmit and store your data for the purpose of providing the services and for the promotion of our business pursuant to clauses 10 and 19.5.
- 14.3 While all care is taken to securely store your data, including regularly performing back-ups, we do rely on third party providers for storage and other services and we make no warranty that our backups will be accessible by you or that your data will be safe. We will not be responsible or liable for the theft, deletion, correction, destruction, damage, loss or failure of any of your data.
- 14.4 All information or data uploaded is the sole responsibility of you or the person providing the data. We are not responsible for this content and will have no liability in respect of the quality of the data, or any third-party rights in respect of that data.
- 14.5 If this agreement is terminated, we will hold your data for a maximum period of ninety (90) days from the date of termination. At your request, your data will be accessible by you during this period. Fees may apply for provision of data by request. At the end of the ninety (90) day period, your data will be permanently deleted from our platform, storage and/or operating systems.

15. Security, Accessibility and Integrations

- 15.1 Any data stored in or processed through the platform is primarily stored or processed in Australia. However, due to the nature of the internet and the way data is transmitted, some data may be stored, mirrored or transferred overseas at times. For instance, Microsoft or Google may store email data in datacentres across South East Asia for redundancy purposes, while Content Delivery Networks may mirror website images on US or European servers to improve loading times for visitors accessing your sites on those continents.
- 15.2 Continuous access to your website is dependent on third party services. As a result, your website may be inaccessible from time to time. There may also be times your website is inaccessible when we need to complete maintenance or upgrades.
- 15.3 We cannot guarantee that your website will always be error free. We will not be liable for any periods that your website is not functioning or is malfunctioning.

- 15.4 Where our (or a third party's) software or systems integrates with your software, systems or website, we accept no liability for the integration process, the pushing of information (for example, if your system does not accept information due to a malfunction, our system will continue to attempt to push the information across) or the loss of information if integration is unsuccessful. Where we make application program interfaces (API's) available to you, you accept the API's on an 'as is' basis without any warranty of any kind and accept all liability for their use.
- 15.5 We disclaim all liability for any computer virus or technological problems that were not intentionally caused by us or are beyond our control. While we take reasonable commercial efforts to secure your website and cloud services, you are encouraged to install and maintain up-to-date security software on your systems.

16. Software License Administrator

- 16.1 You agree, if required by us, to appoint within your business a Contract Administrator who will be responsible for:
- (a) Liaising with us in relation to this agreement.
 - (b) Arranging information, content or data we require.
 - (c) Providing us with approvals or feedback in a collated format.
 - (d) Serving as Privacy Officer or Data Protection Officer (if you have selected this option for your privacy policy) for the purpose of your website's Privacy Policy with visitors.
 - (e) Providing details of or acting as director guarantor for any accounts or invoices outstanding.
- 16.2 We reserve the right to liaise only with the Contract Administrator if we continually receive conflicting instructions, information or feedback from multiple parties.
- 16.3 You may change the nominated Contract Administrator by giving 14 days written notice.

17. Limitation of liability

- 17.1 We are not liable for the accuracy or lawfulness of any content you provide to us or for any content we produce on your behalf. It is your responsibility to understand and abide by any laws affecting the content you are displaying on your website and to check the lawfulness and accuracy of all material provided for uploading to your website and all material produced by us. We are also not liable in any circumstances for material from third parties which is uploaded or posted to your website or related public access areas including social media sites.
- 17.2 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, even if we initiated the integration.
- 17.3 To the fullest extent permissible by law, and without limiting Australian Consumer Law, in the event of any fault in the 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.

- 17.4 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 is the amount actually paid by you for services under this agreement rendered in the three months immediately preceding the date of dispute (or latest in time dispute if more than one dispute).
- 17.5 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.
- 17.6 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.

18. Intellectual Property Indemnity

- 18.1 It is your responsibility to ensure that you have the right to use and display any content, including without limitation, text, image or photographs, that you provide to us for incorporation into the services, and that the content does not infringe upon the intellectual property rights of any other person or entity.
- 18.2 We reserve the right not to publish content unless you are able to provide adequate proof of permission to use that material, although we are not obliged to consider or exercise this discretion.
- 18.3 We do not claim any copyright or ownership in the materials provided by you to us.
- 18.4 You are responsible for managing any intellectual property complaint made in regard to any of the content or operation of your social media platforms, website or promotional campaigns.
- 18.5 You agree to indemnify us from any liability (including legal fees and costs) threatened or actual, arising from the use of any content published on your behalf, whether supplied by you or us.

