

## Absolute Digital Media Limited – Digital Marketing Terms and Conditions

The Client's attention is particularly drawn to the provisions of clause 10.

### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Advertising Networks:** the advertising networks that Absolute Digital Media agrees to provide the Services in connection with as set out in the Contract Order Form.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Campaign:** the creation, installation, management, development and employment of a paid advertising network strategy as set out in the Contract Order Form.

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 6, including the Initial Fee and the Monthly Charges.

**Client:** the person or firm who purchases Services from Absolute Digital Media.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.8.

**Contract:** the contract between Absolute Digital Media and the Client for the supply of Services in accordance with these Conditions.

**Contract Order Form:** the order form issued by Absolute Digital Media to the Client.

**Conversion Tracking Codes:** the Google conversion tracking codes or other conversion tracking codes installed on the Website.

**Deliverables:** any amendments or other work carried out to the Website, including the development or design of any additional Website Pages, by Absolute Digital Media as part of the Services.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Expedited Services Fee:** has the meaning set out in clause 9.1(d).

**Initial Fee:** the initial payment for the Services.

**Input Material:** has the meaning set out in clause 4.1(h).

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all

applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Initial Term:** has the meaning set out in clause 3.2.

**Month:** a calendar month and monthly shall be construed accordingly.

**Monthly Charges:** the monthly fee for the Services.

**Pre-existing Materials:** all Documents, information and materials provided by Absolute Digital Media relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports, graphics and specifications.

**Renewal Period** has the meaning set out in clause 3.2.

**Resources:** the resources that Absolute Digital Media may use or employ in order to provide the Services, including Third Party Resources.

**Search Engines:** Google.co.uk together with any additional or replacement search engines or directories that Absolute Digital Media decides to select in accordance with clause 5.4(b).

**Absolute Digital Media:** Absolute Digital Media Limited registered in England and Wales with company number 06643590.

**Services:** the services supplied by Absolute Digital Media to the Client as set out in the Contract Order Form, together with any additional services that Absolute Digital Media agrees to provide to the Client.

**Third Party Resources:** Advertising Networks, Search Engines, web analytics software, pay per click programmes, directories or third party websites or any other third party resources that Absolute Digital Media may use or employ in order to provide the Services.

**Website:** any website, intranet or extranet of the Client that Absolute Digital Media is to carry out the Services on.

**Website Pages:** pages on the Website, including any additional pages created by Absolute Digital Media as part of the Services.

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes e-mails.

## **2. BASIS OF CONTRACT**

- 2.1 The Client shall sign the Contract Order Form and return it to Absolute Digital Media. This constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Contract Order Form shall only be deemed to be accepted when Absolute Digital Media returns a signed copy to the Client at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Absolute Digital Media which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Absolute Digital Media, and any descriptions or illustrations contained in Absolute Digital Media's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Absolute Digital Media shall not constitute an offer, and, unless otherwise agreed, is subject to amendment at any time to meet any rise or fall in Absolute Digital Medias' costs.

## **3. SUPPLY OF SERVICES**

- 3.1 Absolute Digital Media shall supply the Services to the Client in accordance with the Contract Order Form in all material respects.
- 3.2 The Client shall purchase the Services from Absolute Digital Media for the term (**Initial Term**) set out in the Contract Order Form. After that, unless terminated by Absolute Digital Media as provided in clause 3.3 or clause 11, the Contract shall be automatically renewed for successive periods of the same duration as the Initial Term (each a **Renewal Period**) unless the Contract is terminated by the Client giving Absolute Digital Media notice to terminate, in writing, before the end of the Initial Term or any Renewal Period, in which case the Contract shall terminate on the later of the end of the Initial Term or Renewal Period or two full Months after the date on which the notice is given.
- 3.3 Absolute Digital Media can terminate the Contract with immediate effect at any time, at its sole discretion. Absolute Digital Media shall not be obliged to give notice of such termination to the Client but may do so at its sole discretion in any form. Where Absolute Digital Media exercises this termination right, Absolute Digital Media will refund any Charges paid by the Client for Services that have not been delivered at the date of termination. No other Charges will be refunded on termination.
- 3.4 Absolute Digital Media shall use all reasonable endeavours to meet any performance dates specified in the Contract Order Form, but any such dates shall

be estimates only and time shall not be of the essence for performance of the Services.

