

## **AD.FAST PUBLISHER LICENCE**

BEFORE USING THE AD.FAST SYSTEM, INCLUDING ANY OR ALL OF THE AVAILABLE PROGRAMS, YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. USING THE ADFAST SYSTEM INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

### **DEFINITIONS**

**Ad.fast Invoice Account** means a credit account maintained in accordance with an ad.fast Invoice Account Agreement by, or in respect of, one or more Publishers, to which the charges due as a result of downloading Files by the said Publisher or Publishers are debited;

**Ad.fast Sending Credit** means the basic unit of exchange available to Users without an ad.fast Credit Account for discharging liabilities incurred in respect of uploading Files;

**Ad.fast System** means the system, including the use of the Programs, owned by or licensed to Qmulu, for the electronic delivery of Files to Publishers;

**Artwork** means a single piece of advertisement or other artwork that is identifiable by a single production reference. Said reference is an alphanumeric string allocated by a Publisher for the purpose of uniquely identifying an individual piece of artwork within the Publisher's production environment. Such references are commonly referred to within the

publishing industry as URNs or Unique Reference Numbers;

**Download Confirmation** means the provision of a date and time record of the event of the download from the ad.fast System by a Publisher of an individual File. This information is provided both to the User and the Publisher either in an e-mail or via the ad.fast System tracking pages;

**File** means a computer document, supplied by a User, in the format (or if more than one, any one of the formats) detailed in Schedule C containing a single Artwork and identified on the AdFast System by a Tracking Number;

**File Download Sections** means those areas of the Site that allow (utilising the Publisher Programs): a) Incoming Files to be tracked and downloaded; b) reports of File transfers to be generated; c) access to the Publication maintenance area for the purpose of creating and maintaining technical, contact and other information pertaining to Publications that is accessible through the ad.fast System;

**In Writing** means by letter or other written communication posted to its address as currently held in a User's User Data, or by email sent to a User at its email address currently held therein.

**Payment Section** means the section of this Licence, headed 'Payment', that details the method of payment available to Publishers to discharge their liabilities in relation to downloading Files;

**Programs** means, together (and separately if the context so requires) the Publisher Programs, User Programs and the Uploading

Programs, and both the original and all whole or partial copies of them including modified copies or portions merged into other programs;

**Publication** means any publication produced by a Publisher for distribution either in print or in electronic format;

**Publisher** means you, a newspaper, magazine or internet site publisher and your registered subsidiaries and/or your or their agents who subscribes to and accepts delivery of Files via the AdFast System;

**Publisher Programs** means the software held on the AdFast System servers that generates the Internet pages within the Site that are viewable with Internet Browser applications and FTP client applications, and other programs including modified copies or portions merged into other programs;

**Qmuli** means QMULI LIMITED, Company Number 06029892 whose registered office is at 145-147 St John Street, London EC1V 4PY;

**Site** means the ad.fast public internet site located at [www.adfast.co.uk](http://www.adfast.co.uk) or [www.adfast2.qmuli.com](http://www.adfast2.qmuli.com);

**Territory** means the British Isles including for the sake of clarity England, Wales, Northern Ireland, Eire, the Channel Islands, the Isle of Man and all other offshore islands included within the geographic description "The British Isles";

**Time of Upload** means the date and time that the ad.fast System records the arrival of a File and issues the Publisher and the User with a Tracking Number;

**Tracking Number** means a unique number issued by the ad.fast System as a receipt in respect of a particular File when the process of uploading that File to the system is complete;

**Uploading Programs** means software (owned by Qmuli, or licensed to Qmuli) residing on the ad.fast servers that generates the pages within the Site that are purposed to facilitate the uploading of Files and are accessible by licensed Users with internet browser applications and FTP client applications;

**User** means, normally, an advertiser or advertiser's agent who utilises the ad.fast System for the transmission of Files to Publishers;

**User Programs** means any programs in respect of which Qmuli has obtained a licence for distribution to, and use by, Users.

## **USE OF THE AD.FAST SYSTEM BY PUBLISHERS WHO RECEIVE FILES**

Access to the ad.fast System is licensed not sold. Publishers who download Files from the ad.fast System are hereby subject to and undertake to pay a charge per File uploaded to the AdFast System and destined for any of your Publications. Qmuli grants you a licence both to access and use the File Download Sections of the Site only in the Territory and the Downloading Programs as a Publisher, for each instance of permitted access, strictly and only in accordance with this Licence. You obtain no rights other than those granted you under this Licence.

Qmuli reserves the right to modify the ad.fast System and the Programs as they see fit from time to time without prior notice, but you will be notified In Writing if appropriate. The Programs contain confidential information belonging to Qmuli and all copyright, trademarks and other intellectual property rights in the Programs are the exclusive property of Qmuli as to their respective rights and ownership therein, or are licensed by Qmuli for distribution to, or use by, Users.

