



## Action Plus Sports Images End User license Agreement (EULA)

This is a legal and binding agreement between your company, you, your employer and/or your client, as may be licensed (hereinafter collectively known as ("You") and Action Plus Sports Images ("APSI"), where used in this agreement shall mean APSI, its wholly-owned subsidiaries, affiliates and/or distributors. This License Agreement applies to the web site currently located at [www.actionplus.co.uk](http://www.actionplus.co.uk), any international or other versions, future APSI web sites, and/or any Images delivered via download or on any physical storage media.

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS. YOUR ACCEPTANCE OF THESE TERMS IS AN ABSOLUTE CONDITION TO YOUR ACCESS TO AND USE OF ANY IMAGE(S). CLICKING THE "I ACCEPT" BUTTON AND DOWNLOADING AND/OR USING ANY IMAGE(S) FROM APSI CONFIRMS YOUR ACCEPTANCE OF THESE TERMS AND FORMS A LEGAL CONTRACT BETWEEN YOU AND APSI. The Invoice, as defined below and attached to this license, shall be made a part of this Agreement and shall be incorporated by reference herein, and together with this Agreement shall constitute the entire agreement between APSI and You regarding the Image(s). If You do not agree to the following terms, you should not download or use any Image(s).

### 1. LICENSE

#### A. Definitions

"Image(s)" shall mean composites, images, photographs or any other visual representation regardless of whether the Image(s) are obtained via download from any APSI Web site, delivered via any Storage Media that is now known or may become known in the future, or obtained from an APSI authorized distributor, together with all accompanying metadata and other material.

"Comp Usage" is defined as the creation of a temporary test 'mock-up', rough design layout or comprehensive rendering of a proposed work for client review, internal company review or testing. **The Image may not be used in any materials distributed or accessible to the public or in any final product or use**, including, without limitation, any online or other electronic distribution system (except You may transmit comps digitally or electronically for their review) and may not be sold or sublicensed alone or as part of any product.

"Invoice" means any computer-generated or printed form or document provided by APSI, or any of APSI' authorized distributors, that sets forth, without limitation, the specific parties contracting for use of the Image(s) selected, the limitations on the license (if any) of the Images and the corresponding price(s) for the license of such Image(s). The term "Invoice" may also include any confirmation pages or receipts provided to You in connection with an on-line payment transaction that contain additional licensing terms. See your Invoice, dated today.

"Storage Media" shall mean CD-ROM, digital video disc (DVD), floppy disk, hard drive, or any other storage device or media now known, or hereafter created.

"User" shall mean the individual, legal entity or agent entering into this license agreement or any employee or contractor of such individual, legal entity or agent that edits, manipulates or modifies the Images or is otherwise directly involved in the creative process including, but not limited to, photo editors, photo researchers, photographers, art directors or designers. All Users shall only use the Images in accordance with the terms of this Agreement.

"You" shall mean a single:

- (i) individual,
- (ii) legal entity (corporation, partnership, Limited company, sole proprietorship, etc.), or
- (iii) agent acting on behalf of a single individual or legal entity.



## **B. Grant: Paid License**

- (i) APSI grants You a non-exclusive and non-transferable license to use and reproduce the Image(s) as specified in any Invoice, specific license rights pages on APSI' Web sites and this Agreement. This Agreement is conditioned upon:
  - (a) Your satisfying all applicable conditions and restrictions on use, and
  - (b) APSI receipt of full payment as invoiced by APSI. Your failure to make payment when due shall terminate any license granted to You, shall immediately and automatically terminate Your rights to use the Image(s) and shall be deemed a breach of this Agreement and copyright infringement.
- (ii) (ii) The Image use is strictly limited to:
  - (a) Comp Usage or
  - (b) the use, medium, length of time, image size/resolution, territory, market, or industry and any other restrictions specified in any Invoice, specific license rights pages on APSI' Web sites and this Agreement.
- (iii) Use of Images in a manner not expressly authorized by the Invoice and this Agreement
  - (a) may constitute an infringement of the proprietary rights of APSI or a third party and
  - (b) may result in You incurring or being responsible for any damages resulting from any such use, including any damages resulting from any claims for infringement of the intellectual property or proprietary rights of APSI or a third party.
- (iv) Fees assessed for Your use of the Image(s) depend on the nature of the rights granted. You shall not undertake any expanded use of the Image(s) without the prior approval of APSI and the payment of any additional license fee required by APSI for such expanded use. You shall promptly notify APSI of any desire to expand use of the Image(s) for which You have not received APSI' prior approval, and shall pay to APSI any additional license fee required by APSI for such expanded use.

