

# TERMS & CONDITIONS – Contract for services to Chivas

## **i** CHIVAS' CONTRACTING PLATFORM

[Chivas Brothers International Limited](#) is a company incorporated in Scotland with company number SC646563 ("**Chivas**"). It is the Scotch whisky and premium gin division of the [Pernod Ricard spirits & wine group](#). Chivas markets some of the world's best known and highest quality malt, blends and premium gins, in addition to liqueurs and spirit drinks.

These Terms & Conditions are the standard contracting platform used by Chivas' Marketing and Communications teams to govern its legal relationship with any individual, company or other form of business ("**Agency**") which offers or supplies services to or for Chivas on an on-going basis.

### **1. Definitions and Interpretation**

- 1.1 The words and phrases defined in Schedule 1 shall have the meanings described in that Schedule. All other defined words and phrases shall have the meaning given to them when they first appear. This Agreement shall be interpreted in accordance with Schedule 1.
- 1.2 If there is any conflict or inconsistency the following descending order of importance will apply: firstly these terms and conditions, then the Work Plans.

### **2. Agreement to Act as Agency**

- 2.1 Chivas appoints the Agency on a non-exclusive basis to carry out, and the Agency agrees to provide, the Services to Chivas, in accordance with the terms and conditions of this Agreement.
- 2.2 Each obligation of the Agency shall be interpreted, unless the context requires otherwise, as an obligation on the Agency to perform or to procure the performance of the said obligation or the relevant Services by an Agency Affiliate. The Agency shall ensure that it and any Agency Affiliate providing Services has capabilities to provide those Services and the Agency shall remain liable for all acts and omissions of each Agency Affiliate as if such acts and omissions were its own.
- 2.3 The Agency warrants, represents and undertakes to Chivas that (i) during the Term; and (ii) for 6 months after the end of the Term, the Agency will not and will procure that the Agency Affiliates providing Services under the Agreement will not provide services to any person, firm, company or other entity (except Chivas and the Group Companies) which or who produces or markets any wine (including champagne) or spirit or spirit based drink or which is a member of the Diageo Group.

### **3. Term of Appointment**

This Agreement shall commence on the Effective Date and continue thereafter until terminated by either party in accordance with the Agreement (the "**Term**").

### **4. Agency Services**

- 4.1 The parties may enter into a Work Plan for Services and/or Deliverables. Once a Work Plan is agreed and/or signed by the parties, the terms of this Agreement will apply to that Work Plan.
- 4.2 The Agency will perform the Services and procure that all Deliverables are delivered: (i) on time and in accordance with the Work Plan; and (ii) in accordance with Good Industry Practice (and shall employ policies and procedures appropriate to ensure that compliance).
- 4.3 Time shall be of the essence in relation to the obligations of the Agency throughout this Agreement (unless the Agency is prevented from meeting such obligations due to (i) an act or omission of Chivas; or (ii) a Force Majeure Event).
- 4.4 The Agency will allocate suitable personnel with appropriate levels of experience and seniority to provide the Services. Chivas acknowledges it may be necessary for alternative personnel with similar levels of seniority and experience to provide the Services. The Agency will consult with Chivas prior to replacing such personnel.
- 4.5 The Agency will procure that the Key Individuals are actively involved in the provision of the Services. Should any Key Individual leave the Agency or cease to be actively involved, the Agency will appoint a suitable replacement, having obtained prior Written Approval.
- 4.6 The Agency shall perform its obligations in accordance with all applicable Policies, which it acknowledges have been made available to it. Agency shall also comply with any reasonable requests made by Chivas for any Key Individuals to undertake any training provided by Chivas regarding the Policies.
- 4.7 Chivas may require the Agency to cancel, reduce or amend any or all Services or any or all of a Work Plan at any time by giving written notice to the Agency (including by email) and the relevant Fees shall be reduced or amended accordingly. Where a reduction or amendment to the Fees is required pursuant to this clause, the Agency shall, as soon as reasonably practicable following receipt of notice, provide a written proposal to Chivas for the reduction or amendment, following which Chivas may either (i) accept the revised Fees; or (ii) reject the proposal and request that the parties enter into good faith negotiations to determine the appropriate level of reduction or amendment. The revised Fees shall be effective from the date on which the revised Services are implemented.
- 4.8 In the event of cancellation, reduction or amendment pursuant to clause 4.7, Chivas will reimburse the Agency for any reasonable charges or expenses incurred by the Agency to a third party, excluding the Agency's and Agency Affiliates' Personnel, provided that (i) any such charges and expenses are directly attributable to the part of the Services or the Work Plan that has been cancelled, reduced or amended; (ii) Chivas has previously given its Written Approval to the appointment or engagement of such third party and that the relevant charges and expenses may be paid in advance; and (iii) the Agency has used its best endeavours to mitigate such charges and expenses as far as possible.
- 4.9 If Chivas requires the Agency to increase any Services, the Agency shall inform Chivas promptly of any resulting increase in the relevant Fees and shall act reasonably in assessing such increase. Following Chivas' Written Approval of the relevant increase, the relevant Services, Work Plans and Fees will be amended accordingly.

