

Provider and Client Agreement

Client The parties (organisations, directors, shareholders and others) who represent who considers and/or employs and/or deploys products and/or receives services and/or technologies of Provider(s).

Provider(s) Alpha Web Smarts and enabling solutions providers including (as): SynergyComms, Mobile-Synergy and others validated by Alpha Web Smarts.

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IP Intellectual Property as at www.ipaustralia.gov.au, <http://www.epo.org> & <http://www.uspto.gov>.

General

1. In consideration of the premises, terms and conditions hereinafter set forth (the receipt and sufficiency of which is hereby acknowledged) the parties of Client and Provider hereto undertake to abide by the terms of this agreement.
2. As per best practices this legal agreement is regularly reviewed and updated and published at www.alphawebsmarts.com/terms/AWS_Client_Agreement.pdf.
3. Client(s) should regularly review this agreement at any time and communicate as they wish to query. Client(s) may not amend or alter the terms of this agreement unless application is made in writing and approved by Provider.
4. Provider supplies technology and/or intelligence and/or consulting and/or other products & services so as to provide advantage for the Client.
5. This agreement is binding upon the parties hereto and their successors, staff, suppliers, advisors, agents and others. Client must not assign, sub-licence or otherwise modify the licence or its responsibilities under this agreement unless specifically agreed to in writing by Provider.
6. By proceeding with supply of service Provider and Client are bound by this agreement and deemed to have accepted its terms.
7. Cancellation by Client of ongoing services must be made in writing to Provider. Ongoing services will be charged for until receipt of Client cancellation notice.
8. Provider offerings are for a limited time of two months from offer of proposal or on offer on website. Proof of offer must be provided by Client in event of any dispute to agreement.
9. Provisions of agreement regarding IP are deemed to include further companies or individuals, referred to as Agent or Partner, who are involved in the supply of information and services from Provider to Client.

Technologies

10. Client accepts to licence IP from Provider either as a standard product offering posted on Provider website or a customised proposal as otherwise communicated.
11. Provider provides Client with IP including proprietary technology referred by names including and not limited to: Alpha-SEO™; αSEO™, Search-Synergy™; and Spiderbait™.
12. Alpha-SEO™ is comprised of website code and services for the purpose of obtaining high rankings for its Client's websites upon internet search engines. For marketing purposes Alpha-SEO™ may be referred to by other names which the Provider technology is marketed in tandem with its Providers including and not limited to: Search-Synergy™ and Woocom-Elevator™.
13. Provider's algorithms and methodologies are trade secrets which must not be divulged to any other party without written permission from Provider.

Copyright Ownership of Information & Licence

14. Ownership of Provider information and technologies IP reside with Provider as per IP Australia law and as set forth in this agreement.
15. Client retains copyright ownership of the original information content of Website/Artwork/IP provided to Provider at time of engagement.

16. Provider retains copyright ownership of Alpha-SEO™ which it licences to Client, as well as other original coding and artwork and systems developed.
17. Client may not copy/clone/modify/emulate Alpha-SEO™ in any way not included in this agreement.
18. Client agrees to licence Alpha-SEO™ only for the uses specified in the standard offering or by other correspondence.
19. Licence of Alpha-SEO™ is valid only when due fees are paid to current date.
20. If Client delays deployment of Alpha-SEO™ licence is not extended except by written permission of Provider.
21. Upon conclusion of the term of licence all Alpha-SEO™ must be removed from Client website unless ongoing maintenance is paid to date.
22. Removal of expired code will be provided by Provider Free of charge following notification by Client.
23. Upon conclusion of the licence this agreement with respect of ownership and confidentiality remains in force ongoing until agreed to in writing by Provider.

Fees

24. Fees are due upon invoice. Payment shall be made in full by Client within thirty (30) days of date of invoice unless otherwise agreed in writing by Provider.
25. Currency is in Australian dollars unless otherwise indicated.
26. Client shall be responsible for payment for all goods and services supplied at the order of Client or any other person acting on behalf of Client. Such order may be by purchase order or verbal request.
27. No disputes will be recognised after 14 days.
28. Client is liable for ongoing monthly fees based pro-rata if Client continues to use Alpha-SEO™ without licence or other written Provider permission until all Alpha-SEO™ is removed from Client website or a renewal of licence is enacted.
29. In the event that credit is extended Client hereby agrees to be bound by the following provisions:
 - 29.1. Client authorises Provider to make inquiries as to credit and financial matters relating to Client and/or its Directors or Proprietors including obtaining credit reference reports from credit providing bodies and/or credit reporting agencies.
 - 29.2. Any claims in respect of goods and services must be made within fourteen (14) days of delivery of the goods and in this respect time shall be of the essence.
 - 29.3. Fees not paid in full by the due date will be subject to an account handling fee of \$15.00 per month. Client shall pay interest at the rate of 1.5% per month calculated from thirty (30) days from the date of the invoice until the date of payment thereof. The said interest shall be charged to the Customer's account each month and Provider shall be entitled to charge interest upon the interest.
 - 29.4. If fees are overdue Provider may suspend all work in progress until the account is paid in full.
30. Client shall pay Provider forthwith on demand all reasonable costs, charges and expenses incurred by Provider in enforcing or attempting to enforce its rights, powers or remedies hereunder.

