



ADVOCATENASSOCIATIE

# COMMUNICATION AGENCY CONTRACT

TEMPLATE AGREEMENT BETWEEN ADVERTISERS AND COMMUNICATION AGENCIES  
FOR ALL COMMUNICATION PROJECTS

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**Between:**

The communication agency  
with registered offices  
with registration number  
represented by

hereinafter referred to as "Agency"

**And:**

The advertiser  
with registered offices  
with registration number  
represented by

hereinafter referred to as "Advertiser"

jointly referred to as "Parties".

**Whereas:**

With the present Contract, Parties wish to enter into a cooperation agreement in which the Advertiser shall entrust one or more Assignments to the Agency for the Duration of the Contract.

**Now therefore, for and in consideration of the covenants of the Parties set forth below, the Agency and the Advertiser agree as follows:**

**SECTION 1. OBJECT**

The Advertiser entrusts to the Agency, on the conditions set forth in the present Contract and Exhibits joint thereto (hereinafter jointly referred to as: the "Contract"), the management of the communication as described in Exhibit 1 (hereinafter referred to as: the "Order").

**SECTION 2. TERRITORY**

**2.1.** The Contract is entered into and is valid for the territory as defined in Exhibit 2 (hereinafter referred to as: the "Territory").

**2.2.** If the Order also encompasses internet-based applications and support, this may only be directed towards the population of the Territory, regardless of whether third parties outside the Territory might be able to receive the messages or not.

**2.3.** Services falling outside of the Territory shall be invoiced separately.

**SECTION 3. DURATION**

**3.1.** The Contract is entered into for a fixed duration of [...] starting from [...] / date of signature].

**3.2.** At the end of the initial period as defined in Section 3.1, the Contract shall be tacitly prolonged for an indefinite duration (hereinafter jointly referred to: "Duration"), unless one of the Parties notifies the other by registered mail of his desire not to prolong the Contract at least [...] before the end of the initial period.

**3.3.** Once the Contract is prolonged for an indefinite duration, the Contract may be terminated by either Party by giving notice allowing for a notice period of [...] months.

**SECTION 4. OBLIGATIONS OF PARTIES**

**4.1.** The Advertiser agrees to put all necessary means at the disposal of the Agency to allow the latter to execute the Order, including but not limited to:

- submitting to the Agency a timely, complete and correct briefing;
- submitting to the Agency all relevant statistics and documents relating to the trademarks used by the Advertiser;
- provide all support necessary for the good execution of the Order;
- give clear instructions stating the objectives and possible priorities;
- inform on elements entrusted to third party agencies;
- abide by all obligations imposed by governments and competent professional representative organisations, rules on competition and other legal provisions and recommendations;
- remunerate all work, deliveries and invoices of the Agency in accordance with Section 7.

**4.2.** The Agency agrees, amongst other obligations, to:

- enter into written agreements with service providers in its own name and for its own account, unless otherwise agreed upon by mutual, prior and written consent;
- abide by all obligations imposed by governments and competent professional representative organisations, rules on competition and other legal provisions and recommendations.

**SECTION 5. EXCLUSIVITY**

**5.1.** The Advertiser grants exclusivity to the Agency in accordance with the perimeter, duration and territory as stipulated in Exhibit 3.

**5.2.** The Agency guarantees to the Advertiser to refrain from accepting and executing orders within the scope of the perimeter, duration and territory as described in Exhibit 3.

**SECTION 6. REMUNERATIONS AND REBATES**

Parties agree to the applicable remuneration system and any possible rebates in Exhibit 4, prior to the start of the Order, for the whole Duration of the cooperation in execution of the Contract and for every specific Order assigned in execution of the Contract.

## **SECTION 7. PAYMENT CONDITIONS**

**7.1.** Unless otherwise agreed upon in writing, the Agency shall invoice [on a monthly basis / at the beginning of / upon completion of the Order]. The Advertiser shall pay the invoiced amount to the Agency within 30 days after the date of invoice.

**7.2.** Unless otherwise agreed upon in writing, in case of default of payment within 30 days after the date of invoice, the Advertiser shall be forced by rule of law and without any necessary prior notice of default, to immediately pay the invoiced amount, increased with interests and damages, calculated on the basis of sections 5 and 6 of the Act of 2 August 2002 on compensation for delay in payment in commercial transactions.

