

MOFILM Creative Agreement

THIS CREATIVE AGREEMENT is made between:

- (1) **MOFILM LIMITED**, having its registered office located at 20 Market Street, Altrincham, Cheshire WA14 1PF ("**MOFILM**"); and
- (2) **YOU** ("**Creative**" or "**You**").

WHEREAS:

- (A) Creative is the creator and owner of certain Content as more particularly defined below.
- (B) MOFILM operates certain mobile content digital transmission services and makes provision for the delivery of certain Content via mobile telephones, portable devices and/or PCs, Cinema and Television.
- (C) MOFILM wishes to obtain from Creative and Creative wishes to provide to MOFILM certain film content on the terms and conditions set out below.

WHEREBY IT IS HEREBY AGREED:

1. DEFINITIONS

1.1 The following definitions have the following meanings and apply in this Agreement:

"Act"	means the Copyright, Designs and Patents Act 1988 (as amended);
"Brand Participant"	means the relevant brand partner associated with MOFILM for purposes related hereto;
"Competition"	the competition run by MOFILM to which Creative may enter Films and/or Content pursuant to this Agreement and the terms and conditions of the Competition available via the Website from time to time;
"Content"	means Films and other content, including without limitation graphics, sound recordings and biographical materials delivered by Creative to MOFILM hereunder;
"Film"	means an original audio-visual recording created and owned by Creative and delivered to MOFILM for distribution to end users hereunder;
"Intellectual Property Rights"	means all intellectual property rights, howsoever arising and in whatever media, whether registered or capable of registration, including without limitation, copyright, trade marks, trade names, design right, database right, patent, personality right, image right and right of privacy;
"Moral Rights"	means the right of integrity, the right of paternity and all other rights of Creative of copyright works customarily referred to as 'moral rights', throughout the world;
"Service"	means the services provided by MOFILM to Creative in relation to this Agreement;
"Site"	means the MOFILM website at www.mofilm.com or other URLs notified to Creative from time to time.

2. GRANT OF RIGHTS

- 2.1 Subject to the provisions of this Agreement, Creative hereby grants to MOFILM the rights within the Territory during the Term to use, reproduce, store, format, adapt, distribute, display, publicly

perform, license, exhibit, broadcast and/or make available and transmit to end users the Content as part of the Service and otherwise in relation to Brand Participants. Creative acknowledges that MOFILM's only liability to Creative shall be to use reasonable endeavours to provide the Fee set out under Clause 4 below. Further, Creative hereby grants to MOFILM the right to use, reproduce and display the name and likeness of Creative, and any trade marks, service marks or trade names related to or contained within the Content, on the Site for the purposes of marketing and promoting the Content and the Service.

- 2.2 Notwithstanding and without limiting the above, by submitting Content to MOFILM, Creative consents and agrees to assign and transfer (using the written form attached hereto) to MOFILM and the relevant Brand Participant any and all rights, title and interest in and to such Content.
- 2.3 To the fullest extent legally possible in each country of the world, Creative hereby absolutely and irrevocably waives all Moral Rights in respect of all Content in relation to all uses of Content by MOFILM and the relevant Brand Participant, end users or other third parties pursuant to this Agreement.
- 2.4 Creative hereby agrees that all Content may be used by MOFILM and the relevant Brand Participant for the purposes of advertising and promotion of the goods and/or services of the Brand Participant and MOFILM and related uses.
- 2.5 Upon payment of the Fee, Creative hereby grants to MOFILM an irrevocable, perpetual, fully paid-up, and exclusive licence for the copyright and all other Intellectual Property Rights in the Content. MOFILM's rights under such licence shall include (but are not limited to) the exclusive, world-wide rights to use, reproduce, distribute, display, publicly perform, exhibit, broadcast, transmit, license and make available the Content; and Creative acknowledges and agrees that MOFILM intends to sub-license or assign such rights in the winning submission to the relevant Brand Participant(s).
- 2.6 Creative hereby agrees at the request of MOFILM to execute all such further documents and do all such further acts as MOFILM may require in order to vest in MOFILM and the relevant Brand Participant the rights hereby intended to be licensed and/o assigned.
- 2.7 If you upload any material to the Site (including, without limitation, films) you hereby grant to MOFILM and the Brand Participant(s) a worldwide, non-exclusive licence to use that material in any media and, specifically, to make that material available via the Site and via mobile phone networks. You warrant that all such materials are original and do not infringe the rights of any third party and that you have the right to grant such licence and you agree to waive your moral rights for the purposes of this licence. You also warrant that the material is not obscene, offensive or defamatory to any person or otherwise illegal. We reserve the right to cut, edit, crop or arrange your material as necessary for purposes related to the Site, and we may remove the material at any time. Unless you have requested otherwise, your name may be published alongside your material. If you do not want to grant these rights, please do not submit material to the Site.

