

SEO Service Agreement Terms and Conditions



THIS AGREEMENT is made as of the date referred to on the web services contract

BETWEEN:

- (1) Blue Cow Digital Limited a company registered in United Kingdom under number 12130493 whose registered office is at 11b Houghton Street, Southport, PR9 0NS (“the Company”) and
- (2) the person, body or company whos details are in the “Client Details” section of the web services contract (“the Client”)

WHEREAS:

- (1) At all material times the Company is engaged in the business of providing search engine optimisation (“SEO”) services.
- (2) The Client wishes to improve the search engine rankings of their website, the URL of which is shown on the client details section of the web services contract. (“the Website”).
- (3) The Company hereby agrees to provide its services to the Client subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Audit Report”	means a report setting out the current status of the Website with respect to SEO and search engine rankings;
“Business Day”	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
“Competition Report”	means a report providing details of factors including, but not limited to, competing websites’ search engine rankings;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to, or in connection with, this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Designated Search Engines”	means the search engines on which the Company shall apply the SEO Services with a view to improving the ranking of the Website as defined in Schedule 1;

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“Early Termination Fee”	means the outstanding monthly contractual payments from the point of Early Termination until the end of the initial term as defined on the Company Web Services Agreement, plus 3 months notice, plus any additional fees outstanding, plus a £100 administration fee.
“Monthly Fee”	means the consideration payable to the Company for the SEO Services as defined in Clause 5;
“Intellectual Property Rights”	means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;
“Keyword Report”	means a report detailing the Company’s recommendations for keywords to be included in the Website
“Required Information”	means the information which the Client must supply to the Company to enable the Company to carry out the SEO Services as defined in Schedule 1;
“SEO Services”	means the SEO services to be provided by the Company to the Client in accordance with the terms and conditions of this Agreement as defined in Schedule 1; and
“Website SEO”	means the application of the SEO services to the Website including, but not limited to, the editing of the Website

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement;
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
 - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.

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- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

2. Engagement of the Company

- 2.1 The Client hereby engages the Company to provide the SEO Services.
- 2.2 The Company shall carry out SEO Services on the clients website for the initial minimum term of the contract and for any subsequent term, SEO Services will be undertaken each month to a professional standard with the aim of increasing the websites ranking on google or any other search engine if agreed.
- 2.3 The Client shall provide the Required Information to the Company by one month of the date of signature on the web service agreement (“the Delivery Date”). In the event that the Client fails to deliver the Required Information on the Delivery Date, the Completion Date shall increment by one day for each day that the delivery of the Required Information is delayed.

3. Nature of Engagement

- 3.1 The Company shall at all times be responsible for organising how and in what order the SEO Services are performed and shall liaise with the Client (or the Client’s representative) to ensure that due account is taken of the impact of the timing of the SEO Services to be performed upon the activities of the Client and any other contractors, consultants and similar third parties also engaged by the Client.
- 3.2 The engagement under this Agreement is mutually non-exclusive and the Company shall be entitled, at its own expense, to subcontract the performance of the SEO Services.
- 3.3 The engagement and appointment of the Company under this Agreement does not create any mutual obligations on the part of the Client or the Company to offer or accept any further engagement and no continuing relationship shall hereby be created or implied.

4. The SEO Services

- 4.1 The Company shall provide the SEO Services specified in Schedule 1 in accordance with this Agreement and in particular Clause 2.
- 4.2 The Company shall not incur any charges to the Client including, but not limited to, the setting up of pay-per-click campaigns, without the prior written agreement and authorisation of the Client.
- 4.3 The Website SEO shall be performed directly and all changes to the Website shall be uploaded directly to the host server via FTP. The Client shall provide the required access credentials including, but not limited to FTP details, no later than 1 week after the date on this agreement.

