

Search Engine Optimisation Agreement

NOTE: If you are submitting a payment for our services via our website you are accepting the following terms and we do not require a signed hard copy.

DO NOT MAKE AN ONLINE PAYMENT IF YOU DO NOT ACCEPT THESE TERMS.

For postal payments you will need to complete the following form.

All elements highlighted in **ORANGE** require completion by the customer.

DATE:

PARTIES:

(1) **Avara Web Media**, Orchard Lodge, 25 Orchard Way, Aldershot, Hampshire, GU12 4HR (referred to in this agreement as the “**Company**”); and

(2) [*Please input your full details*],

COMPANY/TRADING NAME:

TYPE OF ORGANISATION: (circle as appropriate)

Sole Trader – Partnership – Limited Liability Partnership
Limited Company – Public Limited Company

COMPANY NUMBER (IF APPLICABLE):

SIGNATORY NAME:

POSITION WITHIN ORGANISATION:

FULL ADDRESS:

POSTCODE:

(referred to in this agreement as the “**Customer**”).

BACKGROUND:

(A) The company has been commissioned by the customer to undergo a search engine optimisation campaign (referred to in this agreement as SEO) to a specified website within the terms of this agreement.

AGREEMENT:

1. Definitions and interpretation

1.1 In this Agreement:

“**Acceptance Criteria**” has the meaning given to it in Clause [5.2];

“**Acceptance Period**” means the period of 5 Business Days beginning on the date of actual delivery of the Website to the Customer;

“**Affiliate**” means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

“Agreement” means this agreement (including the Schedule) and any amendments to it from time to time;

“Business Day” means any week day, other than a bank or public holiday in England

“Business Hours” means between 09:00 and 17:00 London time on a Business Day;

“Charges” means the amounts payable by the Customer to the Company under or in relation to this Agreement (as set out in the Schedule);

“Confidential Information” means:

(a) any information supplied by one party to the other party (whether supplied in writing, orally or otherwise) marked as “confidential”, described as “confidential” or reasonably understood to be confidential;

(b) [the terms (but not the existence) of this Agreement;

“Control” means the legal power to control (directly or indirectly) the management of an entity (and **“Controlled”** will be construed accordingly);

“Customer Works” means the works and materials provided to the Company by the Customer, or by any third party acting for or on behalf of the Customer, for incorporation into the Website;

“Defect” means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of the website but excluding any defect, error or bug caused by or arising as a result of:

(a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents or sub-contractors;

(b) an incompatibility between the website and any other application, program or software (other than the Customer Works and the Third Party Works).

“Delivery Date” means the date for delivery of the SEO campaign specified in the Schedule;

“Effective Date” means the date of execution of this Agreement;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, database rights, confidential information, trade secrets, knowhow, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Personal Data” has the meaning given to it in the Data Protection Act 1998;

“Schedule” means the schedule attached to this Agreement;

“Services” has the meaning given to it in Clause [3.1];

“Third Party Works” means the works and materials comprised in the Website, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Works);

“Term” means the term of this Agreement;

“website” means the Customer's website subject to the SEO campaign

“SEO campaign” means the website to be developed by the Company for the Customer under this Agreement; and

“Year” means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement; it follows that a general concept or category utilised in this Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. Term

This Agreement will come into force on the Effective Date and will continue in force until the acceptance of the SEO campaign by the Customer in accordance with Clause [5], upon which it will terminate automatically, unless terminated earlier in accordance with Clause [14].

3. The Services

3.1 The Company will:

(a) If requested, conduct on-page optimisation of the Customer's website;

(b) Submit the Customer's website to a pre-agreed volume of link sources, known as back-linking;

(c) keep the Customer informed of the progress of the SEO campaign development.

(the **“Services”**).

3.2 The Company will use all reasonable endeavours to perform the Services in accordance with the timetable set out in the Schedule; however, the Company does not guarantee that that timetable will be met.

4. Customer obligations

4.1 The Customer will provide the Company with:

- (a) such co-operation as is required by the Company (acting reasonably) to enable the performance by the Company of its obligations under this Agreement; and
- (b) all information and documents required by the Company (acting reasonably) in connection with the provision of the Services.