3. FORMAT, DELIVERY AND ASSESSMENT OF CONTENT

- 3.1 Creative shall deliver the Content to MOFILM in such format(s) as set out on the "upload" pages of the Site from time to time. MOFILM shall be responsible for formatting, adapting or translating items of Content as necessary for provision of the Service.
- 3.2 Creative acknowledges that MOFILM shall assess all Content, such procedure being made up of technical and aesthetic evaluation. MOFILM shall be entitled in its absolute discretion to accept or reject Content, without being obliged to give reasons, and Creative shall have no right to contest any such assessment made by MOFILM's adjudicators.
- 3.3 Creative agrees that MOFILM shall be entitled in its absolute discretion to suggest corrections or technical alterations to submitted Content and acknowledges that, where such suggestions are substantial, Creative may be asked to consent to such corrections made by MOFILM or to revise and re-submit the Content.

4. FEE

- 4.1 In consideration of the rights granted by Creative herein, MOFILM shall offer Creative the chance to enter the Competition, in which the finalists (and certain others) will be paid five-hundred US dollars (\$500) or prize equivalent of at least US dollars (\$500) plus any further amount (if any) as determined by the relevant Brand Participant (“**Fee**”).
- 4.2 Creative acknowledges and agrees that the opportunity to compete for the Fee, together with the self-promotional opportunities made available to Creative hereunder by way of publicity and exposure through the Site(s), constitutes sufficient consideration for Creative’s services and the products of such services provided to MOFILM (including without limitation the Content) in relation to this Agreement.
- 4.3 Any payments to Creative hereunder will be made in US dollars and, if and where applicable, converted into other currencies at the current exchange rate when received or transferred by MOFILM, net of any bank charges. Payments may be made by bank cheque or electronic transfer.

5. **INTELLECTUAL PROPERTY RIGHTS**

- 5.1 MOFILM shall, where as reasonably practicable for each format, use reasonable endeavours to cause copyright notices relating to each item of Content delivered to be displayed to end users. Each copyright notice shall, so far as reasonably practicable for each format, be displayed in the following format: “(c) [Year of first publication] [name of Creative]”.
- 5.2 Creative agrees and acknowledges that, following payment of the Fee, Creative hereby automatically assigns with full title guarantee to MOFILM and the relevant Brand Participant all rights, title and interest in the Content (in addition to all other rights granted herein) and all Intellectual Property Rights (including but not limited to copyright) in the Content shall be controlled by MOFILM and the relevant Brand Participant. Such assignment shall be perfected by written signature and delivery of the form attached hereto.
- 5.3 The brands, products and service names of MOFILM and the Brand Participants are the trade marks or trade names of MOFILM, the Participating Brand or their trading partners unless otherwise stated. Your use of such trade marks is limited to use within submitted Content for the purposes of this Agreement and such permission may be withdrawn at any time. You may not use such trade marks for any purpose other than within your Content during the Term of this Agreement and you hereby undertake after the close of the Competition not to use such trade marks and to delete or destroy all your use of such trade marks in Content controlled by you. You may not distribute products or offer services under or by reference to or otherwise use or reproduce any such trade marks, trade names or taglines without the prior written permission of MOFILM and the Brand Participant.

