

**Influencer template**

(**with service company**)

2022

Prepared by



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**INTRODUCTION**

The rise and explosion in popularity of the use of influencer marketing by brands has been nothing short of a cultural and social phenomenon in the last few years. There is no doubt that influencers have opened the doors to a new form of highly effective marketing for most brands.

In 2016, ISBA and Lewis Silkin worked together to create an industry first template for use by brands when contracting with social influencers. It has been well received by brands and influencers alike to help deal with some of the more unique contracting challenges when contracting with influencers.

6 years on from the launch of the first ISBA influencer templates, and in recognition of how the influencer space is evolving, ISBA and Lewis Silkin have worked together again to create some updates to the influencer template, which brings in some new clauses to take into account the new ISBA Influencer Marketing Code of Conduct.

We also have a micro-influencer template which is intended to be used for smaller one-off campaigns with micro-influencers, and sits alongside the suite of longer form influencer templates, The longer form influencer templates are still intended to be used as a useful starting point for drafting and negotiating longer, higher value campaigns. These templates are also useful when talent contract via their service company or talent management agency.

As ever, the suggested terms are not set in stone, and are merely intended to give ISBA members good drafting tools and options when contracting with influencers. Not all clauses will be applicable to all partnerships, and many will depend on the type of campaign and type of influencers being used. Wherever possible, we have added drafting notes in comments next to the clauses to give guidance when using the suggested terms.

Thank you to all the brands and representatives who have given their time to feedback comments on the suggested terms. Given that this industry is evolving at a rapid pace, this template is likely to benefit from updating in the near future. Do keep sending us your feedback on the template, and we will endeavour to update the suggested terms on a regular basis.

**Jo Farmer, Joint Head of Digital Commerce & Creative, Lewis Silkin LLP (****jo.farmer@lewissilkin.com****)**

**July 2022**

**DATED [ ]**

|  |
| --- |
| **[NAME OF LENDER]****for the services of [talent]****and** **[name of CLIENT]** |
| **AGREEMENT FOR APPOINTMENT OF influencer****(via a lender/service company)** |

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**Influencer Agreement**

This Social Talent Agreement is entered into on the day of [2022]
between:

1. [⚫ Limited] a company registered in England and Wales under Company Number [⚫] whose registered office is at [⚫] (“**Lender**”), for the services of [⚫] (“**Talent**”); and
2. [⚫ Limited] a company registered in England and Wales under Company Number [⚫] whose registered office is at [⚫] (“Company”).

**INTRODUCTION:**

1. The Talent is an [influencer] with a significant number of subscribers and followers to their channels and platforms. The Company wishes to make use of the Talent’s services as stated hereunder to promote the Company’s products and services to a wider audience.
2. The Lender has agreed to procure that the Talent shall provide certain services and materials for the Company as more particularly described in this Agreement and the parties agree that such services and materials shall be supplied in accordance with the terms of this Agreement.

**IT IS AGREED AS FOLLOWS:**

# Definitions & Interpretation

## Definitions used in this Agreement are defined in Schedule 1.

## Definitions which are relevant and used only within a particular clause or Schedule are defined in that clause or Schedule.

# Appointment

## [The Company’s obligations under this Agreement are conditional upon the Lender obtaining the Talent’s signature of the Inducement Statement (the “**Condition Precedent**”). Except for the confidentiality obligations set out in clause 16 (which shall be binding on the parties upon execution of this Agreement), this Agreement shall not come into effect until the completion of the Condition Precedent to the Company’s reasonable satisfaction.]

## The Lender shall supply the Talent during the Term, in accordance with the terms and conditions of this Agreement. The Lender shall procure that the Talent complies with all obligations of the Lender and grants all rights and permissions necessary in order to give effect to the terms of this Agreement.

## In consideration of the provision of the Services and the rights granted under this Agreement, the Company shall pay the Fee and Expenses in accordance with Clause 10.

# talent services

## The Lender shall procure that:

### the Talent provides the Talent Services and creates the Talent Materials, which will feature the Brand as part of the Campaign, in accordance with the Brief;

### the Talent Materials will be produced and created by or on behalf of the Talent in accordance with the timetable set out in the Brief;

### The Talent Materials will be distributed via the Talent Channels to the extent stated in the Brief;

### The Company shall be entitled to use and distribute the Talent Materials in accordance with the Usage Rights in the applicable Brief [provided that the Company shall obtain the Approval of Talent prior to distribution of the Talent Materials. In particular, the Lender will not use or incorporating any third party materials in the Talent Materials (such as third party brands, logos, music, or other intellectual property rights) without obtaining the Company’s prior approval, and if approved, the Lender shall procure a licence from the relevant third party to enable the Company to use such third party materials in accordance with the Usage Rights];

#  [appearances ]

## The Lender shall procure that the Talent shall provide their Services as specified in the Brief in respect of the Appearances and to facilitate the creation by the Company or its suppliers of the Company Materials on the [Shoot Days specified in the Brief] **OR** [on dates and times and locations as are agreed by the parties from time to time in writing, subject to the Talent’s prior professional commitments [which have been notified to Company in advance.] [Without limitation to the foregoing, the Lender shall obtain the Company’s prior written consent before accepting or permitting the Talent to accept any engagement of the Talent which may conflict with any provisional arrangements for a Shoot Day.]

## The Lender shall procure that the Talent arrives at the designated locations for Shoot Days in a timely fashion in accordance with any itinerary agreed by the parties.

## [If for any reason it is not possible to complete the Company Materials in the number of Shoot Days set out in the Brief, the parties shall negotiate in good faith the Fees payable for any additional Shoot Days].