You are responsible for the selection, installation and use of the Programs and for the results obtained from the same. No responsibility will be accepted by Qmuli for your use of any of the Programs on inappropriate or incompatible equipment.

Qmuli cannot and will not be held responsible for ensuring the safe delivery of Files via the ad.fast System. This Licence does not in any way affect the normal contractual and commercial relationship between the Publisher and the User. The User remains responsible for the File transmitted until a Download Confirmation is received. Thereafter that Publisher is responsible for the File.

## **LICENCE PROVISIONS**

Under this Licence, you, a Publisher, may use the ad.fast System to receive Files without restriction on either the quantity sent or the number of machines used to access the Site, provided that:-

- such Files exclusively contain material for use by you, the intended Publisher;
- a File has been submitted to the ad.fast System by a bona fide User; and
- all charges due in relation to incoming Files (supplied in an acceptable File Format) are discharged in accordance with the Payment Section of this Licence.

However, ad.fast reserves the right to impose a maximum size for incoming Files to be accepted, and to alter this maximum as it shall see fit. Any change will be posted on the Site, and take effect forthwith thereafter.

### **YOU SHALL NOT:**

- (1) Use the ad.fast System except as provided in this Licence;
- (2) Modify the Programs and/or merge them into other programs;
- (3) Transfer the possession of the Programs to another party;
- (4) Reverse-assemble or reverse compile the Programs from object code into source code;
- (5) Sub-licence, rent, lease, or assign the Programs;
- (6) Use any component of the ad.fast System without registration with, and acceptance by, Qmuli; or
- (7) Facilitate or permit usage of the ad.fast System by unregistered publishers or their agents or by other parties (other than prospective or existing Users).

**YOU SHALL:**

- (1) Without prejudice to the foregoing, take all such other steps as shall from time to time (both during the currency of this Licence and thereafter) be deemed necessary by Qmuli (at its absolute discretion) in order to protect the confidential information and intellectual property rights of Qmuli;
- (2) Inform all your relevant employees, agents and sub-contractors that the Programs constitute confidential information belonging to Qmuli and that all intellectual property rights therein are the property of Qmuli (as to their respective interests), or are licensed for use by Qmuli. You shall take all such steps as shall be reasonably necessary to ensure full compliance by your employees, agents and sub-contractors with the relevant provisions of this Licence;
- (3) Adhere to the conditions of the Payment Section and (without prejudice to the generality of the foregoing) discharge your liability to pay the appropriate fee for each File;
- (4) Maintain a database entry on the Site for each publication title you wish included within the ad.fast system, and take all such steps as shall be reasonably necessary to ensure that this data is maintained both in a current and accurate state at all times, and in accordance with the Qmuli Acceptable Use Policy (annexed hereto as Schedule A);
- (5) Allow the information provided under paragraph (4) above to be made publicly available, in whole or part, by Qmuli via the Site, unless specific instructions to the contrary are provided to Qmuli in writing;

- (6) Promptly alert the ad.fast Technical Support team if any Publication ceases and requires removal from the ad.fast database, or if the name of any Publication changes at any time;
- (7) Take all such steps as shall be reasonably necessary to ensure that the usernames and passwords used by your employees and agents to access the ad.fast System remain confidential to the relevant personnel;
- (8) Inform the ad.fast System support services immediately, by both telephone to 08702 402717 (or such other number as may from time to time be provided and published on the Site) and email to support@qmuli.com, in the event that you become aware that the confidentiality of your username and password has become compromised;
- (9) Accept responsibility for any charges relating to Files downloaded to the ad.fast System by persons using your username and password until such time as you have informed the ad.fast System support services that your Publication's confidential information has become compromised.
- (10) For the duration of the Licence enjoy the use of the Publisher Programs by your employees or agents for the purposes for which they are intended, subject to the licence agreement provided with each such Program;
- (11) Upon termination of this licence howsoever and whatsoever occasioned forthwith remove the Programs from any software in which they have been merged but all Programs as modified or merged as aforesaid shall remain subject to the terms and conditions of this licence.



## **PAYMENT SECTION**

This Section details the method available to Publishers for making payments to Qmuli to discharge their liabilities resulting from Files being uploaded to their Publications.

