

# Membership Agreement

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**This Membership Agreement, dated [                      ] 2008, is between:**

(1) **OPENAD UK LIMITED** a company registered in the United Kingdom (company number 5351085) whose registered office is at 8 Hanover Street, London, W1S 1YE, United Kingdom ("**OpenAd**"); and

(2) **MEMBER, ("Member")**.

Full Name \_\_\_\_\_

Company Name \_\_\_\_\_

Street Address \_\_\_\_\_

City & Postcode \_\_\_\_\_

Country \_\_\_\_\_

Company Registration Number \_\_\_\_\_

OpenAd Account number \_\_\_\_\_

THIS LEGAL AGREEMENT STATES THE TERMS AND CONDITIONS APPLICABLE TO THE BROWSING AND LICENCING OF CREATIVE MATERIAL AND THE HOLDING OF PITCHES BY YOU ON THE SITE AT WWW.OPENAD.NET. IF YOU DO NOT AGREE TO BE BOUND BY THIS MEMBERSHIP AGREEMENT, YOU MAY NOT BROWSE OR OTHERWISE ACCESS THE MATERIAL, OR HOLD PITCHES, ON OR VIA THE SITE.

If you have any questions about this Membership Agreement, please email us at [legal@openad.net](mailto:legal@openad.net). We may amend this Membership Agreement at any time by giving you notice either by email in accordance with this Agreement or by posting within this website the amended Membership Agreement. Any amended Membership Agreement will govern your access to the Creative Material from the date of the notice.

## **IT IS HEREBY AGREED as follows:**

### **1. INTERPRETATION**

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

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| <b>"Author"</b>            | the originator of Creative Material displayed on the Site (and for the avoidance of doubt, any third party materials are not included in Creative Material);   |
| <b>"Award"</b>             | 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;  |
| <b>"Brief"</b>             | the definition of the Pitch Holder's objectives and target market(s) including, but not limited to, details of the parameters and potential obstacles the Author must consider, such information being set out in a Briefing Form;   |
| <b>"Briefing Form"</b>     | the form that a Member must complete in order to become a Pitch Holder, such a form communicating the Brief;   |
| <b>"Copyright"</b>         | copyright and all other similar proprietary rights in the nature of copyright as may exist now or in future anywhere in the world;   |
| <b>"Creative Material"</b> | all materials created by an Author 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, web sites, web advertisements, viral emails, events, exhibitions, corporate identities, calendars, catalogues, brochures, packaging, products, giveaways or any other marketing or promotional |

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	communications of any nature (and, for the avoidance of doubt, any third party materials are not included);
<b>“Deadline”</b>	the date as set by the Pitch Holder by which all Creative Material must be uploaded to the Site by Authors for it to be considered as a potential Entry;
<b>“Entry”</b>	a Pitch Reply that observes the Deadline and successfully passes through the Pre-Selection Control procedure, and which on the expiry of the Deadline will become accessible to the Pitch Holder;
<b>“Intellectual Property Rights”</b>	(i) Copyright and related rights, database rights, moral rights, know-how and confidential information, whether or not registered or registerable; (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;
<b>“Licence”</b>	the basis on which OpenAd sells or makes available Creative Material to a Member for a limited or unlimited period, subject to payment of the Licence Fee to the Author in accordance with Clause 4;
<b>“Licence Fee”</b>	the payment received by OpenAd from the Member for the Licence of the selected Creative Material from OpenAd to the Member, calculated in accordance with Clause 4;
<b>“Limited Licence Term”</b>	the period of twelve (12) months from the date of payment of the Licence Fee to OpenAd (or as otherwise agreed), which can be later extended as agreed by the Member and OpenAd;
<b>“Member Account”</b>	the privately-accessed sub-page within the Site set up for the Member as part of the registration process, where Entries shall be posted by OpenAd following expiry of the Deadline and where Products licensed by the Member shall be delivered and stored;
<b>“Membership Fee”</b>	the subscription fee payable by the Member in accordance with Clause 2;
<b>“Membership Fee Schedule”</b>	the prices for various products and services available to Members;
<b>“Perpetual Licence Term”</b>	the perpetual and unlimited term starting from the date of payment of the Licence Fee to OpenAd;
<b>“Pitch”</b>	the process by which Authors are invited to submit and display Creative Material on the Site for the Pitch Holder’s brand (if identified), product or service or for OpenAd’s own generic products or services, in conformity with a Brief and pursuant to Clause 3;
<b>“Pitch Holder”</b>	a Member who completes a Briefing Form which is then approved by OpenAd;
<b>“Pitch List”</b>	the list of active and non-active pitches running on the Site;
<b>“Pitch Reply”</b>	Creative Material uploaded to the Site by the Author before the Deadline for consideration as an Entry for the relevant Pitch subject to Pre-selection Control;
<b>“Pitch Service”</b>	the service provided by OpenAd on its Site whereby Members (as Pitch Holders) can hold a Pitch;
<b>“Price List”</b>	a list of prices on the Site referring to the costs for a particular product or service to be charged to the purchaser of that particular product or service (exclusive of VAT and, if applicable in the case of Licensing Products, commission as set out from time to time in the Price List within the Site);
<b>“Product”</b>	the item of Creative Material displayed on the Site and offered for licensing to Members;
<b>“Selection”</b>	a procedure undertaken by OpenAd’s agents or representatives in order to screen Creative Material submitted by Authors, which includes, without limitation, assessment to ensure adherence to relevant professional and industry standards;
<b>“Site”</b>	the OpenAd website located at <a href="http://www.OpenAd.net">www.OpenAd.net</a> or such other site or sites as OpenAd may specify from time to time;
<b>“Technical Evaluation”</b>	a procedure undertaken by OpenAd in order to screen Creative Material submitted

