

# Appointing & Managing DM Agencies

## ...the essential guide for clients

### 1. How to find an agency

- Reviewing DM agency arrangements
- Managing out your agency
- How to find an agency



### 2. Managing the pitch process

- Managing the pitch process
- Writing a brief
- Evaluating DM agency pitches



### 3. Appointing a new agency

- Contract and fee negotiations
- Suggested terms and conditions
- Survey of DM agency fees
- Agency best practice



## INTRODUCTION...

Finding the right agency with the right skills, chemistry and culture to work successfully with you can be a time-consuming, exhausting and expensive process. In order to make the process easier for you but still maintain best practice and due diligence, we have provided guidelines to help you in your search, selection and management of a DM agency.

The DMA and AAR, the agency search and selection consultancy, have joined together to produce this series of guides to help you when you are selecting and managing agencies. For agencies, there is also a link to DMA best practice guidelines and DM code requirements.



# Section 01

## How to find an agency

- Reviewing DM agency arrangements
- Managing out your agency
- How to find an agency



### ● Reviewing DM agency arrangements

#### **Do you really need to review your DM agency arrangements?**

Deciding to embark on a pitch process to change your agency is not a decision that should be taken lightly. It's time consuming, exhausting, expensive in terms of staff time and resources, and it's very easy to get it wrong.

Before you take the next step, ask yourself these questions:

#### **1. Has your relationship with your incumbent agency irretrievably broken down? Could it be fixed?**

Marriage guidance is cheaper than divorce. If the situation might be rescued by undertaking a formal evaluation and repair of your relationship with the help of a third party, try this first.

#### **2. Is holding an agency review in the best interest for your brand or business?**

Consider what you might be giving up in terms of brand/business knowledge and learnings that your outgoing agency already has. This will need to be rebuilt with your new agency. A review process will take your eye off the ball as far as the day-to-day management of your business is concerned. Is the time right for this to happen?

#### **3. Have your needs changed so much that your incumbent agency no longer has the core skills to satisfy them?**

It may be worth exploring whether there are other ways of complementing your existing agency's skill set, via collaborations with other specialists.

#### **4. What are your contractual arrangements with your current agency?**

Check your contract with your incumbent agency, you may find that there are service level, financial and notice provisions regarding termination of the relationship which could effect the timing of your agency review.

### ● Managing out your agency

**If an existing relationship with an agency needs to end whether it be a change in business need, sub-standard performance or the loss at repitch, then the relationship and contract termination will need to be managed carefully. Ideally, this eventuality should be considered and planned before pitches are invited.**

**The 'managing out' of an agency can be a delicate and complicated process of protecting rights and reputations of both parties. Break-ups are very rarely advantageous to an agency and usually cause real business heartache possibly including redundancies, share price fluctuation and operation change. Therefore 'managing out' needs to be handled sensitively and professionally.**

#### **Transfer of rights/licenses**

The incumbent agency may hold Intellectual Property Rights (IPRs), licences and confidential information; therefore careful management is required to ensure a smooth transfer of rights or licences. Remember that the difficulties of securing existing material and work in progress can be compounded if the relationship becomes strained. There may be, at the very least, delays in securing the rights, adding to bad feelings and cost.

#### **Terms of termination**

If there is a written contract, the termination clause needs to be adhered to. If there is no written contract, then it is down to negotiation between the client and agency.

As the reasons for the termination of a relationship can vary greatly, from poor performance to the loss of a repitch, the most important element to build into a termination is flexibility.

#### **Reputation**

It is important to remember that the reputation of the client may suffer if the process is badly handled and the incumbent is treated poorly. Embarking on a new agency relationship can be costly and difficult. The difficulties can be exacerbated if the circumstances of the termination with the incumbent were not fair and equitable. It can also affect a client's ability to attract other agencies. We, therefore, recommend that the client debriefs the incumbent to explain why it lost the business and how the agency will be managed out.

#### **Measurement**

Monitoring performance over the contract period provides the evidence upon which balanced conclusions can be drawn. Regular and consistent appraisals can focus attention on poor performance and enable decision regarding termination to be taken with integrity. Equally, the pitch evaluation criteria and process should also allow for objective evidence that can be useful in managing out the incumbent.

#### **Parallel running**

To safeguard any work in progress from being adversely affected by a change in agency mid-campaign, there may be a need for a period of parallel running with the incumbent agency and the new 'pitch-winning' agency. This may cost extra but will ensure a smooth hand-over period.

#### **Notice period**

We normally find that the notice period for termination is three to six months. If a notice period has been agreed, this may be used to manage out an incumbent.