6. **WARRANTIES**

- 6.1 Each party warrants and covenants to the other party that it has the right and power to enter into and fully perform all of its obligations under this Agreement; it will comply with all applicable laws in the performance of its obligations hereunder and the operation or supply of the Service; and, it shall bear and pay any and all taxes, duties and customs of any kind, however designated, levied or based in any way upon its own performance of this Agreement or the sale, acquisition, communication or resale of any Content.
- 6.2 If you upload any film, recorded music, text, photographs, graphics or other materials to the Site, you hereby warrant and represent that you personally created, wrote and produced such content and all materials contained within such content, or that you have written permission from or are authorised by the owner(s) of those materials for such use. If you submit any material containing a “cover” (i.e. a new version of someone else’s song) or any material comprising any pre-existing recorded content (i.e. “clips” from other films or programmes, “samples” from other records, photographs, graphics, etc), you must tell us and provide details at the time of posting
- 6.2 CREATIVE WARRANTS AND REPRESENTS AS FOLLOWS:
- 6.2.1 **ALL CONTENT IS ORIGINAL:** Subject to the provisions below, all Content and material used in

the Film(s) is the original work of Creative (or, where Creative is a company, employees of Creative) and has not previously been displayed publicly, published or used in any company or other entity's communications in any country of the world. Creative is the sole owner of all Copyright and other Intellectual Property Rights in all Content.

- 6.2.2 **USE OF MUSIC:** Any use of music composed and/or recorded specially for a Film must be cleared in writing for all relevant rights. Any use of music from physical or online sources (including from a CD or a website) must be cleared in writing for use by Creative and made known to MOFILM at the time of delivery. Creative agrees to produce written evidence of such rights clearance(s) at the time of delivery and promptly on request during the Term.
- 6.2.3 **USE OF PHOTOS, GRAPHICS, TEXT OR OTHER THIRD PARTY MATERIAL:** Any use of photos, graphics, text or other material created, licensed or otherwise owned or controlled by any third party must be cleared in writing for all relevant rights. Any use of photos, graphics, text or other third party material from physical or online sources (including from a book, a painting, a newspaper or a website) must be cleared in writing for use by Creative and made known to MOFILM at the time of delivery. Creative agrees to produce written evidence of such rights clearances at the time of delivery and promptly on request during the Term.
- 6.2.4 **EMPLOYEES AND "WORKS FOR HIRE":** Where Content incorporates the work of employees of Creative or of any other third parties (or is a so-called "Work for Hire"), the Intellectual Property Rights in the Content must be assigned to the Employer/Creative and the Moral Rights of such employees, workers and persons must be waived to the fullest extent possible in each country of the world in relation to all uses of the Content by MOFILM, end users or other third parties pursuant to this Agreement.
- 6.2.5 **NO INFRINGEMENT:** The inclusion and use on the Site of all Content will not infringe the Copyright or any other Intellectual Property Rights or Moral Rights of Creative or any third party.
- 6.2.6 **NOT DEFAMATORY:** The Content is not defamatory and its use pursuant to this Agreement by MOFILM, end users and other third parties will not infringe any publicity or personality rights of any person.
- 6.2.7 **NO EARLIER CONTRACTS:** Creative is not in breach of any employment or commissioning contract with any third party by reason of entering into or exercising or granting any rights or performing any obligations under this Agreement
- 6.2.8 **EXCLUSIVITY:** Creative does not currently and will not in future use, exploit, submit or authorise or cause any other person to use for any purposes, material which is the same as or substantially similar to any Content submitted to the Site by Creative during the Term.
- 6.3 In the event of any breach of the terms and conditions contained in this Agreement by MOFILM, the aggregate liability of MOFILM in connection with this Agreement shall be limited to damages which shall not exceed the Fee received by Creative. MOFILM shall not, in any circumstances, be liable for any indirect, incidental or consequential loss or damage. Nothing in this Agreement shall exclude or limit the liability of MOFILM for death or personal injury resulting from the negligence of MOFILM or that of its agents or employees.
- 6.4 Creative hereby indemnifies MOFILM (together with its associated, subsidiary and affiliated companies) and shall hold 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 Creative of any of the representations, warranties or obligations of Creative set out in this Agreement.
- 6.5 Termination of this Agreement will not release either party from any of its obligations hereunder which are intended to have a continuing effect.
- 6.6 Creative agrees to notify MOFILM immediately after it becomes aware of any actual or threatened infringement, dilution or other impairment ("**Infringement**") of any item of Content. Upon receipt of such notice, MOFILM shall decide whether to assert or file any legal or equitable proceedings (an

