



Institute of Advertising
Practitioners in Ireland



SUGGESTED TERMS AND PROVISIONS FOR USE IN CLIENT/AGENCY AGREEMENTS

CLAUSE 1

This Agreement is made on _____ (day) of _____ (month) _____ (year).

Between

a company incorporated in [Ireland] with registered number _____
whose registered office is at

("the Client"); and

a company incorporated in [Ireland] with registered number _____
whose registered office is at

("the Agency").

CLAUSE 2

Defined terms

All words which appear in quotation marks and bold type will throughout this agreement (the "Agreement") have the meaning given to them when they first appear in that form. They are listed in **Schedule 1** attached together with the clauses in which they are first defined.

CLAUSE 3

Agreement to act as agency

The Agency agrees to serve during this Agreement as the Client's advertising agency to handle the advertising in _____ [excluding/including] [advertising on the worldwide web or any other globally accessible medium] (the "Territory") of [all the Client's products and services] [those products and/or services of the Client listed in **Schedule 2** attached] [the Client's corporate image] (the "Accounts") on the following terms. From now on in this Agreement all advertising produced by the Agency for the Client under this Agreement shall be called the "Advertising".

CLAUSE 4

Term of appointment

This Agreement shall commence on _____ (the "Commencement Date") and continue for a period of _____ months unless terminated sooner by either party under clause 29. After that initial period it will continue until terminated by the giving of [...] months notice in writing by either party. Notice to terminate cannot expire until the initial period has elapsed. From now on in this Agreement the period from the Commencement Date to the end of this Agreement will be referred to as the "Term".

CLAUSE 5

Agency services

5.1 In order to provide the Advertising, the Agency will perform for the Client the services detailed in **Schedule 3** to this Agreement (the “**Services**”).

5.2 [The Agency will procure that the **Key Individual(s)** named in **Schedule 4** [is] [are] actively involved in the provision of the Services. Should any Key Individual leave the Agency, the Agency will with the Client’s consent appoint a suitable replacement, such consent not to be unreasonably withheld or delayed.]

CLAUSE 6

Co-operation

The Client will give the Agency clear briefings and ensure that all the facts given about the Accounts are accurate, while the Agency will co-operate fully with the Client and use reasonable care and skill to make the Advertising as successful as is to be expected from a competent advertising agency. The Client will help the Agency do this by making available to the Agency all relevant information and co-operating with the Agency.

CLAUSE 7

Other appointments

7.1 During the Term the Agency will not without the Client’s written agreement [nor will any agency which either owns more than 50% of the issued share capital of the Agency or in which either the Agency or any subsidiary of the Agency owns more than 50% of the issued ordinary share capital] act in the Territory in connection with the advertising of:

Insert one of the following:

- a direct market competitor with any of the Accounts [or any of the Client’s other products or services as of the Commencement Date].
- a product or service which is [by manufacture or industrial or commercial classification in a category] similar to any of the Accounts [or any of the Client’s products or services as of the Commencement Date].

7.2 During the Term the Client will not use another outside agency to provide any of the Services in respect of the Accounts in the Territory [subject where appropriate to sub-clause 29.5 below].

CLAUSE 8

Approvals and authority

8.1 Any reference in this Agreement to the Client’s written approval shall mean written approval by directors or employees of the Client authorised to approve the Agency’s work and whose names are set out below:

“Authorised Person”

Name _____ Title _____

Name _____ Title _____

Any change to the Authorised Persons during the Term will be notified in writing by the Client to the Agency.

8.2 For the purposes of this Agreement “**written approval**” shall include approval signified by:

8.2.1 fax on the Client’s notepaper bearing the signature of an Authorised Person;

8.2.2 oral approval given by an Authorised Person provided this is in circumstances where time does not permit written approval and the said oral approval is confirmed within one “**working day**” (meaning a day on which the clearing banks in the City of London are open for business) by way of a contact report from the Agency to the Client;

8.2.3 [e-mail emanating from the personal e-mail address of an Authorised Person.]

8.3 The Agency shall, after obtaining the Client’s general written approval of its campaign plans, submit to the Client for its specific written approval:

8.3.1 copy, layouts, artwork, storyboards and/or scripts;

8.3.2 media schedules for time, space and other facilities; and

8.3.3 estimates or quotations of the cost of the various items of advertising and other services covered by this Agreement together with terms of payment.

8.4 The Client’s written approval of copy, layouts or artwork will be the Agency’s authority to purchase production materials and prepare proofs. The Client’s written approval of proofs will be the Agency’s authority to publish.

8.5 The Client’s written approval of television, cinema and radio scripts and/or storyboards with estimates or quotations of the production cost will be the Agency’s authority to enter into production contracts and engage performers, and the Client’s written approval of films and recordings with estimates or quotations of the cost will be the Agency’s authority to transmit.

8.6 The Client’s written approval of media schedules and estimates will be the Agency’s authority to make reservations and contracts for space, time and other facilities under the terms and conditions required by media or suppliers.

8.7 The Agency will advise the Client immediately of any changes in the estimated cost of items of Advertising or any changes in plans, schedules or work in progress previously approved in writing by the Client.

CLAUSE 9

Contact reports

Contact reports will be issued by the Agency dealing with matters of substance discussed at meetings or in telephone conversations between the Client and the Agency within _____ working days following the meeting or conversation. If the subject matter of a contact report is not questioned by the Client within _____ working days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation to which it refers.

CLAUSE 10

Amendments

10.1 The Client may request the Agency to change, reject, cancel or stop any and all plans, schedules or work in progress and the Agency will take all reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations to media and suppliers.

10.2 In the event of any cancellation or amendment the Client will reimburse the Agency for any charges or expenses incurred by the Agency to which the Agency is committed and also pay the Agency’s remuneration covering these items.