- 3.5 Absolute Digital Media warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.6 Absolute Digital Media will not commence performance of the Services until it has received the Initial Fee.
- 3.7 Absolute Digital Media shall be entitled to refuse to accept or use any Input Material in the provision of the Services:
  - (a) which may be deemed offensive, illegal or in any way controversial;
  - (b) for which the Client has not obtained an appropriate licence, permission or consent pursuant to clause 4.1(h).
- 3.8 If the Client or any third party makes any changes to the Website which overwrite any Deliverables, Absolute Digital Media will not be responsible for reinstating the Deliverables and if the Client does require Absolute Digital Media to reinstate them the Client is liable to pay to Absolute Digital Media additional charges to cover the cost of reinstating the Deliverables.
- 3.9 Absolute Digital Media shall be entitled for the duration of the Contract to approve or disapprove any design strategies, existing code or other techniques requested or currently used by the Client which in the sole opinion of Absolute Digital Media are detrimental to the Campaign or other Services to be provided by Absolute Digital Media.
- 3.10 Absolute Digital Media shall be entitled for the duration of the Contract to publish written content on behalf of the Client in accordance with clause 7.7.
- 3.11 Absolute Digital Media has no obligation to provide services free of charge, including SEO analysis and specifically to those who are competitors of Absolute Digital Media

#### **4. CLIENT'S OBLIGATIONS**

- 4.1 The Client shall:
  - (a) ensure that the terms of the Contract Order Form and any information it provides are complete and accurate;
  - (b) co-operate with Absolute Digital Media in all matters relating to the Services;
  - (c) ensure that the Charges and Payment are received in accordance with clause 6.2;
  - (d) allow Absolute Digital Media access to the Website so that it can upload new Website Pages or make changes for the purposes of the Services including obtaining the approval of any third party where this is required;
  - (e) provide Absolute Digital Media with such administrator rights to any Third Party Resources as are necessary for Absolute Digital Media to supply the Services;

- (f) ensure that the Conversion Tracking Codes are installed properly and are working;
- (g) ensure that the Website is live and accessible via the internet;
- (h) provide Absolute Digital Media with such Documents, information and materials as Absolute Digital Media may reasonably require in order to supply the Services (**Input Material**) including additional relevant text content for the Website for the purpose of creating additional Website Pages where Absolute Digital Media considers that the text content of the Website is too low, and ensure that such information is accurate in all material respects; and
- (i) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start and provide Absolute Digital Media with evidence of such licence, permission or consent when requested by Absolute Digital Media.

4.2 If Absolute Digital Media's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) Absolute Digital Media shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Absolute Digital Media's performance of any of its obligations. For the avoidance of doubt, the Client shall continue to be liable for the Monthly Charge during any period that Absolute Digital Media suspends performance of the Services;
- (b) Absolute Digital Media shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Absolute Digital Media's failure or delay to perform any of its obligations as set out in this clause 4; and
- (c) the Client shall reimburse Absolute Digital Media on written demand for any costs or losses sustained or incurred by Absolute Digital Media arising directly or indirectly from the Client Default.

4.3 In order to protect the legitimate business interests of Absolute Digital Media, the Client covenants with Absolute Digital Media that it shall not (except with the prior written consent of Absolute Digital Media):

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away,

from the employment or service of Absolute Digital Media the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Absolute Digital Media. The Client shall be bound by the covenant set out in this Clause 4.3 during the term of this agreement, and for a period of 6 months after termination or expiry of this agreement.