"Action") with respect to such Infringement at its sole discretion. If such Infringement has occurred, at MOFILM's sole option, exercisable upon notice to Creative, MOFILM may either pursue the Action or authorise Creative to prosecute the Action in Creative's own name. In the event MOFILM elects to pursue such Action, Creative shall reasonably cooperate with MOFILM in the Action. If MOFILM authorises Creative to pursue the Action, Creative shall advise MOFILM of all developments in connection with the Action of which Creative becomes aware and MOFILM shall have the right to participate in such Action.

- 6.7 User agrees that the liability of MOFILM to User under this Agreement shall be limited to the greater of: (1) the amount User has actually paid to MOFILM for its products or services; and (2) one thousand pounds (£1000). Except as set out herein, MOFILM shall not be liable for any indirect or consequential loss of any kind in contract, tort or otherwise arising out of your use of this Site or in relation to the goods and/or services that we provide. Nothing in this Agreement shall operate to limit or exclude liability for death or personal injury caused by negligence of MOFILM.

7. ENTRY TO COMPETITION

- 7.1 Creatives may enter the Contest between 12:00:00 Greenwich Mean Time ("GMT") on June 6 2011 and 12:00:00 GMT on August 1 2011 by visiting the Site, entering their email address, uploading Content and clicking "submit". Creatives will then be sent an email which will include a link to confirm such email address. Creatives must agree to submit a written release signed by each identifiable person appearing in the submitted Content granting MOFILM and the Participating Brand permission to use his/her image/likeness. Submitted Content that does not include all required information may be considered void.
- 7.2 Each Participating Brand has a separate and different creative assignment and Creative must refer to the relevant creative assignment (or "Brief") of the relevant Brand Participant as posted on the Site <http://www.mofilm.com/>.
- 7.3 Films must be submitted online as a Video File of no more than [90 seconds] in length and no more than 500 MB in size. Video Files must be provided in one of the following file formats: .MPEG; .MOV; .AVI; .WMV.
- 7.4 On request, Creative agrees to provide the original audio and video files used during production of the Content for broadcast or other purposes (which may include uncompressed QuickTime files, final audio mix and/or separate audio tracks for dialogue, music, and effects).
- 7.5 Submissions must be primarily in English or subtitled and MOFILM reserves the rights edit, crop or cut Content in its sole discretion. You may submit up to a total of twenty-four (24) entrants provided the same (or substantially similar) item of Content is not uploaded more than once.
- 7.6 Once uploaded, submitted Content can and will not be returned. The relevant Participating Brands may, in its sole discretion, remove, delete and/or void any submitted Content it deems inappropriate or otherwise non-compliant. All submitted Content will be reviewed before being published or judged; however, such review does not relieve Creative from responsibility for compliance with this Agreement.
- 7.7 The individual Creative uploading a particular entry will be deemed the entrant for that entry ("Entrant"). If any group has collaborated on a submitted item Film, the entire group is deemed to have designated the uploading Creative as the agent of such group, to agree to these terms and to accept the prize on behalf of the group. MOFILM and/or the relevant Participating Brand shall not be liable for any dispute between such collaborators.
- 7.8 MOFILM reserves the right, at its sole discretion, to disqualify any entrant deemed to be (a) tampering or attempting to tamper with the entry process or the operation of the Competition or any Participating Brands or the Site, (b) violating the terms of this Agreement or the Competition or any rules posted at the Event, (c) violating the terms of service, conditions of use and/or general rules or guidelines of any MOFILM property or service, or (d) acting in an unsportsmanlike or disruptive manner, or with intent to annoy, abuse, threaten or harass any other person.