### **5. Fees and Payment**

- 5.1 The Fees shall be as set out in the relevant Work Plan and shall be (i) exclusive of any applicable VAT (which shall be itemised separately on Agency invoices and payable by Chivas subject to receipt of a valid VAT invoice); and (ii) inclusive of any travel, accommodation or other expenses or third party disbursements (unless explicitly detailed in the Work Plan with specific reference to this clause of the Agreement, precise details of the expense and the amounts thereof as well as a requirement that such expenses or disbursements are approved in advance and in writing by Chivas); and (iii) inclusive of any duties, imposts and levies other than VAT. Any increase in Fees shall be subject to the prior written agreement of the parties.
- 5.2 Fees shall be expressed and payments made in Pounds Sterling unless otherwise agreed between the parties in writing. Where the parties agree in writing that any payment shall be made in any other currency, the following principles shall apply: (i) the Agency shall bear any relevant exchange rate risk; and (ii) unless the parties agree otherwise in writing, the relevant exchange rate shall be determined by reference to the rates set out in the Wall Street Journal on the date on which the relevant invoice is issued.
- 5.3 The Agency shall issue invoices for the Fees in accordance with the Work Plan payment profile. If no payment profile is set out, the Agency may invoice Chivas at any time after the acceptance in writing by Chivas of all Deliverables in the relevant Work Plan or, if the Work Plan is split into stages, at any time after the acceptance in writing by Chivas of all Deliverables in a particular stage. The Agency shall ensure that each invoice contains a valid Purchase Order number and sufficient information to enable Chivas to reasonably assess whether the Fees detailed thereon are properly payable and any other information reasonably requested by Chivas in writing and the Agency shall submit all invoices in such format as Chivas may specify from time to time and shall send all invoices to the following email address: [accountspayable@pernod-ricard.com](mailto:accountspayable@pernod-ricard.com); with copy to the contact person for Chivas as set out in the Work Plan.

- 5.4 Chivas will pay valid invoices within 60 days after the end of the month in which Chivas' accounts payable department received the valid invoice. Chivas shall notify the Agency within a reasonable time if it considers that an invoice is not acceptable and reserves the right to withhold payment of any invoice or part of an invoice which is not in accordance with this Agreement or which is disputed by Chivas, acting reasonably.
- 5.5 Each party shall be liable to pay interest on any overdue amount at an annual rate of 2% above the prevailing base rate of Barclays plc, which interest shall accrue on a daily basis from the date payment becomes due until the party to whom the overdue amount is due has received payment of the overdue amount together with all accrued interest. The parties agree that this remedy provides the payee party with a substantial remedy for the purpose of the Late Payment of Commercial Debts (Interest) Act 1998 and that the parties waive and exclude the statutory right to interest otherwise granted under such Act.