CLAUSE 11

Remuneration

11.1 Retainer

The Client shall pay the Agency a retainer of €_____ for each year of the Term beginning with the Commencement Date and its anniversaries (“Year”), payable in equal monthly instalments.

or

Time spent

The Agency’s charges for the Services shall be calculated using the hourly rates shown in Schedule 5 to this Agreement, provided that the total charge in each year of the Term beginning with the Commencement Date and its anniversaries (“Year”), shall not exceed €_____.

or

Commission

The Agency’s income will be calculated on the following basis: the Agency shall include in its invoices to the Client a commission of X% on the net cost to the Agency (the “Agreed Commission”) (equivalent to Y% of the gross cost) of all [media] [production] [services] purchased on the Client’s account.

If remuneration is to be by commission but with an agreed minimum remuneration level, the next sub-clause may be added to the Commission clause.

11.2 The Agency’s total remuneration for each year of the Term beginning with the Commencement Date and its anniversaries (“Year”) will not be less than €_____. If during any Year the Agreed Commission in respect of the Accounts is less than this sum the Client will pay the Agency the difference. If it is more the Agency will retain the excess. If the Term ends part way through a Year this provision shall apply pro rata on a [daily] [monthly] basis.

or

If remuneration is to be as above but with monthly as well as annual balancing payments, the next sub-clause may be added to the Commission clause.

11.3 The Agency’s total remuneration for each year of the Term, beginning with the Commencement Date and its anniversaries (“Year”) will not be less than €_____. If in any month the Agreed Commission in respect of the Accounts is less than one twelfth of this sum the Client will pay the Agency the difference. If at the end of any Year the total remuneration received by the Agency (Agreed Commission plus balancing sums) is larger than the above minimum for the Year the Agency will refund to the Client either the amount of such excess, or an amount equal to the total balancing sums paid by the Client for each of the months of that Year, whichever is the less.

If the Term ends part way through a Year this provision shall apply pro rata on a [daily] [monthly] basis.

And (in the case of exclusive appointments with media commission), the parties may wish to add the following to the Commission clause at 12.1.

Payments of Agreed Commission following the service of notice to terminate this Agreement shall be made in accordance with the provisions of sub-clause 29.5 below.

Add the following if the parties agree a retainer basis of remuneration plus a performance related bonus:

11.4 In addition to the remuneration set out above, if the Agency meets the criteria specified in Schedule 6 for payment by results, the Client shall pay the Agency the results bases bonus in accordance with the scheme set out in **Schedule 6**.

CLAUSE 12

Media space and time charges

12.1 General

Media charges will be based on the current published rates for Advertising in all media. [Whatever commission is allowed by media, the media charge passed on by the Agency to the Client will be no more and no less than is required to give the Agency the Agreed Commission.]

12.2 Refunds and adjustments

The Agency will credit the Client with any other refund received by the Agency in connection with space and time charges which the Client shall have paid. If the Agency is able to purchase space or time at less than current published rates the Agency's media charges shall be adjusted accordingly.

CLAUSE 13

Discounts and rebates

13.1 If, in a medium operating volume discounts, the space or time used by the Client varies from that agreed with the medium, the amount will be disclosed [and an adjusting payment will be made by either the Client or the Agency so that the Client pays no more and no less than the net of commission figure charged by the medium].

13.2 All cash discounts quoted in media rate cards as available to all purchasers will be offered to the Client provided the Client pays the Agency invoices on the appropriate due dates.

13.3 The Client shall receive the benefit of all commissions, discounts and rebates [obtained by the Agency] [derived from the handling by the Agency of the Accounts under this Agreement].

CLAUSE 14

Materials, services and disbursements

The Agency will [depending on whether the item of expenditure attracts Agreed Commission pursuant to clause 12,] invoice the Client [inclusive of Agreed Commission] in respect of the following approved costs incurred by the Agency in performing the Services:

14.1 the cost of all production work required to produce the Advertising including film production, artwork, photography, model fees, recordings, the services of performers, blockmaking, typesetting and printwork;

14.2 production costs involved in the preparation of packaging, labels and cartons, exhibition and display material, booklets, sales letters, product publicity and other promotion material or services as may be prepared or suggested by the Agency and agreed by the Client;

14.3 all costs incurred in the despatch of advertising material to or from publishers and other media and other special deliveries incurred in carrying out the Client's instructions and safeguarding the Client's interests;

14.4 travelling and hotel expenses of Agency personnel [when attending studios and locations, company sales conferences and any other travel and overnight stays at the request of the Client] [outside a radius of [] miles from the Agency's offices] [with the exception of such travelling to the Client's premises by Agency personnel as is required in the ordinary course of providing the Services] [in accordance with the Client's travel and expense policy, if any]; and

14.5 any other item agreed between the parties in writing.

CLAUSE 15

Market research

The basis of the charges for any market research carried out by the Agency or on its behalf will be agreed with the Client in writing in advance in respect of any projects that are agreed to be necessary to provide data on which to base advertising strategies. Such research may include background studies of the market, consumer attitudes and product acceptance and projects to establish the effect of advertising that has been published.

CLAUSE 16

Advertising outside the Territory

The terms of remuneration set out above do not cover Services in respect of Advertising outside the Territory. If such services are required a separate remuneration arrangement will be negotiated.

CLAUSE 17

Fluctuations in currency values

If for whatever reason the sterling equivalent of the cost to the Agency of any materials or services purchased overseas for the Advertising is less or more than the cost anticipated at the date when such obligations were incurred, the Agency will charge the Client at the rate of currency exchange which is in operation at the time [the Agency makes its remittance overseas] [the Agency's remittance is received overseas]. The rate of currency exchange in operation at the time is deemed to be the closing mid-point rate in London for the day [the Agency makes its remittance overseas] [the Agency's remittance is received overseas] as subsequently quoted in the next published edition of The Financial Times.

