

## **Absolute Digital Media Limited - Website Design, Development and Hosting 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:

**Acceptance:** the acceptance or deemed acceptance of the Deliverables by the Client pursuant to clause 6.

**Acceptance Tests:** the testing of the Deliverables by the Client to determine whether they comply with the Website Design Brief.

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

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 7.

**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 18.8.

**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.

**Defects:** has the meaning set out in clause 6.3.

**Deliverables:** the Website or any software or application designed or developed by Absolute Digital Media as part of the Services.

**Deposit:** has the meaning set out in clause 7.2.

**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.

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

**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.

**Non-Supplier Defects:** has the meaning set out in clause 6.4.

**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.

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

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

**Website:** any website, intranet or extranet that Absolute Digital Media designs and develops for the Client as part of the Services.

**Website Design Brief:** the brief setting out in writing the description or specification of the Services to be provided by Absolute Digital Media to the Client.

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 and Website Design Brief in all material respects.
- 3.2 Absolute Digital Media shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Absolute Digital Media warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.4 Absolute Digital Media will not commence performance of the Services until it has received the Initial Fee.
- 3.5 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(d).

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

- 4.1 The Client shall:
- (a) ensure that the terms of the Contract Order Form and/or Website Design Brief and any information it provides are complete and accurate;
  - (b) co-operate with Absolute Digital Media in all matters relating to the Services, including signing off the build and design of the Deliverables as soon as is reasonably practicable;
  - (c) 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 any images, content or database in an acceptable format, and ensure that such information is accurate in all material respects; and
  - (d) 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, as part of the Services, Absolute Digital Media is to develop any applications or Website on a server not recommended by Absolute Digital Media, the Client shall provide to Absolute Digital Media any information, additional software, support or co-operation pertaining to the server that Absolute Digital Media may reasonably require to allow the application or Website to be developed. If Absolute Digital

Media is to develop large applications as part of the Services, the Client shall provide a suitable testing environment which is identical to the final product environment.

- 4.3 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;
  - (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.

## **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 18.8.
- 5.4 Absolute Digital Media may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

## **6. ACCEPTANCE AND BUG FIXES**

- 6.1 The Client shall carry out Acceptance Tests.
- 6.2 If the first stage of Acceptance Tests are not carried out within 7 days of the Client receiving the Deliverables from Absolute Digital Media, as a result of any cause attributable to the Client, the Deliverables shall be deemed to have passed the Acceptance Tests.

- 6.3 In the event that any Acceptance Tests are not passed, the failures which cause the relevant test to be failed (**Defects**) shall be drawn up and documented by the Client and presented to Absolute Digital Media within 7 days of the Client receiving the Deliverables from Absolute Digital Media for discussion as to how best to remedy such Defects.
- 6.4 If any such failure results from a Defect which is caused by an act or omission of the Client or its sub-contractors or agents for which Absolute Digital Media shall have no responsibility (**Non-Supplier Defects**), the Deliverables shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. Any work attributable to Non-Supplier shall be charged at Absolute Digital Media's then current rates.
- 6.5 Absolute Digital Media shall remedy Defects as soon as reasonably practicable so as to ensure that the Deliverables pass the Acceptance Tests on a retest. If the Deliverables do not pass the Acceptance Tests on a retest, Absolute Digital Media shall not be deemed to be in breach of these Conditions if the continued failure relates to Non-Supplier Defects.
- 6.6 Once Acceptance has taken place, if any bugs, errors or other defects in the Deliverables are identified by the Client, Absolute Digital Media will use reasonable effort to remedy the defect in order to meet the standards of function set out in the Website Design Brief but it shall not be obliged to do so and any such further modifications together with any other amendments or updates which the Client instructs Absolute Digital Media to make to the Deliverables shall be charged at Absolute Digital Media's then current rates.

## **7. CHARGES AND PAYMENT**

- 7.1 The Charges for the Services shall be as set out in Contract Order Form.
- 7.2 The Initial Fee shall be payable to Absolute Digital Media before it commences provision of the Services. The Client shall either pay the total Charges or a non-refundable deposit representing a percentage of the total Charges to Absolute Digital Media as set out in the Contract Order Form (**Deposit**). Once the Client has paid the total Charges or Deposit they shall not be entitled to cancel or terminate the Contract.
- 7.3 Absolute Digital Media shall invoice the Client for the balance of the Charges due on completion of the Services (**Final Invoice**) unless the total Charges have been paid in full prior to commencement of the Services. For the avoidance of doubt, the Services will be completed once the design and build of the Deliverables has taken place. The Final Invoice will also include any charges for any additional Services provided by Absolute Digital Media during the design and build of the Deliverables.
- 7.4 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.
- 7.5 If commencement of the Services is delayed as a result of the Client failing to provide Input Material, Absolute Digital Media shall be entitled to charge the Client £250 for every seven Business Days that the Services are delayed. Absolute Digital Media shall notify the Client of any such charges and the charges will be added to Absolute Digital Media's final invoice for the balance of the Charges due.