## [If any Shoot Day is cancelled at any time due to a Force Majeure Event, the Lender shall [use reasonable endeavours to] procure that the Talent provides the Services on such alternative date(s) and at location(s) as shall be agreed with the Company in the place of any such cancelled Shoot Day.]

## The Lender shall procure that the Talent shall adhere to and comply with all reasonable directions of the studios and other locations at which the Talent provides the Services to the extent that the Lender or the Talent is notified of the same either in advance or at the applicable location.

## [The Lender shall procure that the Talent shall co-operate with the Company (at the sole expense of the Company) to secure insurance in relation to the Talent if the Company so decides to obtain such insurance, and will comply with all reasonable requirements necessary to effect such insurance and obey all reasonable directions of the insurer in the event that such insurance is obtained.]

# talent and lender obligations

## The Lender shall and shall procure that:

### the Talent co-operates with the Company (and any third parties participating in the creation of the Materials and/or the Campaign) and complies with the Company’s reasonable instructions in respect of the Campaign;

### the Talent uses reasonable care and skill in the provision of the Services;

### the Talent devotes such time and resources as are necessary to provide the Services to the Company in accordance with this Agreement and the Brief;

### the Talent adheres to the date(s) and time(s) agreed for any Shoot Day and any Appearances and time shall be of the essence in respect of any Shoot Day or Appearance.

### the Talent will not make any unsubstantiated claims on the Company Product (including the products or services of the Company);

###

### the Talent Materials materially comply with the Brief and any reasonable instructions given by the Company in relation to how the Brand and Company Property should be referenced in the Talent Materials, whilst also maintaining the Talent’s unique voice and honest, authentic point of view;

### [the Talent maintains their physical appearance as at the Effective Date including weight, facial hair, hair style and colour for the duration of the Term];

### the Talent does not use photo filters, photo shopping or any other editing techniques that could give misleading or exaggerated impressions of product effects or benefits; and

### the Talent will be transparent about the demographic of their followers and audience and provide all available data on request on their followers (including the percentage of any children and minors); and

### it shall make available on request all data, reports, results, metrics, and other research requested by the Company in order to audit and assess the success of the Services and to evaluate performance of the Talent Material

## The Lender must advise the Company immediately in writing on becoming aware:

### that the Talent may be unable to perform the Services in accordance with this Agreement;

### of any development that may have a material impact on the Talent’s ability to perform the Services in accordance with this Agreement;

### of any acts committed [(or allegedly committed)] by the Talent which might [adversely affect the effectiveness of the Materials or] be [materially] detrimental to the reputation of [the Company], [the Campaign] and/or the Brand;

### of any material risk that the Materials do not comply with Advertising Regulations or any applicable law;

### of any material risk that the Materials may infringe the rights of any third party; or

### of any material risk that the Materials may not comply with the terms and conditions of the social media sites on which they have been distributed.

# Company obligations

## The Company will:

### ensure that all the facts given about the Brand are accurate;

### work collaboratively with the Talent to ensure that the Talent understands the Company’s expectations and brand values;

### promptly inform the Talent if the Company considers that any Talent Materials submitted to the Company by the Talent for approval are false or misleading or in any way contrary to law or applicable Advertising Regulation.

### give the Talent full and clear briefings in respect of the Campaign and the Brand.

### promptly supply to the Talent (at no charge) such samples of its products and Company Property as are reasonably required at the Company’s discretion (including the amounts to be provided) for the Talent to provide the Services and deliver the Talent Materials. To the extent that the Company’s failure to provide the Talent with such products and Company Property prevents the Talent from performing any Talent Services and/or providing any Talent Materials in accordance with this Agreement, the Lender will be relieved of its obligations to the Company; and

### use reasonable endeavours to avoid changes to the Services and Campaign once underway insofar as is possible.

# labelling of deliverables and compliance with laws and isba code of conduct

## Under Advertising Regulations, the fact that a brand has paid an influencer to create content, or include a product reference in its marketing must be transparent to the public. The Lender shall (and shall procure that the Talent shall):

### Comply with all Advertising Regulations, including all applicable laws and all rules, guidance, codes of practice and adjudications relating to the CAP Code and the guidance issued by the Advertising Standards Authority and the Committee of Advertising Practice (available at [www.asa.org.uk](http://www.asa.org.uk) and [www.cap.org.uk](http://www.cap.org.uk) ), as well as the Consumer Protection from Unfair Trading Regulations 2008 and all guidance issued by the Competitions and Markets Authority

### Ensure that the labels #ad or #advert or #paid (as well as any campaign hashtags as set out in the Brief) is placed prominently and legibly on all Talent Materials, and that such label is visible to the viewer prior to the viewer engaging with such Talent Materials;

### Obtain the Company’s prior approval before using any other hashtag disclosure that is not specified in this Agreement;

### Comply with the Company’s instructions when referring to the Company’s products or services in the Talent Materials [and comply with the content guidelines set out in the Appendix];

### Ensure all Talent Materials are truthful, socially responsible, not defamatory or harmful to any third party, not illegal or offensive, not violent and do not depict dangerous or anti social behaviour;

### Not do anything or authorise any activity (whether directly or indirectly) in post production of the Talent Materials which could be misleading in relation the effects of use of the Brand;

### Ensure that any opinions expressed by the Talent in the Talent Materials are honestly held and are not exaggerated; and

### Not include any third party content or intellectual property rights (including by way of example, music, logos, other people, other branded products) in the Talent Materials unless it has obtained permission from the owner of intellectual property rights or third party content ;

## [Lender shall not be liable for any Company Property or any information or content relating to the Brand which is supplied by or on behalf of Company for inclusion in the Company Materials)].