CLAUSE 18

Value Added Tax

VAT will be included on Agency invoices, where appropriate, at the prevailing rate.

CLAUSE 19

Evaluation

The parties will conduct a full two-way evaluation and review of their relationship every [6] [12] months, including (without limitation) the performance of the Key Individuals and other staff from both the Agency and the Client. Any resulting changes agreed to the Services, the remuneration or any other aspect of the Agreement shall be agreed in writing, failing which the arrangements in place at the time of the Evaluation, for instance as to Agency remuneration, will continue to apply.

If the parties have agreed a performance-related bonus arrangement then the following should be added.

The evaluation and review meetings will also operate the performance-related bonus scheme described at clause 12.

CLAUSE 20

Terms of payment

In this clause, payment of an invoice within a specified number of days means payment within that number of days after the [presentation] [receipt] [date] of the invoice in question. [Should they consider it appropriate, the parties may mutually agree that particular fees or costs should be invoiced and/or paid in Euros].

20.1 Agency Fees

The Agency will invoice the Client in respect of Agency fees [monthly in advance] [monthly in arrears] and the Client will pay the invoice within _____ days.

20.2 Production

The Agency will normally invoice the Client in respect of production costs on the _____ day of each month and the Client will pay the invoice within _____ days. Where suppliers, including but not limited to film production companies, market researchers and exhibition contractors, require payment in advance or at various stages of production, the Client shall pay the Agency's invoices in respect of such production costs and for models' and actors' fees [within _____ days] [immediately upon presentation].

20.3 Media

The Agency will invoice the Client in respect of media costs on the _____ day of each month in respect of any media committed since the previous invoice and the Client will pay such invoices [immediately upon presentation] [within _____ days.]

20.4 Phase Payments

Where a project spans more than two months the Agency shall invoice 90% of the total estimated cost of the project evenly at the end of each month of the project. When the project is complete the Agency shall reconcile total time and costs and issue an invoice for the balancing amount.

20.5 The Client reserves the right to withhold payment of any invoice or part of an invoice which is not in accordance with this Agreement and shall on receipt of such invoice forthwith notify the Agency in writing of the reason for such withholding and, where applicable, pay the undisputed part of such invoice.

20.6 The Agency reserves the right to charge interest on all invoices presented to the Client which are not paid by the relevant due date at the rate of _____% above the base rate from time to time of _____ Bank plc. This right extends to any part of an invoice of which payment is withheld pursuant to sub-clause 21.4 should it be subsequently established that the amount in question was invoiced in accordance with this Agreement.

20.7 Where a surcharge is levied by a supplier of media or other supplier against the Agency due to late payment and this results from late payment by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue account.

20.8 In the event of the Agency's credit insurers revising or withdrawing cover for the Client, the Agency reserves the right to revise its terms of payment and if necessary [ask for payments in advance of media bookings] [seek suitable guarantees from the Client]. If it is not possible to reach agreement on suitable revised terms the Agency will have the right of termination set out in clause 29.2.

20.9 Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other party.

CLAUSE 21

Audit

21.1 In respect of all expenditure which is reimbursable by the Client under this Agreement the Agency shall maintain such accounts and records (the "Records") as are reasonably necessary for the purpose of enabling the Client to conduct an audit of that expenditure.

21.2 The Agency will allow the Client by its own personnel or by a professionally qualified independent auditor access to all the Records during the Term and for _____ months afterwards on not less than _____ days written notice at any time during normal business hours for the purposes of auditing or otherwise inspecting them [provided that in the absence of exceptional circumstances the Agency shall not be obliged to allow such access or inspection more than once during any _____ month period].

21.3 Should any audit or inspection of the Records by the Client reveal that the Client has been overcharged the Agency shall reimburse to the Client the amount of the overcharge within 7 days.

21.4 The Agency will afford to the Client all reasonable assistance in the carrying out of such audit, whilst the Client and its auditor will ensure that any information obtained in the course of the audit concerning the Agency's business is kept in the strictest confidence and not used for any purpose other than the proper conduct of the audit.

CLAUSE 22

Media and suppliers: business terms and selection

22.1 Unless otherwise stated in this Agreement, the Agency's contracts with media and suppliers in respect of the Services shall be made in accordance with media rate cards or other standard or individual conditions and contracts. The rights and liabilities as between the Client and the Agency shall correspond to those between the Agency and the various media and other suppliers under such conditions, including in particular any rights of amendment, omission and cancellation. On the Client's written request the Agency shall supply the Client with the relevant terms and conditions.

22.2 The Agency shall use reasonable care and skill in the selection and appointment of media and suppliers and the agreement of the terms and conditions of such appointment. Should the Client request, the Agency will obtain more than one quote for a particular supply and discuss these with the Client before placing an order.

22.3 In order to fund the ASAI self regulatory system, a levy of 0.2% is payable to the Advertising Standards Board of Finance. This applies to the gross media cost of all advertisements (excluding classified lineage, semi-display and any displays, screenings and publications outside of Ireland) and the postage cost of direct mailings in Ireland. The Agency shall add the levy to all appropriate invoices submitted to the Client, but no Agreed Commission shall be payable on the amount of the levy.

22.4 If in the course of providing the Services during the Term the Agency decides to use the services of any company in which the Agency has a financial interest, the Agency will declare this and before commissioning such services obtain the Client's consent thereto, such consent not to be unreasonably withheld.