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	by Authors, which includes, without limitation, technical evaluation of grammar and clarity;
<b>“Term”</b>	the duration of this Agreement, being a period of twelve (12) months commencing on the date written above, which may be extended by agreement of the parties prior to the expiry of such period (please note that Member’s access to the Site may be delayed until payment is received);
<b>“Territory”</b>	the territory or territories specified by the Member upon licence of the Product which may be extended by the agreement of the parties during the Term;
<b>“VAT”</b>	value added tax, or other similar taxes on goods and/or services;
<b>“Winning Entry”</b>	an Entry selected as the winner of a Pitch.

## **2. MEMBERSHIP**

- 2.1 In consideration of the payment of the Membership Fee, the Member shall be granted the right for the Term to:
- 2.1.1 allow such number of users to browse such category or categories of Creative Material on the Site as the Member has selected for the basis of its membership from time to time;
  - 2.1.2 hold the designated number of Pitches as the Member has selected for the basis of such membership from time to time, in accordance with Clause 3 below; and,
  - 2.1.3 offer to license Products from OpenAd, in accordance with Clause 4 below for use in its advertising or communications (or those of its existing client, where the Member is an advertising agency, PR, publicity, media agency or other consultancy and such client use is fully disclosed to OpenAd both when registering and when licensing).

Existing Members may upgrade their Membership at any time to include further users, categories and/or Pitches.

- 2.2 The Membership Fee shall be calculated in accordance with the Membership Fee Schedule (exclusive of VAT). All payments are subject to validation checks and/or confirmation. If the Member’s bank refuses to authorise any payment, OpenAd shall not be liable for any resulting delay in services, and OpenAd shall not be obliged to inform the Member of any such refusal. The Member also acknowledges that OpenAd shall not be responsible for any related bank charges.
- 2.3 Other than in accordance with Clause 4 below, the Member will not use, reproduce, distribute, display, publicly perform, exhibit, broadcast, transmit or make available the Creative Material featured on the Site or create or design any material which is in any way similar to any of the Creative Material so featured.
- 2.4 On registration and payment of the Membership Fee, each Member will be allocated a Member Account, for purposes related to holding Pitches and licensing Products.

## **3. HOLDING A PITCH**

### *3.1 Briefing*

- 3.1.1 The Member must complete a Briefing Form in order to become a Pitch Holder and hold a Pitch.
- 3.1.2 The quality, accuracy and clarity of all information contained in the Brief shall be the sole responsibility of the Pitch Holder.
- 3.1.3 The Pitch Holder shall be responsible for including all relevant legal or practical restrictions and considerations that may apply to Creative Material in relation to the Pitch in a defined market or territory in the Brief.
- 3.1.4 The Pitch Holder acknowledges that OpenAd gives no guarantee or warranty in respect of Pitch Replies or Entries for any Pitch.