## ● How to find an agency

**The objective of your agency search and selection process is to find the right DM agency for you and your needs. There are lots of good agencies out there, finding the right one for you is not easy.**

Bearing the following tips in mind will make it easier for you.

### 1. Write a brief and timing plan

Spend time thinking about the sort of agency you want to work with. The agency's size, location, core skills and required specialist expertise, type of clients you'd like to keep company with, competitor conflict, whether you want the agency to have a formal or informal approach, international capabilities if relevant and, importantly, your annual budget/agency fee expectations should be considered.

Decide on the date by which you need your new agency in place and work back from there. Write a sensible timing plan – agency search, pitching and appointment will take you at least three months if you do it properly – and stick to it. Build in enough time for your pitching agencies to respond to your pitch brief, i.e. a minimum of 4 weeks.

### 2. Make sure everyone who is important knows about your plans

Don't get half way through the search process and discover that your plan doesn't have the support of your senior management. Get their endorsement of the review at the start and, if you have a purchasing department, also involve them in the process from the start. Make sure key dates in your timing plan are communicated to all relevant decision makers.

### 3. Consider getting some help

In order to balance the need for due diligence and confidentiality in your search and selection activity with the need to get on with your day job, you could consider engaging some specialist third party help with the search process. The DMA works with specialist intermediary AAR, their chosen partner for agency search and selection.

### 4. Do thorough, preliminary research before constructing your shortlist

Consult the DMA members database, look at agency directories and websites, trawl through marketing materials you have received from agencies and kept on file because they were interesting, read the trade press. Bear in mind that if you approach agencies directly asking for information, credentials or examples of work, the fact that you are looking for an agency will rapidly be splashed across the trade press (and elicit copious unsolicited approaches from agencies hoping to work with you).

Compare the information about the agencies you are interested in with the criteria in your brief in order to construct your shortlist of agencies – ideally, no more than six agencies. You should visit these agencies for 'chemistry' meetings before deciding on your pitch list. It's important that you like them and feel that you could work with them before asking them to pitch.

### 5. Consider your incumbent agency (if you have one)

Don't let your current agency find out about your plans from someone other than you, inform them of your plans before you start talking directly to other agencies (when news of your agency search is likely to leak out into the trade press).

Include them in your agency pitch list only if they have a fair chance of retaining your business. If your incumbent has no chance of retaining the business, tell them this, give them formal notice of termination of contract and try to part on good terms.

### 6. Invite no more than three agencies to pitch

The only grounds upon which you should have more than three agencies on your pitch list is if you include the incumbent. If you have done your due diligence properly, you will not need to see pitches from more than three (four with the incumbent). More than three will unnecessarily confuse and elongate the process.

### 7. Decide on the type of pitch you want to hold

You don't have to hold a traditional 'beauty parade' style pitch with full strategic and creative recommendations. There are alternative options:

- i. Live project test – you could give the agencies an issue or task and ask them to respond with their recommendations as to how they would deal with the issue or task strategically.
- ii. Workshop – you could hold a workshop where the proposed client and agency team work through a number of relevant exercises or brainstorming projects to ascertain what the real working chemistry between them might be.

The most important consideration is to pick a pitch style that will enable you to make your decision. Remember – creative work presented during a pitch is very rarely commissioned for production by clients in reality.

### 8. Write the pitch brief

You should issue a written brief to the pitching agencies clarifying the exact nature of the pitch, what will be expected of them on the day, arrangements for and timings of the presentations/workshops, and how the agencies will be evaluated by the decision-makers.

### 9. Make time to talk to the agencies during the pre-pitch period

Give the agencies access to, and enough time with, all relevant decision-makers. They will have questions they want to ask, and will want to try to get to know you better in order to more clearly understand what you need and what you are looking for.

### 10. Pre-empt the trade press

Prepare a press release so that you control the information about your agency review rather than letting the press control it for you.

### 11. What this is really all about

In the final analysis, you will appoint a group of people supported by an agency rather than the other way around. Don't feel uncomfortable about this – you've been through a due diligence process so you know the agency can do the job. Appoint the people you feel most comfortable with. In 99.9% of cases, they will be the right agency for you.

# Section 02

## Managing the pitch process

- Managing the pitch process
- Writing a brief
- Evaluating DM agency pitches



### ● Managing the pitch process and writing a brief

#### 1. Introduction

What follows on the next page is a 'check list' of the subjects you might wish to include in a pitch brief. Your consideration of the subjects is dependent on the nature of your requirements and how much information you want to supply to the pitching agencies. Agencies will always ask questions around the core brief so it is best to be prepared.