Qmuli reserves the right to suspend or terminate use of the ad.fast System by any Publishers who fail to discharge their liabilities in accordance with the provisions of this Section and the Scale of Charges: -

- (1) Uploading Files incurs a charge to the Publisher at the Time of Upload for each File uploaded to any of the Publisher's Publications.
- (2) The Scale of Charges for Publishers in respect of Files uploaded to any of their Publications is annexed hereto as Schedule B to this Licence.
- (3) Qmuli reserves the right to amend this Scale of Charges at any time, on giving no less than 90 (ninety) days notice posted on the Site. At the time of maturity of such a notice and thereafter, amended copies of Schedule B will be made available on the Site for download and attachment to this Licence.
- (4) Where Qmuli decides that a Time of Upload has occurred in respect of a File it shall be entitled to charge for such File and no refund shall be made to the Publisher thereafter notwithstanding that the File is never recorded as downloaded, or is uploaded in a corrupted form, or is uploaded a second or subsequent time by a User.
- (5) Publishers can discharge their liabilities in respect of Files uploaded to their Publications by applying the charges to an ad.fast Invoice Account.
- (6) Publishers must deliver to Qmuli a completed ad.fast Invoice Account Agreement, which is available, for completion, from the Site.

- (7) Once an ad.fast Invoice Account has been opened in respect of a particular Publisher, charges for all Files uploaded to any of the Publisher's Publications will be debited to that account. Thereafter, the ad.fast System will raise a monthly or quarterly invoice in respect of Files uploaded to said Publications and shall charge Value Added Tax thereon at the rate prevailing at the Time of Upload. Such invoices will be supplied to the ad.fast Invoice Account holder by email using the address recorded in the ad.fast Invoice Account Agreement (or as notified In Writing thereafter by the account holder).
- (8) Any Publisher who requires a paper invoice sent by First Class Post may so indicate on the ad.fast Invoice Account Agreement. There is an additional charge for this service, as detailed in Schedule B to this Licence.
- (9) Invoices raised in respect of ad.fast Invoice Accounts must be settled within 30 (thirty) days of the date of their issue.

## **NO WARRANTY**

The Programs are provided by Qmuli "as is". No warranty is given by Qmuli to any Publisher in respect of their functionality or compatibility with any machine, equipment or other software.

THIS CLAUSE AND THE FOLLOWING CLAUSE ARE IN LIEU OF ALL WARRANTIES (OR CONDITIONS), EXPRESS OR IMPLIED, AND SPECIFICALLY EXCLUDE (SUCH EXCLUSIONS NOT BEING LIMITED TO), THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **LIMITATION OF REMEDIES**

Qmuli's entire liability under this Licence is as follows:

- (1) For any claim (including fundamental breach), in any form, related in any way to this Licence, Qmuli's liability will be for actual damages only and will be limited to £10.
- (2) No Publisher may bring an action, regardless of form, more than one year after the cause of the action arose.

These limitations will not apply to claims for personal injury (including death) caused by the negligence of Qmuli or its agents for which Qmuli is legally liable.

**ALL PUBLISHERS MUST KEEP BACK UP COPIES OF FILES WHICH THEY DOWNLOAD AND NEITHER QMULI NOR THE OWNERS WILL BE LIABLE FOR:-**

- (1) The loss of a File from the ad.fast System; or
- (2) Any lost profits, lost savings, or for any incidental, or economic or indirect, or consequential loss or damage, even if Qmuli has been advised of the possibility of such loss or damage; or
- (3) Any damages claimed by any Publisher based on any third party claim; or
- (4) Ensuring the safe or timely delivery of Files via the ad.fast System; or
- (5) Any loss or corruption of data during transmission or for the speed or success of transmission thereof; or
- (5) Any loss or damage to software or computer equipment at any time utilised by a Publisher to access the ad.fast System; or

- (6) Any downtime where the ad.fast System is unavailable to Publishers due to the carrying out of essential maintenance or for any other reason outside Qmuli's control.

## **GENERAL**

- (1) Any additional software that is required by you to operate the Programs should be separately licensed between you and any third party software provider. Qmuli accepts no responsibility for any third party software licence, and you will indemnify Qmuli to the extent of any cost, loss, damage or liability the use of, or breach of any licence of that software causes Qmuli.

- (2) You, the Publisher, are responsible for payment of any taxes, including but not limited to Value Added Tax and personal property taxes, resulting from this Licence.

## **ACCEPTABLE USE POLICY**

Qmuli reserves the right to terminate this Licence at any time if it becomes aware of, or is notified by a Publisher or any other person of, the misuse, abuse or illegal use of the ad.fast System contrary to either Qmuli's Acceptable Use Policy (annexed hereto as Schedule A), or any statutory regulation or law governing the relationship between Qmuli and Publishers or the relationships between Users, Qmuli and Publishers.

## **CONTENT OF YOUR DATA**

You undertake that your Files will not contain anything obscene, offensive or defamatory and will conform at all times with Qmuli's Acceptable Use Policy (annexed hereto as Schedule A). You will indemnify Qmuli and keep it fully and effectively indemnified against all actions, proceedings, claims, demands, damages and costs (including all legal costs on a full indemnity basis) occasioned to Qmuli as a result of any breach of this undertaking.