- 7.9 The Competition is offered worldwide and is governed by the laws of England and Wales. All claims relating in any manner to the Competition or to any entry shall be resolved in the courts of London, England. The Competition is void where prohibited.

8. COMPETITION FINALISTS AND WINNERS

- 8.1 Submitted Content shall be judged on the “Judging Criteria” as follows:

8.3.1 Originality and Creativity - 50%

8.3.2 Adherence to Creative Assignment - 50%

- 8.2 Finalists (at least three (3) from each Brand Participant) will be selected by a judging process in which a designated panel of judges from MOFILM and/or each Brand Participant (“**Judges**”) shall evaluate each eligible submission based on the Judging Criteria. The Judges may designate a winner and a runner-up (and may award further prizes) in their sole discretion and any “tie” or “draw” shall be awarded or resolved accordingly. The Judges’ decisions shall be final and no related correspondence will be entered into.

- 8.3 The winner for each Brand Participant shall be invited to the Event, at which a further voting process will be carried out amongst all the brand winners and/or certain other finalists. The selected winners across all brand entries will be judged by attendees at the Event and further prizes may be awarded. The finalist entries will be posted on the Site for public viewing. All Finalists are subject to verification, including without limitation, verification of eligibility, compliance with this Agreement. If any attempt to notify or contact a finalist is unsuccessful or returned as undeliverable, if a finalist cannot be verified or is otherwise unable to accept a prize, the prize will be forfeited and may be awarded to an alternate finalist provided sufficient time remains, in the relevant Participating Brand’s sole discretion. Creative agrees that MOFILM and the Participating Brand(s) shall have the sole right to decide all matters and disputes arising in relation to the Competition and that all decisions of MOFILM and the Participating Brand(s) shall be final and binding.

- 8.4 Creatives are prohibited from obtaining votes or affecting the voting processes in any way by any fraudulent or inappropriate means, including, without limitation, offering prizes or other inducements to attendees, as determined by MOFILM in its sole discretion. Votes cast with intent to impair the integrity of the voting process shall be void.

9. COMPETITION

PRIZES

The overall winner prizes shall be as follows:

- 9.1 The overall winner prizes shall be as listed on www.mofilm.com.
- 9.2 Creative shall be solely responsible for any taxes on any prizes received and agrees to complete and return any taxation form received (depending of country of residence) in relation to the Competition.
- 9.3 MOFILM and the Participating Brand(s) reserve the right substitute any prize (or portion thereof) with any prize of substantially equivalent or greater value.
- 9.4 By accepting a prize, Creative (as a winner) agrees that the Participating Brand(s) and/or MOFILM shall not be liable for any loss or injury resulting from participation in the Competition, acceptance or use of any prize, or any travel related thereto.

10. GENERAL

- 10.1 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.
- 10.2 Your use of the Site and your entry to the Competition creates no partnership, client, fiduciary or

other professional or employment relationship.