#### 2. Requirements on the day

Tell them how long the presentations should last and who their audience is likely to be – job title will suffice if you don't want to name individuals. Make it clear whether strategic proposals alone are required or whether some creative ideas or a full creative pitch is expected. Indicate what you want the agency to demonstrate on the day be it a team of people who would work on your business; a strategic understanding of your brand, your business and your target audience; the creative solution; full media/list/third party/sponsorship proposals; remuneration etc.

#### 3. Timing

Prepare a timetable for the pitch and stick to it firmly. Time must be allowed for constructive ideas from brief to presentation. Four weeks minimum is the suggested time frame for a full creative pitch, although different approaches can take less time.

#### 4. Access

It can be a good idea to brief the agencies in person (but this is not necessary) and give the agencies the opportunity to ask you questions once they have digested the brief. These questions can be handled with a Q&A session at your premises and it is best to obtain the questions in advance from the agencies to allow you to field the right people. If needs be, you can forward on any answers you are unable to provide at the time or agree to set up further meetings with internal departments eg sales. This requires someone senior to champion the agency relationships and to ensure consistency of response. Be aware this can be very time consuming.

#### 5. Judging

Ensure that all the decision makers have been fully briefed and that they are present at each pitch. Set up an objective evaluation system for assessing each presentation and allow enough time (two working days) for the attendees to attend, ask questions and discuss the presentations. But don't leave it too long after the pitch presentation for the discussion as the intensity of the presentation day is soon forgotten as people return to daily roles.

#### 6. The appointment

Decide quickly and inform fairly. Once the business contracts and remuneration details have been discussed – this can often include more than one agency – and a winning agency identified, agree the procedure for notification. Ensure all the pitching agency losers and winners are informed on the same day and be prepared to provide some feedback to those who are unsuccessful. Immediately issue a press release to the trade press.

● Writing a brief

**A Checklist**

**Definitions:**

<p><b>1. Background</b></p>	<p>Briefly about the company/business including any relevant history, ownership, sales figures, key competitors.</p>
<p><b>2. The market</b></p>	<p>Size and growth trends – volume and value. Regional/seasonal characteristics, penetration of product category. Significant product developments or market innovations.</p>
<p><b>3. The product/services</b></p>	<p>Brands, sizes, variants, prices – recommended, actual, trade. Brand-shares – current/previous; by size, volume and value. Key brand benefits. Production methods; constraints and flexibilities.</p>
<p><b>4. Overall marketing strategy</b></p>	<p>Media mix most often deployed plus any particular brand vehicles you have. Stated marketing strategy of company/brands. Advertising – historical, current, planned. Other marketing support e.g. public relations, sponsorship, direct mail etc. Relevant research information.</p>
<p><b>5. The target audience</b></p>	<p>Target audience profile – sex, age, demographics- Consumer/business Their relationship with your brand. Purchase motivations/usage occasions/rate of purchase. Regional/seasonal characteristics.</p>
<p><b>6. The trade</b></p>	<p>Distribution network. Distribution – volume and value by trade sector. Key customers. Delivery methods, methods of display. Average order size by trade category.</p>
<p><b>7. Internal structures/operations</b></p>	<p>Sales force structure, sales cycle information, dealership. Operational, telesales, fulfilment, web based operations.</p>
<p><b>8. The marketing challenge</b></p>	<p>Set the challenge and motivate – eg to launch, increase penetration, build loyalty, boost sales, win back, in UK/Europe/global etc.</p>
<p><b>9. Marketing objectives (to be quantified)</b></p>	<p>Primary Consumer/Business audience Trade. Sales force. Methods of evaluation to be used.</p>
<p><b>10. Expected discipline usage</b></p>	<p>Advertising. Promotional marketing. Direct marketing. Digital Multi discipline.</p>
<p><b>11. Timing</b></p>	<p>Schedule of other activity. Campaign duration Packaging or production lead times. Key accounts sell-in. Internal staff, Sales force briefing.</p>
<p><b>12. Budget</b></p>	<p>Stated allocation. Inclusions/exclusions. Allocation guidelines.</p>
<p><b>13. Guidelines and constraints</b></p>	<p>Overall preferred creative style. Sacred cows.</p>
<p><b>14. Support material to be supplied</b></p>	<p>Any research reports, data sources available, counts and profiling analyses. Product samples, by variant and size. Examples of advertising. of previous campaigns, promotions. Other communication material – leaflets, sales presenters etc. Any other relevant material.</p>

