

Terms and Conditions

PLEASE NOTE, YOU MAY NOT USE THE ABSOLUTE EMAIL MARKETING SERVICE UNLESS YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. BY USING THE ABSOLUTE EMAIL MARKETING SERVICE YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

1. DEFINITIONS

1.1 In these Terms & Conditions, the following expressions shall have the following meanings:

"Additional Items" means any additional goods (including but not limited to software) and / or services that are provided by the Company in addition to the Service;

"Anti-Spam Policy" means the Company's anti-spam policy as set out on its website www.absoluteemailmarketing.com and as amended from time to time;

"the Company" means Ashenhurst Media Limited, Business Design Centre, 52 Upper Street, London N1 0QH, United Kingdom (Company Number: 03941097, VAT Number: 06013271) trading as "Absolute Email Marketing" and reference to the consent authority or agreement of the Company means consent authority or agreement in writing signed by a director of the Company;

"Contract" means the order placed by the Customer with the Company on these terms and conditions, and any other document or documents agreed by the Company to be incorporated in a Contract between the Company and the Customer including but not limited the Anti-Spam policy which shall be deemed incorporated into each and every Contract;

"Content" means as defined in clause 4.11.2;

"the Customer" means the person firm or company who uses the Service and includes, for the avoidance of doubt, any Resellers of the Service;

"the due date" means the first day of each month;

"Email" means any electronic mail sent using the Company's software, servers and/or system, from time to time, by the Company on behalf of the Customer pursuant to the Service, the Content of which is to be provided by the Customer to the Company;

"Free Account" means where the Customer is given free access to any part of the Service and an account is set up for that Customer without charge;

"ISPs" means internet service providers being organisations that provide access to the internet

"List" means as defined in clause 4.11.1;

"Monthly Email Credit Package" means the purchase of a package of a fixed number of emails on a monthly or month by month basis;

"One-Off Purchase" means where the Customer pays a fixed sum to send a

fixed number of Emails within 30 days of the date of the Contract. In such circumstances the Customer will be given the corresponding number of Email "credits" to be used during such 30 day period.

"Recipient" means any person who the Customer intends receive an Email to be sent pursuant to the Service;

"Reseller" means any person who purchases the Service with the intention of selling it one to one or more third parties.

"the Service" means the Company's email marketing service, using the Company's software and monitoring systems through the Mailing Manager and any Additional Items that the Customer has ordered from the Company, and the Company has agreed in writing to supply;

"the service fees" means the fees agreed between the Company and the Customer for the provision of the Service by the Company pursuant to the Contract;

"Term" has the meaning ascribed to it in clause 6.1;

"Third Party Purchaser" means any third party purchasing the Service through a Reseller;

"Transgression" shall mean any breach of contract, tort or other act of default, omission or statement of the Company its employees, agents or subcontractors in respect of which the Company is liable to the Customer;

"Mailing Manager" means the Customer's personal email marketing account on the Company's mailing manager service;

"Unlawful" means as defined in clause 4.2.

1.2 Terms defined in the Company's order form (or previously agreed in other applicable documents, which forms part of the Contract) have the same meanings in these terms and conditions.

2. THE SERVICES

2.1 The Company shall provide the Service (being Absolute Email Marketing), to the Customer pursuant to these terms and conditions and the Service shall continue to be supplied, unless the Contract is terminated in accordance with these terms and conditions. No additions or modifications to or terms inconsistent with these terms and conditions shall be binding unless agreed in writing by the Company. In the event of any inconsistency between these terms and conditions and any other document forming part of the Contract, these terms and conditions shall prevail unless expressly referred to and varied with the written consent of the Company. The Contract is not intended to create a partnership or agency relationship between the Company and the Customer.

2.2 The Company will process information about the Customer in accordance with the Company's Privacy Policy, from time to time, contained at www.absoluteemailmarketing.com and by requesting the

Service the Customer consents to such processing and agrees to adhere to such Privacy Policy.