- 4.4 In order to protect the legitimate business interests of Absolute Digital Media, the Client covenants with Absolute Digital Media that it shall not (except with the prior written consent of Absolute Digital Media) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person. The Client shall be bound by the covenant set out in Clause 4.4 during the term of this agreement and for a period of 6 months after termination or expiry of this agreement.
- 4.5 For the purposes of Clauses 4.3, 4.4 and 4.6, a Restricted Person shall mean any firm, company or person employed or engaged by Absolute Digital Media during the term of this agreement, who has been engaged in the provision of the Services or the management of this agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.
- 4.6 If the Client commits any breach of Clause 4.3 or clause 4.4, the Client shall, on demand, pay to Absolute Digital Media a sum equal to one year's basic salary or the annual fee that was payable by Absolute Digital Media to the Restricted Person plus the recruitment costs incurred by Absolute Digital Media in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of Absolute Digital Media.

## **5. AMENDMENTS**

- 5.1 If the Client wishes to change the scope or execution of the Services, it shall submit details of the requested change to Absolute Digital Media in writing.
- 5.2 If the Client requests a change to the scope or execution of the Services, Absolute Digital Media shall, within a reasonable time, provide a written estimate to the Client of:
- (a) the likely time required to implement the change;
  - (b) any necessary variations to the Charges arising from the change; and
  - (c) any other impact of the change on this agreement.
- 5.3 If the Client wishes Absolute Digital Media to proceed with the change, Absolute Digital Media has no obligation to do so unless and until the parties have agreed the necessary variations to the Charges, the Services and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 14.8.
- 5.4 Absolute Digital Media may, from time to time and without notice:
- (a) change the execution or scope of the Services, provided that such changes do not materially affect the nature or the charges for the Services;
  - (b) change any of the Search Engines to which the Client's web pages are to be submitted whether by the inclusion of additional search engines to those listed in clause 1.1 or the replacement of any of the search engines listed in clause 1.1 with a search engine which, at the entire discretion of Absolute Digital Media, is more suitable for the purposes of optimising the Website.

## **6. CHARGES AND PAYMENT**

- 6.1 The Charges for the Services shall be as set out in the Contract Order Form.

- 6.2 The Initial Fee shall be payable to Absolute Digital Media before it commences provision of the Services. The Monthly and or Annual Charges shall be paid by the Client in accordance with the payment terms set out in the Contract Order Form by Standing Order in full and in cleared funds to a bank account nominated in writing by Absolute Digital Media.
- 6.3 The additional Monthly Click Charges shall be calculated in accordance with the terms set out in the Contract Order Form and shall be paid by the Client in accordance with the payment terms set out in the Contract Order Form in full and in cleared funds to a bank account nominate in writing by Absolute Digital Media.
- 6.4 Time for payment shall be of the essence of the Contract.
- 6.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Absolute Digital Media to the Client, the Client shall, on receipt of a valid VAT invoice from Absolute Digital Media, pay to Absolute Digital Media such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.6 Without limiting any other right or remedy of Absolute Digital Media, if the Client fails to make any payment due to Absolute Digital Media under the Contract by the due date for payment (**Due Date**), Absolute Digital Media shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 6.7 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against Absolute Digital Media in order to justify withholding payment of any such amount in whole or in part. Absolute Digital Media may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Absolute Digital Media to the Client.
- 6.8 Unless otherwise stated in the Contract the Client shall be responsible for the fees of any Third Party Resources and shall maintain such adequate funds in any third party accounts as are required to maintain inclusion in such resources. The Contract Order Form sets out an estimate of the fees that the Client will incur for the inclusion of keywords and other listings in the Third Party Resources.
- 6.9 Absolute Digital Media Limited reserves the right to vary the service fee according to further requirements made by the Client. Any such variation shall be advised by Absolute Digital Media in writing and confirmed by the Client in writing before the work proceeds further or any fees are incurred.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 The Client hereby authorises Absolute Digital Media to use any Intellectual Property Rights of the Client that are on the Website for the purpose of providing the Services.
- 7.2 Subject to clause 7.3 all Intellectual Property Rights arising out of the Deliverables, including any graphics or programming code, shall be owned by Absolute Digital Media until the Client has paid the Charges in full. Once the Client has paid the

charges in full all such Intellectual Property Rights shall automatically be transferred to the Client.

