

Licence Agreement (see also the Order Form)

This Licence Agreement, dated [] 200[], is between:

- (1) **OPENAD UK LIMITED** (“OpenAd”) a company registered in the United Kingdom (company number 5351085) whose registered office is at 8 Hanover Street, London, W1S 1YE, United Kingdom; and
- (2) **LICENSEE** (as identified in the Order Form), (“Licencee”).

THIS LEGAL AGREEMENT, **TOGETHER WITH THE RELEVANT ORDER FORM**, APPLIES TO THE MEMBER’S LICENSING OF THE SPECIFIC CREATIVE MATERIAL SPECIFIED. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. IF YOU AGREE WITH THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1. Words and phrases in this Agreement shall have the following meanings unless the context otherwise requires.

“Author”	the originator of Creative Material displayed on the Site;
“Award”	any discretionary payment made by a Pitch Holder as an award for a Winning Entry, the amount of which shall be deducted from any Licence Fee paid within the 30-day pitch period by that Pitch Holder for the relevant Product;
“Copyright”	copyright and all other similar proprietary rights in the nature of copyright as may exist now or in future anywhere in the world;
“Creative Material”	all materials created by the Author and submitted to OpenAd in connection with an Idea, including (without limitation): concepts, designs, scripts, plans or any other embodiments or expressions of ideas for advertisements in any media, point of purchase material, direct mail, websites, web advertisements, viral emails, events, exhibitions, corporate identities, calendars, catalogues, brochures, packaging, products, giveaways or any other marketing or promotional communications of any nature (and for the avoidance of doubt any third party materials which may be displayed as a suggested use of and in conjunction with the Creative Material, are not included);
“Idea Code”	the serial number designated by OpenAd to identify a specific item of Creative Material that constitutes a Product for the purposes of posting on the Site;
“Intellectual Property Rights”	(i) Copyright and related rights, database rights, moral rights, knowhow and confidential information, whether or not registered or registrable; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights;
“Licence”	a licence granted by OpenAd to a Licensee to use the Product on the terms set out in this Agreement;
“Licence Fee”	the price paid by the Licensee for a Licence calculated in accordance with this Agreement and set out in the Order Form and any Award paid by a Pitch Holder will be subtracted from the Licence Fee;

“Licence Term”	the period set out in the Order Form;
“ORDER FORM”	the order form agreed and completed in relation to this Licence Agreement;
“Product”	the specific item (or items) of Creative Material displayed on the Site and specified by the Licensee as being the subject of this Licence, the relevant Idea Code(s) in the Order Form;
“Site”	the OpenAd website located at www.OpenAd.net or such other site or sites as OpenAd may specify from time to time;
“Territory”	the territory or territories set out in the Order Form, which may be extended by further agreement of the parties at any time during the Licence Term;
“VAT”	value added tax.

2. GRANT OF RIGHTS

- 2.1. The terms and conditions contained in this Agreement set out the terms on which OpenAd may grant to the Licensee a Licence use the Product, for the Term, within the Territory in its own communications (or, where the Licensee is an advertising agency, in the communications of its relevant client).
- 2.2. The technical steps required for making an order are detailed in the relevant section of the Site.
- 2.3. Payment in full of the Licence Fee shall be made by the Licensee before the Product is delivered.
- 2.4. In consideration for payment of the Licence Fee, OpenAd hereby grants to the Licensee an exclusive, non-transferable licence to use, reproduce, distribute, display, publicly perform, exhibit, broadcast, transmit, make available and otherwise use the Product within the Territory for purposes of advertising and communications (or, where the Licensee is an Advertising Agency, for purposes of advertising and communications of its relevant client) for the duration of the Licence Term.
- 2.5. The Licensee agrees to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to perfect the licence of the Copyright and all Intellectual Property Rights in the Product for the purposes of the use of the Product in its or its client’s communications (including, without limitation, all necessary permits, licences, approvals, consents or waivers in relation to film production, artwork, photography, models, performers and sound and visual recordings).
- 2.6. Upon payment of the Licence Fee, OpenAd shall:
 - 2.6.1 supply the Product to the Licensee in such format as OpenAd may in its absolute discretion specify; and
 - 2.6.2 remove the Product from the Site.
- 2.7. The Licensee agrees that:
 - 2.7.1 any Product(s) Licensed to the Licensee, may be used by OpenAd without additional payment for the purposes of promoting OpenAd and its services;
 - 2.7.2 the Licensee shall not receive any refund or compensation for not using the Product during the Licence Term or for not using the same in any part of the Territory; and,
- 2.8. Nothing in this Agreement shall create an agency relationship between the parties.