2.3 The Company will process information provided by the Customer about the Recipients ("the Recipient Information") in accordance with the provisions of the Data Protection Act 1988 ("the Act"). For the purposes of the Act the Customer is the Data Controller in respect of all Recipient Information. The Company acts only as a data processor in respect of the Recipient Information. The Company shall process the Recipient Information solely for the purpose of providing the Service, including the maintenance, management and improvement of the Service, and as instructed by the Customer. The Company shall not divulge any Recipient Information to any third party, other than any third party suppliers, web hosts and developers engaged by the Company for the purpose of the maintenance, management and improvement of the Service, without the Customers express prior consent. The Company will use all reasonable endeavours to keep the Recipient Information safe from unauthorised or unlawful processing or accidental loss.

2.4 The delivery or receipt of Emails to any Recipient cannot be guaranteed and is dependent upon complete, full and accurate Lists from the Customer (including but not limited to, up to date email addresses), upon suitable internet availability or connectivity by the Recipient and on various anti-spam and junk mail policies adopted by the Recipient or ISPs. Whilst the Company will provide the Service in accordance with the terms of the Contract, the Company makes no representations or warranties whatsoever about the speed or proportion of Emails sent that will be delivered.

2.5 It is the Customer's obligation to check all Emails (and send test Emails) prior to sending Emails to Recipients to ensure that the Content is correct, displayed accurately and to ensure that all links within such Content operate correctly. The Company shall have no liability whatsoever for any errors in any Emails.

2.6 The sending of any Email or any other content created using the Service by any alternative means is strictly prohibited.

2.7 The Company may, at its sole discretion and upon notifying the Customer in writing, assign transfer, sub-contract or deal in any other manner with all or any of its rights under the Contract or any part thereof to a third party.

2.8 The Company may, from time to time and without notice, make changes to the Service which are necessary to comply with any applicable

law or industry standards, or which do not materially affect the nature of the Service or the service fees.

2.9 There is no obligation upon the Company to provide trial period accounts, Free Accounts, paid Service accounts or second accounts.

2.10 There is no obligation (upon either the Customer or the Company) to extend any Free Account period into a paid Service account.

2.11 The Customer acknowledges that if, during the Contract, it deletes any data in its Mailing Manager (including, but not limited to, Lists and Content), the Company is not able to recover or restore such data.

3. COMPANY RIGHTS AND OBLIGATIONS

3.1 The Company shall provide the Service to the Customer with reasonable skill and care and in a professional manner. All warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law from the Contract and terms and conditions.

3.2 The Company shall provide the Customer with a 24-hour contact service in order that it may notify the Company of any interruptions or any other problems with the Service. The Company shall use reasonable endeavours to respond to the Customer's notification of interruptions or other problems with the Service and to rectify any problems with reasonable diligence and within a reasonable timescale.

3.3 The Company shall use all reasonable endeavours to ensure that access to the Service will be available at an uptime level of 95%. For the avoidance of doubt, the uptime availability level does not include downtime attributable to:

3.3.1 hardware or telecommunications failures;

3.3.2 interruptions to the flow of data to or from the internet,

3.3.3 changes, updates or repairs to the network or software which the Company uses as a platform to provide the Service,

3.3.4 the effects of the failure or interruption of the Service provided by third parties;

3.3.5 factors outside of the Company's reasonable control;

3.3.6 the Customer's actions or omissions (including without limitation, breach of the Customer's obligations set out in the Contract) or those of any third parties (including but not limited to breaks in the continuity of the electricity supply or of the telecommunications linked to the Company's server);

3.3.7 interruptions to the Service resulting from any request by the

Customer; and

3.3.8 interruptions to the Service resulting from any third party security breach and/or hacking or other malicious action.

3.4 If the Service is suspended or interrupted the Company shall use reasonable endeavours to restore the Service within a reasonable time period.

3.5 The Service is an email marketing solution that should be used for 'opt in' email marketing only (for the avoidance of doubt, the term 'opt in' shall mean where the Recipient of the Email has formally agreed and consented to receiving any Email). The Customer warrants it has the consent of each Recipient to the receipt of any Email.

3.6 The Customer shall not use the Service for the purposes of 'SPAM', junk mail, unsolicited or unauthorised advertising.

