

**ADVERTISER / AGENCY CONTRACT**

**CREATIVE SERVICES**

(No Audit Clause)

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This Agreement is made on

2010.

**between**

[*Insert name of Advertiser*] a company incorporated in [*England*], registered number [*insert company number*] whose registered office is at [*insert registered office address*] (the “Advertiser”); and

[*Insert name of advertising agency*] a company incorporated in [*England*], registered number [*insert company number*] whose registered office is at [*insert registered office address*] (the “Agency”).

**Definitions and Interpretation**

Schedule 1 contains a list of defined terms. Except where expressly provided in this Agreement, the defined terms shall have the meanings set out in Schedule 1.

The clause headings are included for convenience only and shall not affect the interpretation of this Agreement.

The Schedules annexed to this Agreement shall form part of this Agreement and shall have full force and effect. Any reference to this Agreement includes the Schedules.

Use of the singular includes the plural and vice versa and the use of any gender includes the other genders.

References to any statutory legislation shall also refer to any amendments, extension or re-enactments thereof or to any subordinate legislation made from time to time.

**1 Appointment**

1.1 During the Term, the Advertiser appoints the Agency to carry out the Services, and the Agency agrees to provide the Services in the Territory in accordance with the terms of this Agreement.

1.2 The Advertiser will not use any third party to provide the Services or any part thereof in the Territory during the Term.

1.3 The Agency shall act as principal in law in all its contracts with third parties in relation to this Agreement.

**2 Term**

2.1 This Agreement shall commence on the Commencement Date and shall continue for an initial period of 12 months (the **Initial Term**), unless terminated sooner in accordance with the provisions of clause 22. After the Initial Term has expired, the Agreement shall continue in full force and effect unless and until terminated in accordance with the provisions of clause 21 or 22.

### **3 Services**

- 3.1 The Agency shall carry out and perform the Services set out in Schedule 2 with all the due care and skill which would be expected from a professional advertising agency.

### **4 Personnel**

- 4.1 The Agency shall allocate Personnel with suitable levels of experience and qualification to carry out the Services. The Advertiser acknowledges and agrees that the Agency may need to replace the Personnel with alternative personnel, and the Agency agrees to ensure that such replacements are of a similarly suitable level of experience and qualification.

- 4.2 The Agency shall ensure that any Key Personnel are actively involved in carrying out the Services. The Agency shall inform the Advertiser in the event that any Key Personnel leaves the Agency or is otherwise unable to continue to be actively involved in the carrying out of the Services.

- 4.3 Each party agrees that it will not during the Term or for a period of 6 months thereafter directly or indirectly solicit or attempt to solicit or authorise any third party to solicit or attempt to solicit any of the other party's [Personnel]/[Key Personnel] who has worked in connection with the Services under this Agreement during the previous 12 months.

- 4.4 The parties acknowledge that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply either at the commencement or the termination of this Agreement. In such circumstances, the parties agree to adhere to the IPA/ISBA TUPE Protocol from time to time in force for governing the rights and obligation of the parties and their Personnel.

### **5 Administration and Reporting**

- 5.1 The Agency and the Advertiser shall co-operate at all times during the provision of the Services. The Agency shall prepare and provide the Advertiser with a written report of all and any significant matters arising at meetings or in telephone conversations, and of any specific points agreed between the parties at any time, within seven days. The parties agree that this written report shall be regarded as an accurate and binding report of the meeting or conversation, or of any agreed points, unless the Client gives written notice of any disagreement it has with the content of any report within three working days of receipt.

- 5.2 The Agency shall willingly co-operate, where necessary, with any other third party appointed by the Advertiser. The Advertiser shall ensure that any third party supplier reciprocates such co-operation. The Agency shall produce written reports of any discussions between the Agency and any third parties appointed by the Advertiser.