**7.3.** Unless otherwise agreed upon in writing, the Agency shall invoice all third party invoices to the Advertiser who must pay these invoices within 30 days after the date of invoice. Advances and retainers to be paid to third parties must be paid by the Advertiser [immediately / within ... days].

## **SECTION 8. DELIVERY CONDITIONS**

**8.1.** The Agency shall deliver all materials against signing of a proof of receipt on the address of the Advertiser or on any other address as agreed upon in writing between Parties.

**8.2.** If the materials to be delivered are contained in digital files, delivery can be made through electronic transfer (e-mail, ftp, ...).

## **SECTION 9. PRACTICAL ARRANGEMENTS**

### **9.1. Representation**

Parties assign the persons having signing and representative power, more specifically the directors or the employees of the Advertiser authorized to approve the work of the Agency, as well as the Agency's employees assigned to the execution of the Order (hereinafter referred to as: the "Representatives").

The Representatives are nominated in Exhibit 5.

Parties communicate any change of identity or competence of the Representatives to the other Party in a timely fashion. If the main responsible for the execution of the Order within the Agency is replaced, the Advertiser must agree with the replacing Representative, who may not be refused without reasonable objections. In absence of the Representatives, a temporary delegation of powers is provided, which must be immediately notified in writing to the Agency.

### **9.2. Approval Procedure**

The Order as presented by the Agency is subject to the prior, written approval of the Advertiser by e-mail (hereinafter referred to as: "Approval"). The Order is transferred in a standard PDF document or other similar procedure. All texts, lay-out, illustrations, storyboards and scripts, communication plans, action calendars, retroplanning and all changes thereto, as well as the terms and conditions of payment, samples of the Materials such as premiums, formats of folders, types of paper, prototypes of POS materials, etc. must also be approved by the Advertiser.

The Approval of the Advertiser marks the authorization to the Agency to continue developing the Order.

### **9.3. Changes and alterations**

As far as the abovementioned elements have been approved by the Advertiser, the Agency shall duly inform the Advertiser of any changes applied thereon, in so far as these changes have a direct impact on the smooth execution of the Order.

### **9.4. Evaluation**

Every [six / twelve] months, Parties shall evaluate each other on their relationship.

Parties shall make use of the evaluation scheme as mentioned in Exhibit 6.

### **9.5. Relations with services providers and partners**

The Advertiser's approval of the planned Order marks the authorization to the Agency to enter into agreements with subcontractors and service providers in accordance with the conditions of these subcontractors and service providers and as mutually agreed upon between Parties.

Unless the Advertiser specifically prefers a certain provider or partner, the Agency is exclusively responsible for the cooperation between providers and the Agency, including but not limited to the contractual relationship, execution, work, payments and responsibilities.

The rights and obligations agreed upon between the Advertiser and the Agency correspond with the rights and obligations between the Agency and the subcontractors and providers. The Agency has the right to enforce any modification, non-application or cancelation, imposed by the subcontractors and providers, towards the Advertiser.

The Advertiser shall always receive the general terms and conditions of the subcontractors and providers from the Agency upon demand.

## **SECTION 10. TERMINATION OF THE CONTRACT**

**10.1.** Safe for the provisions set forth in Section 3, the Contract may be terminated by rule of law and without prior judicial intervention in the following events and on the following conditions:

- Grave fault, fraud or violence committed by one of the Parties;
- Substantial or repeated breach of the Contract by a Party (hereinafter: "Defaulting Party") rendering any further cooperation impossible or, in the event that the breach is reparable, the situation has not been properly restored within 15 to 30 days after the Defaulting Party's receipt of the notice of default sent by registered mail in which the breach is specified and the Defaulting Party is requested to restore the situation or end the default or breach. For the avoidance of doubt, a violation of Section 5 and 15 of the Contract is to be considered a substantial breach.
- Insolvency of one of the Parties (suspension of payments, unstable creditworthiness, grave financial difficulties, judicial concordat, bankruptcy).

**10.2.** Parties agree to continue to cooperate in good faith during the notice period upon termination of the Contract, to correctly pay all invoices, to execute all current affairs and projects and to respect and execute all obligations stipulated in the Contract. Upon termination of the Contract, Parties shall transfer all necessary materials to the other Party and shall cooperate in good faith in the submission of the orders to another agency.