3.7 If the Company in its sole discretion believes that:

3.7.1 the Service is being used for SPAM, junk mail, unsolicited or unauthorised advertising, or

3.7.2 the Customer is breaching these terms and conditions in any other way, then the Company may decide (in its sole discretion) to suspend or terminate the Service and no refund of any service fee or other payments to the Company will be made.

3.8 The Customer agrees to comply with the Company's Anti-Spam policy, as published on the Company's website, from time to time.

3.9 The Company has the right, at its sole discretion, to remove the details of any Recipient from the List supplied by the Customer (pursuant to clause 4.11.1 below), for whatever reason (including, but not limited to, if the Company should receive any complaint from a Recipient in respect of any Email received by them).

3.10 The Company has the right to monitor the Customer's use of the Service including but not limited to the Customer's bounce back, unsubscribe and complaint rates. Should the Company, in its sole discretion, consider the Customer's bounce back, unsubscribe and/or complaint rates to be excessive or abnormal the Company may instigate a manual review of the Customer's use of the Service and the Customer's account may be locked or suspended during any such review.

3.11 If the Company states that a backup service is included, the Company will make reasonable efforts to protect and backup data for the Customer, at least once every 24-hours. The Company will not be liable for any lost, corrupted or destroyed data as a result of any suspension or interruption to the Service caused by the Company providing such backup service or caused by the failure for whatever reason of any such backup service.

3.12 The Company does not guarantee the accuracy or regularity of the backup service. The Customer is also responsible for taking their own backups in connection with the Customer's use of the Service and the Customer is solely responsible for an independent backup of data stored on the Company's or any third party providers' server and network. The retrieving of back up files by the Company may be charged as an Additional Item.

4. CUSTOMERS OBLIGATIONS

4.1 The Customer shall ensure that each Email:

4.1.1 includes a clear statement identifying the Customer or the person on whose behalf the Email is sent;

4.1.2 includes a valid email address at which the Recipient can contact the Customer (or the person on whose behalf the Email is sent) if they wish to opt out of receiving Emails or request that they are not contacted (such means for opting out should be simple) together with the sender's full, verifiable, legitimate postal address;

4.1.3 is lawful in the jurisdiction of the Recipient; and

4.1.4 is less than 2mb in size including attachments.

4.2 The Customer undertakes and warrants that the Service shall not be used directly or indirectly for any Unlawful purpose and that the Content shall not be Unlawful. For the purpose of this Contract, the term "Unlawful" means in breach of any applicable law, regulations or codes of practice in force, from time to time, in any jurisdiction and shall include but is not limited to: -

4.2.1 civil and criminal offences of copyright and trademark infringement;

4.2.2 transmission or display or posting of abusive, indecent, obscene or pornographic material;

4.2.3 commission of any criminal offence (including deliberate transmission of computer viruses) including, but not limited to, pursuant to the Computer Misuse Act 1990 or similar legislation in any country;

4.2.4 any transmission or display or posting of any material which is defamatory, libellous, offensive, abusive, or menacing character or which causes annoyance, inconvenience or needless anxiety to any other person;

4.2.5 transmission or display or posting of any material in breach of the

Data Protection Act 1998 (or any replacing statute) dealing with data protection or similar legislation in any other country or of any material which is confidential or is a trade secret;

4.2.6 use of the service in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere;

4.2.7 the use of the service for purposes generally deemed to be unacceptable, including spamming, hacking, phreaking, password cracking, pirated software, ROMS, emulators, or IP spoofing or providing "links" or "how to" information to such material; and

4.2.8 use of the Service to send an Email to any Recipient to which the Recipient has not consented (unless authorised by any applicable law or legislation); and

4.2.9 misleading or a misrepresentation

4.3 The Customer undertakes not to host images or files on the Company's servers save as required for the proper performance of the Services.

4.4 The Customer accepts that it is the data controller for the purposes of the Data Protection Act 1998 (or any replacing statute) in respect of any personal data in relation to any Recipient that the Company processes in the course of providing the Service. It is the Customer's obligation to ensure that consent has been provided to the use of the personal data by the Recipient and as such the Company is not liable or responsible for the accuracy or use of such personal data.