- 5.3 The parties agree to meet on such frequency as the parties may agree to review the provision of the Services. If the parties agree any changes to the Services, the Fee or

any other matter at the review, these shall be set down in writing and signed by both parties. If any agreed changes are not recorded in writing and signed, such changes shall not apply.

## **6 Approvals and Changes**

- 6.1 All creative work, designs, copy, storyboards and scripts (the **Materials**) must be approved by the Advertiser. The Agency shall provide creative work, designs, copy to the Advertiser, and the Advertiser's Approval of such materials shall permit the Agency to buy production materials and prepare proofs. The Advertiser's Approval of any proofs shall permit the Agency to publish.
- 6.2 The Agency shall also provide storyboards and scripts to the Advertiser, and the Advertiser's Approval of such materials shall permit the Agency to enter into contracts with production houses and actors and/or models.
- 6.3 In the event that the Agency needs to make any changes to any previously approved Materials, the Agency shall inform the Advertiser as soon as possible with a detailed explanation for the change, and obtain the Advertiser's Approval before continuing.
- 6.4 The Advertiser shall inform the Agency in the event of any change to the Authorised Representatives.
- 6.5 Provided that the Agency allows for an adequate period of time for response when seeking the Advertiser's Approval, the Agency shall not be held liable for any delay or any increase in costs arising as a result of any failure by the Authorised Representative to provide the requisite approval.
- 6.6 In the event that the Agency wishes to change any agreed plans, the Agency shall send a formal written request to the Advertiser, setting out the details of the requested change, the reasons for such a request and any change in the costs. The Advertiser, acting reasonably, shall decide whether to approve such changes at its sole discretion.
- 6.7 In the event that the Advertiser wishes to cancel or change any agreed plans or schedules, the Agency shall comply as far as it is able to do so within its contractual obligations with any third parties. The Advertiser will pay the Agency for all reasonable costs incurred by the Agency, or imposed on the Agency by any third parties, as a result of such cancellation or change, provided that the Agency shall use all reasonable endeavours to mitigate such costs.

## **7 Fees and Costs**

- 7.1 The Advertiser shall pay the Agency in accordance with the provisions of Schedule 3 (the **Fee**) in respect of the Services.
- 7.2 In the event that the parties agree a change to the scope of the Services or a formal change to agreed plans and schedules are made in accordance with clauses 6.6 or 6.7,

any changes to the Fee or other agreed costs shall be made in writing and signed by both parties.

- 7.3 Where relevant, VAT (at the prevailing rate) will be included as a separate item on all Agency invoices.
- 7.4 The Advertiser shall pay all agreed third party costs [without mark up/including any Agreed Commission] necessary for the provision of the Services, including, but not limited to those, items listed in Schedule 3.
- 7.5 The Agency shall pass onto the Advertiser the benefit of any discounts or rebates from third parties which are obtained solely as a result of the Services carried out by the Agency pursuant to this Agreement.
- 7.6 The fees and costs described in this clause 7 do not cover any services which are not included in the Services described in Schedule 2. In the event that the Advertiser requires the Agency to provide any such additional services the parties shall negotiate and agree new fees in respect thereof.

## **8 Terms of Payment**

- 8.1 The Agency shall invoice the Advertiser in respect of the Fee each month and the Advertiser shall pay the invoice within 30 days.
- 8.2 Subject to clause 8.3, the Agency shall invoice the Advertiser in respect of 50% of any production costs once the Advertiser has agreed the estimate and the Advertiser shall pay this sum as soon as possible after receipt thereof. The remaining 50% of the production costs will be invoiced by the Agency on completion of the production and the Advertiser shall pay such invoice within 30 days.
- 8.3 In the event that any third party suppliers require payment in advance or payment in a different manner to that set out in clause 8.2 above, the Agency shall invoice the Advertiser in respect thereof as soon as possible and the Advertiser shall pay such invoices immediately.
- 8.4 If a supplier charges the Agency a penalty for late payment which penalty is caused by the Advertiser failing to pay any sum within a specified period, the Advertiser shall on demand pay the Agency the amount of such penalty and any interest which the supplier may have charged in respect thereof.
- 8.5 If a media owner levies a late copy charge against the Agency, the Advertiser shall on demand pay the amount of such late copy charge to the Agency.
- 8.6 The Agency shall be entitled to amend any agreed payment terms and require payment in advance or a suitable guarantee from the Advertiser if the Agency's credit insurers amend or withdraw their cover in respect of the Advertiser. In such circumstances, the Agency shall provide written notice to the Advertiser and seek alternative arrangements to be effected within 30 days. Until such arrangements are