## Company and Lender shall (and Lender shall procure that Talent shall) comply with the obligations for advertisers, brands, talent agencies and talent set out in the ISBA Influencer Marketing Code of Conduct.

# editorial control

## **EITHER**

## [The Lender shall procure that the Talent submits all Talent Materials to the Company for its prior Approval in relation to the way in which the Brand is featured or mentioned within the Talent Materials. [The Company may request up to [x] rounds of reasonable amendments to the Talent Materials in relation to the way in which the Brand is featured or mentioned, and any further rounds of amendments shall be subject to the payment of a further fee [as specified in the Brief]/[to be agreed in good faith]. Notwithstanding the foregoing, the Company acknowledges that the Talent shall have final editorial approval over the Talent Materials.]

## **OR**

## [The Lender shall procure that the Talent submits all Talent Materials to the Company for its prior Approval and the parties agree that the Company shall have final editorial control over the Talent Materials, [provided that the Company shall only be entitled to request amendments to edit the way in which the Brand is featured or mentioned in the Talent Materials and in order that the Talent Materials comply with all applicable laws and Advertising Regulations]. [The Company may request up to [x] rounds of reasonable amendments to the Talent Materials in relation to the way in which the Brand is featured or mentioned and in order to ensure compliance with applicable laws, and any further rounds of amendments shall be subject to the payment of a further fee [as specified in the Brief]/[to be agreed in good faith].]

## The Company shall submit to the Lender, for its prior Approval:

### all Company Materials featuring the Talent which arise out of the Appearances and/or the Shoot Days; and

### all Materials featuring the Talent Image Rights

## The Company agrees that the final version of the Company Materials shall not differ from the Company Materials approved by the Talent in any material respect, but the Lender acknowledges and agrees, and shall procure that the Talent acknowledges and agrees, that the Company has the right in its absolute discretion to determine the final form of the Company Materials.

# Approvals

## For the purposes of this Agreement, any reference to “Approval” to be given by the Talent shall mean the Talent giving approval by one of the following methods:

### e-mail from the individual business e-mail address of the Authorised Talent Approver;

### the signature of the Authorised Talent Approver on the Company’s documentation.

## For the purposes of this Agreement, any reference to “Approval” to be given by the Company shall mean the Company giving approval by one of the following methods:

### e-mail from the individual business e-mail address of Authorised Company Approver; or

### the signature of an individual of the Authorised Company Approver on the Lender’s documentation.

## In the event that the Talent does not approve of any matter requiring the Talent’s Approval, the Lender shall notify the Company of the Talent’s reasons for disapproval within [x] days of the Company’s request. [If the Lender does not notify the Company of disapproval in accordance with this clause 9.3, the relevant matter shall be deemed approved.] All Approvals under or in connection with this Agreement shall [be given by the Talent in their absolute and sole discretion] **OR** [shall not be unreasonably withheld, delayed or conditioned.]

## The Lender agrees and acknowledges, and shall procure that the Talent agrees and acknowledges, that the Company shall be entitled to create cut-downs, edits, translations or other alternative forms of any Material (including by the replacement of the product cutaway and/or tag-line and any modification necessary for the localisation of such Material) and such creation shall not be deemed to be new Material in respect of which the Talent and/or Lender has any right of approval and/or entitlement to additional fees.

## The Company is not obliged to use the Materials in any way or to exercise any or all of its rights hereunder [but the Talent shall be entitled to the Fee notwithstanding any non-use of the Materials].

# quality of audiences

## The Lender shall (and shall procure that the Talent will) not engage in any practices in relation to promotion of the Talent Materials which artificially increase the perceived engagement with the Talent Materaials. By way of example only, such prohibited practices could include:

### paying (whether directly or indirectly) a third party to increase the number of likes on Talent Materials and/or on the Talent Channels in order to make the Talent and/or its content appear to have a wider and more engaged audience than it actually does;

### Using (or authorising or encouraging others to use) automated means such as bots, software or programmes to increase the number of likes, comments, shares or other engagements with Talent Materials;

### Non human fraudulent likes or followers; and/or

### Other unethical, dishonest, non organic or non human methods of increasing perceived engagement with the Talent Materials.

## The Lender consents to the Company using technological tools and to co-operate and make available all necessary data and records to verify that no prohibited practices as set out in this clause [10] have been used.

## In the event that the Company has a reason to suspect that the Lender has breached this clause 10 this shall entitle the Company to terminate in accordance with clause 18.

# measurement and reporting

## The Lender shall provide the Company with such reports, analytics and data as shall be requested by the Company (and in accordance with any requirements set out in the Brief) during and after the Campaign in order to assist the Company in reviewing the Campaign’s success and viewer engagement with the Talent Materials.

# Fees and Expenses

## All sums payable under this Agreement are exclusive of value added tax, which (if applicable) shall be payable by the Company within [x) days] of receipt by the Company of the Lender’s valid VAT invoice for the relevant sum in a form acceptable to the Company.

## The Fee shall be invoiced in accordance with the payment timetable and instalments set out in the Brief.

## [[The Company shall arrange or reimburse the Lender for all reasonable travel and subsistence expenses properly incurred by the Talent in performing the Services and substantiated by proper evidence of payment, provided that such expenses have been agreed in advance in writing by the Company. ]

## The Lender agrees and acknowledges, and shall procure that the Talent agrees and acknowledges that the Fee fully satisfies any obligation for the Company to provide equitable and adequate remuneration for the rights granted hereunder.