4.5 The Customer warrants, represents and undertakes that the Company's processing of any Customer's personal data in accordance with the Contract and its instructions under it will not infringe or breach any rights of any data subject or be other than in accordance with the Data Protection Act 1998 (or any replacing statute).

4.6 The Company does not accept and shall have no responsibility, or liability, for the Recipient's personal data or the Content of the Emails sent using the Service or for sending them to Recipients in accordance with the terms of the Contract and the Customer will indemnify the Company against all and any damages, claims, expenses, losses and costs that the Company may incur as a result of any breach of clause 4.1 to 4.5 above.

4.7 The Customer will ensure that that the Content supplied to the Company complies with all applicable laws, regulations and requirements, in place from time to time, of any country from which it can be accessed and the Customer will indemnify the Company against all and any damages, claims, expenses, losses and costs that the Company may incur as a result of any breach of this clause 4.7 by the Customer.

4.8 The Company reserves the right to monitor any and all communications passing through the Company's servers in connection with the Service, at all times.

4.9 If the Service is used for any Unlawful use the Company may suspend or terminate the Service immediately and at the same time as suspension or termination occurs the Company shall, if it is lawful to do so, notify the Customer.

4.10 The Customer shall comply with the Company's policies which are in place from time to time in respect of the Service. The Customer further agrees to keep its password and other access details for use with the Service confidential and restricted to those members of staff who need to know such details and shall ensure all such staff are aware of the confidential nature of such information. The Customer is solely responsible for all activities that occur under the Customer's password or Absolute Email Marketing account. The Customer shall notify the Company without undue delay if the Customer believes that its password and other access details for use with the Service is no longer secret.

4.11 The Customer agrees to undertake the following, from time to time, in relation to the Service:

4.11.1 to supply, in a timely manner, the Company with full and accurate details (including but not limited to, names and email addresses) of all Recipients of the Emails (the "List");

4.11.2 to supply, in a timely manner, the content, images, designs and any other information the Customer reasonably requires to be sent by the Company in the Emails (the "Content"); and

4.11.3 to instruct the Company as to when the Emails are to be sent to the Recipients.

4.12 Any date given by the Company to the Customer in respect of the Service and in particular the sending of Emails to Recipients shall be conditional upon the Company receiving from the Customer the List, Content and any other information for any Emails in a final form from the Customer, within any timescales specified by the Company (from time to time) and any delay in the Customer providing such List, Content and any other information will result in the Company receiving an equivalent extension of time to estimated dates given for sending such Emails.

4.13 Where the Customer submits the Content to the Company pursuant to clause 4.11.2, the Customer:

4.13.1 warrants that: (i) such Content is the Customers own original work or that of its licensors; (ii) the Customer has the right to make the Content available to the Company for the purpose of the Service; and (iii) the Content is and will continue to remain accurate, comprehensive and up-to-date and is not Unlawful;

4.13.2 indemnifies the Company against all legal fees, damages, claims and other expenses that may be incurred by the Company as a result of the Customer breaching clause 4.13.1;

4.13.3 agrees to waive any moral rights in the Content (or warrants that its licensor has waived its moral rights) for the purposes of its submission to Recipients as an Email; and

4.13.4 acknowledges and agrees that such Content may be copied or downloaded by any Recipients.

4.14 Where the Customer submits Content to the Company (including without limitation any text, graphics, video or audio) the Customer is required by such submission to grant to the Company a perpetual, royalty-free, non-exclusive, sub-licensable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and exercise all copyright and publicity rights with respect to any such work worldwide.

4.15 The Customer accepts that it is responsible for dealing with and responding appropriately to any complaints of whatever nature made by any Recipient to the Company and the Company does not accept and shall have no responsibility, or liability, for any such complaints made.