USE OF PHOTOGRAPHS: Please note that any use in Products of photographs from on-line photo stocks or libraries (e.g. Getty, Zefa, Corbis, etc) is subject to the relevant library or stock terms and conditions.

3. REMUNERATION

- 3.1. The Licence Fee is set out in the Order Form.
- 3.2. Should the Licensee wish to extend the Licence, a further Licence Fee shall be renegotiated with OpenAd and the terms and conditions contained in this Agreement, and any other relevant or amended terms and conditions, shall be accepted anew by the Licensee.

- 3.3. The Licensee shall pay the Licence Fee to OpenAd within 15 days after the acceptance of this Agreement.
- 3.4. Payments shall be made in US dollars and, if and where applicable, converted from or into other currencies at the current exchange rate when received or transferred by OpenAd, net of any bank charges. Payments may be made by bank cheque or electronic transfer.
- 3.5. Any amount paid by a Pitch Holder as an Award shall be subtracted from the Licence Fee paid by that Pitch Holder for the relevant Product.

4. WARRANTIES AND INDEMNITIES

- 4.1. OpenAd warrants that the Product will, at the time of dispatch, correspond to its description on the Site.
- 4.2. The Licensee hereby indemnifies OpenAd (together with its associated, subsidiary and affiliated companies) and holds it harmless from and against any and all liability, loss, damages, costs, legal costs and disbursements, professional and other expenses of any nature whatsoever incurred or suffered by it arising by reason or in consequence of any breach by the Licensee of any of the representations, warranties or obligations of the Licensee set out in this Agreement. The Licensee shall also be liable in contract, tort or otherwise howsoever and whatever the cause thereof for any loss of profit, business, contracts, revenues or anticipated savings and for any special indirect or consequential damage of any nature whatsoever in connection with any such breach.

5. LIMITATION OF LIABILITY

- 5.1. In the event of any breach of the terms and conditions contained in this Agreement by OpenAd, the remedies of the Licensee shall be limited to damages which shall not exceed the Licence Fee and OpenAd shall not, in any circumstances, be liable for any indirect, incidental or consequential loss or damage whatsoever.
- 5.2. Nothing in this Agreement shall exclude or limit the liability of OpenAd for death or personal injury resulting from the negligence of OpenAd or that of its agents or employees.

6. DISCLOSURE OF AUTHOR'S IDENTITY

- 6.1. The identity of the Author may, at OpenAd's discretion, be disclosed to Licensees unless the Author specifically requests in the course of the submission process that his identity be withheld. If withheld at the Author's request, the identity of the Author will not be disclosed to any Licensee except in the event of legal proceedings brought by OpenAd concerning originality of the Creative Material or the entitlement of the Author to Licence or otherwise exploit it.
- 6.2. The Licensee agrees that its identity may be disclosed by OpenAd to the Author upon the Licensee paying the Licence Fee.
- 6.3. The Licensee undertakes and agrees that: (i) if it wishes to extend the Term or rights of any Licence or (ii) if the Licensee intends to purchase, Licence or otherwise obtain any other material whatsoever from OpenAd or an Author, then such extension, sale, licence or other arrangement shall at all times be negotiated, arranged and conducted exclusively by OpenAd.

7. CIRCUMVENTION OF OPENAD'S FEE AND PRICING STRUCTURE

The Licensee agrees not to engage in any action or activities meant to circumvent the Site or OpenAd's stated fees. Prohibited systems or techniques include (but are not limited to) the following:

- 7.1. Any offer to purchase or Licence any Creative Material directly or indirectly from an Author, not using OpenAd or the Site for negotiation;
- 7.2. Any agreement between an Author and a Licensee to mislead or defraud OpenAd by conducting a transaction at a different cost to the price agreed upon through OpenAd;
- 7.3. Any attempt to change (or to conceal) sale or Licence prices or other terms or conditions in any way other than through OpenAd or the Site;
- 7.4. Advertising, spamming or offering to deal with any Author outside of OpenAd or the Site; and/or,

- 7.5. Suggesting that any Author contact a Licensee directly or indirectly to procure services outside of OpenAd or soliciting anyone else to do so.