## 6. Audit

- 6.1 For the duration of the Term and for a period of 3 years thereafter (or any further period which may be required by law), the Agency shall maintain and keep the Records and will (a) allow Chivas, its own Personnel or the audit Personnel of a Group Company or a third party appointed by Chivas access to all the Records; and (b) make available any Records to Chivas within 5 days of Chivas' request). The Agency will provide all reasonable assistance in the carrying out of such audit. Chivas shall be entitled to carry out such an audit no more than once per Contract Year.
- 6.2 Should any audit or inspection of the Records by Chivas reveal that Chivas has been overcharged; the Agency shall reimburse to Chivas the amount of the overcharge plus interest at the rate referred to in clause 5.5 above and the costs of the audit or inspection within 14 days of Chivas' request.
- 6.3 Should any audit or inspection of the Records by Chivas reveal that a Deliverable or Service has not been provided in accordance with the Agreement, Chivas shall be entitled to exercise any of the options set out in clause 12.1 at its sole discretion, notwithstanding that it may have already accepted such Deliverable or Service.

## 7. Agency Status and Suppliers: Business Terms and Selection

- 7.1 The Agency is not authorised to act in the legal capacity of an 'agent' for Chivas. It shall not act in Chivas' name or otherwise be entitled to bind Chivas in any way.
- 7.2 The Agency may only appoint subcontractors with Chivas' prior Written Approval which shall not be unreasonably withheld. For the avoidance of doubt, nothing shall restrict Chivas' right to contract directly with any subcontractor (whether in relation to the Services or otherwise) if this is deemed by Chivas to be appropriate. The Agency will use all reasonable endeavours to obtain competitive prices and commercially advantageous terms for Chivas from suppliers and all other third parties involved in any way in the provision of the Services.
- 7.3 The Agency shall remain fully responsible for the delivery of the Services and any Deliverables under this Agreement notwithstanding whether any aspect thereof may have been subcontracted to third parties. Any act or omission of any of the Agency's subcontractors (or their Personnel) shall be deemed to be an act or omission of the Agency for the purposes of this Agreement.
- 7.4 The Agency shall not pay any costs to any subcontractor, supplier or otherwise in advance without obtaining Chivas' prior Written Approval. If Chivas agrees to such costs being paid in advance ("**Approved Advance Costs**"), the Agency shall obtain Chivas' prior Written Approval of the relevant contracts with suppliers and subcontractors and such contracts shall include provisions stating that that (i) the Approved Advance Costs have been paid by Chivas to the Agency and no further payment shall be due by Chivas; (ii) supplier's or subcontractor's claim for payment is against the Agency, not Chivas, and (iii) the relevant supplier or subcontractor shall carry out the relevant services for Chivas directly, if Chivas so requests.
- 7.5 If Chivas gives its Written Approval to pay the Approved Advance Costs, then it shall pay the Agency's invoices in respect of such Approved Advance Costs within 10 Working Days of receipt of a valid invoice and the Agency shall pay such costs to the relevant supplier or subcontractor without delay, and in any event, within 5 days of receipt from Chivas and shall hold on trust for Chivas any sums paid to it by Chivas for the purpose of paying costs in advance and shall not pay any such sum into an overdrawn bank account.
- 7.6 The Agency shall obtain receipts for all costs payable to suppliers and subcontractors and shall provide copies to Chivas upon request.
- 7.7 For the avoidance of doubt, for the purposes of this clause 7, references to "subcontractors", "suppliers" and "third parties" shall include Agency's Affiliates (where applicable).