CLAUSE 23

Copyright and other intellectual property rights

23.1 From now on in this Agreement, "**Rights**" means any copyright, extended or revived copyright, design right, registered design right, patent, performer's property right, trade mark, database right or any similar right exercisable in any part of the world, including any application for registration of any patent, trade mark, registered design or similar registerable rights in any part of the world, "**Existing Material**" means any photograph, TV programme, feature film, character, music, sound recording, performance, book, painting or any other material protected by Rights, created by a third party and in existence at the time it is desired to make use of it for the purposes of the Advertising, "**Agency Material**" means all artwork, copy, models, designs, photographs and all other material created for the Advertising by directors or employees of the Agency, [provided that it is approved by the Client and incorporated] [whether or not it is incorporated] into Advertising during the Term, "**Commissioned Material**" means all artwork, copy, models, designs, photographs, films, sound recordings and all other material the creation of which is commissioned from third parties during the Term by the Agency for the Advertising and "**Moral Rights**" means all rights described in Part 1, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world.

If it is agreed that as far as possible all intellectual property rights (IPRs) are to vest in the client the following sub clauses 24.2 to 24.6 could be used.

VERSION A - intellectual property rights to vest in client

23.2 It is the intention of the parties that the Client should own the Rights in all Agency Material and Commissioned Material and all necessary rights in Existing Material. To that end and subject to sub-clause 24.3 the Agency shall forthwith on the Client's written request sign an unconditional assignment with full title guarantee of all Rights in the Agency Material and the Commissioned Material together with the right to sue for damages for past infringement. In relation to performers' property rights these shall be assigned subject to any repeat fees previously agreed with the approval of the Client and any legally unwaivable right such as the right to equitable remuneration.

23.3 Insofar as Commissioned Material consists of television, cinema and radio commercials, the Rights in these pass to the Agency under standard forms of agreement. As these impose obligations affecting future use of the commercials any relevant assignment of Rights by the Agency will have to be subject to these obligations. Regarding any other Commissioned Material, the Agency will take all necessary steps, at pre-agreed cost to the Client, to obtain an unconditional written assignment to the Client of all Rights.

23.4 If the Agency intends to incorporate any Existing Material in the Advertising the Agency shall inform the Client as soon as practicable and if no assignment of the Rights is possible negotiate a grant of the required usage rights at pre-agreed cost to the Client.

23.5 The Agency shall retain ownership of all copyrights, patents, database rights, trademarks, trade secrets, know-how and any other proprietary right, now known or hereinafter created together with all extensions and renewals of such rights in all concepts, designs, content, utilities, processes, methodologies, software and tools which are: (a) pre-existing works and works outside the scope of Services provided; (b) works of general applicability to the consulting and software development industries; and (c) existing and future trademarks, service marks, trade names, domain names and all other marketing material of the Agency, hereafter called "Agency Property". Agency Property shall not include the "look and feel" of a Deliverable created by the Agency for the Client or the Core Agency IP. To the extent that part or all of such material forms a part of any Deliverable provided by the Agency to the Client, upon payment of all Fees and Expenses due, the Agency hereby grants to the Client a perpetual, non-exclusive, royalty-free, worldwide licence to use such Agency Property therein solely for Client's internal business purposes and for the use, operation and maintenance of such of the Deliverables embodying such Agency Property.

23.6 Agency shall retain ownership of all rights in technology and/or products developed by the Agency for licensing and re-use by multiple parties, hereafter called the "Core Agency IP". The Agency shall licence the Core Agency IP to the Client in accordance with the terms and conditions of the Licence Agreement.

23.7 This sub-clause deals with the use of Advertising after the end of the Term, including unused or unpublished Advertising plans or ideas prepared by the Agency, whether the subject of Rights or not. The rights to use this material shall remain the Client's and it shall not be used by the Agency except and to the extent that:

23.7.1 the Advertising consists of Existing Material; or

23.7.2 the Agency may reasonably wish to use the Advertising for the purposes of promoting its own business.

All the above applies regardless of whether the physical embodiment of any relevant creative work is in the Agency's possession in the form of copy, artwork, plates, films etc.

If the assignment of IPRs to the client at the end of the contract is preferred, then sub clauses 24.2 to 24.9 below are suggested.

VERSION B - Assignment of IPR's on termination plus commission

23.2 The Rights in all Agency Material vest in the Agency unless different arrangements are made in writing.

23.3 The Agency shall obtain all usage rights in Existing Material and Commissioned Material as are deemed necessary by the Agency at the time such material is selected or obtained.

23.4 During the Term the Client will not make use of the Advertising in or outside the Territory without the Agency's prior written consent.

23.5 If the Client so requests and provided all obligations of the Client arising from this Agreement (including those relating to the period of notice) have been met, the Agency shall assign to the Client, after the Term, with full title guarantee, such of the Rights in the Agency Material, Commissioned Material and Existing Material as may be owned by the Agency and capable of assignment together with the right to sue for damages for past infringement. Such assignment shall be subject to sub-clauses 24.6 to 24.9 below.

23.6 The copyright in television, cinema and radio commercials passes to the Agency under standard forms of agreement. As these place restrictions on future usage, assignments of Rights to the Client will be subject to the rights of third parties and will be made only by special arrangement on terms indemnifying the Agency against subsequent claims by third parties.

23.6.1 The Agency shall retain ownership of all copyrights, patents, database rights, trademarks, trade secrets, know-how and any other proprietary right, now known or hereinafter created together with all extensions and renewals of such rights in all concepts, designs, content, utilities, processes, methodologies, software and tools which are: (a) pre-existing works and works outside the scope of Services provided; (b) works of general applicability to the consulting and software development industries; and (c) existing and future trademarks, service marks, trade names, domain names and all other marketing material of the Agency, hereafter called "Agency Property". Agency Property shall not include the "look and feel" of a Deliverable created by the Agency for the Client or the Core Agency IP. To the extent that part or all of such material forms a part of any Deliverable provided by the Agency to the Client, upon payment of all Fees and Expenses due, the Agency hereby grants to the Client a perpetual, non-exclusive, royalty-free, worldwide licence to use such Agency Property therein solely for Client's internal business purposes and for the use, operation and maintenance of such of the Deliverables embodying such Agency Property.