8. COPYRIGHT INFRINGEMENT

- 8.1. The Licensee acknowledges and agrees that OpenAd shall not be liable for infringements of Copyright or any other Intellectual Property Rights in the Creative Material or any Product.
- 8.2. If, in OpenAd's reasonable opinion, there is a suspected infringement of Copyright or any other Intellectual Property Rights in any Creative Material, OpenAd may disclose to the relevant Author the computer log of Licensees who browsed the relevant Creative Material before the infringement took place.

9. TERMINATION

- 9.1. This Agreement shall continue for the duration of the Licence Term (unless terminated in accordance with clause 9.3 below).
- 9.2. This Agreement may be renewed in accordance with clause 3.
- 9.3. Either party may, without prejudice to any rights or remedies which it might have against the other, terminate this Agreement by notice in writing if:
- 9.3.1 the other party is in material breach of the terms and conditions contained in this Agreement; or
 - 9.3.2 a resolution is passed or a petition is presented for the voluntary winding-up of the other party;
 - 9.3.3 a receiver, manager administrator or like person is appointed over the whole or any part of the business or any of the assets of the other party;
 - 9.3.4 the other party has a petition presented to any court for its winding-up or for an administration order; or
 - 9.3.5 the other party suffers anything analogous to the foregoing in any relevant jurisdiction.

10. THIRD PARTY TRANSFER

- 10.1. Subject to clause 10.2 below, the Licensee shall not without the prior written consent of OpenAd assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it, and/or sub-contract any or all of its obligations under this Agreement.
- 10.2. If the Licensee is an Advertising Agency, then such Licensee may assign its rights under this Agreement to its relevant client on whose behalf the Licensee has purchased a Licence to use the Product.
- 10.3. OpenAd may at any time assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it, and/or sub-contract any or all of its obligations under it.
- 10.4. References in this Agreement to the parties shall include their respective heirs, successors in title, permitted assigns and personal representatives.

11. FORCE MAJEURE

Neither party shall be liable to the other for any default or breach of this Agreement caused directly by circumstances beyond its reasonable control (including, without limitation, any downtime of the Site), provided that:

- 11.1. the defaulting party uses its best endeavours to minimise the adverse effects of the enforced default or breach;
- 11.2. the default or breach is remedied as soon as the force majeure event has ceased to exist.

12. ILLEGALITY

- 12.1. If any part of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction then it will be deemed to be deleted from this Agreement and any affected clauses will be construed accordingly;
- 12.2. if any significant part of this Agreement is adversely affected by the illegality or unenforceability the parties will use their reasonable endeavours in good faith to find a legal and enforceable means of achieving the objective of the adversely affected part; and
- 12.3. if the illegal or unenforceable part of this Agreement represents any essential requirements of this Agreement so that it cannot be proceeded with, then the parties will in good faith use all their reasonable endeavours to agree the terms of a termination which is fair to each of them.

13. RIGHTS OF THIRD PARTIES

This Agreement does not create any right enforceable by any person who is not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. WAIVER

If either party waives any breach of this Agreement committed by the other party that waiver will not be deemed to be a waiver of any subsequent similar breach or of any other breach at any time.

15. NOTICES

- 15.1. Any notice or other communication given under this Agreement shall be in writing and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom) or fax to the address of the relevant party set out above (or as otherwise notified by that party hereunder) or by email to legal@OpenAd.net. Any such notice shall be deemed to have been received:
- 15.1.1 if delivered personally, at the time of delivery;
 - 15.1.2 in the case of pre-paid recorded delivery or registered post, forty-eight (48) hours from the date of posting;
 - 15.1.3 in the case of registered airmail, five (5) days from the date of posting;
 - 15.1.4 in the case of a fax, at the time of transmission; and
 - 15.1.5 in the case of email, at the time the email is received by OpenAd.
- 15.2. In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out above (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party or that the email was received at the email address set out above.

16. ENTIRE AGREEMENT

This Agreement, and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

17. GOVERNING LAW AND JURISDICTION

- 17.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 17.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over

any claim or matter arising under or in connection with this Agreement (or the legal relationships established by this Agreement). Notwithstanding this clause, actions initiated or maintained by OpenAd for injunctive, or other mandatory, prohibitory or similar relief, whether with respect to the infringement of proprietary rights or otherwise, may be brought by OpenAd in any court of competent jurisdiction.

- 17.3. OpenAd appoints Clintons Solicitors, 55 Drury Lane, London, UK WC2B 5RZ as its agent to receive on its behalf in England and Wales service of any proceedings arising out of or in connection with this Agreement. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by OpenAd). If for any reason such agent ceases to act as agent, OpenAd shall forthwith appoint a substitute and shall notify Licensees of such change via the Site.