## 8. Intellectual Property Rights

### Licence of IP Rights

- 8.1 The Agency grants to the Brand Owner a non-exclusive, perpetual, royalty-free, worldwide, irrevocable, sub-licensable licence to use the IP Rights in the Agency Existing Materials to the extent necessary in order for Chivas, any Group Company and their respective licensees and assigns to make full use of the Deliverables.
- 8.2 Chivas grants to the Agency a non-exclusive, non-transferable, worldwide licence to use the IP Rights in the Brand Materials (with the right to grant sub-licences to its permitted subcontractors, if any) to use, copy, amend, translate, redevelop and create other derivative works from materials provided to the Agency by Chivas in connection with the Agreement:
- (a) solely for the duration and to the extent necessary for the proper performance of the Agency's obligations under this Agreement; and
  - (b) subject to all applicable third party licence terms that the Agency has been given notice of (if any).

### Ownership of Assigned Materials

- 8.3 The Agency hereby assigns to the Brand Owner or its nominee, with full title guarantee, all right, title and interest in and to all existing and future IP Rights in and to the Assigned Materials, including the right to bring, make, oppose, defend or appeal proceedings, claims or actions and to obtain relief (and to retain any damages recovered) in respect of any infringement or any other cause of action arising from ownership of any of such IP Rights (whether occurring before, on, or after the date of this Agreement). For the avoidance of doubt, the assignment under this clause 8.3 shall take effect from the date on which the relevant Assigned Material was or is created, developed or produced.
- 8.4 Until such time as such IP Rights are effectively assigned to the Brand Owner, the Agency shall hold all such IP Rights on trust for the Brand Owner and hereby grants the Brand Owner and Chivas an exclusive, perpetual, royalty-free, worldwide, irrevocable, sub-licensable licence to use those IP Rights and the Assigned Materials for any purpose.
- 8.5 The Agency shall procure that all authors of the Assigned Materials unconditionally and irrevocably waive and/or undertake not to assert all of their moral rights described in Chapter 4 of Part 1 of the Copyright Designs and Patents Act 1988 (or so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world). Any such waivers or undertakings shall be made in favour of the Agency, Chivas, the Group Companies and Chivas' licensees, sub-licensees, assignees and successors in title to the Deliverables or Chivas' business (and such persons shall be entitled to directly enforce the same). The Agency shall promptly provide copies of any waivers or undertakings to Chivas, on request.
- 8.6 The Agency shall not, and shall procure that each of its employees/partners or any third party commissioned by it to produce any Assigned Materials shall not: (i) assign or purport to assign any of the IP Rights in the Assigned Materials to any third party; or (ii) permit any third party to use any of the IP Rights in the Assigned Materials.

### Consents & Releases and Approvals

- 8.7 The Agency shall ensure that it obtains for each Deliverable, prior to production of such Deliverable, and maintains thereafter, all necessary rights, consents, releases and approvals for Chivas, the Group Companies and their respective licensees and assigns to use such Deliverable for: (i) any purposes specified in the Usage Rights Summary; (ii) for Chivas' Minimum Commercial Purposes and such wider purposes as Chivas may have notified to the Agency.
- 8.8 The Agency shall obtain such rights, consents, releases and approvals in writing before producing the relevant Deliverables and shall provide copies of the same to Chivas on request.