**10.3.** Unless otherwise agreed upon in writing, the following clauses survive this Contract:

Section 7 Payment Conditions  
Section 11 Copyright and other intellectual property rights  
Section 13 Tangible Property  
Section 15 Confidentiality  
Section 16 Warranties and Damages  
Section 19.5 Applicable Law and Competent Court  
Exhibit 3 Exclusivity and Prolongation  
Exhibit 7 Licence of Use

## **SECTION 11. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**

**11.1.** Unless otherwise agreed upon in writing, the Agency is the exclusive owner of all intellectual property rights on the Order. The Agency grants to the Advertiser a licence of use, as stipulated in Exhibit 7 for the duration, territory and methods of exploitation as stated therein. Each extension in time or territory must be agreed upon in writing and may give rise to additional remunerations to the Agency.

In the event that Parties agree to transfer the rights, the Advertiser shall acquire the rights except for those rights that are entrusted to collective management.

Unless otherwise agreed upon in writing, the Agency guarantees the free and peaceful use of the existing creations of third parties and on the creations of third parties as ordered in execution of the Contract, for the duration of 1 year and for the Territory and holds the Advertiser harmless for any claim made by third parties in relation to the intellectual property rights on those creations.

**11.2.** Creations presented to the Advertiser that are not accepted by him, remain strictly confidential, remain the exclusive property of the Agency and may not be used or appropriated by the Advertiser without the prior, written consent of the Agency.

**11.3.** The Advertiser cannot claim any rights on computer programmes or databases used by the Agency in execution of the Order, except for those specifically developed at request of the Advertiser.

## **SECTION 12. PARTICIPATION IN COMPETITIONS**

**12.1.** The Advertiser authorizes the Agency to use the Order to promote its own activities through participation in competitions, award ceremonies, information to the press, information to other advertisers, educational purposes, etc. as long as this is requested for every opportunity. The Advertiser reserves the right to deny such authorization by giving an expressly motivated decision if the intended use has a negative impact on the Advertiser's reputation and

image or if the disclosure of the strategies and/or accountancy or other data would be disadvantageous for the competitive position of the Advertiser.

**12.2.** All assignments, creations and drafts developed by the Agency, which have not been selected or used in the Order, may not be submitted by the Agency for participation in competitions, award ceremonies, information to the press, information to other advertisers, educative purposes, etc.

### **SECTION 13. TANGIBLE PROPERTY**

**13.1.** Safe for the provisions set forth in Section 11, all materials prepared by the Agency in execution of the Order and paid by the Advertiser are the property of the Advertiser, without blocking access of the Agency to the creation. This is not applicable to third party materials, images of press agencies or image banks, negatives of pictures or films, nor to any other carrier which the materials are delivered on. The material property on software or databases used by the Agency in execution of the Contract is not transferred except for those specifically developed at request of the Advertiser. Personal and other data related to consumers, collected by the Agency are the property of the Advertiser.

**13.2.** The Agency shall take care of any materials of the Advertiser. Safe for any explicit request of the Advertiser, the Agency shall not be obliged to claim any Order related materials meant for reproduction and distribution from the providers.

**13.3.** The Agency may not destroy the tangible property without the prior Approval of the Advertiser.

### **SECTION 14. PRIVACY PROTECTION**

Each Party ensures that any processing of personal data performed in execution of this Contract shall be done in accordance with the provisions of the Act of 8 December 1992 on privacy protection in connection with the processing of personal data (hereinafter: "Privacy Act") and its decrees. Each Party agrees to comply with the Privacy Act and the Act of 11 March 2003 on certain aspects of services in the information society.

The Advertiser is considered to be the "controller" of the processing, the Agency is considered to be the "processor".

### **SECTION 15. CONFIDENTIALITY**

**15.1.** Parties agree not to divulge, disclose or disseminate any confidential information relating to the activities, industrial projects and strategies, clients or associated companies of the other Party without the prior, written approval of that other Party in the course of the Duration or after termination of the Contract. The same level of confidentiality applies to the financial conditions of this Contract, the relations with third parties and information from studies and surveys. All information which Parties may reasonably deem to be confidential and all information explicitly labelled as confidential is also confidential information in the sense of this Contract.