effected, notwithstanding the provisions of this Agreement, the Agency shall not be obliged to enter into any binding commitments involving expenditure. If the Advertiser fails to implement alternative arrangements, the Agency shall be entitled to terminate this Agreement in accordance with clause 22.

- 8.7 The Agency shall be entitled to charge interest on any invoices which remain unpaid by the Advertiser by the due date at an annual rate of [...] % above the base rate from time to time of [*insert name of Agency's bank*] Bank plc. Interest shall accrue daily from the date when payment becomes due until payment is made.
- 8.8 The Advertiser shall be entitled to withhold payment of any invoice or part thereof where there is a genuine dispute in relation thereto.
- 8.9 In the event that the Agency is purchasing materials or services outside the United Kingdom, the Agency shall charge the Advertiser at the relevant rate of currency exchange on the date the Agency pays for such materials or services. For the avoidance of doubt, the relevant rate shall mean the closing mid-point rate in London for that relevant day as published in the subsequent edition of The Financial Times.

## **9 Third Party Suppliers**

- 9.1 The Agency shall obtain the approval of the Advertiser, which shall not be unreasonably withheld or delayed, when entering into contractual agreements with any third party suppliers in respect of the Services, or when subcontracting any of its rights, duties or obligations under this Agreement to any third party.
- 9.2 When entering into contracts with third party suppliers, the Agency shall act impartially and in good faith when choosing the third party supplier, and shall use all reasonable commercial endeavours to ensure that the relevant terms of this Agreement correspond to those agreed between the Agency and the respective supplier as closely as possible, particularly any rights relating to amendment or cancellation.

## **10 Compliance with Advertising Regulations**

- 10.1 The parties shall comply with all relevant advertising laws and regulations, including, but not limited to, the Committee of Advertising Practice (CAP) Code and the Broadcast Committee Advertising Practice (BCAP) Code, and with the Ofcom Broadcasting Code.
- 10.2 The Advertiser shall be responsible for ensuring that it provides the Agency with sufficient objective, factual and, where appropriate, scientific evidence to support any claim which it wishes to be included in any advertising created by the Agency. The Advertiser acknowledges that any delay caused by a failure to supply such evidence in good time to the Agency or any relevant clearance body shall not give rise to any liability on the part of the Agency.

- 10.3 The self-regulatory system in the UK is funded by a levy of 0.1% which is payable by the Advertiser to ASBOF or BASBOF. The levy is added to relevant invoices for booked media space.

## **11 Data Protection**

- 11.1 When handling personal data for any reason pursuant to this Agreement, both parties shall adhere at all times to the provisions of the Data Protection Act 1998, as amended from time to time, and all other applicable legislation, including, but not limited to, the Privacy and E-Commerce Regulations 2003.
- 11.2 Each party shall use all reasonable commercial endeavours to ensure that any third party database list used in connection with the Services is accurate and complies with all applicable laws.

## **12 Financial Promotions**

- 12.1 The Advertiser's Compliance Officer shall be responsible for ensuring that any Financial Promotion complies with the Financial Services and Markets Act 2000 (together with any other rules or regulations pursuant thereto) (the Act) and all other applicable rules, regulations and guidance issued by Financial Services Authority, including, but not limited to, the "Conduct of Business Sourcebook". The Agency shall not be liable for any failure by the Advertiser to comply with the provisions of this clause.
- 12.2 The Advertiser warrants that the Compliance Officer is an properly authorised person and that any Financial Promotion will be approved by the Compliance Officer pursuant to section 21 of the Act before it is published.