The Company shall produce the following milestone deliverables by the following milestone dates:

- 4.3.1 the Audit Report on or before one month following the signature of this agreement;
- 4.3.2 the Competition Report on or before one month following the signature of this agreement;

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- 4.3.3 the Keyword Report on or before one month following the signature of this agreement;
- 4.3.4 commence Website SEO on or before one month following the signature of this agreement;

4.4 The Client understands and acknowledges the following:

- 4.4.1 The times for websites to appear on search engine listings vary and the Company can thus not guarantee that the Website will appear immediately on the Designated Search Engines or that its position will change immediately from that which it held prior to the SEO Services being performed.
- 4.4.2 The Company cannot control search engines and cannot provide any guarantee that any of the Designated Search Engines will not change their policies or functionality in such a way that will have a detrimental effect on the ranking of the Website following the completion of the SEO Services.
- 4.4.3 The Company accepts no responsibility for any detrimental effect on the Website's search engine rankings which results from any activity of the Client or any third party including, but not limited to, alterations to the Website.
- 4.4.4 The Company makes no guarantee that the SEO Services will result in the Website appearing in the top 10 search results on the Designated Search Engines.

5. Consideration

- 5.1 In consideration of the SEO Services the Client shall pay to the Company the amount shown in the "monthly fee" box on the web services contract each month by direct debit for the initial minimum term plus any subsequent term plus the notice period.
- 5.2 SEO Services require different levels of input from month to month and so it should be noted that they are not charges provided on a "per month" basis but rather the pro rata monthly proportion of the fee for a given period of time (the initial minimum term).
- 5.3 All payments made under this Agreement shall be expressly exclusive of any value added tax chargeable thereon.

6. Intellectual Property

- 6.1 Upon receipt in full by the Company of all sums due under Clause 5, the copyright and any and all other Intellectual Property Rights subsisting in any and all materials created by the Company in the course of providing the SEO Services shall be deemed to be assigned to the Client and the Company shall be deemed to have waived all moral rights in respect of such work arising out of Chapter IV of the Copyright Designs and Patents Act 1988.
- 6.2 The Company further warrants that any and all Intellectual Property Rights subsisting in any and all materials created for or on behalf of the Company by third party consultants, contractors, sub-contractors or similar, shall be assigned to the Company by such third parties and will, where relevant, be subject to the requirements of sub-Clause 6.1.
- 6.3 Nothing in this Agreement shall vest any rights in the Website in the Company and sub-Clause 6.1 shall effect the assignment of any Intellectual Property Rights which may arise to the benefit of the Company in the Website to the Client.

7. Company's Warranties and Indemnity

- 7.1 The Company represents, warrants, undertakes, and agrees with the Client as follows:

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- 7.1.1 the work produced in the course of the SEO Services shall be original to the Company and shall not infringe any copyright, other Intellectual Property Rights, moral rights, rights of privacy, rights of publicity, or any other rights whatsoever of any person;
 - 7.1.2 the work produced in the course of the SEO Services shall not, under the laws of England and Wales be obscene, blasphemous, offensive to religion, or defamatory of any person and shall not contain any material which has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any analogous domestic or foreign legislation and nothing contained in the work will, if published, constitute a contempt of court;
 - 7.1.3 the Company shall not assign, licence, transfer, encumber or otherwise dispose of any rights of copyright or any other rights in or to the work produced in the course of the SEO Services except pursuant to this Agreement and shall not enter into any agreement or arrangement which might conflict with the Client's rights under this Agreement or might interfere with the Company's performance of its obligations under this Agreement;
 - 7.1.4 Subject to sub-Clause 7.2 the Company hereby undertakes to indemnify the Client and keep the Client at all times fully indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision the legal costs of the Client on a solicitor and own-client basis), awards, or damages howsoever arising – directly or indirectly – as a result of any breach or non-performance by the Company of any of the Company's undertakings, warranties, or obligations under this Agreement.
- 7.2 The total liability of the Company under this Agreement shall be limited to no more than 25% of monies received, directly relating to SEO, from the Client during the calendar year of any claim.

8. Client's Warranties and Indemnity

- 8.1 The Client represents, warrants, undertakes, and agrees with the Company as follows:
 - 8.1.1 the Website shall be original to or otherwise owned by the Client and shall not infringe any copyright, other Intellectual Property Rights, moral rights, rights of privacy, rights of publicity, or any other rights whatsoever of any person;
 - 8.1.2 the Website shall not, under the laws of England and Wales be obscene, blasphemous, offensive to religion, or defamatory of any person and shall not contain any material which has been obtained in violation of the Data Protection Act 1998, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Official Secrets Act 1989, or any analogous domestic or foreign legislation and nothing contained in the Website will constitute a contempt of court;
 - 8.1.3 the Client shall not enter into any agreement or arrangement which might conflict with the Company's rights under this Agreement or might interfere with the Company's performance of its obligations under this Agreement;
 - 8.1.4 The Client hereby undertakes to indemnify the Company and keep the Company at all times fully indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision the legal costs of the Company on a solicitor and own-client basis), awards, or damages howsoever arising – directly or indirectly – as a result of any breach or non-performance by the Client of any of the Client's undertakings, warranties, or obligations under this Agreement.