Information, Confidentiality and Non-Disclosure

31. In the course of business Client, Agent or Partner or Client may learn from Provider confidential information owned by Provider including methodology, business information, contracts, records and other proprietary, confidential or other non-public information (collectively, the "Information" or "IP") relating to its business, the proprietary, confidential and non-public nature of which information Provider desires to maintain. The confidential information has unique value to Provider.
32. The term confidential information is deemed to include all notes, software, analyses, compilations, studies, interpretations or other documents prepared by Provider and/or Client which is a part of the supply by Provider of services to Client.
33. Client may be a participant in research and development by Provider which may be the basis of applications for patents. Client participation does not constitute public disclosure nor gives rise to ownership of the IP.
34. Provider will be prejudiced by any unauthorised use or disclosure of the Confidential Information, may be precluded from being granted patents, and may suffer financial loss as a result of unauthorised disclosure or unauthorised use of the Information.

35. All information will be kept confidential and shall not, without the prior written consent of Provider, be disclosed by Client in any manner whatsoever, in the whole or in part and shall not be used by Client other than in the process of day-to-day operations or research activity of Provider.
36. All Information delivered by Provider to Client, and all other Information prepared by Client with regards to the provision of this Agreement, and all copies thereof, shall be returned to Provider upon termination or of agreement and no copy retained.

Duration & Ending of Obligation of Confidentiality

37. The parties acknowledge that the confidential points of this agreement exist for an indefinite period of time.
38. This agreement shall continue until terminated in writing by Provider.
39. Client shall be relieved from the obligations of confidentiality in this agreement in respect to any part of the Confidential Information which:
 - 39.1. Client can show was in its possession as of the date of the disclosure, and Client notifies Provider that fact within 21 days of the date of this Agreement; or
 - 39.2. Client can show is or becomes part of the public domain otherwise than by a breach of this Agreement; or
 - 39.3. Client can show was independently developed by Client, by STAFF who did not have access to the Confidential Information.
40. Client may not take the benefit of the above if parts or elements or features of the Confidential Information are in the public domain, or otherwise fall within one of the categories mentioned above, but the combination of those parts or elements or features is unique.

Forced Disclosure

41. In the event that Client is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) to disclose any Information, Client will provide Provider with prompt notice of any such request or requirement so that Provider may seek a protective order or other appropriate measures and/or waive compliance with this Agreement.
 - 41.1. If in the absence of a protective order or other measures or the receipt of a waiver by Provider, Client is nonetheless, in the written opinion of counsel, legally compelled to disclose Information to any tribunal or else stand liable for contempt or suffer other censure or penalty.
 - 41.2. Client may, without liability herein, disclose to such tribunal only that portion of the Information which counsel advises is legally required to be disclosed, provided that Client exercise their best efforts to preserve the confidentiality of the Information, including, without limitation, cooperating with Provider to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Information by such tribunal.

Infringement of Agreement

42. Client acknowledges that any breach of covenants contained in this agreement will result in irreparable injury to Provider, for which money damages could not adequately compensate Provider.
43. In the event of any such breach or any threatened breach, Provider shall be entitled to have an injunction or restraining order issued by a court enjoining and restricting Client from breaching or continuing any such breach. Such remedy shall not be deemed to be the exclusive remedy, but shall be in addition to all other remedies available at law or equity to Provider.

Communications

44. Electronic communications known as email shall constitute legal means of communications.
45. Any email which has been sent by Provider is deemed to have been received by Client, Agent or Partner or Client unless Provider receives a message from a mail server that such email has failed to be delivered.
46. It is the responsibility of Client to notify Provider of any changes to their contact details.

Governing Laws

47. This agreement shall be governed by and constructed in accordance with the IPProvider of New South Wales Australia and the parties agree to submit themselves to the exclusive jurisdiction of the courts there.

Performance & Guarantees

48. The performance of internet or Client systems is not the responsibility of Provider.
49. Provider does not warrant Alpha-SEO™ to be error free.
50. Client acknowledges that search engines (such as Google or Yahoo) are independent concerns of Provider and that Provider has no direct control over the listings they provide.
51. If Proposal includes any Guarantees they are conditional that Client agree and undertakes to:
 - 51.1. all Provider recommendations regarding domain names and hosting setup.
 - 51.2. enact Provider website code exactly as provided and without delay.
 - 51.3. supply Provider with .ftp access to any pages which will benefit from Alpha-SEO™ so that Provider is able to update, without restraint, its Alpha-SEO™ code.
 - 51.4. website hosting must be commercial quality and have at least 99% uptime.
 - 51.5. supply Provider with monthly data indicating the unique number of website visitors including the period 6 months prior to the implementation Alpha-SEO™.

Liability

52. Provider excludes, as far as is legally possible, all liability arising from the Client use of its products and services.
53. Provider limits, as far as is legally possible, its liability to the replacement, repair and re-supply of Provider products and services.
54. Neither party is liable for delays or failure arising outside its reasonable control ("force majeure"), nor do any such delays or failure relieve the party of its obligation.

Support

55. Client support is excluded from this agreement and is the subject of a separate support agreement.