## **13 Intellectual Property Rights**

- 13.1 Subject to clause 13.2 below, the Agency agrees to assign to the Advertiser with full title guarantee, all Intellectual Property Rights in the materials provided to the Advertiser by the Agency in the course of carrying out the Services under this Agreement, and in any third party materials, which are owned by the Agency and capable of assignment, together with the right to sue for damages for past infringement provided that the Advertiser has fulfilled all its obligations under this Agreement, and in particular those relating to the payment of the Agency's Fees and costs.
- [12.1 The Intellectual Property Rights in the materials provided to the Advertiser by the Agency in the course of carrying out the Services under this Agreement shall remain the property of the Agency. During the Term, the Agency agrees to grant to the Advertiser a licence to use the materials for use in the Territory specified in Schedule 2. At the end of the Term, the Agency agrees to grant the Advertiser a [...] year licence to continue to use the materials on similar terms but for an additional fee to be agreed, provided that the Advertiser has fulfilled all its obligations under this

Agreement, and in particular those relating to the payment of the Agency's Fees and costs.]

- 13.2 The Advertiser acknowledges that certain advertising industry standard contracts deal with Intellectual Property Rights in specific ways. Any assignment under clause 13.1 is therefore subject to any restrictions on use included within such standard contracts. Any Performer's Intellectual Property Rights in any materials created for the Advertiser under this Agreement shall be assigned by the Agency to the Advertiser, but such assignment shall be subject to any repeat fees agreed with the Performer and any right to equitable remuneration. The Advertiser shall be fully and solely responsible for any claims arising as a result of a breach of such restrictions, except where such breach was caused by the acts or omissions of the Agency.
- 13.3 The Agency shall use all reasonable commercial endeavours to obtain an assignment of Intellectual Property Rights from any third party whose materials are used in the provisions of the Services, whether pre-existing materials or specially commissioned materials, to the Agency. Where no such assignment is available, the Agency shall obtain all necessary usage rights for all third party materials used in the provision of the Services on the best available terms.
- 13.4 The Advertiser acknowledges and agrees that it shall not obtain the copyright in any 'stock' photographs, films or images, or to any negatives, which the Agency has purchased from news or photographic agencies or websites for incorporation into the Services.
- 13.5 The Agency shall waive any Moral Rights that it may have in respect of the materials it develops and incorporates within the Services. The Agency shall use all reasonable commercial endeavours to obtain a similar waiver from third parties whose materials are used in the provisions of the Services, whether pre-existing materials or specially commissioned materials.
- 13.6 The Advertiser shall only be entitled to use the materials produced by the Agency pursuant to this Agreement within the Territory. In the event that the Advertiser wishes to use the materials outside the Territory during the Term, the Advertiser will pay the Agency a reasonably commercial fee which shall be negotiated by the parties acting in good faith. Any agreed fee shall be paid to the Agency once the materials have been published outside the Territory.
- 13.7 Where the Agency has developed and created a character in the course of the provision of the Services, and the Advertiser wishes to use this character in any income-generating merchandising, the parties shall agree a share of the proceeds or such other payment mechanism as the parties may decide to ensure that the Agency is rewarded appropriately for its work.
- 13.8 The Agency shall, during the Term and at all times thereafter, be entitled to use any materials created by the Agency under this Agreement to promote itself and its

business, including but not limited to showing the materials on its own website and on showreels, and for entry into industry awards.

- 13.9 For the avoidance of doubt, where the Agency presents artwork, designs or other materials to the Advertiser as part of a pitch process, the Agency shall retain the copyright in that artwork, design and materials and the Advertiser shall not use it, unless the Agency is successful in the pitch, in which case the provisions of clauses 13.1 to 13.7 shall apply.