23.6.2 Agency shall retain ownership of all rights in technology and/or products developed by the Agency for licensing and re-use by multiple parties, hereafter called the "Core Agency IP". The Agency shall licence the Core Agency IP to the Client in accordance with the terms and conditions of the Licence Agreement.

23.7 The Client shall notify the Agency of any intended use of Advertising after the Term and will pay the Agency a fee equivalent to _____% of the gross amounts payable for the media in which the Advertising is used. Such sums shall be paid to the Agency within _____ days after the due dates for payment in respect of the media in which such Advertising is used.

23.8 Save with the written consent of the Agency the Client shall not at any time before or after the end of the Term, other than in the Client's above or below the line advertising or on the packaging of the Client's products, use or license any use in or outside the Territory of any cartoon figure, model or other character whose visual appearance has been created exclusively for the Client by the Agency or by the Agency's subcontractors. The Agency's consent for any other use of such characters shall not be unreasonably withheld, but where income is to be generated by, for example, activities in the nature of character merchandising, the Agency's consent will be conditional on prior agreement between the parties and where appropriate with subcontractors, on reasonable fees or royalties.

23.9 Notwithstanding any of the above the Agency shall:

23.9.1 be able during and after the Term to use Advertising for the purpose of promoting its own business; and

23.9.2 retain the copyright in any material contained in any presentation made in competition with any other agency in the event of the Agency's presentation being unsuccessful.

The varieties of IPR arrangements possible are infinite but since space is limited the broad thrust of two other approaches is suggested below without detailed clauses.

VERSION C -

IPR's in Agency Material to be assigned to the Client from the start with the Agency obliged to either obtain an assignment of all IPR's in Existing and Commissioned Material or, if this is not possible, to notify the Client and negotiate the grant of a licence on the best possible terms, the cost to be for the account of the Client.

VERSION D -

IPR's in Advertising, except and to the extent that it consists of Commissioned or Existing Material (where only a usage license is obtained) to be assigned to the Client on request after 12 months have expired from the end of the Term, with the Client obliged to pay a fee to be agreed for continued use of Advertising after the Term.

CLAUSE 24

Ownership and custody of material

24.1 All Advertising prepared by the Agency and paid for by the Client will be the Client's property but not necessarily the Client's copyright. This does not apply to "stock" photographs obtained from news or photographic agencies for particular advertisements or to photographic or film negatives or to any other medium in which this material may be supplied.

24.2 The Agency will keep in its care materials entrusted to the Agency by the Client (the "Property"). The Agency will mark or otherwise identify the Property as being the property of the Client and will be responsible for its safekeeping. The Agency will not, however, be obliged to recover typesetting, colour separations, printing plates etc. and the like from media and suppliers once the Agency has parted with them.

24.3 The Agency shall not be entitled to destroy Property without the Client's prior written consent, except that if after [12] months from the Property coming into its possession the Agency gives written notice to the Client that it no longer requires the Property and the Client does not respond within 30 days from the date of the notice, the Agency shall be entitled to return the Property to the Client by delivery to the Client's offices at the address shown at clause 1.

CLAUSE 25

Insurance

25.1 Transmission and Production

The Agency will insure against transmission and production risks for all Advertising undertaken for television. Unless the parties agree otherwise in writing the premium for such insurance shall be included in the Agency's production charges.

25.2 Loss or Damage

Regarding Property and items such as negatives, video tapes and software coming into existence for the purpose of producing the Advertising (the "Items"):

25.2.1 Property and Items retained by the Agency will at all times that they are in the Agency's possession be insured by the Agency against loss or damage even though some Items may have become the Client's property as a result of the Client paying the relevant production costs;

25.2.2 [the Agency] [the Client] will insure Property and Items against loss or damage when in transit between the Agency and third parties for the purposes of production or publication and when in the possession of those third parties. The Client shall specifically inform the Agency in the event of any Property or Items having an individual or aggregate value greater than €_____.

25.3 Professional Indemnity

Without prejudice to its liability to indemnify the Client, the Agency shall have in force and maintain at its own cost such policy or policies of insurance with insurers of repute as will give the Agency (or its sub-contractors) cover in a sum of not less than €_____ in respect of all of its potential liabilities and obligations under the provisions of this Agreement. The Agency shall as requested by the Client provide the Client with all such documentation as is necessary to prove the Agency's continuing compliance with its obligations to insure under this provision.

CLAUSE 26

Confidential information

26.1 The parties acknowledge a duty not during or after the Term to disclose without the other's prior written permission any confidential information either concerning the other's business, its business plans, customers or associated companies or resulting from studies or surveys commissioned and paid for by the Client.

26.2 In particular during and after the Term the Agency acknowledges its responsibility to treat in complete confidence all the confidential marketing and sales information and statistics relating to the Client's business with which the Client may supply the Agency in the course of any work for the Client.

26.3 From now on in this clause 27 "Information" will be used to describe the categories of information referred to in sub-clauses 27.1 and 27.2.

26.4 The Agency shall where so requested by the Client impose obligations in terms equivalent to those in sub-clauses 27.1 and 27.2 on its own personnel and obtain written assurances from any third parties to whom Information has to be disclosed in order to enable the Agency to carry out its obligations under this Agreement.

Use sub-clause 27.5 if copyright sub-clause 24.2 version B used.

