DATED 20……

**BETWEEN**

**……………………………………………………..**

**ACN……………**

**AND**

**<          >**

(ACN **<          >**)

**ADVERTISING AGENCY AGREEMENT**

**THIS AGREEMENT** is made the day of [ ]

**BETWEEN** ………………

**AND <          >** (ACN [**<          >**) trading as **<          >**of **<          >** ("the Agency")

**RECITALS**

1. XXXX carries on in Australia the business of production and marketing of human health products including research and development in this area.
2. The Agency carries on the business of an advertising agency, including but not limited to development and production of advertising and promotional material.
3. The Agency agrees to provide to XXXX certain services and XXXX agrees to accept such services on the terms and conditions following.

# IT IS AGREED:

# TERM

* 1. This Agreement is effective from [INSERT DATE] ("Commencement Date") and continues in effect for an initial term of one (1) year subject to the provisions of clause 11.

# RELATIONSHIP AND SERVICES

**Services**

2.1 The Agency will act as XXXX's advertising agency in respect of the product specified in Item 1 of Schedule A ("Product") and will provide to XXXX advertising services for the Product of the type described in Item 2 of Schedule A, subject to the terms of this Agreement.

**Other Agencies**

2.2 XXXX may also use other agencies or consultants for their specialised services and expertise, including but not limited to public relations, market research, media planning and placement, medical communications and medical education agencies. The Agency will work co-operatively with such other agencies or consultants as are reasonably required by XXXX.

**In-house Facility**

* 1. XXXX has its own in-house artwork and production facility, the functions of which include support for both new and in-line products, including products allocated to advertising agencies. Where XXXX considers it to be necessary, the Agency will work co-operatively with XXXX in the use of its in-house facility. If requested, the Agency will provide to XXXX material previously prepared by the Agency in relation to the services in Schedule A in the form of disks, documents or other form which may help the XXXX in-house facility in preparing promotional material. Such material will be provided in a timely manner by the Agency.

#### Global Marketing

2.4 XXXX operates under a global marketing principle by which its parent company, supplies marketing strategies, creative concepts, branding and promotional materials for new products. The Agency will comply with directions from and accept and use materials supplied by AAAA, in relation to this principle.

**Market Research**

2.5 The Agency acknowledges and agrees that any market research services will be conducted in conjunction with XXXX's market research department.

**Agency Personnel and Relationship**

2.6 Key creative and service personnel of the Agency identified in Schedule B will not be transferred from performance of services for XXXX without XXXX consent which shall not be unreasonably withheld. The Agency shall transfer any of its personnel from performance of services for XXXX upon reasonable request from XXXX.

**3. SERVICE REQUEST PROCESS**

**Briefs**

3.1 When XXXX requires the Agency to provide services it shall provide instructions describing the required services in a brief, including (without limitation) the matters set out in Schedule C.

**Estimates**

3.2 The Agency shall within seven (7) days of receipt of instructions or such other time as XXXX agrees to:

(a) provide a verbal debriefing in respect thereof, if so requested by XXXX;

(b) provide to XXXX its detailed written estimate describing the nature of the services and expenses and estimated amounts of such expenses which will be incurred in carrying out the instructions, and the Agency will use the "Estimate Form" contained in Schedule D for this purpose or a similar form containing substantially the same information.

3.3 XXXX shall notify the Agency in writing of its acceptance of an estimate under this Agreement, and the Agency will carry out the services in accordance with the instructions and estimate. No work shall be carried out before acceptance of an estimate.

3.4 If during the course of execution of the services XXXX seeks any variation of the services, then it will provide to the Agency a further written instruction in respect of each variation, and the Agency will provide an up-dated written estimate.

3.5 Meeting Fees

Costs for meetings will be based on an hourly fee to be agreed prior to the Commencement Date and reviewed on a yearly basis, but any variation will be subject to XXXX approval. Travelling costs of up to 2 hours are allowable, if substantiated. If more than 2 persons are to attend meetings, the Agency shall inform XXXX and obtain the consent of XXXX for the additional Agency attendees. The Agency will keep records of time spent on an hourly basis, specifying the services carried out, and provide such records to XXXX on request.