- 7.3 The Client acknowledges that, where Absolute Digital Media does not own any Pre-Existing Materials, Absolute Digital Media licences all such rights to the Client on a royalty-free non-exclusive worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and that such licence and the Client's use of any Intellectual Property Rights in the Pre-Existing Materials is conditional on Absolute Digital Media obtaining a written licence from the relevant licensor on such terms as will entitle Absolute Digital Media to license such rights to the Client.
- 7.4 As between the Client and Absolute Digital Media the Input Material shall be owned by the Client. The Client licences all Intellectual Property Rights and other rights in the Input Material to Absolute Digital Media on a royalty-free non-exclusive worldwide basis to such an extent as is necessary to enable Absolute Digital Media to provide the Services.
- 7.5 The Client undertakes that they have all necessary licences and consents to allow Absolute Digital Media to use the Input Material for the purposes of providing the Services and shall keep Absolute Digital Media indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Absolute Digital Media as a result of or in connection with any claim made against Absolute Digital Media for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Input Material.
- 7.6 The Client hereby authorises Absolute Digital Media to annotate and insert onto the Website Absolute Digital Media's identification as the author of the specific code it provides as part of the Services providing that Absolute Digital Media only inserts such identification where it is the legal owner of such code.
- 7.7 The Client acknowledges that Absolute Digital Media shall not be liable for any loss or damage suffered by the client or by any third party arising from the use of any words or phrases by them and the client agrees to indemnify Absolute Digital Media in respect to any claims, damages or costs arising from the written content supplied to the client by Absolute Digital Media. It is the client who is responsible for ensuring that all necessary rights, permissions or consents required for the use of written content produced by Absolute Digital Media are obtained. It is also agreed that Absolute Digital Media has no responsibility to ensure that these necessary permissions have been obtained by the client in relation to the use of names, people, trade marks, or any other copyrighted materials. When written content is produced or issued by Absolute Digital Media with the authority of the client, that client agrees to indemnify Absolute Digital Media against any loss or damage where rights, releases, consents or permissions have not been granted or obtained.

## **8. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the



Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.

## **9. RANKINGS, RESULTS AND LINK PLACEMENTS**

9.1 The Client acknowledges and accepts the following in connection with the Services:

- (a) Absolute Digital Media shall endeavour to achieve a higher listing across the Search Engines but due to the competitiveness of some keywords and phrases, ongoing changes in search engine algorithms, penalties and other competitive factors, Absolute Digital Media does not guarantee the positioning that it can achieve for the Client.
- (b) Absolute Digital Media has no control over the policies of the Search Engines or Third Party Resources with respect to the type of Websites and/or content that they may accept now or in the future. The Websites and/or any content on it may be excluded or banned from the Search Engine or Third Party Resources at any time at the sole discretion of the Search Engines or Third Party Resources.
- (c) A Search Engine or Advertising Network may drop a listing for no apparent or predictable reason. The listing may reappear in the Search Engine or Advertising Network without any further action. If the listing does not reappear within a reasonable period of time Absolute Digital Media will endeavour to recover the listing in accordance with that Search Engine's or Advertising Networks current policies.
- (d) A Search Engine may offer expedited listing services on payment of a fee (**Expedited Services Fee**). If the Client agrees to the use of these services, the Client is liable for the payment of any Expedited Service Fee unless this has been incorporated into the Charges.
- (e) Absolute Digital Media is not responsible for any changes made to the Website by the Client or a third party which adversely affects the ranking of the Website in the Search Engines.
- (f) Many of the Third Party Resources are competitive in nature. Accordingly, Absolute Digital Media does not guarantee the position of any keyword, phrase or search term.
- (g) Absolute Digital Media's previous performance in the provision of the Services or services similar to the Services is not indicative of any future results that Absolute Digital Media may achieve on behalf of the Client.
- (h) Paid advertising may be subject to the individual Advertising Network's policies and procedures. Each edit or change made to such policies and procedures may affect the Campaign and the Client acknowledges that this is outside the control of Absolute Digital Media. Absolute Digital Media will endeavour to rectify any negative affects on the Campaign arising from an edit or change to these policies and procedures.
- (i) Unless otherwise agreed in the Contract Order Form, Absolute Digital Media does not guarantee the placement of the Client's advertising, its availability or availability related to the fund's in the Client's account with the Advertising Network.