- 7.6 The Client shall pay each invoice submitted by Absolute Digital Media, other than those related to Monthly or Annual Charges, on presentation and in full and in cleared funds to a bank account nominate in writing by Absolute Digital Media.
- 7.7 Time for payment shall be of the essence of the Contract.
- 7.8 Absolute Digital Media will not transfer the Deliverables to the Client's domain or hosting service until the total Charges have been settled in full.
- 7.9 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.
- 7.10 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.
- 7.11 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.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 Subject to clause 8.2 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.

- 8.5 The Client agrees that use of Absolute Digital Medias Web Hosting Services is at the Clients sole risk. Absolute Digital Media does not warrant that its Web Hosting service will not be interrupted or error free, nor do they make any warranty as to the results that may be obtained from the use of the Service or as to the accuracy or reliability provided through Absolute Digital Media.
- 8.6 The Client acknowledges that under no circumstance, including negligence, shall Absolute Digital Media be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Absolute Digital Media Web Hosting Service, or that results from mistakes, omission, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorised access to Absolute Digital Medias Web Hosting records, programs or services.

## **9. 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 9 shall survive termination of the Contract.

## **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 clause 4.2 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 unavailability of the Website, its servers or software or arising as a result of the use of any materials supplied by an agent or sub-contractor of Absolute Digital Media;
- (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. COMPATIBILITY**

11.1 Absolute Digital Media will make reasonable effort to ensure that the Website or any application designed or developed by Absolute Digital Media as part of the Services functions correctly:

- (a) on the server it is initially installed in; and
- (b) when viewed with the web browsing software on Mozilla and Google Chrome browsers;

but Absolute Digital Media shall not accept any liability for any failure to function on any browser software or any failure to comply with software code or any errors, omissions or failure of software code product.

**12. SOFTWARE DEVELOPMENT**

12.1 The development of software is a complex activity and Absolute Digital Media does not warrant that any software that it develops will be free from defects and accepts no liability for any losses incurred by the Client as a result of using software designed or developed by Absolute Digital Media.

**13. HOSTING**

13.1 If Absolute Digital Media recommends any hosting company to host the Website, it does not guarantee the availability of the hosting service and that it will not be interrupted. Accordingly, Absolute Digital Media accepts no liability for any losses the Client suffers as a result of the unavailability, malfunction or interruption of the hosting service.

- 13.2 The Client acknowledges that, given the nature of such services, Absolute Digital Media cannot guarantee that the Services, when delivered via the internet, will be uninterrupted or error free. Also that Absolute Digital Media is under no obligation to compensate for downtime, whether the downtime be caused by the Client, Absolute Digital Media Web Hosting, or a provider for Absolute Digital Media.
- 13.3 Should the Client transfer their hosting or registered domain name to another provider a Charge shall be payable to Absolute Digital Media for the time required to complete the transfer. Absolute Digital Media will not transfer the data until the total Charges have been settled in full.

#### **14. WEBSITE OPTIMISATION**

Absolute Digital Media does not warrant the position it will achieve for the Website on any search engine. It will not carry out any search engine positioning or optimisation of the Deliverables unless it has agreed to provide such services under a separate contract with the Client. Such contract shall be governed by Absolute Digital Media's Digital Marketing Terms and Conditions which can be found at [www.absolutedigitalmedia.com](http://www.absolutedigitalmedia.com) or which can be obtained from Absolute Digital Media on request.

#### **15. TERMINATION**

- 15.1 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 15.1(c) to clause 15.1(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.

15.2 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 15.1(c) to clause 15.1(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.

## **16. CONSEQUENCES OF TERMINATION**

16.1 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 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) 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
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**17. DATA PROTECTION**

17.1 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.

**18. GENERAL**

**18.1 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.

**18.2 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.

**18.3 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, or sent by fax to the other party's main fax number.
- (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 18.3 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.

18.4 **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.

18.5 **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.

18.6 **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.

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

18.8 **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.

18.9 **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.