- **Evaluating DM agency pitches**  
Final DM agency presentation

Agency name:  
Date of presentation:

**Part 1 – agency performance**

Do the recommendations:	Marks out of 5 or use weighing
<b>1. Answer the brief</b>	
<b>2. Demonstrate quality thinking on:</b>	
Overall strategy	
Market needs	
Brand business understanding	
Target audience	
Positioning	
Creative strategy	
Targeting/media/data strategy	
<b>3. Demonstrate creative flair in:</b>	
Creative idea	
Creative execution	
Targeting/media/data plan	
<b>4. Demonstrate that the creative idea integrates across-the-line e.g. advertising, PoS, literature, sales promotion, PR</b>	
<b>5. Cover:</b>	
Budget estimate	
Programme timetable	
Pre and post-research & measurement/evaluation	
Staffing plan (provision for handling the account)	
<b>6. Has the agency made intelligent use of the information we have provided? Are its assumptions about it realistic or naive?</b>	

	Marks out of 5 or use weighing
7. Has the agency attempted to obtain additional information about our business & the issues that are inherent in the account?	
8. Has the agency understood the attitude & culture of the company?	
9. Has the agency understood the character of the product or service?	
10. Has the agency demonstrated disciplined thinking, logic & communication both in written & verbal presentation?	
11. Overall, do the recommendations fit with the company's business objectives?	
<b>Part 1 - total marks out of 110</b>	

**Part 2 - working relationship & team member**

Do the people seem:	Marks out of 15
1. Easy to work with?	
2. Intelligent?	
3. Professional?	
4. Technically skilled?	
5. Do they have good rapport as a team?	
6. Do you like them?!	
<b>Part 2 – total marks out of 90</b>	

<b>Grand total possible marks out of 200</b>	
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Additional notes:

## Section 03

# Appointing a new agency

- Contract and fee negotiations
- Suggested terms and conditions
- Survey of DM agency fees
- Agency best practice



### ● Contract and fee negotiations\*

#### 1. Always have a contract in place. It should include the following:

- Who the parties are
- The length of the arrangement
- What the agency will be doing – services and scope of work
- For which brands, services, divisions, territories
- Who will be working on the account, key personnel
- How the agency will be briefed
- Who will approve work and budget commitment at the client company
- Fees and commissions for the agency, or how projects will be costed
- Hourly rates by role or project costs; rate cards etc
- Payment terms
- How production will be commissioned and accounted for to the client and the billing process clearly identified
- How any costs unspent by the agency should be treated
- Rights to any refunds, discounts obtained by the agency
- Reconciliations and quarterly management reporting to ensure the contract terms are being adhered to
- Rights of audit
- Warranties from the agency that it can do the work
- Warranties from the client that it will provide all the necessary information and that it will be accurate
- Warranties on data protection ownership of data, databases and materials
- Insurance
- What happens when things go wrong
- How the contract can be terminated and the consequences of termination
- Key clauses that will survive termination and for what length of time, including, but not limited to, restraint of trade, confidentiality, and copyright and intellectual property.
- Who are the client and agency contacts
- Under whose jurisdiction
- Provisions for renewal

#### 2. Best practice fee negotiations should:

- Take place before appointment and before work commences
- Be fair and equitable
- Identify the profit the agency wishes to make and how it will achieve it through its pricing
- Be reviewed at quarterly, six monthly or annual intervals as appropriate
- If a retainer is put in place there should be a regular reconciliation of actual time to estimated time in the retainer
- Be very clear as to how time will be monitored
- It should be clear in the contract how the hourly/daily rates are built up
- Hourly/daily rates should be benchmarked as should time to complete a task
- Project costs should be benchmarked and reconciled upon completion
- Be based on an agreed scope of work which is reviewed regularly
- Be very clear about what is in scope and what is ad hoc
- Identify what time costs (if any) can be included in production costs
- Consider performance related pay

- **Suggested terms and conditions**

These are proposed terms of business, suggested by the The DMA (UK) Ltd to its members and other interested parties. These terms do not constitute legal advice. You should consult a suitably qualified lawyer if you wish to use these terms for the specific circumstances of your agreement. Any word in CAPITALS means that it either reflects the party's name and this may be changed to suit specific requirements. The shaded boxes provide the key points or meaning behind the clause and outline the flexibility within the clause. The shaded boxes are not to be reproduced as part of the final contract.

**TERMS AND CONDITIONS  
FOR  
CONTRACT OF AGREEMENT  
BETWEEN  
[CLIENT]  
AND  
[AGENCY]**

## 1. INTRODUCTION

The introduction may be as friendly or official as required; it basically outlines what is about to follow and details geographically where the agreement will be in force and who the agreement is between.