## The Company shall have the right to deduct and withhold from any and all Fees and expenses payable by the Company pursuant to this Agreement all withholding and other taxes (excluding value added tax) and any other payments required to be deducted, withheld and paid by the Company pursuant to any applicable present or future law or governmental rule or regulation requiring such withholding deduction and payment. [If any payment of the Fees is subject to such withholding tax (whether by way of direct assessment or withholding at its source), the Lender shall be entitled to receive from the Company such amounts as shall ensure that the net receipt to the Lender of the Fees after tax in respect of the payment is the same as it would have been were the payment not subject to such tax.].

## [Lender confirms that Talent is not a member of Screen Actors Guild, Equity or any other union or collective bargaining agreement. ] All fees payable under this Agreement are inclusive of all fees (including any wardrobe, rehearsal, filming, recording, re-recording, post-synchronisation, studio, residual, union and/or barring fees and other monies, excluding value added tax, which might otherwise be or become due and payable to the Talent.

## The Lender confirms that it is entitled to collect and receive all sums payable by the Company in respect of the Talent Services under this Agreement.

## The Lender shall be responsible for making all deductions from payments and fees received by Lender and for performing all acts and making all payments necessary under any applicable legislation in force in the Territory including any Income Tax, National Insurance and Social Security contributions.

# Grant of Rights

## Subject to the rights of approval set out in Clause 8, the Lender shall, and shall procure that the Talent shall (to the extent required) grant to the Company and the Client the right (including without limitation any rental and lending rights) to:

### use and exploit the Talent Materials and Company Materials in accordance with the Usage Rights, in the Media and the Territory for the duration of the Usage Period;

### use the Talent’s Image Rights in accordance with the Usage Rights, in the Media and the Territory for the duration of the Usage Period;

### use the Materials during [and after the Term] within the Territory for the following non-paid for uses, [subject to Talent’s prior Approval]:

#### [advertising and industry awards, exhibitions and competitions];

#### [publication of legacy or heritage advertising materials;] and

#### internal archival purposes.

## **[EITHER]**

## [Given the nature of the internet, the parties agree and acknowledge that the Materials may be available online after the Usage Period, and the Lender agrees (and shall procure that the Talent agrees) that the Company shall not be responsible for removing any Materials from the Media or third party media after the Usage Period, or for any use of the Materials by third parties either during or after the Usage Period, [but the Company shall use its reasonable endeavours to procure such removal upon the Lender’s request.] [After the Usage Period, the Lender shall not (and shall procure that the Talent does not) take down any Deliverables from the Media under its control without the prior approval of the Company].

## [**OR**]

## [After the expiry of the Usage Period, the Company shall procure that the Materials are removed promptly [on the Lender’s request] from any Media where the Company controls or owns such Media. In addition, after the expiry of the Usage Period, at the Lender’s request the Company shall [use its reasonable endeavours to] procure the removal of any Materials on third party Media which has been authorised by the Company].

## Any use other than as expressly permitted under this Clause 13 shall be subject to the Company obtaining the Talent’s prior written Approval to such use.

## The Lender shall, and shall procure that the Talent shall (to the extent required):

### assign to the Company with full title guarantee, by way of present assignment of present and future copyright and other rights, all Intellectual Property Rights and all other rights of whatever nature in and to the Company Materials [and the Talent Materials], save for any Talent Image Rights, which for the avoidance of doubt shall remain the property of the Talent;

### irrevocably and unconditionally grant and confirm to the Company in respect of the Materials all consents required, including without limitation any performers non-property rights pursuant to Part II of the Copyright Designs and Patents Act 1988 (and all other laws now or in future in force in any part of the world) which may be required for the exploitation by the Company and the Company of the rights granted under this Agreement;

### do any and all such acts and execute all such documents consistent with this Clause 13 in such manner and at such locations as may be required by the Company in order to protect or enforce any of the rights assigned, granted, licensed or confirmed under this Agreement.

## For the avoidance of doubt, the Talent shall retain ownership of all Intellectual Property Rights [in the Talent Materials and] the Talent Image Rights.

## The Company hereby grants the Lender and the Talent the right to use the Company Property, and the Brand, for the purposes of creating the Talent Materials and providing the Talent Services and distributing the Materials in accordance with the Usage Rights.

## Any and all goodwill arising out of the use of the Company’s or the Lender’s or the Talent’s Intellectual Property Rights (including the Talent Image Rights as well as the Company Property) shall accrue to the benefit of the licensing party. No other rights save for those expressly set out herein shall be deemed granted to the other party.

# Warranties and liability

## **Lender Warranties**

## The Lender (on its own account and on behalf of the Talent) warrants, represents and undertakes to the Company that:

### it has the right and power to enter into this Agreement;

### [to the best of its knowledge and belief] the use of the Talent Materials (which for the avoidance of doubt do not include any Company Materials) and Talent Image Rights in accordance with the Usage Rights and provision of Services will not infringe any third party Intellectual Property Rights or any other rights of any third party (including privacy or publicity rights);

### the Talent Materials are not defamatory, libellous, slanderous, obscene or likely to cause offence;

### Lender is entitled to the benefit of the Talent’s services and to make such services available on the terms of this Agreement;

### Lender and Talent each have the right and power to enter into this Agreement, and to assign, grant and/or licence (as applicable) the rights herein to the Company (or to procure such assignment, grant or licence as applicable), and neither of them is subject to any prior or existing contractual or other obligation that prevents, restricts, limits or in any way affects each of their respective capacity or ability to perform any of the obligations hereunder;

### [the Talent is a citizen of the United Kingdom (and therefore a “qualifying person” and a “qualifying individual” within the meaning of sections 154 and 206 respectively of the CDPA);]

### [to the best of their knowledge and belief,] the Talent is in such a state of health that they will be able to fulfil his obligations under this Agreement;

### [the Talent will not [during the Campaign] make any statement or do anything or conduct themselves in a manner that disparages [or adversely affects the promotion of], [the Company], the Campaign and/or the Brand or brings [the Company,] the Campaign and/or the Brand into disrepute, contempt, scandal or ridicule;

### the Talent shall not share views or engage in behaviour (whether in their professional or personal lives) which could be interpreted as racist, anti-Semitic, homophobic, misogynistic, intolerant of religions, violent or extremist, bullying or aggressive towards others, pornographic, or involving any criminal activity, and the Lender will immediately inform the Company of any content involving the Talent (whether current or historical) which breaches the obligations set out in this clause or which does not align with the values of the Brand, or which could be reputationally damaging to the Company and/or the Brand.