4.2 The Customer will be responsible for procuring any third party co-operation reasonably required by the Company to enable the Company to fulfil its obligations under this Agreement.

5. Delivery and acceptance

5.1 The Company will use all reasonable endeavours to deliver the SEO campaign to the Customer for on or before the Delivery Date.

5.2 During the Acceptance Period, the Customer will carry out acceptance tests to determine:

- (a) whether the SEO campaign conforms in all material respects with the specification of the SEO campaign in the Schedule. (the "Acceptance Criteria").

5.3 If the SEO campaign meets the Acceptance Criteria, the Customer will send to the Company a written notice during the Acceptance Period confirming acceptance of the SEO campaign, this may be conveyed by email.

5.4 If the SEO campaign does not meet the Acceptance Criteria:

- (a) the Customer will send to the Company a written notice during the Acceptance Period setting out in detail the respect(s) in which the SEO campaign does not meet the Acceptance Criteria; and
- (b) the Company will have a further remedial period of 10 Business Days to modify the SEO campaign so that it meets the Acceptance Criteria.

5.5 The SEO campaign will be deemed to have been accepted by the Customer if:

- (a) the Customer does not give any notice to the Company under either Clause [5.3] or Clause [5.4] during the Acceptance Period; or
- (b) the Customer receives any monitored increase in ranking for their chosen key phrases under the SEO campaign.

6. Charges and payment

8.1 No work will start on the SEO campaign until the company has received full payment of the total project value by cheque, bank transfer or electronic payment with a credit/debit card. The Company will issue invoices for the Charges to the Customer on the relevant invoicing dates set out in the Schedule, or (if earlier) upon the acceptance of the SEO campaign by the Customer.

8.2 No VAT will be charged on any of our products or services.

8.3 Charges must be paid by bank transfer, electronic payment with a credit/debit card or by cheque (using such payment details as are notified by the Company to the Customer from time to time)].

8.5 If the Customer does not pay any amount properly due to the Company under or in connection with this Agreement, the Company may:

- (a) charge the Customer interest on the overdue amount at the rate of 4% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment and will be compounded quarterly); or
- (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

7. Intellectual Property Rights

7.1 All copyright and other Intellectual Property Rights in the added to the Website (excluding the Customer Works and the Third Party Works) will as between the parties be the sole property of the Company and, subject to full payment of the Charges, from the date of acceptance of the SEO campaign by the Customer the Company grants to the Customer a non-exclusive worldwide licence of such Intellectual Property Rights for the purposes of:

- (a) publishing and operating the Website;
- (b) backing-up the Website; and
- (c) updating and adapting the Website;

subject always to the other terms of this Agreement.

7.2 The Customer may only sub-license the rights granted in Clause [9.1] for the purposes set out in that Clause.

7.3 Subject to full payment of the Charges, the Company undertakes not to design or create (or be involved in the design or creation) of any website, web application or web page the look and feel of which is:

- (a) identical to the look and feel of the Website; or
- (b) substantially similar to the look and feel of the Website.

8. Warranties

8.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under this Agreement.

8.2 The Company warrants to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
- (b) that it will perform its obligations under this Agreement with reasonable care and skill;

8.3 The Customer acknowledges that the Company has produced the SEO campaign specified in the Schedule, and the Company does not warrant that the SEO campaign will produce any pre-determined ranking.

8.4 The Customer further acknowledges that the Company does not purport to provide any legal advice under this Agreement or in relation to the SEO campaign and the Company does not warrant that the SEO campaign will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

8.5 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

9. Liability

9.1 Nothing in this Agreement will exclude or limit the liability of either party for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation on the part of that party; or
- (c) any other liability which may not be excluded or limited under applicable law.

9.2 Subject to Clause [9.1], each party's liability to the other party under or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:

(a) neither party will be liable for any:

- (i) loss of profits, income or anticipated savings,
- (ii) loss or corruption of any data, database or software,
- (iii) reputational damage or damage to goodwill;
- (iv) loss of any commercial opportunity, or
- (v) indirect, special or consequential loss or damage;

(b) neither party will be liable for any losses arising out of a Force Majeure Event; and

(c) each party's liability in relation to any event or series of related events will in no circumstances exceed £1,000.00

10. Data protection

10.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under this Agreement.