This document outlines the mutually agreed terms on which AGENCY is appointed as the Marketing Services Agency within the United Kingdom for CLIENT.

## 2. APPOINTMENT

It is important to make the commencement of the contract clear. This clause also makes the contract, in effect, a rolling contract. It is also important to establish sole appointment for the products and services so that there is clarity if the client is using many agencies for other brands or products. The notice period may be changed to suit requirements.

CLIENT agrees to appoint AGENCY as its sole Agency to perform the services listed below, with effect from DAY/MONTH/YEAR, and thereafter unless or until ended by either party giving to the other not less than SIX months' notice in writing.

CLIENT undertakes not to use another agency, or perform such services internally, for the products listed below and for the services AGENCY agrees to provide.

AGENCY agrees to inform CLIENT before accepting an assignment from any client whose products/business are/is directly competitive with those of CLIENT.

Without prejudice to the above, this agreement may be terminated immediately by either party giving written notice to the other if the other commits a material breach of this agreement, which if the breach is capable of remedy, it is not done so within 14 days of being required to do so in writing, or in the event of the other party going into liquidation or having a receiver or administrator appointed.

## 3. PRINCIPAL

It is important to state whether or not you act as principal at law.

We act in all our contracts as a principal at law.

## 4. AGENCY SERVICES

This section will detail the products and or services that you will provide or perform under this agreement and the fees or commissions that will be contained within it.

To provide CLIENT with a comprehensive service in all areas of ADVERTISING, MEDIA BUYING, SALES PROMOTION, DIRECT MARKETING, DATABASE, PRINT AND PRODUCTION ETC. in a professional manner.

This service to include the following elements:

- 4.1. MAKE A CAREFUL STUDY OF YOUR BUSINESS AND MARKETS**
- 4.2. PREPARE AND PRODUCE CREATIVE WORK**
- 4.3. PLAN AND BUY MEDIA**
- 4.4. BUY PRINT AND PRODUCTION SERVICES**
- 4.5. CONSULT ON DATABASE BUILDING AND ANALYSIS**

## 5. PRODUCTS

As with the sole agency element, it is important to carefully detail what brands/products/services you will be contracted to cover. 5.2 gives the flexibility to add new areas within the terms of this agreement.

**5.1. Agreement to cover CLIENT's brands.**

**5.2. New products as briefed and agreed in writing.**

## 6. APPROVALS, AUTHORITY AND AMENDMENTS

This clause establishes how things will be agreed on an ongoing basis; if any elements do not fit with the agency method of working then the agency should make any necessary changes.

CLIENT's written approval of copy, layouts, creative and artwork will be sufficient authority for AGENCY to purchase the agreed production materials and prepare proofs, and CLIENT's written approval of proofs will be sufficient authority for AGENCY to publish such materials.

CLIENT's written approval of television, cinema and radio scripts and/or storybooks with estimated costs will be sufficient authority for AGENCY to enter into production contracts [and engage performers] and CLIENT's written approval of films and recordings will be sufficient authority for AGENCY to transmit.

CLIENT's written approval of schedules and estimates will be sufficient authority for AGENCY to make necessary reservations and contracts for space, time and other facilities.

The provision of the AGENCY's Service/s [including the acquisition and distribution of sales promotional merchandise] will be discussed between CLIENT and AGENCY. AGENCY will prepare notes of agreements reached at such discussions ["Contact Reports"], which will be signed by a responsible executive of the AGENCY and will for all purposes be deemed to be accurate unless written objection is made by CLIENT within 48 hours of the delivery of the relevant Contact Report to CLIENT.

In the event of CLIENT requesting in writing any cancellation or amendment to work in progress, AGENCY will take all possible steps to comply, provided that AGENCY can do so within its contractual obligations to media and suppliers. In the event that this is not possible CLIENT agrees that it will reimburse AGENCY for any charges or expenses to which AGENCY is committed and to also pay AGENCY fees for such work in progress.

## 7. CHARGES

Whilst the whole of this agreement must be made out with no ambiguity, this area of the agreement requires extra care. The way in which you have agreed or wish to be remunerated may be fee based or a mix of fee and commission. Pick the paragraph(s) that are relevant. It is normal that this area of the agreement will already have been discussed with the client and may have been represented in part by presentations to secure the business.

AGENCY's charges will be based on the following:

### 7.1 A) FEES

A fixed fee of £XX,XXX.XX per month. The fee will be invoiced monthly in arrears.