4.16 The Customer accepts that if the Company receives a complaint about any Emails sent using the Service from a Recipient and the Customer has failed to comply with the provisions of clause 4.1.1 and 4.1.2, the Company reserves the right, without liability to the Customer, to disclose the Customer's details (e.g. its name and contact details) to the Recipient

4.17 The Customer accepts that Customer usage of Absolute Email Marketing, the Service or their account shall act as acceptance of the Company's terms and conditions and Anti-Spam policy.

4.18 The Customer warrants, represents and undertakes that it will not delete, bulk unsubscribe or modify its account other than in accordance with honest commercial practices and not for the sole purpose of avoiding any billing threshold agreed with the Company.

5. RESELLERS

5.1 Where the Customer acts as a Reseller:

5.1.1 the terms of the Contract shall apply in full to the Customer, including but not limited to these terms and conditions and the Anti-Spam Policy;

5.1.2 the Customer warrants and undertakes that it has, or will before reselling any of the Services, enter into a contract with all Third Party Purchasers on terms no less onerous than the Contract;

5.1.3 the Customer acknowledges that it bears all responsibility for the actions and conduct of its Third Party Purchasers and hereby indemnifies the Company against all and any damages, claims, expenses, losses and costs that the Company may incur as a result of the acts or omissions of any Third Party Purchaser;

5.1.4 the Customer agrees to terminate forthwith its contract with any Third Party Purchaser who acts in breach of these terms and conditions and/or the Anti-Spam Policy and hereby grants the Company an irrevocable right to prohibit, restrict or limit any such third party's access to the Service; and

5.1.5 notwithstanding clause 5.1.4 above, the Customer acknowledges that should any of its Third Party Purchasers act in breach of the Contract, the Company shall consider that to be a breach by the Customer and the Company's rights under the Contract will apply as if it were the Customer who had carried out the breach.

6. TERM AND PRICE

6.1 Except for where the Customer makes a One-Off Purchase, or accesses the Service by way of a Free Account, all Customers shall be subject to a minimum Contract term of 3 months (the "Minimum Term") (or as otherwise previously specified in the Company's order form or any other applicable documents which forms part of the Contract) and, subject to clause 8.1, thereafter the Contract will continue until and unless either party terminates the Contract in accordance with their respective obligations in clauses 8.1 and 8.2.

6.2 Where the Customer purchases a Monthly Email Credit Package, any credits which remain unused 30 days after the date of purchase shall be lost and no refund shall be payable by the Company.

6.3 Where the Customer makes a One-Off Purchase, the Contract shall remain in force for a period of 30 days only at which point it shall automatically terminate. Upon termination of any Contract relating to a One-Off Purchase any unused Email credits shall be lost and no refund shall be payable by the Company.

6.4 Where the Customer makes a One-Off Purchase, but fails to send the fixed number of Emails within the 30 day period, any unused Emails will expire automatically and will not be transferred to any subsequent One-Off Purchase.

6.5 The service fee for the Service shall remain in force for the duration of the Minimum Term. Thereafter the Company reserves the right at the Company's sole discretion to increase the service fee after providing the Customer with one month's written notice of the fee's increase, from time to time.

6.6 The Customer shall pay the service fee by standing order or credit card payment on the due date as set out in writing by the Company from time to time. If the Customer fails to set up or cancels its standing order mandate then the Company reserves the right to charge an administration fee.

6.7 Where the Customer supplies the Company with details of the Customer's credit card and no standing order has been set up, the Customer agrees that the Company will charge the credit card for payment of the service fee on the due date. If the Customer objects to the service fee, the Customer should inform the Company upon receipt of the invoice prior to the due date.

6.8 Time for payment shall be of the essence for the Contract. The Company reserves the right to suspend the Service or terminate the Contract and Service immediately if the service fee is not received within 7 days of the due date. Any amounts due up to the point of suspension or termination will remain due and payable as if no suspension or termination had occurred.

6.9 Any Additional Items must be paid for within 30 days of the date of the invoice.

6.10 If all or part of the price or service fee for the Contract or any Additional Items remain unpaid after the due date the Company shall be entitled to charge interest on any unpaid balance at 4% above Barclays Bank plc lending base rate for the time being, such interest being paid in full together with the unpaid balance.