- (j) Absolute Digital Media will use all reasonable endeavours to keep the Client informed of any changes to Third Party Resources, industry practice or any other changes that Absolute Digital Media is made aware of which may impact the Campaign and the provision of the Services. However, Absolute Digital Media may not become aware of such changes.
- (k) Absolute Digital Media has no control over webmasters with respect to the continuation of link and/or content placements now or in the future. The link and/or any content may be taken down from the website at any time for no apparent or predictable reason and at the sole discretion of the webmaster. Unless otherwise agreed in the Contract Order Form, Absolute Digital Media does not guarantee the placement or availability of any link and/or content.

**10. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

10.1 Nothing in these Conditions shall limit or exclude Absolute Digital Media's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.2 Subject to clause 10.1:

- (a) Absolute Digital Media shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise:
  - (i) for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, or arising from their late or non-arrival, or any failure of the Client to comply with its obligations in clause 4.1 or any other fault of the Client or the Client's agents or sub-contractors;
  - (ii) for any loss, damage, costs, expenses or other claims for compensation arising from the use of Third Party Resources;
  - (iii) for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Absolute Digital Media's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges.

10.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.4 This clause 10 shall survive termination of the Contract.

## **11. TERMINATION**

11.1 Without limiting its other rights or remedies, Absolute Digital Media may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) if the Client fails to pay any amount due under the Contract on the due date for payment;
- (b) the Client commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach;
- (c) the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (f) the Client (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company);
- (i) a floating charge holder over the assets of the Client (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;
- (k) any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to

any of the events mentioned in clause 11.1(c) to clause 11.1(j) (inclusive);

- (l) the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 Without limiting its other rights or remedies, Absolute Digital Media shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and Absolute Digital Media if the Client becomes subject to any of the events listed in clause 11.1(c) to clause 11.1(m), or Absolute Digital Media reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

## **12. CONSEQUENCES OF TERMINATION**

12.1 On termination of the Contract for any reason:

- (a) the Client shall immediately pay to Absolute Digital Media all of Absolute Digital Media's outstanding unpaid invoices and interest and, in respect of Services supplied and Monthly Charges due during the **Initial Term** but for which no invoice has been submitted, Absolute Digital Media shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) subject to the Client's compliance with clause 12.1(a), Absolute Digital Media shall return to the Client all Input Materials and all information and materials relating to the Campaign and any other Services which are reasonably necessary for the Client or its agents or suppliers to continue to provide similar services to those to be provided under the Contract, except that Absolute Digital Media shall not be required to disclose any of confidential information relating to its business or systems, including any technical and commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **13. DATA PROTECTION**

13.1 Any personal data processed by and on behalf of the Absolute Digital Media in connection with the Services will be processed in accordance with Absolute Digital Media's Privacy Policy, a copy of which can be found at [www.absolutedigitalmedia.com](http://www.absolutedigitalmedia.com) or which can be obtained from Absolute Digital Media on request.

## **14. GENERAL**

14.1 **Force majeure:**

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Absolute Digital Media including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Absolute Digital Media or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Absolute Digital Media shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Absolute Digital Media from providing any of the Services for more than 6 weeks, Absolute Digital Media shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

**14.2 Assignment and subcontracting:**

- (a) Absolute Digital Media may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of Absolute Digital Media, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**14.3 Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

**14.4 Waiver:**

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or

partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 **Severance:**

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Absolute Digital Media.

14.9 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.