26.5 [The Client acknowledges and agrees that any identifiable and original idea or concept presented by the Agency in relation to any promotion or advertising campaign invented or developed by the Agency shall be acknowledged as being available only for such promotion or campaign and shall not be used for any other purposes whatsoever without the Agency's express prior agreement given in writing. Even where no promotion or campaign is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without the Agency's express prior written consent.]

26.6 For the avoidance of doubt, the restrictions in this clause 27 shall not prevent:

26.6.1 the disclosure or use of Information in the proper performance of the Agency's duties;

26.6.2 the disclosure of Information if required by law;

26.6.3 the disclosure of Information which has come into the public domain otherwise than through unauthorised disclosure.

26.7 The Client acknowledges that nothing in this Agreement shall affect the Agency's right to use as it sees fit any general marketing or advertising intelligence gained by the Agency in the course of its appointment.

CLAUSE 27

Warranties and indemnities

27.1 If there is an error in Advertising as published or publication is delayed or does not occur as planned, the Agency will not be liable unless this is caused by its default or neglect.

27.2 Should either party or its employees sustain any loss or liability, costs (including legal costs) or damages as a result of the other's breach of this Agreement, the party in breach shall indemnify the other in full save in respect of consequential losses.

27.3 The Client warrants that to the best of its knowledge information and belief all Account information supplied to the Agency before and during the Term will be accurate and not in any way contrary to [Irish] law.

27.4 [The Agency warrants that having taken such legal or other advice in respect of the Advertising as the parties consider necessary and having undertaken such trade mark searches and other enquiries as the parties may agree should be undertaken, the publication of the Advertising shall, to the best of the Agency's knowledge and belief, not infringe any third party rights or be in any other way contrary to law other than as contained in any legal or other advice provided to the Agency and communicated to the Client.]

[For the avoidance of doubt any costs incurred in taking legal or other advice and undertaking trade mark or other searches and enquiries as the parties may agree should be undertaken are for the account of the Client.]

[The Agency warrants to the Client that having taken such legal advice to the best of its knowledge and belief any creative work produced by the Agency as part of the Services will be original to its authors, has not been previously published in any form in Ireland, will not infringe the copyright of any third party in Ireland and will not contain anything obscene, blasphemous, libellous or otherwise unlawful in Ireland other than as contained in any legal or other advice provided to the Agency and communicated to the Client.] [The Client accepts full legal responsibility in respect of any Advertising approved by it for publication and will indemnify the Agency in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the Advertising by the Client for advertising purposes.]

27.5 The Client confirms that it is expressly understood and agreed that in planning and buying the Client's media activity, the Agency shall use its [best] [reasonable] endeavours to ensure the accuracy of all estimated and target figures relating to:

27.5.1 the number, proportion or type of people likely to be exposed to the Advertising;

27.5.2 the number of exposures each person is likely to receive; and

27.5.3 the cost of achieving these exposures.

Since these are matters which are ultimately beyond the Agency's control, no warranties can be given by the Agency as to the accuracy of such estimates/targets or as to the figures actually occurring and no liability shall attach to the Agency in respect of any losses suffered by the Client or by any third party by reason of the Client's reliance on such estimates/targets.

CLAUSE 28

Termination

28.1 Either party may terminate this Agreement forthwith by notice in writing to the other if the other party:

28.1.1 is in material breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, fails to remedy such breach within [30] days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it; or

28.1.2 (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

28.1.3 (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or

28.1.4 becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

28.1.5 has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

28.1.6 ceases, or threatens to cease, to carry on business.

28.2 The Agency shall be entitled forthwith to terminate this Agreement by written notice to the Client if the Agency is unable to obtain normal credit insurance in respect of the Client and advance payments and suitable guarantees have not been made available by the Client within _____ days after the Agency's written request under the provisions of sub-clause 21.7. During the period between the Agency's request for advance payments and suitable guarantees and the earlier of either the Client providing them or the end of the Term, all the Agency's obligations in relation to the booking of media shall be automatically suspended, as will any other Agency obligation to enter into any commitments involving significant expenditure as principal on the Client's account.

28.3 The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice and whether or not there is a period of notice, the Client shall pay all sums due in respect of work done and expenditure committed by the Agency until the end of the Term.

28.4 Upon the termination of this Agreement and payment by the Client of all items properly chargeable to the Client hereunder, the Agency will give the Client all reasonable co-operation in transferring, subject to the approval of third parties where required, all reservations, contracts and arrangements with media or others for space, time or materials yet to be used and subject to clause 24, all rights and claims thereto.

The following sub-clauses 29.5 and 29.6 may be inserted in commission only contracts.

28.5 If the Client wishes to place Advertising direct or through another agency during the agreed period of notice it may do so provided that it pays the Agency a sum equivalent to the remuneration which the Agency would have been entitled to receive had it placed the Advertising under this Agreement.

28.6 If, prior to notice of termination of this Agreement, the Agency has at the request of the Client prepared detailed plans or proposals for future advertising in respect of which the Agency has not been remunerated, the Agency shall be entitled to receive from the Client [payment on a fair compensation for work done basis] [the equivalent of _____% of the amount of the remuneration received by the Agency from the Client in the [6/12] months prior to the date of notice], less any remuneration which the Agency may otherwise receive from the Client in respect of its work under this Agreement during the period of notice.

28.7 [If the Client wishes to use, after the Term and through another agency, a media plan drawn up by the Agency during the Term for the Client's future use, the Client shall not do so without the Agency's prior written consent and agreement being reached regarding appropriate remuneration for the Agency.]