19. Intellectual Property

- 19.1 We own the intellectual property rights in the materials we use to deliver the services, or we have permission to use that material and share it with you for the purpose of providing the services.
- 19.2 You agree that all intellectual property rights in our materials, proprietary software, any design, code or document created, or discoveries made in the course of creating your website or used to provide the services to you, vest in us upon creation ('our IP'). You do not have any right to use open source software or our IP for any purpose other than use of the end product we create for you, for its intended use and in accordance with this agreement.
- 19.3 During a fixed term agreement and/or until our fees have been paid for in full, we retain ownership of all content that we create for you (including derivative work derived from your source material), for example text, webpage design or content. Upon payment in full, ownership of the created content transfers to you. Note that 'created content' does not include our IP, licensed or paid for items including themes, licensed images or music, software or plug-ins.
- 19.4 Where you are paying monthly under a fixed term agreement with us, ownership in the created content does not pass to you until all monthly payments have been paid in full. By entering into this

agreement, you agree we may register our interest in your website on the Personal Property Securities register (PPSR) to secure our interests in the created content until you have made all payments owing under your agreement with us.

19.5 Promotion

- (a) You consent to our use of your website, associated graphics or screen shots and any unused design ideas and development in the promotion of our services.
- (b) You consent to our creation of a credit and link in the footer of your website and agree to retain that link until the website is redesigned. You agree to remove the credit and link in the event that you make or authorise any other person to make substantial changes to your website.
- (c) We retain copyright in any designs or other work not approved by you (renounced designs) and in any work done in projects that are cancelled or terminated. You may contact our office to purchase a license to use those designs or work.

20. Termination

20.1 For fixed term agreements:

- (a) You may not terminate this agreement until the end of the fixed term. If you attempt early termination, you acknowledge that the balance of fees not previously invoiced will immediately become due and payable in full.
- (b) If we have suspended our services and the reason for the suspension has not been resolved, we may elect to terminate this agreement by giving 7 days written notice and we may then invoice you for the balance of fees due for the fixed term and not invoiced prior to that date.

20.2 For all month-to-month agreements:

- (a) Subject to clause 19.2(b), either party may terminate this agreement on giving 30 days written notice to the other.
- (b) Notice to pause, suspend or stop performing the services must be given at least 30 days prior to the date of your direct debit or credit card payment for your request to take effect.

20.3 For all other services, you may not terminate this agreement until all agreed work detailed in the proposal has been completed and paid for.

20.4 If you are in default under this agreement or have become unresponsive to our communications, we may provide written notice to you setting out the details of your default or unresponsiveness and allowing you 7 days to rectify the same. If you do not rectify the default or unresponsiveness in the 7 day period, we may give you written notice suspending the services we provide. If, after 7 days of our services being suspended, you have not rectified the default or unresponsiveness, we may terminate this agreement by giving you written notice, with termination effective as at the date of the written notice.

20.5 If we are in default under this agreement, you may provide written notice to us setting out the details of our default. If we agree there is a default and we do not fix the default within 21 days of the date of your notice, you may give written notice to us terminating this agreement and the date of termination will be the date we receive your lawful termination notice.

20.6 Following notice of termination by either party:

- (a) all Fees and other charges you have agreed to pay, will become immediately due and payable;
- (b) we will hand over and/or securely destroy all login and access details which you have supplied to us;
- (c) you will be responsible for ongoing account management and we will not be responsible for any account management after the termination date. It is your responsibility to arrange with us (at your cost) for any required account transfers, including the removal of licenced content you do not own or are not entitled to;
- (d) you must cancel any PayPal subscriptions, automated direct deposits, direct debit, or credit card facilities in place at the time of termination.
- (e) we are not responsible for any 3rd party fees incurred after the termination date.

21. Third Party Platforms

- 21.1 The services that we provide can or may rely upon the continued operation of online facilities that it uses. We will not be liable for any third-party failures affecting the provision of the services.
- 21.2 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 these terms and conditions and agree that any liability arising from the use of those platforms remains your sole responsibility.
- 21.3 You acknowledge that third party platforms may change their policies, algorithms, regulations or systems at any time. We cannot be held 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.
- 21.4 You acknowledge that third party browsers and devices may change their policies and systems at any time. Our services are aimed toward appropriate appearance on the most common browsers and mobile formats. We cannot guarantee that the services will appear perfectly on every available device or that the services will continue to appear perfectly if browsers or devices change in the future.