### *3.2 Member’s Account*

- 3.2.1 The Member may hold as many Pitches as designated at the time of registration as a Member, though this number may be upgraded at any time.
- 3.2.2 When posting a Brief, the Pitch Holder may choose whether or not to offer an Award (such amount to be

deducted from any later Licence Fee for that Award-winning Entry) and whether or not to set a fixed Licence Fee for any or all Pitch Replies;

- 3.2.3 The Pitch Holder is solely responsible for setting the start date of the Pitch (which must be at least one day after submitting the Pitch) and setting the Deadline.
  - 3.2.4 Once the Pitch has been published, the Deadline may be extended by the Pitch Holder at any time.
  - 3.2.5 The Pitch Holder may suggest prices, territories or other terms and conditions for potential licensing but the Pitch Holder acknowledges that OpenAd retains absolute discretion in setting all terms and conditions and/or placing references to the Member's Account on or within the Pitch List. Any conditions set by Authors or by OpenAd for specific Entries cannot be changed after the Deadline, though the Pitch Holder may offer to extend the term or the territory for a proportionately-increased Licence Fee.
  - 3.2.6 OpenAd reserves the right to make additions to, delete or change any prices and/or categories mentioned in the Price List without notice and such changes will take effect from the date of posting on the Site.
- 3.3 *Assessment and Pre-Selection of Pitch Replies*
- 3.3.1 OpenAd shall subject all Pitch Replies to Technical Evaluation and Selection and, following expiry of the Deadline, all accepted Pitch Replies shall be published on the Member's Account as Entries.
- 3.4 *Awards*
- 3.4.1 The Pitch Holder acknowledges that OpenAd gives no guarantee or warranty that any Pitch Reply, Entry or Winning Entry complies with any Brief.
  - 3.4.2 The Pitch Holder may select the Winning Entry from all Entries posted in the Member's Account. Alternatively if the Pitch Holder requests, OpenAd may appoint independent third parties to make a selection on the Pitch Holder's behalf.
  - 3.4.3 The Pitch Holder may choose to offer to award a cash prize as an Award to the Winning Entry. Any such offer of an Award shall be legally binding and the Pitch Holder must honour all such offers to pay an Award. The cash amount of any Award is at the sole discretion of the Pitch Holder.
  - 3.4.4 The Pitch Holder may also give Awards to any other Entries (in addition to the Winning Entry). The cash prize amount of any Award is at the sole discretion of the Pitch Holder and such sum will be subtracted from any Licence Fee paid by that Pitch Holder for the relevant Product within the 30-day Pitch period.
  - 3.4.5 Entries that are not the Winning Entry shall remain in the Member's Account for thirty (30) days from the announcement of the Winning Entry. Entries that remain un-licensed following such 30-day period shall be returned to the Author and may be de-branded (by the Author or by OpenAd) for subsequent posting to the OpenAd gallery where any Subscriber shall be able to browse and License the Products. Where Products are placed into the Gallery in this way, Members shall be bound by their obligations under the Membership Agreement.
  - 3.4.6 The Pitch Holder is under no obligation to license, purchase or in any other way use the Winning Entry or any other Entry published on the Member's Account.

#### 4. LICENSING OF CREATIVE MATERIAL

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

**USE OF GRAPHICS, AUDIO OR OTHER THIRD PARTY MATERIAL:** *Please note that any use within Products of graphic, audio or other third party material created, licensed or otherwise owned or controlled by any third party, is subject to the licence terms of the relevant third party.*

##### *Limited Licence of a Product*

- 4.1 If the Member wishes to license any Product from the Site, then in consideration for the payment of the Licence Fee and subject to the Licence Agreement, OpenAd shall grant to the Member a non-transferable exclusive right to use the selected Product in the selected Territory for a period of 12 months in its advertising or communications (or that of the Member's existing client, where the Member is an advertising agency, PR, publicity, media agency or other consultancy and such client use is fully disclosed to OpenAd both when registering and when licensing).

*Perpetual Licence of a Product*

- 4.2 If the Member wishes to license indefinitely any Product from the Site, then in consideration for the payment of the Licence Fee and subject to the Licence Agreement, OpenAd shall license to the Member the Intellectual Property Rights in the Territory to use the selected Product in its advertising or communications (or that of the Member's existing client, where the Member is an advertising agency, PR, publicity, media agency or other consultancy and such client use is fully disclosed to OpenAd both when registering and when licensing).

*Exclusivity*

- 4.3 When any Product is licensed in accordance with Clause 4.1 or 4.2 above, such Product shall not be sold or licensed again for any other purposes during the License Term or thereafter.

*Delivery*

- 4.4 Upon Licensing of a Product to the Member, OpenAd shall:
- 4.4.1 supply the Product to the Member in such format as OpenAd may in its absolute discretion reasonably specify; and
  - 4.4.2 promptly remove the Product from the Gallery.

*Extension of Licence*

- 4.5 The Member may extend the Term or Territory of a Licence at any time upon acceptance of a further (or varied) Licence Agreement and payment of a further Licence Fee, such amount to be set by OpenAd in accordance with the Price List.