3.6 Service Fee

XXXX will, subject to acceptance of the estimate, allow the Agency in respect of sub-contracted services in the nature of production work, printing, film making, mailing (excluding postage) or other services not being media placement services, a service fee equal to 10% of the quoted sub-contract service. No service fee is payable on GST as defined in clause 6.6.

3.7 Media Placement

Media Placement services requested by XXXX will be charged to XXXX at the net cost to the Agency plus 5% service fee. The Agency will take advantage of XXXX contracted rates if possible. This fee covers planning, scheduling and placement of media.

**Sub-contracted services**

3.8 Where the Agency needs to use external services ("sub-contracted services") the Agency will give XXXX a written description of the services, which may include but are not limited to film, print and mailings. The Agency must obtain and submit to XXXX three (3) quotations, including one (1) from an XXXX nominated preferred supplier. The successful supplier of the particular services or items will be selected by XXXX, taking into account the recommendations of the Agency where necessary. XXXX will provide a list of preferred suppliers to the Agency and provide regular updates.

3.9 The Agency is not required to follow the processes under clause 3.7 where the total value of services or items to be procured from a third party is less than $1,000.00. However, XXXX preferred suppliers should be used where possible.

3.10 The Agency will manage and be responsible to XXXX for the provision of all its sub-contracted services. XXXX will, subject to acceptance of the estimate, allow a service fee to the Agency of such amount as is referred to in clause 3.6.

3.11 The Agency is solely responsible for payments for sub-contracted services, and will, if so requested by XXXX, provide a copy of invoices issued in respect of sub-contracted services. Where sub-contracted services are provided by XXXX preferred suppliers, payment should be made within 45 days of receipt of payment from XXXX.

3.12 The Agency shall use reasonable endeavours to ensure that sub-contractor suppliers abide by the same ethical and business standards and practices, and other obligations, as are required of the Agency in clause 4 of this Agreement.

**4. ADVERTISING STANDARDS RESPONSIBILITY**

4.1 The Agency will, on an on-going basis during the continuance of this Agreement, use its best endeavours to become familiar with the XXXX organisation, including its business philosophy and ethics, its products and the markets in which XXXX operates.

4.2 The Agency will produce material of a quality and standard to meet XXXX's reasonable expectations having regard to the business philosophy and ethics of XXXX referred to in clause 4.1.

4.3 The Agency is expected to have a thorough working knowledge of and will comply with the following:

(a) The International Medical Media Standards of XXXX.;

(b) The Code of Conduct of the Australian Pharmaceutical Manufacturers Association;

1. The Therapeutic Goods Act 1989 and Regulations;

and to the extent they are applicable

(d) The Code of Good Conduct of the Pharmaceutical Association of Australia;

(e) The Code of Ethics of the Australian Association of National Advertisers;

(f) The Code of Good Conduct of the Proprietary Medicines Association of Australia.

XXXX will provide copies of any of those documents that are not in the public domain. The Agency is not required to familiarise itself, or comply, with any legislation, standards, or mandatory or voluntary codes applying in countries other than Australia in which XXXX. market, promote or sell products or conduct research.

4.4 The Agency will use all reasonable efforts to ensure that any promotional or advertising material created by it is fair, legal and true, and to obtain any necessary approvals, licences, permits and authorisations relevant to XXXX's promotional or advertising material.

4.5 The Agency will obtain the written approval of XXXX for any promotional or advertising material before broadcast or publication. The Agency will not make any commitments on behalf of XXXX unless authorised by XXXX in writing.

4.6 XXXX acknowledges and accepts that the ultimate responsibility for the medical and legal accuracy of any promotional or advertising material produced by the Agency lies with XXXX, subject to clauses 7 and 9.2.

4.7 Should the Agency be offered any work that could be in conflict with the advertising or promotion of XXXX products, the Agency will notify and discuss the offer and relevant circumstances with XXXX and comply with the reasonable directions of XXXX.

**5. REPORTING**

5.1 The Agency will prepare fortnightly or at such other intervals as XXXX requires, status reports describing, for each project, the current status, next action, responsibility, final delivery date and such other pertinent information as XXXX requests.

5.2 XXXX will hold a formal review with the Agency of matters relevant to the Agency and the services performed by it 6 monthly after the Commencement Date for the first year of this Agreement and thereafter annually. A special review may be undertaken within a reasonable time after a request by either XXXX or the Agency to hold such review.