### [the Talent is not the subject of any current or pending legal proceedings];

### [the Talent does not have a criminal record of any kind, is not subject to any outstanding criminal investigation and has never received nor been recommended treatment for addiction to drugs, alcohol or gambling];

###  [the Talent has a full United Kingdom driving licence with no current [or pending] points, endorsements, motoring-related prosecution [or police enquiry];]

###  [the Talent holds a valid UK passport and has no restrictions that would prevent them from travelling as contemplated in this Agreement].

## [The Lender shall indemnify the Company and keep the same indemnified against all costs (including reasonable legal costs), claims, expenses and liabilities incurred by the Company and arising in connection with any breach of the warranties set out in [Clause 14.1]].

## **Company Warranties**

## The Company warrants, represents and undertakes that:

### it has the right and power to enter into this Agreement;

### [to the best of its knowledge and belief] the Company Materials, Company Property, Brand and its performance of its obligations hereunder will not infringe any third party Intellectual Property Rights or any other third party rights (including privacy or publicity rights);

### All Company Property will comply with all applicable laws, including Advertising Regulations, save that the Talent shall remain responsible in accordance with clause 7 for ensuring appropriate disclosure and hashtags when distributing Talent Materials on Talent Channels where reasonably necessary in accordance with Advertising Regulations; and

### it shall not commit any disparaging act or omission in relation to the Talent in connection with the Campaign.

## [The Company shall indemnify the Lender and keep the Lender indemnified against all costs (including reasonable legal costs), claims, expenses and liabilities incurred by the Lender [or Talent] and arising in connection with any [breach of its warranties under Clause 14.3] [and in respect of any third party claim brought against the Lender or Talent arising in respect of the Brand, Company Property or the Company’s products or services]. ]

## **Liability**

## Nothing in this Agreement shall exclude or in any way limit either party’s liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.

## Subject to Clause 14.5 (and including for the avoidance of doubt any indemnity contained in this Agreement), in no event will either party or the Talent be liable under or in connection with this Agreement for:

### loss of actual or anticipated income or profits;

### loss of goodwill;

### loss of anticipated savings;

### loss of data; or

### any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

## Where one party (“**Indemnifying Party**“) agrees to indemnify and keep the other party (“**Indemnified Party”**) indemnified under this Agreement, such indemnity is subject to the Indemnified Party complying with the following process in the event that a third party claim arises:

### the Indemnified Party must promptly notify the Indemnifying Party in writing of such claim;

### the Indemnified Party must not make any admission of liability, settlement or compromise without the prior written consent of the Indemnifying Party;

### the Indemnified Party must give the Indemnifying Party express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such claim, provided that the Indemnifying Party regularly consults the Indemnified Party on the conduct and defence of the claim;

### the Indemnified Party must provide the Indemnifying Party with all available information and assistance in relation to such claim as the Indemnifying Party may reasonably require at the Indemnifying Party’s cost and expense; and

## If within ninety (90) days after the Indemnifying Party’s receipt of notice of any such claim, the Indemnifying Party fails to take action to defend or settle such claim, the Indemnified Party may at the Indemnifying Party’s expense undertake the defence, compromise or settlement of the claim as it sees fit.

## Subject to clause 14.5:

### the Talent and Lender’s maximum liability under or in connection with this Agreement shall not exceed [INSERT] in the aggregate; and

### [the Company’s maximum liability under or in connection with this Agreement shall not exceed [INSERT]in the aggregate.

# exclusivity

## Nothing in this Agreement shall prevent or restrict the Talent from rendering their professional services outside of this Agreement save as expressly set out herein.

## [Subject to Clause 15.1, during the Usage Period [and for a period of [x] months thereafter, the Lender shall procure that the Talent shall not appear on camera, provide voiceovers, perform any [paid] endorsement, authorise the use of their voice or image, nor accept any other engagement or any endorsement in connection with any Competitor, without the prior written consent of the Company.]

## **EITHER**

## [The Lender shall procure that the Talent shall not during the Usage Period [and for a period of [x] months thereafter]:

### give any interviews to, or make any statement or personal appearances for or on behalf of any Competitor;

### permit themselves to be sponsored or endorsed by, employed by, or in any way commercially associated with any Competitor; or

### publicly discuss [or display] his purchase or use of any product or service which is sold, manufactured, distributed or otherwise provided by a Competitor].

### **OR**

## [Subject to Clause 15.1, during the Usage Period [and for a period of [x] months thereafter], the Lender shall procure that the Talent shall use reasonable efforts to ensure that they will] not be photographed, filmed or recorded using any products or services of a Competitor.]

# Confidentiality

## Each of the parties acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it may receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party (“**Confidential Information**”).

## Confidential Information shall include any document marked “Confidential”, or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.