### Use of Third-Party Materials

- 8.9 The Agency shall not incorporate and/or use Third-Party Materials in any Deliverable unless the Agency has obtained Chivas' Written Approval to do so. The Agency shall give Chivas reasonable prior notice of its intention to include any such Third-Party Materials and at the same time shall notify Chivas in writing:
- (a) whether an assignment to Chivas of the relevant Third-Party Materials can be obtained and the cost of obtaining it; and
  - (b) if no assignment of the relevant Third-Party Materials can be obtained or cannot be obtained for a reasonable cost, the cost of obtaining a licence of such materials for Chivas' Minimum Commercial Purposes and such wider purposes as Chivas may have notified to the Agency.
- 8.10 The Agency shall not propose the inclusion of any Third-Party Materials in any Deliverable unless the Agency is able to negotiate a licence of such materials for Chivas, the Group Companies and their respective licensees and assignees to use such materials for any purposes specified in (i) the Usage Rights Summary; and (ii) Chivas' Minimum Commercial Purposes; and (iii) such wider purposes as Chivas may have notified to the Agency.
- 8.11 Following receipt of the Agency's notice under clause 8.9, Chivas shall notify the Agency whether: (i) Chivas' Written Approval has been granted in respect of the inclusion of the relevant Third-Party Material; and (ii) the Agency is required to obtain an assignment (if available) or a licence to enable the use of such Third Party Material for such purposes as specified in clause 8.10, and if so, the extent of such assignment or licence and the approved cost thereof (if any). Chivas may also require the Agency to negotiate prices at which any such licence obtained may, at Chivas' option, be extended.
- 8.12 The Agency shall ensure that all licences of Third-Party Materials are granted directly to Chivas, the Brand Owner or such of the Group Companies as Chivas shall notify to the Agency.
- 8.13 The Agency shall provide to Chivas such information on the rights acquired in respect of each Third-Party Material (including Assigned Material and Third-Party Material in respect of which a licence has been obtained), in a Usage Rights Summary and warrants that any such information shall be accurate and complete.
- 8.14 The Agency acknowledges and agrees that: (i) Chivas' review of the Usage Rights Summary shall not relieve the Agency of any of its obligations under this Agreement; and (ii) Chivas, the Brand Owner and the Group Companies will rely upon the Agency and Agency Affiliates to ensure that any usage rights granted in connection with this Agreement are sufficient to run campaigns in the Territories and for the time periods required by Chivas.

### Other

- 8.15 Without prejudice to any of the foregoing provisions, the Agency undertakes not to disclose, use or copy the look and feel of any Deliverable for any other purpose, including the design of any website or online application.
- 8.16 The parties agree that all use and all goodwill arising from use of the Brand Materials and/or the Assigned Rights by the Agency shall inure to the benefit of the Brand Owner or its nominee.
- 8.17 Notwithstanding that IP Rights may not protect all Concepts, slogans, and strategies, the Agency agrees that the Brand Owner shall own all Concepts, slogans, and strategies created by or on behalf of the Agency or Agency Affiliates during the Term which are included in the Deliverables. The Agency shall not, and shall procure that Agency Affiliates shall not, create work for another customer based on any such Concepts, slogans or strategies.
- 8.18 The Agency agrees that, upon request from Chivas, it shall, and shall procure that the Agency Affiliates and the subcontractors of Agency and the Agency Affiliates (along with the Personnel of the Agency, Agency Affiliates and such subcontractors) shall, execute all further documents and do all further acts as may be necessary to give full effect to any term of clause 8. The Agency shall do this at no charge to Chivas.