# 6. INVOICES, EXPENSES and PAYMENT

**Invoices**

6.1 The Agency will invoice XXXX in the first week of each month for the services provided during the previous month. Each invoice must:

(a) include the purchase order number, and conform to XXXX invoice and accounting procedures notified by XXXX to the Agency;

(b) be capable of being reconciled with the estimate by including a breakdown of work done for each of the items in the estimate;

(c) include total billings to date in respect of the estimate, and where practicable, against each item in the estimate.

6.2 Variances above any accepted estimate will not be permitted unless XXXX has authorised the additional costs.

**Expenses**

6.3 XXXX will not accept charges for photocopying, couriers, supervision or other expenses, except where directly related to and included in approved estimates and authorised by XXXX. XXXX electronic facilities and internal courier, and e-mail should be used, wherever possible.

**Disputed charges**

6.4 If XXXX disputes any charges or other items in an invoice, XXXX must notify the Agency within a reasonable time after having received the invoice.

**Payment**

6.5 XXXX will pay the Agency the amount to which the Agency is entitled under this Agreement within thirty (30) days of the date of the invoice.

**GST**

6.6 In this clause “GST” means goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 and regulations thereunder as in force from time to time (“GST Law”) and terms used have meanings as defined in the GST Law.

6.7 The amount payable for any taxable supply made under or in accordance with this Agreement shall be increased by the amount of any GST levied or imposed on or in respect of such supply provided that it is a precondition of any payment for any taxable supply that the recipient has issued a GST tax invoice or such other document as may be required under the GST Law to enable the payer to obtain an input tax credit.

# 7. INTELLECTUAL PROPERTY

7.1 In this clause unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Creator” includes artist, illustrator, freelancer, computer operator, copywriter, author, scriptwriter, director, songwriter, photographer, re-toucher, graphic designer, art director, sculptor, animator, model maker, jingle writer, musician, or composer;

“Intellectual Property” means any copyright, design (whether registered or unregistered), trademark (whether registered or unregistered), patent or patent application or invention, circuit layout, know-how, confidential information (whether such information is in writing or recorded in any other form) and other proprietary or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;

“Material” means all and any advertising and promotional material, including but not limited to advertising or promotional copy, storyboards, scripts, logos, designs, artwork, films, and any other material in any medium, computer programmes, reports, studies, designs, drawings, technical information or other data whatsoever developed or created by the Agency or employees of the Agency, or developed or created by or procured from any Third Party pursuant to the Agency's obligations under this Agreement.

“Moral Rights” has the meaning ascribed to it in the Copyright Act 1968 (Cth) and includes a Creator’s:

1. right of attribution of authorship;
2. right not to have authorship falsely attributed; and
3. right of integrity of authorship;

“Third Party” means any supplier from whom the Agency acquire goods or services for the purpose of fulfilling the Agency’s obligations under this Agreement.

* 1. Subject to clause 7.4 the Material is and shall at all times be the sole absolute property of XXXX, and for further assurance the Agency hereby assigns to XXXX all its right title and interest in and to the Material, and agrees to procure each Third Party to also assign to XXXX, where possible, all its right title and interest in and to the Material.
  2. Without limiting clause 7.2, the Agency hereby assigns, and agrees to procure each Third Party, where possible, to assign to XXXX all Intellectual Property throughout the world and for all time in all and any Material produced pursuant to this Agreement. Without limiting the effect of this clause, this assignment shall operate as an assignment of future copyright pursuant to section 197(1) of the Copyright Act 1968 and the Agency agrees to do or cause to be done all such acts and things as XXXX may reasonably require to fully vest copyright in XXXX and to enable XXXX to perfect its title, and, where possible, to also procure each Third Party to do so, including without limitation to sign all documents and do all acts necessary to vest such rights in XXXX, and to perform its contractual obligations in relation thereto.

7.4 Notwithstanding the provisions of clause 7.2 and 7.3 XXXX must not use or exploit the Material outside Australia. unless it first pays to the Agency the amount calculated in accordance with Schedule E. This clause does not prevent XXXX:

(a) using the Material on websites which may be accessed from anywhere in the world;

(b) passing the Material to its parent, or any of the subsidiaries for review only.