6.11 Unless otherwise expressly stated by the Company, all prices or service fee given by the Company to the Customer pursuant to the Contract shall be exclusive of VAT.

7. FREE ACCOUNTS

7.1 Where the Customer is offered access to the Service by way of a Free Account such Free Account shall be entirely at the discretion of the Company.

7.2 The Free Account may be terminated by either party at any time without notice.

7.3 Where any Free Account is terminated by the Company in accordance with clause 7.2 above the Company shall be under no obligation to provide any reason for terminating the account.

7.4 The Customer accepts that the Service provided by way of any Free Account may be limited by the Company as it sees fit in its sole discretion.

7.5 These Terms and Conditions and the Anti-Spam Policy shall apply to any Free Account as they would to any other account or use of the Service.

8. TERMINATION

8.1 The Company shall be entitled to terminate the Contract forthwith and recover all losses or damage resulting to the Company (including but without limitation to loss of profit or other consequential loss) if:

8.1.1 the Customer has a bankruptcy petition presented against him, or a bankruptcy order is made, if the Customer makes or seeks to make any composition or arrangement with his or its creditors, if the Customer makes a proposal to his creditors for a voluntary arrangement or applies for an interim order, if an encumbrancer takes possession of any of the Customer's assets, or any of the Customer's assets are taken in execution or process of law, if a petition is presented or an order is made or a resolution is passed for the winding up of the Customer, if a petition is presented or an order is made for an administration order to be made in relation to the Customer, or if a receiver or administrative receiver is appointed over any of the Customer's assets (or any analogous event occurs to the Customer in its jurisdiction); or

8.1.2 the Customer fails to make any payment owed to the Company on the due date as specified in clause 6;

8.1.3 the Customer is in breach of any contract with the Company (including this Contract) and fails to remedy the same within seven working days of written notice requiring the same or immediately if the breach shall be not be capable of remedy;

8.1.4 the Customer acts in breach of the Company's Anti-Spam Policy;

8.1.5 the Company receives any complaints about SPAM resulting from the Customer's activity which the Company's, in its sole discretion, determines to be sufficiently serious to warrant termination.

8.1.6 The Customer accepts and acknowledges that the Company is entitled to monitor the Customer's use of the Service including but not limited to its bounce back and unsubscribe rates and that if the Company, in its sole discretion, considers such rates to become excessive or abnormal.

8.2 In the event that the Customer wishes to cancel the Contract the Customer shall submit a cancellation request to

info@absoluteemailmarketing.com giving the Company no less than 30 days notice of such cancellation.

8.3 The Customer will, and shall remain liable to, pay the service fees where the Customer removes their credit card details from their account and no cancellation request has been submitted until such cancellation request has been submitted and the notice period expired.

8.4 The Company is not liable for any refunds to Customers who fail to cancel their account in accordance with the Company's cancellation request procedure set out in clause 8.2, irrespective of a Customers' usage of the Service during this period.

8.5 The Company shall be entitled to terminate the Contract at any time, without reason and without any liability to the Customer, upon one months' written notice to the Customer.

8.6 Termination shall be without prejudice to the rights of any party accrued at the date of such termination.

8.7 Upon termination:

8.7.1 the account may be deleted from the Company's server, unless agreed otherwise by the parties;

8.7.2 all service fees shall immediately become due and payable to the Company; and

8.7.3 although data may remain on the Company's servers for a period, the Company shall be under no obligation to retain any data (including the Lists) and, provided always that it complies with the requirements of the Data Protection Act 1998 (or any replacing statute), may dispose of such data as the Company deems appropriate.

8.8 The Customer accepts that, as a result of clause 8.7.1, following termination of the Contract, the Customer's account details and any Lists, Content or other data input by the Customer cannot be restored.

9. INTELLECTUAL PROPERTY

9.1 Copyright in all software that is supplied or utilised by the Company remains the property of the Company or that of its licensor.

9.2 The Customer shall indemnify and keep the Company indemnified from and against the consequences of the Company suffering any claims of infringements of copyrights, patents, trademarks, industrial designs, database rights or other property rights arising from the provision of the Service.