## Confidential Information shall exclude information which:

### at the time of receipt by the recipient is in the public domain;

### subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;

### is lawfully received by the recipient from a third party on an unrestricted basis; and/or

### is already known to the recipient before receipt hereunder.

## Each of the parties undertake to maintain the confidentiality of the other party’s Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the other party’s Confidential Information reasonably secure. Neither party shall at any time, whether during the Term or at any time thereafter, without the prior written approval of the other party, use, disclose, exploit, copy or modify any of the other party’s Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Agreement.

## Each of the parties undertakes to disclose the other party’s Confidential Information only to those of its employees , representatives and suppliers to whom, and to the extent to which, such disclosure is necessary for the performance of this Agreement.

## The Lender shall procure that the Talent fully observes the provisions of this Clause 16 as if the Talent were a party to this Agreement.

# [Option to extend usage period ]

## The Lender agrees, and shall procure that the Talent agrees that the Company shall have the option to extend the Usage Period of any Materials for a further period of [x months] from the day following the last day of the Usage Period upon written notice to the Lender and payment of the Usage Option Fee.

## The Lender agrees, and shall procure that the Talent agrees, that if the Company requires, the Lender will enter into negotiations in good faith with the Company in relation to extending the Term of this Agreement to include the provision of additional services, and/or extending the Usage Period of any Materials and/or extending the scope of the permitted use of any Material(s) in territories or media not within the scope of this Agreement.

# Data Protection

## The Lender agrees (and agrees to procure any necessary consents from the Talent) to Company holding and processing their personal data (as defined in EC Regulation 2016/679 known as the GDPR) in connection with the Campaign.

## The Company shall process the Talent and Lender’s data solely for the purposes of the Campaign and in accordance with the GDPR.

## The Lender acknowledges and agrees that it shall comply (and shall procure the Talent’s compliance) with its obligations under the GDPR and other applicable laws relating to processing data and marketing by electronic communications (“Data Privacy Laws”) to the extent that it or the Talent is processing any personal data of third parties when providing the Deliverables, and in such event, the Lender and/or Talent as necessary will enter into such other agreements as shall be required by the Company setting out obligations in relation to Data Privacy Laws.

# Termination

## Either party shall have the right to terminate this Agreement immediately on written notice to the other party:

### [at any time before the first Shoot Day;]

### if the other party commits a material breach of the terms of this Agreement and, if such breach is capable of remedy, fails to remedy the breach within [x days] of the actual receipt by the breaching party of a written notice from the non breaching party identifying the breach and requiring the same to be remedied;

### as a result of a Force Majeure Event in accordance with clause 21;

### the other party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

### the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal or enters into any compromise or arrangement with its creditors (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or

### if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of the other party (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party.

## [The Company shall be entitled to terminate this Agreement for convenience at any time on notice to the Lender subject to the following terms:

### **EITHER** the Lender shall be entitled to retain a pro-rata portion of the Fee based on the number of days that have elapsed between (a) the Effective Date and (b) the date of termination, as a proportion of the Usage Period]

### **OR** [the Company shall be liable to pay the entire Fee to the Lender, notwithstanding early termination].]

## Neither termination nor suspension of this Agreement shall otherwise affect a party’s accrued rights and obligations at the date of termination and clauses which by their nature.

## Provisions of this Agreement which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination shall remain in full force and effect notwithstanding termination of this Agreement.

# Notices

## Any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the person giving it and may be served by delivering it personally or by first class prepaid or registered mail to the address of the relevant party set out at the head of this Agreement or to such other address as is notified in writing from time to time by or on behalf of the parties. Any notice so served shall be deemed to have been received:

### if delivered personally, at the time of delivery; or

### in the case of a notice sent by first class prepaid or registered mail, 48 hours after the date of posting.

# force majeure

## Neither party nor Talent shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a “**Force Majeure Event**”).

## Force Majeure Events shall include but not be limited to the following events affecting the Talent, Lender or Company:

### death, incapacity or sickness of the Talent;

### strikes, lock-outs or other industrial action;

### civil commotion, riot, invasion, war (whether declared or not), terrorism, or threat of or preparation for war or terrorist attack;

### fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster;

### impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and/or

### compliance with any law or governmental order, rule, regulation or direction.

## The party whose performance is affected by a Force Majeure Event shall, as soon as reasonably practicable after becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.

## If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding [x months], the non-affected party shall have the right to terminate this Agreement immediately on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.

# General

**Variation**

## No modification or variation of this Agreement shall be valid unless it is in writing and signed by each of the parties to this Agreement. Unless expressly set out in this Agreement, no modification or variation of this Agreement shall:

### be valid if made by e-mail;

### be construed as a general waiver of any provisions of this Agreement; or

### affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and obligations of the parties under this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.

**Severance**

## If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms provided that if any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.

**Waiver**

## The failure of either party to enforce or exercise at any time any term or any right under this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect that party’s later right to enforce or to exercise it.

**Counterparts**

## This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement.

**No partnership**

## Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

## **Assignment**

## The Lender may not assign, transfer, charge, sub-contract or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written consent of the Company.

**Entire agreement**

## This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:

### in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and

### its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

# Governing law and jurisdiction

## The validity, construction and performance of this Agreement and any disputes or claims arising under or in connection with this Agreement (including non-contractual disputes and claims) shall be governed by the laws of England and Wales.

## Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales for the resolution of any dispute, claim or matter arising under or in connection with this Agreement (including non-contractual disputes, claims and matters).