#### **14 Ownership of Materials**

- 14.1 Subject to the provisions of clause 13, all tangible materials produced by the Agency shall become the property of the Advertiser, provided that the Advertiser has fulfilled all its obligations under this Agreement and in particular those relating to the payment of the Agency's Fees and costs.

- 14.2 The Agency shall ensure that any materials provided by the Advertiser (the Advertiser's Materials) to the Agency are kept safely and securely. All such Advertiser's Materials shall be clearly identified whilst in the control of the Agency and the Agency shall be responsible for any loss or damage to the Advertiser's Materials while they are in the Agency's control.

- 14.3 At the end of the Term, the Agency shall return the Advertiser's Materials and the Advertiser's property referred to in clause 14.1 to the Advertiser's offices at the Advertiser's expense. In the event that the Agency is unable to deliver such materials for any reason, then the Agency shall be entitled to destroy these materials after a period of 6 months have elapsed, provided that it has given the Advertiser at least 30 days written notice of its intention so to do.

#### **15 Confidential Information**

- 15.1 Other than in the course of fulfilling its duties or performing the Services under this Agreement, neither party shall disclose to any third party the Confidential Information of the other party without first obtaining the prior written permission of the other party.

- 15.2 The Advertiser shall be entitled to request that the Agency obtain signed non-disclosure agreements from third party suppliers containing similar obligations of confidentiality, prior to disclosing to such third party suppliers any of the Advertiser's Confidential Information.

- 15.3 It shall not be a breach of this clause 15 if either party discloses Confidential Information:

15.3.1 Where that party can prove that the information was already in its possession prior to the date of this Agreement;

- 15.3.2 Where that party can prove that the information was obtained from a third party who were themselves not bound by any duty of obligation;
  - 15.3.3 Where the Confidential Information is already in the public domain; or
  - 15.3.4 Where the disclosure is required by a court order or by law.
- 15.4 If the Advertiser is subject to the Freedom of Information Act 2000 (and any subordinate legislation) (“FOIA”), and the Advertiser receives a Request for Information (as defined in the FOIA), and such Request relates to the Confidential Information, the Advertiser shall inform the Agency and the parties shall discuss whether any of the Confidential Information can be exempted from the requirements for disclosure.

## **16 Advertiser Obligations**

- 16.1 The Advertiser warrants that, as far as it is aware, all information provided to the Agency during the Term in respect to the Services shall be true, accurate and legal.

## **17 Agency Obligations**

- 17.1 The Agency warrants that any creative materials developed by the Agency under this Agreement will be original and shall not, as far as the Agency is aware, have been published previously in the Territory, and shall not infringe the Intellectual Property Rights or other rights of any third person. The Agency shall, where necessary, obtain requisite legal advice and carry out relevant searches in order to comply with its obligations under this clause 17.1.
- 17.2 The Agency shall endeavour to ensure that any creative materials developed by the Agency under this Agreement shall not be, and shall not contain anything that is, obscene, blasphemous, libellous or illegal in the UK.
- 17.3 When requested by the Advertiser, the Agency shall obtain, and provide to the Advertiser copies of, legal advice received in respect of any element or part of the materials developed hereunder.

## **18 Indemnity**

- 18.1 Subject to the provisions of clause 19, the Agency shall indemnify the Advertiser for any and all costs, claims, losses or damages arising as a result of the negligence of the Agency or a breach of any term or warranty under this Agreement by the Agency. The Agency shall not be liable for any loss, delay or damage caused as a result of an act or omission on the part of the Advertiser.
- 18.2 The Advertiser shall indemnify the Agency for any and all costs, claims, losses or damages arising as a result of any breach of any term or warranty under this Agreement by the Advertiser.