CLAUSE 29

Survival of obligations on termination

The following clauses shall survive the end of the Term:

Clause 22	Audit
Clause 24	Copyright and other intellectual property rights
Clause 25	Ownership and custody of material
Clause 27	Confidential information
Clause 28	Warranties and indemnities
Clause 36	Non-solicitation
Clause 39	Notices
Clause 40	Applicable law
Clause 41	Dispute resolution

CLAUSE 30

Advertising standards

30.1 Both parties shall comply with the ASAI Codes of Advertising and Sales Promotion, the Broadcast Commission of Ireland (“BCI”) Code of Advertising Standards and Practice for Television and other relevant codes of advertising laid down whether on a statutory or a self-regulatory basis. Both parties shall abide by the rulings of the Advertising Standards Authority of Ireland and Central Copy Clearance Ireland.

30.2 In order to satisfy the requirements of these codes or any statutory requirements the Client and the Agency will co-operate with each other in ensuring that suitable objective factual product and other information is available as required.

30.3 The Client shall inform the Agency without delay if the Client considers that any Advertising submitted to the Client by the Agency for approval is false or misleading or in any way contrary to law or to any applicable code.

CLAUSE 31

Financial services advertising

31.1 It is the responsibility of the Client to ensure that all Advertising which is an “investment advertisement” as defined by the Financial Services Act 1986 (as replaced, modified, or re-enacted from time-to-time) (the “Act”), complies with the Act and all relevant rules and regulations, whether of the Financial Services Authority or of any recognised Self Regulatory Organisation or Recognised Professional Body of which the Client may be a member or to whose rules and regulations the Client may be subject from time to time.

31.2 In particular the Client warrants that in relation to any Advertising falling within the Act’s definition of “investment advertisement”:

31.2.1 the Client is or will be an “authorised person”, as defined by the Act, and that every piece of Advertising will be seen and approved by the Client; or

31.2.2 if the Client is not required to be an authorised person, that each piece of Advertising will be approved by an authorised person; or

31.2.3 the Advertising is otherwise permitted by the Act.

CLAUSE 32

Data protection

Each party shall ensure that any mailing list or customer database supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1988, (as replaced, modified, or re-enacted from time-to-time) and that each party shall comply with the relevant obligations of the Data Protection Act 1988.

CLAUSE 33

Waiver

No whole or partial waiver of any breach of this Agreement shall be held to be a waiver of any other or any subsequent breach. The whole or partial failure of either Client or Agency to enforce at any time the provisions of this Agreement shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part of it or the right of either party to enforce subsequently each and every provision.

CLAUSE 34

Force majeure

If due to war, strikes, industrial action short of a strike, import or export embargo, lockouts, accidents, fire, blockade, import or export embargo, flood, natural catastrophes or other obstacles over which [a party] [the Agency] has no control, [that party] [the Agency] fails to perform any of its obligations under this Agreement, [that party] [the Agency] shall not be held responsible for any loss or damage which may be incurred as a result of such failure. Should the event of force majeure continue for longer than one month, the party adversely affected shall have the option of terminating this Agreement immediately without further liability other than such liabilities as have already accrued when the Term ends.

CLAUSE 35

Non-solicitation

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of [...]months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any [key] executive of the other party who has worked on the Advertising at any time during the last 12 months of the Term. [Each of the parties shall notify the other in writing of those executives whom they regard as "key" for these purposes.]

CLAUSE 36

Severance

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall promptly commence good faith negotiations to remedy such invalidity.

CLAUSE 37

Entire agreement

This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of this Agreement which supersedes all previous communications, agreements and other arrangements, written or oral [excepting the copy agreements annexed hereto as Schedule [...]]. It is expressly agreed that no variation of this Agreement shall be effective unless in writing and signed by both parties.

CLAUSE 38

Notices

38.1 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party at its specified address at clause 1 (or such other address as is notified to the other party in writing) as follows:

38.1.1 by hand;

38.1.2 by registered or first class post or recorded delivery; or

38.1.3 by facsimile transmission confirmed by registered or first class post or recorded delivery.

Notices sent by registered post or recorded delivery shall be deemed to be served three (3) working days following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4.00pm on a working day, but otherwise on the next following working day. In all other cases, notices are deemed to be served on the day when they are actually received.

CLAUSE 39

Applicable law

This Agreement shall be construed in accordance with and governed by the law of [Ireland] and both parties hereby irrevocably agree that the Courts of [Ireland] shall have [non] exclusive jurisdiction to resolve any controversy or claim of whatever nature arising out of or relating to this Agreement or any alleged breach of it.

CLAUSE 40

Dispute resolution

Either

40.1 [In this clause “**Mediation**” shall mean mediation in accordance with the mediation procedure of IDR Europe Ltd or CEDR. Either party shall at its absolute discretion refer any difference which in any way relates to or arises out of this Agreement to Mediation under the auspices of either IDR Europe Ltd or CEDR (“**the chosen ADR organisation**”) as a condition precedent to exercise any right to litigation save that the right to seek and obtain injunctive relief and/or to issue and pursue proceedings for non-payment of an invoice is expressly excluded from this condition precedent.