## **C. Copyright**

The Image(s) are copyrighted and protected under the various laws of the United Kingdom, International treaties and other applicable laws. The Image(s) shall remain the sole and exclusive property of APSI, or its licensors. Use of the Images is licensed, not sold, pursuant to the terms of this License Agreement. Use of the Images without agreeing to this License Agreement, or a breach of these License Agreement terms is copyright infringement.

## **D. Prohibited Uses**

The following uses are not permitted under this license:

- (i) Copy or reproduction of the Image(s), except as specifically provided for in Section 1(E).
- (ii) Removal of any copyright, trademark or watermark from any place where it appears on the Image(s).
- (iii) Display the Image(s) in any digital format or for any digital use at a resolution greater than 96 dpi, except in editorial or preliminary design work.
- (iv) Sublicense, distribute, transfer or assign the Image(s) or rights to the Image(s).
- (v) Use the Image(s), or any part of the Image(s), as part of a trademark, service mark, or logo. APSI or its licensors retain the full rights to the Image(s), and therefore You cannot establish Your own rights.
- (vi) Use the Image(s) in a product or service whereby the Image(s) can be used apart from a product or service.



- (vii) Use the Image(s) in any way that could be considered defamatory, pornographic, libelous, immoral, obscene or fraudulent, or illegal, either by making physical changes to it, in the juxtaposition to accompanying text or images, or otherwise as part of any use involving sensitive subject matters, as determined by APSI, including but not limited to the following: all sexual issues, sexually transmitted diseases, substance abuse, alcohol, tobacco, AIDS, cancer, mental ailments, Homosexual or alternative lifestyles, and physical or mental abuse, without advance written consent from APSI and any model in such Image(s). Sensitive subject use pertains to both commercial and editorial uses.

#### **E. Retention and Storage Of Digital Image Files**

You may retain digital Image files for up to sixty (60) days, unless otherwise stated in Your Invoice. You may place Images on Your internal computer network provided You limit access to the Images to those having a bona-fide need to facilitate production or creation of any licensed use, but You shall not otherwise distribute or permit access to any Images. Unless this period is extended in writing, You agree to remove any Images that You have stored on any computer or network. You agree not to store or maintain any archive of any Image in any format or medium unless Your Invoice with APSI permits re-use, whereupon You may store Images solely as permitted by Your Invoice. APSI' copyright information and Image identification number must be retained with the Images while You retain them.

#### **F. Use Credit**

In all editorial uses, the following credit must be given to the copyright holder, their representative, and APSI, either adjacent to the Image or in a credits section which is referenced in the table of contents: "[Photographer's name-if provided by APSI]/[APSI]." An additional fee of 100% of the original fee will be due for omission of such editorial credit.

In commercial and advertising usage, credit is requested but not required.

#### **G. Releases/Captions**

APSI will notify You if it has obtained a model release and/or a property release for Image(s), either in the release status information accompanying the Image(s) on APSI website, in the Invoice or by other means. If no such notification is given, then no such model or property release has been obtained. APSI grants no rights and makes no warranties with regard to the use of names, people, trademarks, trade dress, registered, unregistered or copyrighted designs or works of art or architecture depicted in any Image(s). You shall be solely responsible for determining whether a release is sufficient for the proposed use or is required in connection with any proposed use of such Image(s). You acknowledge that some jurisdictions provide legal protection against a person's image, likeness or property being used for commercial purposes without their consent. APSI used commercially reasonable efforts to identify the caption for each Image, but cannot be held responsible for erroneous or incomplete caption information.

## **2. PAYMENT TERMS**

Prices for the Image(s) shall be determined solely by APSI and reflected on Your Invoice. Payment is due as specified on the Invoice, or if not stated, within thirty (30) days after Your receipt of the Invoice. You agree to pay all Image(s) license fees. If timely payment is not received, all rights granted in this Agreement, any Invoice, or on specific license rights pages on APSI' Web sites shall be automatically and immediately revoked. A service charge of one and a half percent (1.5%) per month, or the amount allowed by law, will be charged on any unpaid balance. Any claims for adjustments must be made to APSI within five (5) days of receipt. You shall be liable for all past due amounts, interest and costs of collection, including legal fees. See Section 11 for cancellation terms.



### **3. TERM AND TERMINATION**

#### **A. Term**

This Agreement is effective for the period stated on Your Invoice, unless earlier terminated in accordance with the terms of this Agreement.

- (i) This Agreement will terminate automatically, without notice from APSI, if You fail to comply with any provision of this Agreement.
- (ii) You may terminate this Agreement by destroying the Image(s), along with any copies or archives, any CD-ROM or accompanying materials (if applicable), and ceasing all use of the Image(s) for any purpose. Such termination may not effect payment obligations.

#### **B. Termination**

Upon termination of this Agreement, You agree to

- (i) destroy or return all copies and archives of the Image(s) as directed by APSI,
- (ii) cease using the Image(s) for any purpose, and
- (iii) confirm to APSI in writing that You have complied with these requirements.