## **19 Limitation and Exclusion of Liability**

- 19.1 Each party's maximum liability under this Agreement, whether in contract, tort or otherwise, shall not exceed [the total remuneration paid to the Agency over the previous 6/12 months][the sum of £●].
- 19.2 Neither party shall be liable under this Agreement for any indirect or consequential loss or damage arising, including any loss of income or profits or loss of contracts, whether in contract, tort or otherwise, and whether such loss or damage was foreseeable or not.
- 19.3 The exclusions and limitations set out in this clause 19 shall not apply in respect of fraud, death or personal injury, or for any other liability which may not be excluded or limited by law.
- 19.4 This Agreement states the full extent of the parties' obligations and liabilities. Any condition, warranty, representation or other term which may otherwise be implied into this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

## **20 Insurance**

- 20.1 The Agency shall ensure that it has in place adequate insurance with a reputable insurer necessary to cover fully the Agency's obligations and liabilities under this Agreement. Such insurance shall include, but is not limited to:
- 20.1.1 Professional Indemnity Insurance;
- 20.1.2 Insurance against loss or damage to any property of the Advertiser caused while it is in the Agency's possession;
- 20.1.3 Insurance against loss or damage to property when in transit between the Agency and third parties.
- 20.2 The Advertiser shall inform the Agency if the Advertiser provides the Agency with any of its property which has an individual or aggregate value of more than £ 5,000.

## **21 Termination without Cause**

- 21.1 Once the Initial Term referred to in clause 2.1 has expired, either party shall be entitled to terminate this Agreement without cause by serving [three] months written notice on the other party.
- 21.2 The parties' rights and obligations, including those in relation to payment, shall continue in full force and effect during any period of notice until the end of the Term, subject to clause 30. In the event the parties agree to waive any period of notice, the Advertiser shall pay to the Agency all sums due in respect of work done, any expenditure to which the Agency is committed, and any retainer fees which would have been payable in respect of the contractual notice period.

## **22 Termination with Cause**

- 22.1 Either party shall be entitled to terminate this Agreement immediately at any time by serving written notice on the other party if the other party:
- 22.1.1 Is in material breach of any of the terms of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy such breach within 30 days having been provided with details of the breach and the steps deemed necessary to remedy it;
  - 22.1.2 Ceases to carry on business, or threatens to do so;
  - 22.1.3 Passes a winding up resolution (except in the event of a solvent amalgamation or reconstruction) or a court makes an winding up order;
  - 22.1.4 Is dissolved or (being a natural person) dies;
  - 22.1.5 Is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets.
- 22.2 In the event that the Agency is or becomes unable to obtain normal credit insurance for Advertiser, and the Agency has informed the Advertiser in writing of this fact and requested alternative arrangements in accordance with clause 8.6 to be put into effect, the Agency shall be entitled to terminate this Agreement immediately by serving written notice on the Advertiser if such alternative arrangements have not been put in place by the Advertiser within 30 days of the original written notice.
- 22.3 The parties' rights, duties and responsibilities shall continue in full force and effect during any period of notice until the end of the Term. In the event the parties agree to waive any period of notice, the Advertiser shall pay to the Agency all sums due in respect of work done, any expenditure to which the Agency is committed, and any retainer fees which would have been payable in respect of the contractual notice period.
- 22.4 On termination of this Agreement, the Agency shall offer, at the Advertiser's cost, all reasonable co-operation in order to transfer all materials and relevant contracts and licences with third parties to the Advertiser. Any such transfer of contracts and licences shall be subject to any rights contained therein.

## **23 Force Majeure**

- 23.1 Neither party shall be liable for any failure to perform any of its obligations under this Agreement or for any delay caused by circumstances beyond the reasonable control of that party (including a labour dispute between a third party and its employees) (a "Force Majeure Event"). If a Force Majeure Event occurs, the affected party shall notify the other party in writing as soon as possible, stating its reasons for the failure

to perform or the delay and how long it anticipates the Force Majeure event to continue. The affected party shall use its best efforts to mitigate the effects of the failure to perform or the delay.