The Agency agrees to treat all marketing and sales information, results of promotions and statistics in connection with the activities of the Advertiser communicated to the Agency in a confidential manner.

The Agency agrees to impose the same level of confidentiality on her employees, contractors and providers.

**15.2.** Is not considered to be confidential:

- information that already was public on the moment of communication;
- information from third parties;
- information gathered or obtained independently;
- information communicated due to an administrative or judicial decision.

**15.3.** Unless otherwise agreed upon in writing, the Parties are allowed to disclose confidential information to an audit agency in order to perform an audit, on the express condition:

- that disclosure is restricted to the evaluation of the execution of this Contract;
- that the confidential information and the audit results are not disclosed to third parties;
- that the same level of confidentiality provided for in this Contract is imposed on the audit agency.

**15.4.** Parties agree to allow disclosure of the content of this Contract, the campaigns, strategies and financial conditions to external consultants of Parties, on the express condition:

- that disclosure is restricted to the purpose for which the consultant is hired;
- that the confidential information and the consultancy results are not disclosed to third parties;
- that the same level of confidentiality provided for in this Contract is imposed on the consultants;
- that the confidential information is not misappropriated, nor its communication to external consultants;
- that the Agency is informed on the disclosure of confidential information to external consultants, without any additional obligations or performances.

15.5. The Advertiser acknowledges that the Contract does not contain any limitations of the Agency's right to use all self-acquired general marketing, sales or communication related information, if the Agency so pleases.

## **SECTION 16. WARRANTIES AND DAMAGES**

The Advertiser guarantees the accurate description of the products and services, the compliance with applicable law, patents and trademarks, and the legal provisions on market practices and consumer protection, except for the provisions specifically related to the Order as developed and executed by the Agency.

The Agency shall assume all responsibility for the Order, as well as for its content. If the Agency deems it necessary or if the Advertiser specifically asks for it, the planned Order shall be presented to the legal department of the Advertiser for validation. If the Advertiser does not have a legal department or this legal department is not capable of validating the Order, the Order shall be submitted to a lawyer of the Advertiser's choice. The Advertiser bears all costs incurred for validation.

The Advertiser guarantees to having obtained all authorizations and rights for images, materials, personal data and databases provided to the Agency.

Parties hold each other harmless for every claim resulting from breach or negligence of their respective obligations.

The Advertiser shall duly inform the Agency if he suspects that the Order presented by the Agency to him for validation, could be false or deceptive or contrary to the law or any other regulatory framework as mentioned in Section 17.

The Agency shall duly inform the Advertiser on the obligation to comply with the provisions on market practices and on any violation of the Order on these provisions.

## **SECTION 17. COMPLIANCE WITH INDUSTRY CODES**

Both Parties comply with the deontological and regulatory frameworks and regulations governing the communication and advertising sector.

## **SECTION 18. FORCE MAJEURE**

In any event of force majeure, Parties may choose to suspend the execution of the Contract during a period of force majeure, or to terminate the Contract without any damages or compensation, if the force majeure persists for more than one month.

Each Party must inform the other Party in writing of the circumstances of force majeure from the moment that this Party takes note of the force majeure situation; meanwhile the first Party has a best efforts obligation to resolve the force majeure situation.

For the purposes of this Contract, and except for all elements considered as force majeure by the Belgian courts, is considered to be a force majeure situation: any event beyond the Parties' reasonable control and occurring without their fault or negligence, rendering the normal execution of the Contract impossible.

In the event that unforeseen and long-lasting economic instability upsets the contractual economic balance between Parties, Parties shall take all reasonable measures to preserve the spirit of the Contract and to restore the balance existing on the moment of the undersigning of the Contract.

## **SECTION 19. GENERAL PROVISIONS**

19.1. If any provision or provisions of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Parties shall replace the provisions with new provisions reflecting the scope and purpose of the old provisions to furthest extent possible.

19.2. The Contract and its Exhibits contain the whole agreement and reciprocal obligations between Parties in connection with the Object of the Contract, and replace all prior, written and oral covenants and agreements between Parties in connection with the Object of the Contract. In the event of contradiction between the provisions of this Contract and any general or specific terms and conditions of either Party, the provisions of this Contract always prevail. In the event of contradiction between the provisions of this Contract and any provisions in one or more Exhibits, the provisions of this Contract prevail.