This fee is based upon the AGENCY's current known estimate of the total CLIENT workload and allows for the provision of an account team comprising:

LIST HERE THE JOB TITLES OF THE TEAM AND THE AMOUNT OF TIME YOU ARE ALLOCATING THE TEAM TO WORK ON THE CLIENT'S BUSINESS (THIS SHOULD BE BASED UPON THE FEE).

### 7.1 B) COMMISSION

Advertising space and time in all UK media will be charged at current published rates in effect at the time of publication or at such a figure that will realise a commission in all cases the equivalent of 17.65% of net charges.

CLIENT expects to spend, through AGENCY, a minimum of £XXX,XXX.XX on advertising space and time during the period DAY/MONTH/YEAR to DAY/MONTH/YEAR.

### 7.1 C) PROJECT FEE

A project fee of £XX,XXX.XX to be paid:

EITHER:

50% ON APPROVAL OF CONCEPT AND 50% ON SUPPLY OF THE MATERIAL

OR:

ON SUPPLY OF THE MATERIAL.

Plus charges for goods and services as agreed in advance and recorded in contact reports.

### 7.1 D) CONSULTANCY AND IMPLEMENTATION FEE

AGENCY will charge CLIENT:

A consultancy fee of £XX,XXX.XX per month in respect of the services detailed in 4.0

An implementation fee equal to X% of the agreed project budget for each promotion.

## 7.2 OTHER CHARGES

This clause stays in regardless of the method of remuneration as it covers all of the extra areas normally overlooked or not charged.

Postage and other transportation charges, telecommunications charges and copying costs especially incurred in carrying out CLIENT's instructions and safeguarding CLIENT's interests will be charged at net cost.

Travel, subsistence and hotel expenses of AGENCY employees will be charged to CLIENT at net cost.

All goods and services, purchased by AGENCY on CLIENT's behalf will be quoted in advance to CLIENT and subject to a mark up of XXX%.

CLIENT retains the right to purchase any or all such items directly.

## 7.3 REVIEW

This clause recognises that relationships change over time and both parties need a formal review periodically.

It is agreed that a full review of AGENCY's service provision be undertaken no later than XX months following the date of appointment and then at least every XX months until the end of the agreement.

This review will include an opportunity to renegotiate the remuneration either upward or downward on a mutually agreed basis.

## 8. COPYRIGHT AND OTHER RIGHTS

Copyright means all matters which are the subject of protection under the Copyright Designs and Patents Act 1988, as may be amended by subsequent legislation and includes all creative work by agency for client.

The copyright and other intellectual property rights for all purposes in all creative work created by AGENCY for CLIENT are vested in AGENCY, unless arrangements are made to the contrary. AGENCY will obtain and hold where possible all necessary rights in respect of copyright material commissioned by the AGENCY on CLIENT's behalf.

If CLIENT so requests, and provided that all obligations arising from this agreement (including those relating to the period of notice) have been met, AGENCY will assign such copyright and other intellectual property rights to CLIENT on termination of this agreement.

The copyright and other intellectual property rights in creative work commissioned by AGENCY from third parties will normally vest in the supplier. AGENCY will ensure appropriate usage rights in respect of this material. If required, and at CLIENT's expense, AGENCY shall use its best endeavors to obtain extended rights or assignment of copyright and other intellectual property rights.

For avoidance of doubt AGENCY shall retain the copyright and other intellectual property rights in any material contained in any presentation or submission prepared by the AGENCY for the CLIENT.

The copyright and other intellectual property rights in all software programs used to process data and lists shall remain AGENCY's exclusive property.

## 9. PROTECTION OF CONFIDENTIALITY

This clause provides the balance by protecting the agency's ideas whilst also recognising the fact that the client will be making sensitive information and data available to the agency. It may be that a separate confidentiality agreement should be devised where there are large transfers of data, or the client is operating in a new or sensitive market.

CLIENT acknowledges and agrees that any identifiable and original idea or concept presented by AGENCY in relation to any promotion or campaign invented or developed by AGENCY shall be available only for such a promotion or campaign and shall not be used for any other purposes whatsoever without AGENCY's express prior agreement given in writing.

Even where no promotion or campaign is agreed, the ideas and concepts presented to CLIENT shall remain strictly confidential and shall not be used in any way, including communication to any third party, without AGENCY's express prior consent.

AGENCY acknowledges a duty not to disclose without CLIENT's permission during or after the term of appointment any confidential information resulting from studies or surveys commissioned and paid for by CLIENT.