10.2 The Company warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

11. Confidentiality and publicity

11.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [10]. (For the purposes of this Clause [10], the terms of this Agreement constitute the Confidential Information of each party.)

11.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

11.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

11.4 These obligations of confidentiality will not apply to Confidential Information that:

- (a) has been published or is known to the public (other than as a result of a breach of this Agreement);
- (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
- (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body or a stock exchange.

11.5 Neither party will make any public disclosure relating to the subject matter of this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

12. Termination

12.1 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

(a) commits any [material breach] of any term of this Agreement, [and:

(i) the breach is not remediable; or

(ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or]

[(b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).]

12.2 Either party may terminate this Agreement immediately by giving written notice to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

(d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

13. Effects of termination

13.1 Upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 7, 8.5, 9, 10, 11, 13, 15, and 16.3 to 16.13].

13.2 Termination of this Agreement will not affect either party's accrued rights (including the Company's accrued rights invoice for and to be paid the Charges) as at the date of termination.

13.3 If this Agreement is terminated [under Clause [14.1], or] by the Customer under Clause [14.2] or [14.3] (but not in any other case):

(a) the Company will promptly provide to the Customer an electronic copy of the Website;

(b) the Company will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, subject to payment of the Company's reasonable expenses; and

(c) the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).

13.4 Save as provided in Clause [15.3(c)], the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

14. General

14.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by [first class] post, or sent by fax [or email], for the attention of the relevant person, and to the relevant address, fax number or [email address] given below (or as notified by one party to the other in accordance with this Clause).

The Company:

Avara Web Media

Orchard Lodge

25 Orchard Way

Aldershot

Hampshire

GU12 4HR

Email: info@avara.co.uk

The Customer:

[please enter addressee, address, postcode, and email address]

16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice sent by first class post, 48 hours after posting; and
- (c) where the notice sent by fax [or email], at the time of the transmission (providing the sending party retains written evidence of the transmission).

16.3 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

16.4 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

16.5 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

16.6 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

16.7 Each party may freely assign its rights and obligations under this Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any rights or obligations under this Agreement.

16.8 The Company may subcontract any of its obligations under this Agreement to any third party, subject to obtaining the Customer prior written consent (not to be unreasonably withheld or delayed).

16.9 Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the other party who has been involved in the performance of this Agreement.

16.10 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

16.11 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

16.12 This Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this Agreement. Subject to Clause [11.1], each party acknowledges that no representations or promises not expressly contained in this Agreement have been made by or on behalf of the other party.

16.13 This Agreement will be governed by and construed in accordance with the laws of [England and Wales]; and the courts of [England] will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

The parties have indicated their acceptance of this Agreement by executing it below.

EXECUTION:

SIGNED by K A Pearson
duly authorised for and on behalf of the Company

.....

Date:

SIGNED by [PRINT NAME].....

duly authorised for and on behalf of the Customer

.....

Date:

The Schedule

SEO campaign specification

On-page optimisation:

Where requested by the Customer, the Company will analyse the Customer's website to ensure it complies with 'best practice' SEO policies. Any changes in HTML code are the responsibility of the Customer to implement in the website unless the Company have agreed to directly make changes to the website files in the Customer's hosting server.

Off-page optimisation and link building:

The Company will submit the Customer's website to a pre-determined amount of linking websites. The Company does not offer any warranty to the duration of the link or if it is from a page that will be indexed by search engines.

Exclusions from service:

The Company shall be under no obligation to provide Services in respect of:

- I. problems resulting from any modifications or customisation of the domain;
- II. links that are removed by third parties;
- III. any domains other than those specified on the Order Form;

The Services do not include:

- I. the cost of any third party software upgrades or web development which the Company advises are required;
- II. any website, hosting or other technical support;

Guarantee:

The Company does not offer any warranty or guarantee regarding potential ranking positions. As ranking is determined by search engine algorithms, it is impossible to predict the likely outcome of any SOE campaign. The Company does however confirm to use all best and established practices to achieve an improved ranking.

Charges and payment schedule

The invoice total must be paid in full in advance of any work being undertaken by the Company. A revised invoice will be issued by the Company on receipt of any payment.