### **4. WARRANTY AND LIMITATION OF LIABILITY**

#### **A. Warranty**

APSI represents and warrants that:

- (i) the Image(s) or other Storage Media (if applicable) will be free from defects in materials and workmanship under normal use for a period of 30 days from the date of license; and
- (ii) it has the right to enter into this Agreement and to grant the rights hereunder; and
- (iii) the Image(s) as provided hereunder, and used as permitted herein, will not infringe any copyright, moral right, right of privacy or any other intellectual property right of any third party.

#### **B. Limitation of Liability**

EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE IMAGE(S), STORAGE MEDIA AND ACCOMPANYING MATERIALS (IF APPLICABLE) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. APSI GRANTS NO RIGHTS OR WARRANTIES WITH RESPECT TO THE USE OF NAMES, TRADEMARKS, LOGO TYPES, COPYRIGHTED DESIGNS OR WORKS OF ART OR ARCHITECTURE DEPICTED IN ANY IMAGE, AND THE USER MUST SATISFY ITSELF THAT ALL NECESSARY RIGHTS, CONSENTS, OR PERMISSIONS AS MAY BE REQUIRED ARE OBTAINED. APSI DOES NOT WARRANT THAT THE IMAGE(S), WEB SITES OR OTHER MATERIALS, WILL MEET YOUR REQUIREMENTS OR THAT USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE AND USE OF THE IMAGE(S) IS SOLELY WITH YOU. YOU UNDERSTAND THAT YOU SHOULD SEEK COMPETENT COUNSEL BEFORE USING IMAGES ON OR IN CONNECTION WITH ANY GOODS OR SERVICES OR FOR ANY OTHER COMMERCIAL PURPOSES. APSI SHALL NOT BE LIABLE TO YOU OR TO ANY OTHER ENTITY FOR ANY GENERAL, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR LOST PROFITS OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF YOUR USE OF THE IMAGE(S), APSI'S BREACH OF THIS AGREEMENT OR OTHERWISE, EVEN IF APSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. IN NO EVENT, SHALL APSI'S TOTAL AGGREGATE LIABILITY TO YOU, OR TO ANY THIRD PARTY CLAIMING THROUGH YOU, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THE IMAGE(S) (WHETHER IN CONTRACT, TORT OR



OTHERWISE) EXCEED TEN (10) TIMES THE MONETARY AMOUNT ACTUALLY RECEIVED BY APSI FOR YOUR USE OF THE APPLICABLE IMAGE(S).

**C. You represent, warrant and covenant that:**

- (i) You will not use the Image(s) in any way that is not permitted by this License;
- (ii) You are at least eighteen years of age and have the full right and authority to enter into this License on behalf of You and/or Your company, employer or principal;
- (iii) Your use of the Image(s) will not violate any applicable law or regulation of any country or other governmental entity;
- (iv) The information that You provide to APSI is accurate and true, including, without limitation, all credit card or other payment information and You shall update such information as necessary; and
- (v) You are solely responsible for determining whether Your use of any Image(s) requires the consent of any other party or the license of any additional rights. You are solely responsible for obtaining any and all releases and clearances as may be required and You should not rely solely on the information provided by APSI. If You are unsure whether additional rights are needed for Your use of the Images, You are responsible for consulting with competent legal counsel.
- (vi) You shall be solely responsible for Your use of the Image(s) and agree that APSI grants no rights with regard to the use of trademarks, trade dress, copyrighted designs or works of art or architecture in any Images, and You must satisfy Yourself that all necessary rights or consents regarding any of the above, as may be required for reproduction, have been obtained.
- (vii) If You are acting as an agent, You must inform Your client/principal of the terms of this License.

**5. LIMITATION OF REMEDIES**

**A. Replacement or Refund**

APSI' entire liability and Your exclusive remedy, with respect to any claims arising out of this Agreement, except as set out in Section 6 below, shall be at APSI' sole discretion, either:

- (i) replacement of Image(s); or
- (ii) refund of any fee paid for the specific Image(s).

Any claims must be brought within twelve (12) months of the date that You discovered such claim, or reasonably should have discovered such claim, or shall be waived.

See Section 10 for other refund terms that may apply.