CLIENT, in turn, acknowledges AGENCY'S right to use as it sees fit any general marketing or advertising intelligence in the field of CLIENT's product or service, which AGENCY has gained in the course of its appointment. Such use is subject to the agreement of CLIENT.

## 10. TERMS OF PAYMENT

The agency may wish to add a clause into this section that allows it to charge interest on the late payment of invoices. Also, if the Agency is preparing postage then it may wish to exclude this from the 30 day period.

Fees will be submitted monthly in arrears by the XX day of the following month and will be payable within 30 days of receipt by the CLIENT.

Monthly accounts for all other service will be submitted to CLIENT in arrears (except where specifically agreed) by the XX day of the following month. Payment is due within 30 days of receipt by the CLIENT.

As it is necessary to pay media and suppliers on due dates, prompt settlement of accounts is required so that the funds are available to the AGENCY.

Optional Interest for late payment

In the event that payment is not received by the AGENCY on the due date, the AGENCY will charge the CLIENT interest at the rate of 4% above the base rate of {insert name of Agency's Bank} Bank plc from the date the payment was due to the date payment is received,(both before and after judgment)

## 11. TERMS OF BUSINESS WITH MEDIA AND SUPPLIERS

It may be necessary to allow clients, and at times client's suppliers, to see the agency's written terms of business.

The levy of 0.1% payable by advertisers through agencies to the Advertising Standards Board of Finance applies to all gross media rates on press display, advertisements (excluding classified lineage and semi-display), on outdoor, cinema and direct mail appearing in the UK and is not subject to agency commission.

AGENCY acts in all dealings with third parties as a principal at law.

If, as part of a promotion package, AGENCY purchases media on CLIENT's behalf, unless otherwise stated, contracts with the media and suppliers for such advertising are made in accordance with media rate card or other standard conditions or at such prices or conditions as may be negotiated separately.

The rights and liabilities between CLIENT and AGENCY shall correspond to those between AGENCY and the various media suppliers under such standard conditions.

## 12. LEGAL LIABILITY AND OTHER CLAIMS

The following section states what liability the agency has.

### 12.1 LIMITATION OF AGENCY LIABILITY

This clause sets the perimeter to the agency's liability.

This clause sets the limit to the level of liability that the agency will warrant its work. The level should be the same as the Fees the agency expects to be paid under the agreement. If the agreement is to last for more than one year, the agency may want to limit the amount to the fees paid in the preceding year.

AGENCY warrants that the services will be provided in a professional manner, the limit to any liability in relation to the provision of services will be £XXX. CLIENT will indemnify AGENCY against any claim that exceeds this figure. This limit will not apply in the case of death or personal injury caused by the AGENCY'S negligence

AGENCY shall not be liable to CLIENT for any delay in, or omission of, publication or transmission or any error in any advertisement, nor delay in posting or delivery, in the absence of default or neglect on the part of the AGENCY.

Notwithstanding anything contained in the agreement, AGENCY will not be liable for any loss of profits, consequential, economic, or indirect loss arising in any way in connection with the performance (or non performance) of the obligations related to this agreement.

### 12.2 INDEMNITY TO THE AGENCY

This clause puts the responsibility of approval onto the client to indemnify the agency predominantly against a third party action.

CLIENT will indemnify AGENCY against any loss incurred as the result of any civil claims or proceedings brought against AGENCY based upon any advertising and other work prepared for CLIENT by AGENCY and approved by CLIENT before publication.

### 13. ADVERTISING STANDARDS

This clause establishes the codes of practice that the agency complies with. Please add or delete any codes that are not applicable to your agency.

AGENCY complies with the British Codes of Advertising and Sales Promotion, administered by the ASA, and with the DMA (UK) Direct Marketing Codes of Practice and other codes of advertising standards laid down on a self-regulatory basis.

CLIENT will provide a list warranty confirming that any data supplied to AGENCY for use in your marketing campaigns has been appropriately obtained and registered under the Data Protection Act 1998.

### 14. LAW

This clause may need to be changed if the agency or client does not operate under the law of England and Wales.

This agreement is subject to the law of England and Wales and the parties agree to submit to the jurisdiction of the Courts of England and Wales in respect of any dispute or difference arising under the agreement.

We suggest that someone who can commit the company to the terms of the contract signs this agreement. Such a person is normally a Director or Company Secretary.

An independent person i.e. not a family member, should witness the signature at the same time as the person signing.

At least one of the signatories must be on the same page as the main document, otherwise the contract may be invalidated.

Signed for and on behalf of AGENCY

.....

Name: .....

Position: .....

Dated: .....