## **9. Compliance and Clearance Obligations**

- 9.1 Chivas acknowledges that the Agency shall not be required to carry out full trade mark clearance searches in relation to the Deliverables or other products of the Work Plans, unless specifically requested to do so by Chivas in relation to a particular project (for which additional fees may be agreed in accordance with clause 4.9 of this Agreement).
- 9.2 Notwithstanding clause 9.1 and without limiting clause 11.4(a), the Agency will use best endeavours (including obtaining at its own cost such legal advice and conducting such searches (in all cases including preliminary internet word searches) as are reasonably necessary in all applicable Territories) to ensure that any Deliverables will not: (i) breach Advertising Regulations; (ii) infringe the IP Rights of any third party; nor (iii) contain anything obscene, blasphemous, libellous or in breach of Legislation.
- 9.3 In the event that:
- (a) the Agency determines, using best endeavours, or otherwise becomes aware that there is a risk that any Deliverables will: (i) breach Advertising Regulations; (ii) infringe the IP Rights of any third party; or (iii) contain anything obscene, blasphemous, libellous or in breach of Legislation; or
  - (b) any legal advice or searches undertaken pursuant to paragraph 9.1 show that any clearances, permissions, licences and/or releases ("Clearances") are required from any third party,
- the Agency will notify Chivas in writing of any such risk(s) in all cases as early as is reasonably practicable prior to the delivery or submission to Chivas of any Deliverables. If, during the term of this Agreement, the Agency becomes aware of any new risks arising subsequent to such presentation, delivery or submission, the Agency shall notify Chivas in writing immediately of such risks.
- 9.4 The Agency will not produce Deliverables in respect of which it has identified that: (i) there is any evidence of the same or similar marks used within the drinks industry in any relevant Territory; or (ii) any of the risks in clause 9.3 may apply, unless the Agency has obtained prior Written Approval from Chivas' General Counsel.
- 9.5 In the event that legal advice or searches undertaken pursuant to paragraph 9.2 show that Clearances are required from any third party, such Clearances must be notified to Chivas in writing in accordance with paragraph 9.3 and the Agency will use its best endeavours to obtain such Clearances on terms pre-approved by Chivas, including if applicable at Chivas' pre-agreed cost.
- 9.6 Without prejudice to paragraph 11.4 or Chivas' other rights under this Agreement, if the Agency fails to notify Chivas of legal risks or any Clearances associated with Deliverables in accordance with paragraph 9.3, the Agency shall reimburse Chivas in full for the cost of Chivas obtaining its own legal advice (including in connection with any Clearances) as Chivas deems appropriate in the circumstances.
- 9.7 The Agency shall ensure that its contractual obligations are performed in accordance with all Legislation.
- 9.8 Any failure of the Agency to comply with this clause 9 shall be a material breach under clause 14.2(a) of this Agreement.

## **10. Confidential Information**

- 10.1 Without prejudice to clause 8.15, during and after the Term, the Agency shall, treat in complete confidence all the Information.
- 10.2 The Agency shall, and shall procure that any sub-contractors shall, impose obligations in terms equivalent to those in clause 10.1 on their respective Personnel. Upon written request by Chivas, the Agency shall also obtain written assurances from any third parties to whom Information has to be disclosed in order to enable the Agency to carry out its obligations under the Agreement.
- 10.3 The restrictions in this clause 10 shall not prevent: (i) the disclosure of Information to Chivas and its Group Companies as required for the purposes of providing the Services under this Agreement; (ii) the use of Information to the extent necessary for the proper performance of the Agency's duties; (ii) disclosure of Information if required by law or governmental authority; or (iii) disclosure of Information which has come into the public domain otherwise than through unauthorised disclosure.
- 10.4 The Agency may not advertise or publicly announce that it is undertaking work for Chivas or any Group Company pursuant to the Agreement unless Chivas has provided its prior Written Approval and provided that the content of any public statement receives Chivas' prior Written Approval before release.

## 11. Warranties

- 11.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this Agreement. The warranties contained in this Agreement are cumulative and not alternative.
- 11.2 The Agency warrants and undertakes to Chivas that it shall perform the Services with due care and skill, in accordance with Good Industry Practice. The Agency warrants and undertakes to Chivas that, upon Chivas submitting written requests to the Agency for the Agency to remove Content from any of the Deliverables or from any media, the Agency shall comply with such requests promptly.
- 11.3 The Agency warrants and undertakes to Chivas that none of the Deliverables, shall at any time: (i) contain any viruses or other computer programming routines that are intended to or may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (ii) subject to clause 10, be disclosed or published in any manner without prior Written Approval; or (iii) reasonably be considered to bring or to be likely to bring any Group Company into disrepute.
- 11.4 The Agency warrants and undertakes that:
- (a) all creative work products in any Deliverables (excluding all Brand Materials) shall be original to its authors, shall not have been previously published in any form and shall not infringe copyright of any third party; and
  - (b) all Deliverables shall: (i) comply with all Advertising Regulations; (ii) (without limiting clause 11.4(a)) not infringe the IP Rights of any third party; and (iii) not contain anything obscene, blasphemous, libellous or that is contrary to Legislation, other than as contained in any legal or other advice provided to the Agency and communicated to Chivas in accordance with paragraph 9.3.