1. SCHEDULE 1

**DEFINITIONS AND INTERPRETATION**

1. definitions and interpretation
	1. In this Agreement the following words and expressions have the following meanings unless the context requires otherwise:
		1. **“Advertising Regulation”** means any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority and includes any applicable modification, extension or replacement thereof in force from time to time, together with other UK laws, statutes and regulations which are directly applicable to the Services including the Consumer Protection from Unfair Trading Regulations 2008 and any guidance issued by the Competition and Market Authority from time to time;

###  “**Agreement**” means this agreement together with its Schedules;

### **[“Appearances”** means the appearances to be provided by the Talent as described in the Brief which may be filmed, photographed or recorded by the Company to create the Company Materials;]

### “**Approval**” has the meaning set out in clause 8**;**

### **“Authorised Company Approver”** has the meaning set out in the Brief;

### **“Authorised Talent Approver”** has the meaning set out in the Brief;

### “**Brand**” has the meaning set out in the Brief;

### **“Brief”** means the brief describing the Campaign, Services, Fees and other commercial details relating to the Campaign, as set out in Schedule 2;

### “**Campaign** ”has the meaning set out in the Brief;

### “**Company Materials**” means the Materials to be created, filmed or recorded by Company or Company’s representatives or suppliers which feature the Talent Image Rights and the Brand [(including any Materials arising out of Shoot Days and Appearances)] as described in the Brief, but which do not include any Materials created, filmed, recorded or otherwise conceived by Talent or Talent’s representatives which arise out of the Talent Services;

### “**Company Property**” means any materials or information owned by or licensed to the Company which are provided to the Talent in connection with this Agreement;

### “**Competitor**” has the meaning set out in the Brief

### “**Fee**” has the meaning set out in the Brief;

### “**Force Majeure Event** ” has the meaning set out in clause 21;

### **“Materials”** means the copy, blog, vlog, film, audio visual recording, sound recording, photograph, image, drawing, still, artwork, text or other material to be created featuring the Talent Image Rights for the Campaign and which shall are further described in the Brief;

### “**Media**” means the agreed media and channels on which the Materials may be distributed, as set out in the Brief including the Talent Channels;

### “**Services**” means the services to be provided by Talent as is more particularly set out in the Brief, which incorporate Talent Services [and any Appearances];

### **[“Shoot Day”** means the days on which the Talent shall provide their Services in respect of any Appearances as set out in the Brief, which shall comprise a day not less than [x] consecutive hours];

### “**Talent Channels**” means the platforms and channels which are controlled by Talent and in relation to which the Talent agrees to distribute the Talent Materials and Company Materials, and which are described in the Brief;

###  “**Talent Image Rights**” means any trade mark, logo, name, professional alias or stage name, image, likeness, voice or signature of the Talent;

### “**Talent Materials**” means the Materials to be created by the Talent, featuring the Talent Image Rights and the Brand, as described in the Brief;

### “**Talent Services**” means the services to be provided by the Talent in connection with the filming and creation of Talent Materials, as set out in the Brief;

###  “**Territory**” means the territories set out in the Brief in respect of which the Materials may be distributed;

### [“**Usage Option Fee**” means the sum set out in the Brief;]

### “**Usage Period**” means the agreed period of time during which the Materials may be distributed; and

### “**Usage Rights**” means the agreed usage rights for distribution of the Materials during the Usage Period, in the Territory and on the Media.

* 1. In this Agreement, unless the context otherwise requires:
		1. references to clauses and schedules are references to the clauses of and schedules to this Agreement and references within a schedule to paragraphs are to paragraphs of that schedule;
		2. the headings to clauses and paragraphs are inserted for guidance only and shall not affect the meaning or interpretation of any part of this Agreement;
		3. a reference to a particular statute, statutory provision, subordinate legislation or EU directive or regulation is a reference to it as it is in force at the date of this Agreement, taking into account any amendment or re-enactment and includes any statute, statutory provision, subordinate legislation or EU directive or regulation which it amends or re-enacts and subordinate legislation (including any rules, orders, regulation or instruments) for the time being in force made under it;
		4. words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa;
		5. any reference to “**persons**” or “**person**” shall include natural persons, firms, partnerships, companies, body corporates, corporations, unincorporated associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality); and
		6. “**including**” means “including, without limitation,” and “**include**” and related expressions such as “**in particular**” shall be construed accordingly.