Signature of Witness:

.....

Name: .....

Address: .....

.....

Occupation: .....

Signed for and on behalf of CLIENT

.....

Name: .....

Position: .....

Dated: .....

Signature of Witness:

.....

Name: .....

Address: .....

.....

Occupation: .....

● **Survey of DM agency fees 2004\***

HOURLY RATES	AGENCY SIZE		
	Small	Medium	Large
<b>Agency Management</b>			
Chief Executive	£130-£150	£160-£180	£240-£260
Managing Director	£130-£150	£140-£160	£220-£240
Finance Director	£130-£150	£130-£150	£190-£210
Partner	£140-£160	£140-£160	£220-£240
<b>Account Management</b>			
Head of Client Services	£130-£150	£120-£140	£180-£200
Group Account Director	£110-£130	£110-£130	£140-£160
Board Account Director	£120-£140	£100-£120	£150-£170
Account Director	£80-£100	£90-£110	£110-£130
Senior Account Manager	£70-£90	£70-£90	£80-£100
Account Manager	£60-£80	£60-£80	£70-£90
Account Executive	£50-£70	£40-£60	£50-£70
Secretary	£50-£70	£30-£50	£50-£70
<b>Creative</b>			
Creative Director	£120-£140	£140-£160	£190-£210
Senior Art Director	£90-£110	£110-£130	£130-£150
Art Director	£80-£100	£90-£110	£100-£120
Junior Art Director	£70-£90	£70-£90	£90-£110
Senior Art Director	£90-£110	£100-£120	£140-£160
Copywriter	£80-£100	£80-£100	£110-£130
Junior Copywriter	£70-£90	£60-£80	£90-£110
<b>Production</b>			
Creative Services Director	£120-£140	£100-£120	£140-£160
Creative Services Manager	£90-£110	£80-£100	£90-£110
Senior Web Designer	£100-£120	£100-£120	£110-£130
Web Designer	£80-£100	£80-£100	£100-£120
Senior Web Developer	£90-£110	£100-£120	£120-£140
Web Developer	£90-£110	£80-£100	£100-£120
Production Manager	£80-£100	£70-£90	£90-£110
Production Executive	£70-£90	£40-£60	£70-£90
Senior Artworker	£90-£110	£70-£90	N/A
Artworker	£80-£100	£60-£80	N/A
Art Buyer	N/A	£50-£70	£80-£100
Print Buyer	£100-£120	£70-£90	£80-£100
Senior Print Buyer	N/A	£70-£90	£90-£110
Traffic Manager	£70-£90	£60-£80	£80-£100
Traffic Assistant	N/A	£50-£70	£70-£90
Studio Manager	N/A	£80-£100	N/A
<b>Database Management</b>			
Data Director	£140-£160	£120-£140	£160-£180
Data Consultant	£90-£110	£90-£110	£120-£140
Database Manager	£60-£80	£80-£100	£90-£110
Data Analysis	£60-£80	£80-£100	£100-£120
List Buyer	N/A	£80-£100	£70-£90
<b>Planning</b>			
Planning Director	£140-£160	£140-£160	£180-£200
Senior Planner	£90-£110	£100-£120	£130-£150
Planner	£80-£100	£90-£110	£100-£120

**Key:**

Small	3 to 25 employees
Medium	26 to 65 employees
Large	66+ employees and over

*\*This survey was compiled in November 2004 and is for information purposes only. The DMA does not approve the figures.*

*N/A – Range unavailable due to insufficient responses*

## ● Agency best practice

All DMA member agencies have to adhere to the highest standards of practice, codes of conduct, legal guidelines, ethics, staff development and financial management.

It is a condition of membership that DMA members adhere to the DM Code of Practice. This sets standards of code ethical conduct and best practice and is administered and monitored by the independent Direct Marketing Authority. The Code covers all forms of direct marketing. Visit [www.dma.org.uk/codeofpractice](http://www.dma.org.uk/codeofpractice).

As part of the DMA's commitment to raising industry standards and promoting consumer safeguards the DMA issues Best Practice Guidelines, covering specific areas of direct marketing. These guidelines help agencies adhere to the highest industry standards. Visit [www.dma.org.uk/bestpractice](http://www.dma.org.uk/bestpractice) to see a full list of DMA best practice guidelines.

All DMA Agency members have been individually vetted and have demonstrated commitment to industry best practice through signing the Agency Charter Checklist. The DMA also require client references, proof of professional indemnity insurance and investigates applicants' financial stability. So you can be assured that by choosing a DMA member you are working with an agency that has already proved it can meet tough standards.