7.5 All documents materials and other items of tangible nature supplied to the Agency or to any employee of the Agency or Third Party by XXXX pursuant to this Agreement shall at all times remain the sole absolute property of XXXX and shall be returned to it by the Agency upon demand.

7.6 The Agency shall cause its employees and Third Parties to keep in safe custody and not to copy or reproduce nor make available to any third party all or any part of that which is or becomes the property of XXXX pursuant to clauses 7.2 and 7.3, and not to permit any such action to occur.

7.7 The Agency warrants that it has full power and authority to grant the rights described in clauses 7.2 and 7.3, other than rights of Third Parties, and shall indemnify XXXX against and hold it harmless from any and all losses, costs (including legal costs on an indemnity basis), damages, judgments, liabilities and expenses arising out of or relating to any breach or claimed breach of such warranty. The Agency will use its best endeavours to procure each Third Party to grant the rights described in clauses 7.2 and 7.3. If the Agency is unable to procure such rights from a Third Party the Agency will notify XXXX in writing and will not engage that Third Party without the written approval of XXXX.

7.8 In the event that any Material developed for or delivered to XXXX by the Agency, its employees or Third Parties is held by a court or tribunal of competent jurisdiction to constitute an infringement of any patent, copyright or other property rights (including but not limited to the misappropriation of trade secrets) and the use thereof is enjoined, the Agency shall to the extent that it is reasonably able and at its own expense procure for XXXX the right to continue to use the material or modify it so as to render it non-infringing. In the event the Agency is unable to do any of the things hereby required after making reasonable efforts to do so it shall notify XXXX, and XXXX may terminate this Agreement under clause 11.3 without affecting any accrued rights and obligations of either party.

7.9 It is acknowledged and agreed by XXXX that this clause 7 expressly excludes Moral Rights. The Agency will, as far as the relevant laws allow, use its best endeavours to secure a waiver by a Creator of its Moral Rights to any Intellectual Property used by the Agency.

# 8 CONFIDENTIAL INFORMATION

8.1 "***Confidential Information***" means all information regardless of its form passing from XXXX to the Agency or of which the Agency becomes aware relating to XXXX's business or products before or after the date of this Agreement, including but not limited to marketing strategies, market analyses, business practices, expertise and methodology, data, know-how and information about competitive products, except information which:

(a) is public knowledge at the time of its receipt from XXXX or subsequently passes into the public domain otherwise than as a result of a breach of the Agency’s obligations under this Agreement; or

(b) was already in the possession of the Agency prior to receipt from XXXX; or

(c) is properly obtained by the Agency from a third party with a valid legal right to disclose such information and such third party is not under an obligation of confidentiality to XXXX.

8.2 The Agency acknowledges and agrees that Confidential Information is disclosed in confidence and undertakes and agrees to treat and hold Confidential Information as strictly confidential and secret.

8.3 The Agency will prevent disclosure of Confidential Information to third persons other than to employees or sub-contractors of the Agency who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know) and will direct such of its employees and sub-contractors to whom Confidential Information is communicated to also treat and hold the Confidential Information as strictly confidential and secret.

8.4 The Agency will use reasonable endeavours to ensure that each person to whom it discloses Confidential Information under clause 8.3 complies with its direction and will notify XXXX of and take all reasonable steps to prevent or stop any suspected or actual breach of such direction.

8.5 The Agency will, if required by law to disclose any Confidential Information to a third person (including, but not limited to, government), if possible before doing so, notify XXXX and give XXXX a reasonable opportunity to take any steps that XXXX considers necessary to protect the confidentiality of that information and will notify the third person that the information is Confidential Information of XXXX.

8.6 The Agency will, and will use reasonable endeavours to cause its sub-contractors to, use Confidential Information solely for the purpose of performing the services and for no other purpose whatsoever except with the prior written approval of XXXX. Upon completion of the services by the Agency or upon request by XXXX, the Agency will return all Confidential Information in material form as directed by XXXX.

8.7 In the event of a breach or threatened breach of any of the terms of this clause 8 by the Agency, XXXX shall be entitled to an injunction restraining the Agency from committing any breach of this Agreement without showing or proving any actual damage sustained by XXXX.