19.3. Renouncing, altering or amending any of the provisions of this Contract is only valid when agreed upon by mutual consent between Parties in countersigned writing.

19.4. All notifications in execution of or relating to the Contract must be sent to the address mentioned in the preamble of the Contract or on the address mentioned in the notification if such address differs. The notification is deemed to be validly given on the third day following the day of expedition (the post stamp is proof).

19.5. The Contract is subject to Belgian law.

Each difference with regard to this Contract, its content and scope is to be exclusively submitted to the courts of [...].

Signed in [...], in 2 originals, of which each Party declares to having received one undersigned copy.

For the Agency

For the Advertiser

## EXHIBIT 1: OBJECT

Detailed description of the Order, as mentioned in Section 1 of the Contract.

## EXHIBIT 2: TERRITORY

Accurate description of the Territory in which the Contract shall apply, preferably by listing geographically demarcated areas such as countries, regions, municipalities, etc.

Avoid expressions such as "Western Europe", "EMEA" or "Scandinavia".

## EXHIBIT 3: EXCLUSIVITY AND PROLONGATION

Parties do not grant exclusivity to each other.

Parties grant each other exclusivity according to the following parameters:

- Perimeter:
- Product or product range:
- Trademarks:
- Mission:
- Duration:
- Territory:
- Survival after termination of the Contract:

## EXHIBIT 4: REMUNERATIONS, REBATES AND REVISION

## EXHIBIT 5: REPRESENTATIVES AND CONTRACTORS

**THE REPRESENTATIVES OF THE AGENCY ARE:**

**NAME TITLE EMAIL**

**THE REPRESENTATIVES OF THE ADVERTISER ARE:**

**NAME TITLE EMAIL**

In the event that certain Representatives are replaced, an additional exhibit should be added of which each Party received one copy.

**THE AGENCY SHALL APPEAL TO THE FOLLOWING CONTRACTORS FOR THE EXECUTION OF THE ORDER:  
NAME COMMISSIONED PERFORMANCES RELATION TO THE AGENCY**

## **EXHIBIT 6: EVALUATION**

Addition of the evaluation scheme. See: evaluation scheme UBA/ACC.

## **EXHIBIT 7: LICENCE OF USE**

Detailed description of the rights to use the creations of the Agency, licensed to the Advertiser.

Each type of use not explicitly assigned to the Advertiser is deemed to never having been licensed. Please take the restrictive interpretation of contracts in copyright related matters into account.

Use of the creations must be defined with the following parameters:

**Duration:** a specific, definite duration (1 month, 1 year, ...), the Duration of the Contract, the duration of copyright protection (life of the author + 70 years)

**Methods of exploitation:** radio, television, movie theatres, pamphlets, folders, T-shirts, posters, ...

**Territory:** (The territory is usually the same as the Territory of the Contract. Parties may, however, deviate from the contractually defined Territory.)

### **Remark:**

Distinction must be made between the tangible property and the intellectual property. This is the reason why a difference is made between Section 11 (intellectual property) and Section 13 (tangible property).

- Section 13 pertains to the tangible property on the material carriers of the creations: photographic paper, film, posters, stickers, etc. This article provides that the property of all materials paid by the Advertiser flow to the Advertiser. This means that the possession and title on the physical carrier shall go to the Advertiser. This assignment of rights is mitigated by the Agency's right of access to the creations, which is a legally defined right in accordance with article 3, §1, third paragraph of the Copyright Act: "The transfer of the object embodying a work does not allow for the free exploitation of the work; for the purposes of asserting his patrimonial rights, the author must maintain reasonable access to his work." (free translation)

- Section 11 of the Contract treats the intellectual property, i.e. the property of the immaterial creation, including the reproduction, adaptation and public communication rights. Section 11 provides for all intellectual property rights to remain with the Agency, the latter allowing for a licence to use to the Advertiser in accordance with Exhibit 7 (duration, scope, media, etc.).

- Conclusion: creations and drafts remain with the Agency, the material carriers paid by the Advertiser embodying the creations and drafts flow to the Advertiser.