## **LIFE OF YOUR DATA**

Files will generally be stored on the ad.fast System for six months from the Time of Upload (or such other period as Qmuli, acting reasonably, shall determine and advise to Publishers by giving not less than 6 months' notice posted on the Site) ("the Period"). However, Qmuli reserves the right to:-

- (1) limit the amount of computer storage available to any single Publisher on the ad.fast System; and
- (2) delete identical multiple copies of a File already held on the ad.fast System.

During the Period, Files will be available to download by both the User and the Publisher to whom they were consigned. In the event of the proven deletion by ad.fast of a File from the ad.fast System within the relevant Period (whether by accident or fault or intentional act of Qmuli) the liability of Qmuli will be restricted to the credit to the Publisher's account of the relevant charge for re-Upload.

## **TERMINATION**

You may terminate your Licence with ad.fast at any time, but such termination will not discharge your outstanding obligations under the Payment Section, which must be met by the Publisher forthwith thereafter. Qmuli may terminate your Licence if you fail to comply with any of its terms and conditions. In any such event, on termination you, the Publisher, must destroy all copies of the Programs held by you, your employees and agents.

### **THIRD PARTY RIGHTS**

No third party shall obtain rights pursuant to this Licence, save for Qmulu who shall have the benefit of the undertakings, exclusions and indemnities in its favour contained herein. Accordingly, save as aforesaid, Qmulu and the Publisher do not intend that any of the terms of this Licence will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person other than Qmulu and the Publisher.

### **JURISDICTION AND LAW**

This Licence is governed by the laws of England and Wales. The Publisher and Qmulu submit to the exclusive jurisdiction of the English Courts.

## **SCHEDULE A:**

### **ACCEPTABLE USE POLICY**

Carefully read this Policy for acceptable use of the AdFast System. Qmuli operates this Policy in order to conduct its business and facilities in a responsible manner to enable it to provide as uninterrupted and seamless a service to its Publishers and Users as is reasonably possible. Qmuli reserves the right to suspend or terminate use of the ad.fast System by any Publisher upon receiving notification (whether from a User, Publisher or a Qmuli employee or agent, by admission of the Publisher, or otherwise) of that Publisher's contravention of any one or more of the following: -

(1) Without prejudice to the terms of the Licence, you shall not send, transmit, make available, copy, re-transmit, broadcast or publish (whether directly or indirectly) in whatever form any data, information, material or statement which infringes the intellectual property rights of any person or legal entity or the laws or statutory regulations or contractual rights or laws relating to defamation, contempt, blasphemy, infringement of privacy or personal data rights and any equivalent or related laws in any territory in which they are or may be accessed or made available, nor shall you make use of the Programs or the ad.fast System provided to you under this Licence by Qmuli for the purposes of attempting or establishing unauthorised access to, or of facilitating a breach in the security devices of, machines, resources or networks without the prior unequivocal consent of the lawful owner of that machine, resource or network.

(2) You shall not make use nor attempt to make use of the ad.fast System:

- To facilitate and/or further the publication and distribution of chain letters, unsolicited commercial or electronic mail or mail transmission.

- To send or cause to be sent or forwarded either a large quantity of data or large numbers of copies of such data at such frequency that it causes the ad.fast System to become unable to cope with the volume of electronic mail, traffic or data directed at it.

- To send or forward malicious messages and/or viruses.

(3) You shall not use nor attempt to use the ad.fast System to forward data to any other person who does not hold a licence from Qmuli to use the ad.fast System for the receipt of data.



## **SCHEDULE B:**

### **SCALE OF CHARGES**

This schedule details the charges payable by Publishers for services provided by Qmulion and from July 1, 2013 and until further notice in accordance with the terms of this Licence.

Notice of any changes to the prices in the Schedule will be advertised on the Site at least 90 (ninety) days prior to the changes coming into effect.

### **CHARGES FOR RECEIVING FILES**

#### **Charges in respect of ad.fast Invoice Accounts:**

The charge applied to ad.fast Invoice Accounts for each File uploaded to Publications is UK£0.25 (plus VAT at the then prevailing Standard Rate).

### **CHARGES FOR OTHER SERVICES**

The charge for supplying ad.fast Invoice Account holders with a monthly paper invoice delivered by First Class Mail is £5.00 (plus VAT at the then prevailing rate) per month.

## **SCHEDULE C:**

### **ACCEPTABLE FILE FORMATS**

This schedule details the File format(s) that can be uploaded onto the ad.fast System and which will be supplied thereafter to the intended Publication.

Files supplied in any other format will not be accepted.

Qmulu reserves the right to amend this list at any time without notice, save for thereafter giving information posted on the Site.

Acceptable format or formats as at 14th November 2014:

PDF

Legal notices. Updated November 2014.