8.8 This Agreement is not to be construed as granting to the Agency any licence rights or other rights relating to the Confidential Information except as expressly provided in this Agreement or specifically agreed to by the parties in writing.

# 9. PRIVACY

* 1. In this clause “personal information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
  2. The Agency must abide by all relevant National Privacy Principles (“NPP”) set out in the Privacy Act 1988.
  3. Without limiting the generality of clause 9.2:

(a) The Agency must not collect personal information unless the information is necessary for one or more of its functions or activities.

(b) The Agency must collect personal information only by lawful and fair means and not in an unreasonably obtrusive way.

(c) The Agency must take reasonable steps to ensure that any individual whose personal information is collected is aware of:

1. the identity of the organisation collecting personal information;
2. how to contact the organisation collecting personal information;
3. the fact that access is available to this personal information;
4. the purposes for which this personal information is collected;
5. the types of organisations to which personal information of this kind is usually disclosed; and
6. the main consequences for the individual if the personal information is not provided.
7. The Agency must not collect sensitive information (as defined in the Privacy Act 1988) without the consent of the individual whose information is collected or the written approval of XXXX which shall not be given unless XXXX is satisfied that such collection is permitted under NPP 10.

**10. INSURANCE AND INDEMNITY**

# Insurance

10.1 The Agency will take out and maintain the insurances referred to below with an insurer and on policy terms and exclusions and for the duration as is approved by XXXX, (which approval shall not be unreasonably withheld), and will ensure the policies remain valid and enforceable, and will pay all premiums for the policies and their renewals, and provide copies of the policies and certificates of currency in respect thereof, upon request by XXXX:

(a) product and public liability insurance policies that provide coverage for an amount of not less than $5,000,000.00 for each occurrence;

(b) insurance against any claim arising by virtue of any statute relating to workers’ compensation or employer’s liability under statute or at common law; and

(c) professional liability and indemnity insurance for an amount in respect of any

claim or event as is agreed between the Agency and XXXX, and such insurance to cover acts or omissions of the Agency in the actual or purported performance of the services under this Agreement notwithstanding such claim may or may not be made or notified until some time after the provision of the services.

**Indemnity by Agency**

10.2 The Agency indemnifies XXXX its employees, agents and sub-contractors against all claims, expenses, losses or damages, and costs (on a full indemnity basis and whether incurred by or awarded against XXXX) arising from:

* + - 1. any breach of this Agreement by the Agency including, without limitation, a breach in respect of which XXXX exercises a right to terminate this Agreement; or
      2. non-compliance by the Agency, its employees or sub-contractors with any federal or state laws, regulations, rules or codes, including but not limited to infringement of any copyright or other intellectual property rights, or misappropriation of trade secrets; or
      3. any act or thing done without the instructions or approval of XXXX, or causing damage to any property or injury to or death of any person, or any wilful or negligent act or omission of the Agency or its employees or contractors.

**Indemnity by XXXX**

10.3 XXXX will indemnify the Agency its employees, agents and sub-contractors against all claims, expenses, losses, damages and costs (on a full indemnity basis and whether incurred by or awarded against the Agency) arising from:

(a) any breach of this Agreement by XXXX including without limitation a breach in respect of which the Agency exercises a right to terminate this Agreement; or

(b) any act or thing done on XXXX's instructions or with the approval of XXXX including the broadcast or publication of any promotional or advertising material; or

(c) any claim made based on information, facts or material supplied to the Agency by XXXX; or

(d) the failure of any promotional or advertising material to comply with the law, the rules, guidelines and codes of TGA, APMA, IMMS and any other applicable industry standards in force from time to time, except to the extent that the Agency indemnifies XXXX under clause 10.2.

# 11. TERMINATION

11.1 Either party may terminate this Agreement immediately by giving a notice to the other party if the other party:

(a) is in breach of any term or condition of this Agreement and does not remedy the breach within fourteen (14) days of the date of receiving a notice specifying the breach and requiring its remedy; or

(b) ceases to carry on business; or

(c) becomes insolvent; or

(d) if a receiver or a receiver and manager is appointed over the whole or any substantial part of its assets; or

(e) if an order is made or a resolution is passed for the winding up of its business (other than for the purpose of amalgamation or reconstruction not involving insolvency).