*Promotional Use and Non-exploitation*

- 4.6 The Member acknowledges and agrees that:
- 4.6.1 OpenAd may use any Product(s) licensed to the Member during the Term and thereafter for the purposes of its own promotion and marketing; and
  - 4.6.2 the Member shall not receive any refund or compensation for not using the Product during the Term or for not using the same in any part of the Territory.

*Licence Fee*

- 4.7 The Licence Fee payable by the Member and, exclusive of VAT or other taxes, shall be calculated by reference to:
- 4.7.1 the size of the Member's business (or the Member's client's business, where the Member is an advertising or other agency);
  - 4.7.2 the size of the market and/or Territory;
  - 4.7.3 the number and type of elements in the Product;
  - 4.7.4 the duration of the licence;
  - 4.7.5 any other reasonable factor that may be taken into account by OpenAd; and/or
  - 4.7.6 an amount set by the Author.
- 4.8 OpenAd retains absolute discretion in setting any and all fees payable by the Member and may change them at any time on reasonable notice.
- 4.9 The Licence Fee shall be payable by the Member prior to the delivery of the Product.

**5. PRE-SELECTION CONTROL**

OpenAd shall be entitled in its absolute discretion to assess the technical, aesthetic and commercial quality of all Creative Material submitted and to accept or reject any Creative Material submitted to OpenAd and Members (including, without limitation, Pitch Holders) shall have no right to contest such findings.

**6. DISCLOSURE OF IDENTITY**

6.1 The identity of the Author(s) of Creative Material will not be disclosed on the Site. The identity of the Author and/or other originators of Creative Material may be disclosed to the Member if the work is licensed, unless the Author has specifically requested in the course of the submission process that it be withheld. If withheld at the Author's request, the identity of the Author and/or other originators of Creative Material will not be disclosed to the Member except in the event of a claim or complaint concerning the Creative Material.

6.2 The Member agrees that the Member's identity may be disclosed by OpenAd to a relevant Author.

6.3 The Member undertakes and agrees that if the Member:

6.3.1 wishes to extend the Term of any licence of Creative Material; or

6.3.2 licenses any other material whatsoever from any Author,

then such licence or other arrangement shall at all times be negotiated, arranged, conducted and concluded exclusively by OpenAd.

**7. COPYRIGHT INFRINGEMENT**

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 records of Members who browsed the relevant Creative Material before such suspected infringement apparently took place.

**8. TERMINATION**

8.1 This Agreement shall commence on the date written above and continue for an initial period of 12 months from that date (unless terminated in accordance with Clause 8.2 or 8.3 below). This Agreement may be renewed for further periods of twelve (12) months by the Member paying the Membership Fee upon receipt of a renewal invoice.

8.2 OpenAd may terminate this Agreement at any time by giving ninety (90) days' notice to the Member.

8.3 Either party may, without prejudice to any rights or remedies which it might have against the other, terminate this Agreement immediately by notice in writing if:

8.3.1 the other party is in material breach of this Agreement;

8.3.2 a resolution is passed or a petition is presented for the voluntary winding-up of the other party;

8.3.3 a receiver, manager administrator or like person is appointed over the whole or any part of the business or of any of the assets of the other party;

8.3.4 the other party has a petition presented to any court for its winding-up or for an administration order; or

8.3.5 the other party suffers anything similar to the foregoing in any relevant jurisdiction.

8.4 Termination of this Agreement will have no effect on any Licence of a Product pursuant to a completed Licence Agreement nor release either party from any of its obligations hereunder which are intended to have a continuing effect.

**9. CIRCUMVENTION OF OPENAD'S FEE AND PRICING STRUCTURE**

The Member agrees not, during the Term and for a period of twelve (12) months after expiry or termination of the Term, 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:

9.1 any offer to purchase or license any Creative Material directly from an Author and/or not using OpenAd or the Site for such negotiation;

9.2 any agreement between Author and Member to mislead or defraud OpenAd by conducting a transaction at a different cost to the price agreed upon through OpenAd;

9.3 any attempt to change, sale or licence prices or other terms or conditions in any way other than through OpenAd or the Site;

- 9.4 advertising, spamming or offering to procure any services from an Author outside of OpenAd or the Site;
- 9.5 suggesting or attempting to procure that any Author contact the Member directly to provide or procure services outside of OpenAd, or soliciting anyone else to do so.