Once a party has elected for the chosen ADR organisation to handle a Mediation then there shall be no switch to the other body for the purposes of dealing with the dispute in question without the written agreement of both parties. The mediator shall be agreed upon by the parties, but failing such agreement within 10 days of one party requesting the appointment of a mediator and providing details of their proposed mediator, the mediator shall be appointed by the chief executive officer of the chosen ADR organisation from amongst trained mediators proposed by that organisation. Unless agreed otherwise the parties shall share equally the costs of the Mediation. The use of Mediation will not be construed to affect adversely the rights of either party should the Mediation not resolve the dispute in question.]

and if desired

40.2 [Should Mediation not resolve the difference in question, it will be referred to arbitration by a single arbitrator. Either party may serve on the other written notice to concur in the appointment of a particular arbitrator. If that arbitrator is not appointed within 21 days after the notice is served the arbitrator shall be appointed by the President of the Chartered Institute of Arbitrators. The above also applies if an arbitrator previously appointed declines to act or can no longer act.]

or

40.1 [Any difference which in any way relates to or arises out of this Agreement will be referred to arbitration by a single arbitrator. Either party may serve on the other written notice to concur in the appointment of a particular arbitrator. If that arbitrator is not appointed within 21 days after the notice is served the arbitrator shall be appointed by the President of the Chartered Institute of Arbitrators. The above also applies if an arbitrator previously appointed declines to act or can no longer act.]

Signed on behalf of (name of Client):

Print Name: _____

Job Title: _____

Signed on behalf of (name of Agency):

Print Name: _____

Job Title: _____

SCHEDULE 1

Index of defined terms

TERM	CLAUSE CONTAINING DEFINITION
Accounts	3
Act	32
Advertising	3
Agency	1
Agency Material	24.1
Agency Property	24.5
Agreed Commission	12
Agreement	2
Authorised Person	9.1
Chosen ADR organisation	41.1
Client	1
Commencement Date	4
Commissioned Material	24.1
Core Agency IP	24.6
Existing Material	24.1
Information	27.3
Items	26.2
Key Individual(s)	5.2
Mediation	41.1
Moral Rights	24.1
Property	25.2
Records	22.1
Rights	24.1
Services	5.1
Term	4
Territory	3
Working day	9.2
Written approval	9.2
Year	12.1

SCHEDULE 2

The Accounts

SCHEDULE 3

The Services

PLEASE NOTE THIS IS A 'MENU' ONLY: SELECT ONLY THE SERVICES REQUIRED

Parties to add to or omit as appropriate

- 1 Overall services**
 - 1.1 A careful study of the business of the Client and the Accounts.
 - 1.2 An analysis of present and potential markets.
 - 1.3 The identification of problems and solutions in relation to advertising, marketing and merchandising of the Accounts.
 - 1.4 The formulation and submission to the Client for its approval of advertising ideas, plans, programmes and campaigns together with estimates of the cost of executing the recommendations.
 - 1.5 Proposing, arranging and interpreting market research activity which the Agency judges to be of use to the Client in promoting the Accounts.
- 2 Media**
 - 2.1 The evaluation of all advertising media.
 - 2.2 The formulation and submission for the Client's approval of marketing and media plans and subsequent implementation.
 - 2.3 The development, formulation and submission of a detailed media schedule for the Client's approval.
 - 2.4 General media planning and buying.
- 3 Production supervision**
 - 3.1 Preparation and submission of estimates for press production and quotes for television production following respectively the Best Practice Guidelines agreed between the AAI and the IAPI.
 - 3.2 Supervision of production companies and other suppliers.
 - 3.3 Organising the despatch of artwork, prints and other necessary materials to the media.
 - 3.4 Making the necessary arrangements for the use of artists, models, music etc. including licences, buyouts and fees wherever practicable prior to commissioning.
- 4 Other services**
 - 4.1 Negotiating and agreeing sponsorship deals on behalf of the Client and the formulation of all appropriate sponsorship credits and idents.
 - 4.2 Formulation, development and submission to the Client of merchandising and other promotional schemes.
 - 4.3 Analysing the relevance and usefulness of new media (e.g. the worldwide web) as they become available and the formulation, submission and with the Client's approval, execution of new media projects.

SCHEDULE 4

Key Individuals

Key Agency personnel to be involved in providing the services

Name: _____

Role: _____

SCHEDULE 5

Hourly rates of Agency personnel

NB. This schedule will only be relevant where remuneration is fee based

Every agency will have its own organisational and job title structure. The following list is an indication only of the types of jobs that exist within Agencies. It should not be seen as authoritative or definitive, but merely as an illustration.

The hourly rates specified below are subject to any agreed amendment by the parties.

AGENCY PERSONNEL	CURRENT HOURLY RATE €
------------------	-----------------------

Managing Director

Board Director

Account Director

Account Manager

Account Executive

Planning Director

Planning Executive

Media Director

Media Executive

Media Planner

TV Buyer

Press Buyer

Creative Director

Art Director

Copywriter

TV Producer

TV Producer's PA

Traffic Manager

TV Administrator

Production Manager

Production Executive

Print Buyer

Art Buyer

Cinema/Radio Producer

Creative Services Director

SCHEDULE 6

Payment by Results

Total amount payable under Payment by Results [set out a % of Fee or € amount]

Criteria

1. Commercial – 35%

	TOTAL
Net Sales	XX or X% growth

2. Brand Scores – 35%

	TOTAL
Brand Awareness (spontaneous/unsponsored)	X% or Y% increase
Other researched metric 1	X% or Y% increase
Other researched metric 2	X% or Y% increase

Where multiple measures are targeted the amount payable under that criteria will be split evenly across each target.

The payment will be calculated on a quarterly basis according to the following matrix:

% OF TARGET ACHIEVED	PERFORMANCE INCENTIVE PAYMENT
110%	+7.5%
105%	+3.75%
100%	0%
95%	-3.75%
90%	-7.5%

3. Account Management – 30%

Client Review Sheet, in Schedule 7, to be completed on a quarterly basis and the amount payable shall be according to the following matrix:

SCORE	BONUS EARNED
> 5	+7.5%
4	+3.75%
3	0%
2	-3.75%
< 1	-7.5%



8 Upper Fitzwilliam Street, Dublin 2, Ireland.
t. +353 (1) 676 5991 **f.** +353 (1) 661 4589
e. info@iapi.com **www.iapi.ie**