11.2 Either party may terminate this Agreement:

(a) by not less than three (3) month's notice expiring on the expiration of the initial term; or

(b) if this Agreement is not terminated as at the end of the initial term, by giving three (3) month’s notice, or such longer period of notice as is mutually agreed, expiring at the end of such notice period.

11.3 XXXX may terminate this Agreement immediately by giving a notice to the Agency in the event the Agency is unable to do any of the things required under clause 7.6 after making reasonable efforts to do so.

11.4 During the notice period under clause 11.2, the Agency's duties, responsibilities and rights will continue in full force including, where such services have been agreed, the ordering and billing of any advertising in broadcast media where the air dates fall within the notice period, and the ordering and placement of promotional or advertising material in print media where published closing dates fall within the notice period.

11.5 On termination of this Agreement:

(a) The Agency shall deliver to XXXX all materials developed by it up to the date of termination, and XXXX shall only be obliged to pay the Agency for such of the services provided up to the date of termination of this Agreement.

(b) XXXX will promptly settle all outstanding accounts with respect to the period prior to the effective date of termination.

(c) XXXX will have the right to use after the effective date of termination without further payment to the Agency, all materials prepared by the Agency or third parties during the term of this Agreement.

(d) The Agency must immediately return to XXXX all Confidential Information in material form in the Agency's possession or control and, if requested by XXXX, confirm by letter that the Agency has complied with all of its obligations under this clause 11.5.

**12. MISCELLANEOUS PROVISIONS**

# 12.1 Law

This Agreement is to be governed and construed under and in accordance with the laws of New South Wales for the time being in force and the Courts of New South Wales shall have exclusive jurisdiction with respect to any disputes related to this Agreement save and except that, in the event any such dispute is a matter with respect to which the Federal Court of Australia has exclusive jurisdiction, proceedings shall be brought in the New South Wales District Registry of that Court.

# 12.2 Waiver and Variation

No waiver by either party of any breach of one or more of the provisions of this Agreement by the other party shall be deemed to be a waiver of any subsequent breach of the same or any other provision. This Agreement may not be varied except in writing signed by the parties.

12.3 **Inconsistency**

In the event of any inconsistency between this Agreement and the standard terms of a purchase order, this Agreement will apply.

# 12.4 Severability

If any provision of this Agreement shall be construed so as to be illegal or invalid the legality or the validity of any other provision shall not be affected thereby. Any illegal or invalid provisions shall be severable and all other provisions shall remain in full force and effect.

12.5 **Headings**

Headings are for convenience and do not affect interpretation.

# 12.6 Assignment

Neither party may assign, transfer or otherwise dispose of its rights and obligations under this Agreement to any third party without the prior written consent of the other party and any attempt at such unapproved disposal shall be null and void.

* 1. **Relationship**

The Agency is not by this Agreement an employee or agent of XXXX.

# 12.8 Notices

Any notice, demand or other communication given under or pursuant to this Agreement must be in writing and be deemed duly given or made if delivered or sent by post to the address of the party stated on the front of this Agreement or by facsimile transmission to the facsimile number stated below or such other address or facsimile number as is notified by a party to the other party pursuant to this clause.

* + - * 1. XXXX:

Facsimile No: <FAX NO>

* + - * 1. Agency

Facsimile No: <FAX NO>

Each of the parties may change its address or facsimile number for the purpose of this Agreement by giving notice of such change to the other party pursuant to the provisions of this clause.

Any notice, demand, or other communication shall be deemed, in the absence of proof to the contrary, to have been received by the person to whom it was sent:

(i) in the case of hand delivery, upon such delivery;

(ii) in the case of pre-paid post, two (2) business days after the date of despatch; or

* + - * 1. in the case of facsimile transmission, at the time of despatch provided that following transmission the sender receives a transmission confirmation report, or if the sender's facsimile is not equipped to issue a transmission confirmation report the recipient confirms in writing that the notice has been received.
  1. **Audit**

For the sole benefit of verification of compliance by the Agency with its obligations under clause 3 and 6 the Agency must permit XXXX and persons or corporations authorised by XXXX (including if XXXX so elects and limited to if the Agency so elects XXXX external registered auditors) to have access to the books and records of the Agency solely as they relate to work performed for XXXX at all such times as may reasonably be agreed upon reasonable notice being given to the Agency. Any information obtained in exercise of the rights of this clause must be kept confidential by XXXX and its external auditor and not used or disclosed for any other purpose.