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8.1.5 Non-Solicitation: During the term of this Agreement and for 36 months after any termination of this Agreement, the customer will not, without the prior written consent of the CEO of the AdaptiveComms Group, either directly or indirectly, on the customer's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by any of the following companies; AdaptiveComms, Blue Cow Digital, Adaptive Communication Solutions Ltd and TwentyFirst Century Networks Ltd.

9. Confidentiality

- 9.1 Both Parties undertake that, except as provided by sub-Clause 9.2 or as authorised in writing by the other Party, they shall at all times during the continuance of this Agreement and for 12 after its termination:
 - 9.1.1 keep confidential all Confidential Information;
 - 9.1.2 not disclose any Confidential Information to any other party;
 - 9.1.3 not use any Confidential Information for any purpose other than as contemplated by this Agreement;
 - 9.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 9.1.5 ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause 9.
- 9.2 Subject to sub-Clause 9.3, either Party may disclose any Confidential Information to:
 - 9.2.1 any of their sub-contractors, substitutes, or suppliers;
 - 9.2.2 any governmental or other authority or regulatory body; or
 - 9.2.3 any of their employees or officers or those of any party described in sub-Clauses 9.2.1 or 9.2.2;
- 9.3 Disclosure under sub-Clause 9.2 may be made only to the extent that is necessary for the purposes contemplated by this Agreement, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 9.2.2 or is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 9.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 9.5 When using or disclosing Confidential Information under sub-Clause 9.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 9.6 The provisions of this Clause 9 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

10. Termination

- 10.1 The Client may terminate this Agreement by giving to the other not less than 90 days written notice after the initial minimum period as defined on the order form.
- 10.2 The Company may terminate this agreement at any time and without reason by providing the Client with 1 months written notice.

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- 10.3 Without prejudice to the generality of sub-Clause 10.1 and 10.2, this Agreement shall terminate, notwithstanding any other rights and remedies the Parties may have, in the following circumstances:
- 10.3.1 either Party fails to comply with the terms and obligations of this Agreement and such failure, if capable of remedy, is not remedied within 2 weeks of written notice of such failure from the other Party.
 - 10.3.2 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 10.3.3 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 10.3.4 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);
 - 10.3.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 10.3.6 the other Party ceases, or threatens to cease, to carry on business; or
 - 10.3.7 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 10.4 The termination of this Agreement shall be without prejudice to any rights which have already accrued to either of the Parties under this Agreement.
- 10.5 In the case of the Client failing to comply with this Agreement as described in the sub clause 10.3 they will be required to pay the early termination fee as described in Definitions and Interpretations; “Early Termination Fee”.

11. Nature of the Agreement

- 11.1 The Client may not assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the Company, such consent not to be unreasonably withheld.
- 11.2 The Company may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder as it sees fit.
- 11.3 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 11.4 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.5 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

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12. Severance

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

13. Notices

13.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

13.2 Notices shall be deemed to have been duly given:

13.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

13.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated;

In each case notices shall be addressed to the most recent address or e-mail address, notified to the other Party.

14. Alternative Dispute Resolution

14.1 Any dispute or difference arising between the Parties relating to this Agreement or its subject matter shall be referred to a single arbitrator to be agreed upon by the Parties or, failing such agreement, to be appointed by the then President of the Law Society, such arbitrator to have all of the powers conferred upon arbitrators by the laws of England and Wales.

14.2 The Parties hereby agree that the decision of the Arbitrator shall be final and binding on both Parties.

15. Law and Jurisdiction

15.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

15.2 Subject to the provisions of Clause 14, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

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SCHEDULE 1

The SEO Services

<<Insert full details of the SEO Services to be performed by the Company>>

Designated Search Engines

<<List the Designated Search Engines>>

Required Information

<<Insert full details of the Required Information>>