## **10. REMEDIES**

- 10.1 Without limiting OpenAd's other remedies, OpenAd may issue a warning, temporarily suspend, indefinitely suspend or terminate the Member's registration and/or subscription and refuse to provide any services to the Member:
  - 10.1.1 if the Member breaches any term of this Membership Agreement or the agreements incorporated herein by reference, including the written policies and procedures posted on the Site;
  - 10.1.2 if OpenAd is unable to verify or authenticate any information the Member provides to OpenAd; or
  - 10.1.3 if OpenAd believes that the Member's actions may result in the incurring of liability to the Member, any users of the Site or OpenAd.
- 10.2 Once temporarily suspended, indefinitely suspended or terminated, the Member may not continue to use the Site or services under the same account, a different account or re-register under a new account without OpenAd's prior written consent. Violations of this Membership Agreement will be prosecuted to the fullest extent of the law and may result in additional penalties and sanctions, as defined below.
- 10.3 To the extent any Member engages in actions or activities which circumvent the Site or otherwise reduce transaction fees owed to OpenAd under this Membership Agreement, that Member shall be liable to OpenAd for its full fees due for the Product and any follow-up or additional work, and may be subject to additional sanctions, including immediate suspension or termination of subscription or registration, and penalties or compensation of up to one-hundred and fifty percent (150%) of the total value of all relevant Products or Licence Fees circumvented, at OpenAd's sole discretion. OpenAd expressly reserves the right to institute additional penalties, compensation and fees for repeated violations of the Membership Agreement and/or any written policies and procedures posted on the Site.

## **11. LIABILITY AND INDEMNITY**

- 11.1 The Member hereby indemnifies OpenAd (together with its respective 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 Member of any of the representations, warranties or obligations of the Member set out in this Agreement.
- 11.2 The Member 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.

## **12. CONFIDENTIALITY AND DATA PROTECTION**

- 12.1 Any and all text, graphics, outlines, designs, plans, content, information, ideas or other matters whatsoever relating to either party's business and/or clients, which are disclosed or made available to the other party hereunder and which are designated by the disclosing party as 'confidential', are confidential and are supplied as secret and confidential material except insofar as the same has already been published to the general public. Each party undertakes not, without prior written consent from the other party, to disclose or permit the disclosure of any such confidential information to any third party, or use or copy such confidential information in any way other than for purposes specifically authorised hereunder, and shall use best endeavours to ensure that no third party receives such confidential information unless authorised.
- 12.2 Save as provided for elsewhere in this Agreement and in the Privacy Policy on the Site, or as may be required by law, OpenAd shall not disclose to users or other third parties any Confidential Information or personal data registered on the Site by the Member. Such data will only be used by OpenAd in relation to matters concerning the Site and OpenAd's business.
- 12.3 OpenAd shall (save as may be required by law) keep confidential any bank or credit information of the Member which comes to its knowledge as a result of entering into this Agreement.

**13. TRADE MARKS**

The Member acknowledges and accepts that any and all OpenAd trade marks are the exclusive property of OpenAd, that nothing in this Agreement shall be deemed to grant to the Member any proprietary right to or interest in any such trade marks, and that all goodwill generated by the use or reproduction of such trade marks shall benefit OpenAd exclusively.

**14. THIRD PARTY TRANSFER**

14.1 Subject to Clause 14.2 below, the Member 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.

14.2 If the Member is an advertising agency and has licensed any Product on behalf of a client and notified OpenAd of its 're-seller' status, then such Member may assign its rights under this Agreement to such client.

14.3 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.

14.4 References in this Agreement to the parties shall include their respective heirs, successors in title, permitted assigns and personal representatives.

**15. FORCE MAJEURE**

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

15.1.1 the defaulting party uses its best endeavours to minimise the adverse effects of the enforced default or breach;

15.1.2 the default or breach is remedied as soon as the Force Majeure event has ceased to exist.

**16. ILLEGALITY**

If any part of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction then:

16.1 it will be deemed to be deleted from this Agreement and any affected clauses will be construed accordingly;

16.2 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

16.3 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.

**17. 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.

**18. 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.

**19. NOTICES**

19.1 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:

- 19.1.1 if delivered personally, at the time of delivery;
  - 19.1.2 in the case of pre-paid recorded delivery or registered post, forty-eight (48) hours from the date of posting;
  - 19.1.3 in the case of registered airmail, five (5) days from the date of posting;
  - 19.1.4 in the case of a fax, at the time of transmission; or
  - 19.1.5 in the case of email, at the time the email is received by OpenAd.
- 19.2 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 relevant email address.

**20. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement, and no variation of any of the terms or conditions of this Agreement may be made unless such variation is agreed in writing by both parties to this Agreement.

**21. GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 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.
- 21.3 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 Members of such change via the Site.

Signed by, for and on behalf of OpenAd UK Ltd  
Katarina Skoberne  
Managing director



Signed for and on behalf of:

\_\_\_\_\_  
(Member)