* 1. Force Majeure

Failure or delay in performance of any obligations under the Agreement (except for the obligation to make payments) by either party will not be deemed a breach of this Agreement if that failure or delay is due to any cause beyond the reasonable control, and without the fault or negligence of, that party, and the time for performance will be extended for a reasonable time following the delaying cause being overcome or resolved.

## SCHEDULE A

**Services (clause 2.1)**

**Item 1:** **Product**

[INSERT NAME OF PRODUCT]

**Item 2: Description of Types of Services**

(a) Assist in the development of promotional plans and strategies.

(b) Create and produce advertising and promotional material.

(c) Advise whenever research is considered necessary.

(d) Be available for regular consultation covering both strategy and tactics.

(e) If required by XXXX:

(i) Contribute to the design of market/promotional research and assist in interpretation of its findings.

(ii) Place advertising and promotional material in appropriate media.

(iii) Contribute to the development of long term and annual plans and product strategies.

(iv) Carry out other specific assignments in respect of the Product or other products, as may be designated.

**SCHEDULE B**

**Key Personnel (clause 2.6)**

**SCHEDULE C**

**XXXX instructions brief (clause 3.1)**

* The description, objective, strategy and communication messages of the project
* Detailed and comprehensive information including source material and references
* An allowance for flexibility and Agency input
* A debriefing element to facilitate understanding and commitment by both parties
* Realistic timelines
* Budget estimate
* Written and verbal communications
* Sign-off by both parties

The brief assumes both parties have a working understanding of the creation, production and approval functions for medical literature, and the industry codes under which industry operates.

**SCHEDULE D**

**Estimate Form (clause 3.2(b))**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Brand: | | Estimate Date: | | | | Revision no: | |
| Revision no: | |
| Detailed Description: | | | | | | | |
| **Creative Development:** | | | |  |  | | |
| 1. | Administration/Briefings/Meetings | |  |  |  | |  |
| 2. | Creative Development | |  |  |  | |  |
| 3. | Mock Ups | |  |  |  | |  |
| 4. | Mock Ups/Revisions | |  |  |  | |  |
| 5. | Copywriting | |  |  |  | |  |
| 6. | Other (Specify) | |  |  |  | |  |
|  | **SUBTOTAL** (1) | |  |  |  | |  |
|  |  | |  |  |  | |  |
| **Photography:** | | |  |  | | |  |
| 7. | Casting fee/Talent Hire | |  |  |  | |  |
| 8. | Hairdressing/Makeup/Wardrobe | |  |  |  | |  |
| 9. | Location | |  |  |  | |  |
| 10. | Prop Hire | |  |  |  | |  |
| 11. | Photography | |  |  |  | |  |
| 12. | Photographic Supervision | |  |  |  | |  |
| 13. | Material/Transparencies | |  |  |  | |  |
| 14. | Library Hire | |  |  |  | |  |
| 15. | Other (Specify) | |  |  |  | |  |
|  | **SUBTOTAL** (1) | |  |  |  | |  |
|  |  | |  |  |  | |  |
| 10. | Prop Hire | |  |  |  | |  |
|  | | |  |  | | |  |

**SCHEDULE E**

**Use outside Australia (clause 7.7)**

For creative work produced by the Agency that is used in markets outside Australia, the Agency charges a fee of 2% of the gross media cost or 5% of the original project cost (whichever is applicable).

This fee is payable where work is unchanged or changed in such a way that the fundamental core of the original contract remains.

**EXECUTED AS AN AGREEMENT**

**The Common Seal** of XXXX was )

hereunto affixed pursuant to a prior )

resolution of the Board and in the )

presence of: )

……………………………… ………………………………

Director Secretary

**The Common Seal** of **<                          >**)

was hereunto affixed )

pursuant to a prior resolution of the )

Board and in the presence of: )

……………………………… ………………………………

Director Secretary