- 23.2 During a genuine Force Majeure Event, the affected party's performance shall be suspended for the relevant period, and all and any deadlines that may have been agreed shall be postponed by a similar period. Each party shall bear its own costs arising from any failure to perform or delay caused by a Force Majeure Event.
- 23.3 If the Force Majeure Event continues for more than [30] consecutive days, either party shall be entitled to terminate this Agreement forthwith on giving written notice to the other party. In such circumstances, neither party shall be held liable to the other for such termination.

## **24 Waiver**

- 24.1 In the event that either party fails to enforce any right or any term under this Agreement at any time or for any period, such action shall not be construed as a waiver of the right or term in question, and such action shall not affect that party's ability to enforce or exercise it the right or term at a later date.

## **25 Severance**

- 25.1 If any provision, or any part of any provision, of this Agreement shall be held to be invalid, illegal or unenforceable:
  - 25.1.1 such provision, or such part, shall be severed without effect to the remainder of the provisions, and the remainder of such provision, which shall continue in full force and effect; and,
  - 25.1.2 the parties shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability through the substitution of a valid, legal and enforceable provision, or part of a provision, which achieves, to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision, or part of the provision.

## **26 Entire Agreement**

- 26.1 This Agreement and the Schedules annexed hereto constitute the entire agreement between the parties and supersede any previous agreement, oral or in writing, between the parties relating to the subject matter of this Agreement.
- 26.2 Each party acknowledges that, in entering into this Agreement, it has not relied on any statement, representation, assurance or undertaking of any kind other than as expressly set out in this Agreement.

26.3 The parties agree that their only remedy available for breach of any warranty shall be for breach of contract under the terms of this Agreement

26.4 This Agreement may not be varied, amended or modified except by an agreement in writing expressed to be a variation, amendment or modification of this Agreement signed by duly authorised of both representatives of both parties.

## **27 Assignment**

27.1 Neither party shall assign, transfer, charge, encumber, sub-contract, sub-license or otherwise deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

27.2 In the event of merger, takeover or other business restructuring both parties undertake that they will ensure the obligations of this contract are transferred so as to continue with full force and effect.

## **28 Third Party Rights**

28.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **29 Notices**

29.1 All notices to be served under this Agreement shall be in writing and shall be served by email to the email address of an Authorised Representative or by registered delivery or personal delivery to the addresses above or to such other address as a party may notify in writing. Notices sent by registered delivery shall be deemed to be served three (3) Working Days following the day of posting. In other cases, notices are deemed to be served on the day when they are actually received.

## **30 Survival Clauses**

30.1 The following clauses shall survive after termination of this Agreement:

Clause 4.3	Non-solicitation
Clause 13	Intellectual Property Rights
Clause 14	Ownership of Materials
Clause 15	Confidential information
Clause 18	Indemnities
Clause 19	Limitation and Exclusion of Liability
Clause 29	Notices
Clause 31	Applicable law

**31 Governing Law and Jurisdiction**

31.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales

31.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

Signed .....

For and on behalf of the Advertiser

Signed .....

For and on behalf of the Agency

## Schedule 1

### Definitions

The following words and phrases shall have the following meanings:

<b>Term</b>	<b>Meaning</b>
Advertising Regulator	Office of Communications ('Ofcom'), Advertising Standards Authority ('ASA') and any other UK regulator or statutory and regulatory body relevant to the Advertising and Services
Advertising Regulation	Any present or future code of practice, including the Broadcast Code of Advertising Practice ('BCAP') and the Code of Advertising Practice ('CAP'), adjudication, decision, direction or rule of any Advertising Regulator and includes any modifications, amendments or extensions thereof in force from time to time.
Advertiser's Approval	The written approval of an Authorised Representative of the Advertiser provided in accordance with clause 6
Authorised Representative	The Advertiser's director or employee who is authorised to approve work and/or costs, and whose names are set out in Schedule 4
Commencement Date	[ <i>insert date</i> ] or, if uncompleted, the date of signature of this Agreement;
Compliance Officer	An authorised person as specified in section 31 of the Financial Services and Markets Act 2000 (together with any other rules or regulations pursuant thereto);
Confidential Information	Any information concerning a party's business, its business plans, its financial information, client, customers or associated companies, any other information which has been marked confidential, or any other information which may reasonably be regarded as confidential including ideas or concepts which are volunteered from one party to the other but are not subsequently developed pursuant to this Agreement
Financial Promotion	Any advertisement that includes or comprises an invitation or inducement to engage in investment activity (as those terms are defined for the purposes of the Financial Services and Markets Act 2000 (together with any other rules or regulations pursuant thereto));
Initial Term	The period specified in clause 2;
Intellectual Property Rights	Any copyright performer's property right, trade mark, database right, design right or any similar right in any part of the world, including any application for registration of a trade mark, registered design;
Key Personnel	The Agency's employees referred to in Schedule 4;

Moral Rights	The rights set out in Part I, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world;
Performer's Property Rights	The rights set out in Part II, Chapter X of the Copyright, Designs and Patents Act 1988 and any similar rights of performers anywhere in the world;
Services	Those services the Agency will perform for the Advertiser and specified in Schedule 2;
Term	The period from the Commencement Date until the termination of this Agreement;
Territory	The territory defined in Schedule 2;
Working Day	A day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business;

**Schedule 2**

**The Services**

## **Schedule 3**

### **Fees and Costs**

#### **Retainer Fee**

The Advertiser shall pay the Agency a monthly retainer fee of £... This retainer fee shall cover the provision of the Services by the Agency as set out in Schedule 2, but shall not include any third party or third party production costs, or the costs for licensing use of third party material or any requisite legal fees.

#### **Time charges**

The Advertiser shall pay the Agency on an hourly basis, based on the hourly charge out rates set out in Schedule 5. Such charges shall not include any third party or third party production costs, or the costs for licensing use of third party material or any requisite legal fees.

#### **[Payment By Results**

In addition to the fees set out above, the Advertiser shall pay the Agency in accordance with the Payment by Results criteria set out in Schedule 5.]

#### **Third Party Production Costs**

The Advertiser shall pay to the Agency all the third party costs required for the provision of the Services including, but not limited to:

- a) Film production companies' fees, recording studio fees, photographer's fees, actor's/model's fees, and printer's fees.
- b) Costs incurred in respect of couriers for the sending of materials to or from the Advertiser, printers, clearance houses or other requisite parties and any other special deliveries required by the Advertiser.
- c) Costs of travel and accommodation when attending shoot locations or studios and locations, or when travelling at the request of the Advertiser.
- d) Costs involved with copy clearance
- e) Legal fees and the costs of trademark searches to ensure compliance with the laws and regulations in each jurisdiction in which the materials will be published.
- f) Costs associated with any market research carried out by the Agency or a third party in order to provide information for advertising strategies, including but not limited to consumer attitudes, surveys and background information on the market and target market for the product.
- g) All other costs agreed by the parties.

## **Schedule 4**

### **Key Personnel and Authorised Representatives**

The Agency' Key Personnel are:

[Insert Names]

The Advertiser's Authorised Representative/s is/are:

[Insert Names]

## Schedule 5

### Hourly Rates

Set out below are the current charge out rates for Personnel. These may be amended from time to time, and the Agency shall provide written notice to the Advertiser of any such amendment.

<b>Agency Personnel</b>	<b>Current Hourly Charge Out Rate</b>
	<b>£</b>
Managing Director	
Board Director	
Account Director	
Account Manager	
Account Executive	
Planning Director	
Planning Executive	
Media Planner	
Creative Director	
Art Director	
Copywriter	
TV Producer	
Traffic Manager	
TV Administrator	
Production Manager	
Production Executive	
Print Buyer	
Art Buyer	
Cinema/Radio Producer	
Creative Services Director	