9.3 In the event that any such infringement occurs or may occur, the Customer may request the Company to modify and / or amend the account content or infringing part thereof so that the same becomes non-infringing and if the Company agrees to modify and / or amend the account content the Company shall be entitled to charge for the additional cost for making the modifications and /or amendments which shall be chargeable at the Company's then current hourly rate.

9.4 The Customer warrants that it has obtained (and for future use, will obtain) all necessary consents, approvals and licences from any third party who has intellectual property rights incorporated as part of the Email, whether now or in the future.

10. PERFORMANCE AND FORCE MAJEURE

10.1 The Company shall take all reasonable steps to perform its obligations under the Contract. The Company shall not be liable for suspension or interruptions to the Service which shall not entitle the Customer to rescind the Contract, subject to clause 3.4.

10.2 Without prejudice to the generality of clause 10.1, the Company shall have no liability for any delay or default in performance of any obligation caused directly or indirectly by breakdown or unavailability of computer hardware, software, or parts thereof, viruses, hackers, errors, interruptions, bugs, telecoms connections or power supply or any other cause or causes beyond the Company's control (including but not limited to as result of any act or omission of its agents, subcontractors or consultants).

11. EXEMPTIONS AND EXCLUSIONS

11.1 The Company shall not be liable to the Customer for any loss, injury or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, or the Service (including, without limitation, arising out of or in connection with any misuse of data by an unauthorised third party) except as specified in clause 11.3 or to the extent to which it is otherwise unlawful to exclude such liability.

11.2 Notwithstanding the generality of clause 11.1 above, the Company expressly excludes liability for consequential loss, indirect damages, or corruption to other software or data, or for loss of profit, business, revenue, goodwill or anticipated savings.

11.3 The Company accepts liability for death or personal injury to the extent that it results from the negligence of the Company, its agents or its employees or authorised representatives.

11.4 To the extent that the Company is held legally liable to the Customer for any single Transgression, the Company's liability for the same shall not exceed:

11.4.1 in respect of a Contract for a One-Off Purchase, the value of the Contract; or

11.4.2 in respect of any other Contract, the amount paid by the Customer in the 6 months immediately preceding the date of the applicable Transgression.

11.5 A number of Transgressions whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as a single Transgression for the purposes of clause 11.4.

12. NON-SOLICITATION OF STAFF

12.1 The Customer undertakes that it shall not during the Contract and for a period of one-year following its expiry or termination employ or contract the services of any person who is or was employed or engaged by the Company in connection with the Contract.

13. WAIVER

13.1 Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the Company's rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice the Company's rights to take subsequent action.

14. NOTICES

14.1 Any notice required under the Contract shall be deemed served if sent by registered or recorded delivery post or by facsimile or e-mail addressed to the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been served 48 hours after the date of posting or 12 hours after the time of transmission if by facsimile or e-mail.

14.2 The Company can be contacted by email at info@absoluteemailmarketing.com

15. LEGAL CONSTRUCTION, INTERPRETATION AND LIMITS OF THE CONTRACT

15.1 The Contract shall be governed in all respects by the law of England and Wales and shall be subject to the jurisdiction of the English Courts. The text of this Contract and these terms and conditions written in the English language is the authentic text and any difficulties or uncertainties arising shall be solved solely by reference to that text.

15.2 Save for statement or representations confirmed in writing in this Contract, no oral statements or statements made during any online 'live chat' conversation, of whatsoever nature and by whomsoever made shall form part of the Contract. In contracting with the Company the Customer acknowledges that he has not relied on any oral statements, statements made during an online 'live chat' conversation or representations made to him save those confirmed as aforesaid.

15.3 Clause headings are for convenience only and do not affect the construction of this document.

15.4 The Contract and the documents referred to therein constitute the entire agreement and understanding of the parties in respect of its subject matter and supersedes and extinguishes any previous agreement, understanding, undertaking, representation, warranty and arrangement between them relating to the Service, save that nothing in the Contract shall operate to limit or exclude any liability for fraud.