**6. INDEMNIFICATION**

You agree to indemnify and hold APSI, its affiliates, parents, subsidiaries, employees, directors, officers, successors, assigns, distributors and anyone else associated with APSI, harmless from, and against, any and all claims, liabilities, costs, damages, or expenses, (including legal fees) asserted against APSI arising out of Your use of the Images or in connection with Your breach of any of the terms of this Agreement. Provided that the Image(s) are used only in accordance with this Agreement and You are not otherwise in breach of this Agreement, APSI shall defend, indemnify and hold You harmless from all damages (excluding punitive damages), liabilities and expenses (including reasonable legal fees and authorized costs), arising out of or in connection with any actual or threatened lawsuit, legal proceeding or claim alleging that APSI is in breach of its warranties set out in Section 4 above. The foregoing states APSI' entire indemnification obligation under this Agreement and Your sole and exclusive remedy for any actual breach of APSI' representations and warranties set forth herein. APSI shall have no obligation under this



Section 6 unless You promptly provide APSI with written notice of such claim. At the indemnifying party's option, the indemnifying party may assume the handling, settlement or defense of any claim or litigation and the indemnified party shall reasonably cooperate in the defense thereof. The indemnified party shall have the right to participate in the litigation, at its own expense, through counsel selected by the indemnified party. The indemnifying party will not be liable for legal fees or other costs incurred prior to the indemnified party giving notice of the claim for which indemnity is sought.

## **7. GENERAL**

### **A. Enforceability**

If any provision of this Agreement is held to be not enforceable, such provision shall be reformed only to the extent to make it enforceable, consistent with the parties' intent.

### **B. Taxes and other**

You agree to pay and be solely responsible for any and all sales taxes, use taxes, value added taxes and duties imposed by any jurisdiction as a result of the license granted to You, or Your use of the Image(s), pursuant to this Agreement.

### **C. Waiver**

No action of APSI, other than an express written, signed waiver may be construed as a waiver of any part of this Agreement, and no employee of APSI is authorized to make an oral waiver. In the event that APSI waives a specific part of the Agreement, it does not mean that APSI waives any other part.

### **D. Consumers**

No rights, including copyright rights, and rights to copy, distribute, or to enter into a database, to the Images are granted to consumers of products or services provided by You. You warrant that You will not suggest to the contrary in advertising or other communications to consumers.

### **E. Infringement**

In the event You become aware of any activity that infringes any rights, including copyright rights, in the Images, You must promptly notify APSI of such activity and provide all cooperation reasonably requested by APSI regarding such activity.

### **F. Modification**

No provisions in either party's purchase orders, or in any other business forms of either party will supersede the terms and conditions of this Agreement or the terms of any Invoice, confirmation, or receipt generated by APSI, or terms specified on any specific license rights pages on APSI' Web sites, and no supplement, modification, or amendment of this Agreement or the Invoice shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement.

## **8. JURISDICTION**

This Agreement, its validity and effect, shall be solely interpreted, and governed by, the laws of the United Kingdom. Any claims shall be brought solely in the Court of England and You consent to the service of any required notice or process upon You by registered mail or overnight courier with proof of delivery.





## **9. LEGAL FEES**

You agree to reimburse APSI for its legal fees, costs and disbursements if APSI is successful in enforcing any of its rights under this Agreement including, without limitation, in connection with any action to collect payment.

## **10. CANCELLATION**

If You decide not to use the Images, You must advise APSI within fifteen days of the Invoice date, or, in the case of online payment within fifteen days of the payment date, to receive a full refund or within 30 days from the Invoice date or online payment date for a 50% refund. After 30 days from the date of the Invoice or payment date, the transaction cannot be cancelled and full payment is due. Cancellation is not possible once an Image has been publicly used. In order to qualify for a cancellation, You must submit a written, completed and signed refund affidavit within the timeframes set out above and in no event shall affidavits be accepted by APSI more than 30 days after the Invoice date or payment date.

By requesting a refund, You hereby represent and warrant that: (i) You have deleted or destroyed all Images covered by Your Invoice, (ii) that You have not, and will not use the Images covered by Your Invoice, and (iii) that a breach of the foregoing shall require You to immediately repay the entire amount of the Invoice plus damages to APSI.

All cancellations are final.

## **11. ASSIGNABILITY**

You may not assign or transfer to anyone else the rights granted to You in this Agreement, without our prior written consent. APSI may assign or transfer this Agreement freely.

## **12. ENTIRE CONTRACT**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT, TOGETHER WITH THE INVOICE AND THE TERMS ON SPECIFIC LICENSE RIGHTS PAGES ON APSI'S WEB SITES, ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND APSI, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND APSI RELATING TO THE SUBJECT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PURCHASE ORDER TERMS (EVEN IF SUCH TERMS ARE SUBSEQUENT TO THE DATE OF THIS AGREEMENT). FAQ'S, OTHER EXPLANATIONS, AND GENERAL TEXT IN APSI'S WEB SITES ARE FOR YOUR INFORMATION ONLY AND ARE NOT, AND SHALL NOT BE CONSTRUED AS, PART OF THIS AGREEMENT UNLESS SPECIFIED OTHERWISE IN THIS AGREEMENT.