- 10.3 If any provision of this Agreement shall be determined by any court or other tribunal of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.
- 10.4 This Agreement shall be personal to Creative, and Creative shall not be entitled to assign any of its rights or obligations hereunder without the prior written consent of MOFILM.
- 10.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or to any of its provisions.
- 10.6 No responsibility or liability is assumed by MOFILM or any Participating Brand for technical problems or technical malfunction arising in connection with any of the following occurrences which may affect the operation of the Competition: hardware or software errors; faulty computer, telephone, cable, satellite, network, electronic, wireless or Internet connectivity or other online communication problems; errors or limitations of any Internet service providers, servers, hosts or providers; garbled, jumbled or faulty data transmissions; failure of any e-mail transmissions to be sent or received; lost, late, delayed or intercepted e-mail transmissions; inaccessibility of the Site in whole or in part for any reason; traffic congestion on the Internet or the Site; unauthorized human or non-human intervention of the operation of the Competition, including without limitation, unauthorized tampering, hacking, theft, virus, bugs, worms; or destruction of any aspect of the Competition, or loss, miscount, misdirection, inaccessibility or unavailability of an email account used in connection with the Competition. MOFILM and Participating Brands shall not be responsible for any typographical errors in the announcement of prizes or this Agreement, or any inaccurate or incorrect data contained on the Site.
- 10.7 This Agreement embodies the entire understanding and all the terms agreed between the parties relating to the Agreement and no terms, obligations, representations, promises or conditions, oral, written, express or implied, have been made or relied upon other than those contained herein.
- 10.7 All rights and obligations hereunder shall be construed and interpreted in accordance with the laws of England and Wales and the High Court of Justice shall be the sole court of competent jurisdiction

MOFILM Creative Content Assignment Agreement (Short Written)

Creative's First Name	
Creative's Family Name (Surname)	
Date of Birth (eg 5 April 1990)	
Film School Affiliation	
Address	
Telephone Number	
Email Address	
The Brief Name (Brand or Theme Name)	
The Name of Your Video (refer to email)	
Please provide ID Code (You can find this code in the email sent with this form)	
Have you used pre-cleared music (supplied by MOFILM)?	YES / NO
Title of pre-cleared music used (If you can not remember the track you used, please leave this blank but answer "YES")	
If any other music has been used, please give details and provide evidence of permission to use the music	
If any photos, graphics, stock images, text or third party material has been used, please provide details here and provide evidence of permission to use such materials	
Have you used actors, actresses or voiceovers?	YES / NO
(Please send talent releases and a cast list with your completed form or email info@mofilm.com if you require sample documents)	
SAG member or Union talent used	YES / NO
If you have answered yes, please provide full names and union numbers of talent	

1. ASSIGNMENT OF RIGHTS

In consideration of the payment of the Fee (or equivalent) and the services provided by MOFILM under the Creative Agreement and the terms and conditions at www.mofilm.com, the Creative hereby assigns to MOFILM with full title guarantee the worldwide copyright and all other intellectual property rights in the Content identified above, for the full term of all such rights.

2. WAIVER OF MORAL RIGHTS

To the fullest extent legally possible in each country of the world, the Creative hereby irrevocably waives all 'moral rights' in and to the Content in relation to all uses thereof by MOFILM and the Brand Participant(s), and their licensees or assignees.

3. WARRANTIES

The Creative represents and warrants that the Content (and each element of the Content) is original and has not been previously published (or made available online) at any time; that the Creative is the sole owner of all copyright and other intellectual property rights in the Content; and that use of the Content by MOFILM and/or the Brand Participant does not and will not infringe the copyright or any other intellectual property rights or 'moral rights' of any third party.

4. ACTORS AND OTHER INDIVIDUALS APPEARING IN THE CONTENT

The Creative warrants that written permission (and a waiver of moral rights) has been obtained for use of the name(s), likeness(es), performance(s) and/or voice(s) of each person seen or heard in the Content (and the Creative undertakes to provide copies of such written permissions to MOFILM on request). The Creative warrants and represents responsibility for all payments, including without limitation, guild fees, pension and health payments, reuse fees, residuals, or other executory obligations, due to talent used in Content made pursuant to a collective bargaining agreement with any entertainment, advertising or other industry labour union or guild, such as SAG. Creative agrees to produce written evidence of such payments at the time of delivery and promptly on request.

Signed by the Creative (You sign here) Date	 _____/_____ 2011
Signed for and on behalf of MOFILM LIMITED Date (Please leave blank for MOFILM to sign)	 2011

[illegible]