22. Recommendations

- 22.1 We may advise you on, recommend, or obtain for you, goods and services from third parties, including legal documentation and finance arrangements. You acknowledge that this is provided in good faith, for expediency and because to the best of our knowledge, they are professional and successful service providers. We make no warranty though that the services will be suitable for your needs, error free or the best or most cost-effective solution available.
- 22.2 You are still required to do all due diligence to protect your company, staff and legal rights. If you enter into an agreement with a third party as a result of our recommendation, it is your responsibility to understand and negotiate your own terms of agreement with that third party.
- 22.3 You acknowledge that we may earn or pay commission or referral fees from or to third parties.
- 22.4 You agree not to hold us liable for any loss or damage suffered by you as a result of your use of third-party goods or services referred to in this clause 21.

23. Force Majeure

- 23.1 Other than for payments due, 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.
- 23.2 Other than for payments due, 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.
- 23.3 Other than for payments due, 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 on providing notice in writing to the other party.
- 23.4 If a delay or failure due to a Force Majeure Event causes a suspension or termination of this agreement, you agree that payment of all services or work completed up to the date of suspension or termination are still payable by you.

24. Personal Property Securities Act 2009 (Cth) Australia

- 24.1 You acknowledge and agree that this agreement is a security agreement and creates a security interest in the collateral for the purposes of the Personal Property Securities Act (Cth) Australia ('PPSA'). For the purpose of this clause, collateral means our interest in your website arising pursuant to this agreement and that our interest continues until payment for our services has been made in full.
- 24.2 You agree to:
- (a) promptly provide any additional information (which must be complete, up-to-date and accurate) and/ or sign any further document(s) which we may reasonably require to:
 - (i) register our security interest on the Personal Property Securities Register ("PPSR");
 - (ii) register any other document required to be registered (by the PPSA or by us) on the PPSR; or
 - (iii) correct a defect in a statement or document referred to in this clause.
 - (b) pay to us all expenses incurred by us in registering or releasing any statements or documents referred to in this clause;
 - (c) not register, or permit to be registered, any interest in the collateral in favour of a third party without our prior written consent; and
 - (d) complete all steps necessary for us to update our security interest if we complete additional services for you.
- 24.3 To the extent section 115(1) allows, sections 95, 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will not apply to any security interest registered or intended to be registered by us under this agreement.
- 24.4 To the extent section 115(7) allows, sections 127, 129(2), 132, 134(2), 135, 136(3), (4) and (5) and 137 of the PPSA will not apply to any security interest registered or intended to be registered by us under this agreement.

24.5 Further, in relation to any security interest registered or intended to be registered by us under this agreement, you waive any right to receive any notice which would otherwise be required to be provided under the PPSA, including under sections 144 and 157 (unless the requirement to give the notice cannot be waived or excluded).

24.6 You unconditionally ratify any actions taken by the us under this clause 24.

25. Assignment

25.1 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 14 days prior written notice to the other party.

26. Confidentiality

26.1 You may provide information to us that is important and confidential to your business. we will only use that information to provide services to you and will not share it.

26.2 Other information that you provide will be for publication as part of the services, and that information is likely to be published.

26.3 Our contracts and business methods are confidential to its business, and you agree to keep them confidential.

26.4 These obligations of confidence will cease to apply in relation to information that either party is required to disclose by any law, or which becomes part of the public domain other than as the result of a breach by the disclosing party of its obligations of confidence under this agreement.

27. Definitions and interpretation

27.1 In this agreement the following definitions apply:

- (a) **Business day** means a day that is not a Saturday or Sunday or a public holiday in Queensland.
- (b) **Client/you** means you, our valued client as identified in the proposal, and includes your successors and assigns.
- (c) **Fees** means the amount payable by you to us for provision of the services as set out in the proposal (or as updated between us in writing).
- (d) **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 or serious injury or illness, 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.
- (e) **Monthly Fee** means the amount of any set out in the proposal that is paid monthly by you to us.
- (f) **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.
- (g) **Services** means the work we will complete on your behalf in exchange for the fees, as specified in the proposal.

- (h) **We, our, us or theProduct** means Lazy bear Pty Ltd ABN 31 459 636 031 trading as theProduct[®] and includes its officers, employees, contractors, successors and assigns.

27.2 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.

28. General

28.1 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 as 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.

28.2 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.

28.3 Waiver

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

28.4 Enforceability

Even if you do not sign this agreement, you agree to these terms if you request our services and we provide those services.

28.5 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.

28.6 Entire Agreement

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

28.7 No Relationship

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

28.8 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.

End.