1. Schedule 2

**BRIEF**

**ISBA BRIEFING TEMPLATE**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of Talent (“Talent”) and contact details** | [INSERT NAME AND ADDRESS] | **Brand and Product/Service (“Brand”)**  | [INSERT NAME OF BRAND AND ADDRESS ] |
| **Campaign (“Campaign”)** | [INSERT]*Set out detail of the campaign The creatives and what style of video should be discussed with the influencer/their management to determine exactly how the product/service would best be integrated into their channels. However, a steer on the project title will help shape this.* | **Talent Materials (“Talent Materials”) and Services (“Services”)** | [INSERT]*This should include details of all the content being created by the influencer for both the influencers channels as well as anything for brand owned channels, event attendance, competitions etc. Where the Deliverables are based on objectives / outcomes (eg driving number of likes or clicks) rather than number of pieces of content, this should be specified here*  |
| **Company Materials (“Company Materials”)** | [INSERT] *Where relevant insert details of any materials that are being filmed/created by Company or agencies featuring the Talent (as distinct from materials the Talent creates themselves)*  | **Appearances (“Appearances”) and** **Shoot Days** **(“Shoot Days”)** | [INSERT]*Where relevant insert details of the agreed appearances and/or shoot days*  |
| **Commencement Date** | [INSERT]*The Commencement Date is relevant for the length of the Usage Period – ie the duration that the influencer’s materials are uploaded and available for.*  | **Campaign Budget (“Fee”)** | [INSERT]*Full campaign fee excluding VAT if applicable*  |
| **Payment Milestones (“Payment Milestones”)** | [INSERT]*This section needs to outline when the Consideration will be paid, eg, 50% on signature,50% when completed )* *Note ISBA Code of Conduct asks that brands are clear on the exact nature of the fees to be paid and any payment processes such as online portals/other methods of invoicing.* *If there are any third party costs (eg shoot locations or wardrobe), specify whether Company will pay these upfront to Talent*  | **Brand Social handles**  | [INSERT] *These are the brand social handles to be included in the content text.*  |
| **All campaign key messaging to be included** | [INSERT]*This should include any key messaging you want included in regard to the product /service (educating the consumer on the product, price points, where it is available to buy etc) as well as any key information you would like to include around your brand.**This needs to list what disclaimers that are to be used to show that this content is advertising (eg #advert) and where these labels should be placed. . This should be in line with the ASA guidelines.*  | **Campaign Hashtags**  | [INSERT]*This needs to list the disclaimers that are to be used to show that this content is advertising (eg #advert) and where these labels should be placed. This should be in line with the latest ASA and CMA guidance. See* [*https://www.asa.org.uk/resource/influencers-guide.html*](https://www.asa.org.uk/resource/influencers-guide.html) |
| **Dates content to be sent for approval**  | [INSERT] | **Product/brand links to be included (blog, vlog, Instagram stories, twitter and Facebook only)** | [INSERT]*These should be trackable links to allow you to track the results of the campaign on top of the total engagement generated per influencer.*  |
| **Go Live Date/s for content.**  | *[*INSERT]*This should be a timeline of when you need the campaign deliverable/s to be pushed live. However you should always build this up with the influencer/their agent so they can let you know the best times for going live in terms of follower engagement.*  | **Look/Feel/Tone of the content.**  | [INSERT]*This should include any visual inspiration of what you want the content to be in line with.* *As per ISBA Code of Conduct, be clear about objectives and the audience you intend to target* |
| **Content Do’s/Don’ts**  | [INSERT]*This section needs to outline the do’s and don’ts for both visual aspects of the campaigns (i.e no mess in the background, clothing needs to have no obvious branding etc) as well as key messaging (i.e we cannot claim it makes your hair shinier but can say it makes it feel smoother).* *As per ISBA Code of Conduct, the Talent should not be prevented from delivering their honest opinion on a brand or product in order to be authentic.* *As per ISBA Code of Conduct, include any KPIs for success* | **Talent Channels (“Talent Channels”)** **Media (“Media”)****Media Schedule (“Media Schedule”)** | [INSERT]*This refers to what media channels you are planning for the content created by the influencer, including any channels under the influencers control eg their Facebook, Instagram, Snap, YouTube channel as well as any other media channels (eg your own websites/ social channels/ third party media).* *It also needs to specify when the content will be posted. This aspect needs to be included in agreed fee from the start.**Note the ISBA Code of Conduct which asks that brands are up front about sunset clauses and that they are clear on expectations around length of time that contracted content should remain on influencer’s channels*  |
| **Reporting obligations**  | [INSERT]*If you have any reporting requirements they should be added here. For example, you may wish to ask for analytics on some of the following aspects:** *Reach, impressions, Engagement rate*
* *CPM / CPE / CTR / CPV*
* *Followers*
* *Views / view through rate*
* *Video completion rate*
* *Drop off rate*
 | **Paid ad spend to be put behind the content? If so which platform and amount**  | [INSERT]*This refers to what you plan to invest in terms of paid spend behind the influencers content on your online channels. Again, this aspect needs to be included in agreed fee from the start.* |
| **Territories (“Territories”)** | [INSERT]*Add details of countries where content is to be used* | **Usage Period (“Usage Period”)** | [INSERT]*This section needs to list the agreed length of time during which the Brand can use the content*  |
| **Usage Option Fee** | [INSERT]*[where relevant insert details of any option fee* | **Competitor** | [INSERT][*This section needs to insert definition of competitor of the Company – it may need to refer to the category of the relevant Brand, rather than a competitor of the Company]**Note ISBA Code of Conduct which asks brands to respect the timescales of relationships which influencers may have or have had with competitors in their sector)* |
| **Additional Information**  | *For any information you feel you haven’t been able to insert above.*  | **Authorised Company Approver and Authorised Talent Approver** | [INSERT]*Insert details of the person authorised to sign off / give approvals (in the case of Talent, this is likely to be the Talent themselves unless they are nominating a representative/agent.*  |

1. Schedule 3

**TALENT’S INDUCEMENT**

I am familiar with all of the terms, covenants and conditions of the foregoing Agreement, and I hereby consent to the execution thereof by the Lender. I shall perform and comply with all of the terms, covenants, conditions and obligations of the Agreement in the event that the Lender is unable to perform its obligations under the Agreement. By signing below, I hereby confirm that the Lender is entitled to grant and procure all grants, licences, assignments, representations, warranties and consents in so far as they relate to me.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[signature of Talent]

Date:

|  |  |
| --- | --- |
|  |  |

## **IN WITNESS WHEREOF** this Agreement has been duly executed to be effective as of the date set out at the beginning of this Agreement.

**SIGNED FOR AND ON BEHALF OF [COMPANY]**

|  |  |
| --- | --- |
| Signature: …………………………………Name: ………………………………Title: ………………………………………Date: ……………………………………… |  |

**SIGNED FOR AND ON BEHALF OF [LENDER]**

|  |  |
| --- | --- |
| Signature: …………………………………Name: ………………………………Title: ………………………………………Date: ……………………………………… |  |