## 12. Fixing Problems

- 12.1 Without prejudice to any other remedies available to Chivas under this Agreement or otherwise, if a Deliverable or part of the Services is not provided as and when specified in the Agreement (except solely as a result of (i) an act or omission of Chivas; or (ii) a Force Majeure Event), Chivas may by written notice to the Agency (including by email) elect to:
- (a) extend the due date for such Deliverable or Services and request the Agency to re-perform the relevant Services or re-deliver the relevant Deliverable, including, where Chivas so requests;
  - (b) accept such Deliverable or Services subject to an abatement of the Fees, such abatement to be such amount as is reasonable, taking into account the circumstances; or
  - (c) reject the Services or Deliverable as not being in conformity with the Agreement in which event the Agency shall not be entitled to receive the relevant part of the Fees and shall repay to Chivas on request the part of any Fees already paid which relates to such Deliverable or part of the Services; and
- 12.2 In the circumstances described in clause 12.1, the Agency shall, at Chivas' request, reimburse Chivas for any costs reasonably incurred by Chivas in Chivas endeavouring to compensate for (and/or mitigate the consequences of) the Agency's failure to deliver compliant Deliverables or Services on the original due date (whether via: expedited delivery of Chivas products via air freight, use of overtime, weekend-working, extra staff, alternative manufacturing/assembly/rework arrangements - or otherwise).

## 13. Indemnities, Limitation of Liability and Insurance

- 13.1 The Agency will on demand indemnify, keep indemnified and hold harmless each of Chivas, the Brand Owner and each of the Group Companies from any Losses arising out of or in connection with any breach of the Agency's obligations and warranties as set out in clauses 10, 11 and / or 16.
- 13.2 Subject to clauses 13.3 and 13.4: (i) neither party's maximum aggregate liability under or in connection with this Agreement, arising in respect of any number of causes of action arising in a Contract Year, whether in contract, tort (including negligence) or otherwise, will in any circumstance exceed the greater of (a) 200% of the total Fees paid or payable to the Agency during the Contract Year in question; or (b) one million pounds Sterling (£1,000,000); and (ii) neither party will be liable under this Agreement for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.
- 13.3 Neither party limits its liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent such liability cannot be excluded or limited as a matter of law.
- 13.4 Subject to clause 13.3, clause 13.2 shall not apply to clauses 13.1 and 17.1.
- 13.5 Without prejudice to its obligations under the Agreement, during the Term and for a period of one year afterwards, the Agency shall effect and maintain with reputable insurers (minimum Standard & Poor's rating of A+) such policy or policies of insurance as may be necessary to cover the Agency's obligations and liabilities under the Agreement, including any required insurance as set out in the Work Plans. Upon Chivas' reasonable request, the Agency shall provide Chivas with all such documentation as is necessary to prove the Agency's continuing compliance with its obligations to insure under the Agreement.
- 13.6 Within 10 days of a request from Chivas, the Agency shall procure that its parent company (which Chivas deems appropriate for such purpose) enters into a parent company guarantee with Chivas, in a form and on terms as proposed by Chivas.

## 14. Termination

- 14.1 Either party may terminate this Agreement by giving a minimum of three months' prior written notice to the other party.
- 14.2 Either party may terminate this Agreement immediately on written notice:
- (a) in the event of any material breach of the Agreement by the other party, which if remediable, is not remedied within 30 days after the service of a written notice requiring the same. For the avoidance of doubt, the non-payment by Chivas of an undisputed invoice is a remediable material breach of this Agreement.
  - (b) in the event that the other party becomes insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver, administrator or administrative receiver appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of debt; or ceases or threatens to cease to carry on business; or any event occurs, or proceeding being taken in any jurisdiction that has an effect equivalent or similar to any of the events referred to in this clause 14.2(b).
- 14.3 Chivas may terminate the Agreement immediately on written notice if:
- (a) in any six-month period, the Agency commits two or more material breaches of this agreement, whether or not it remedies those material breaches in accordance with 14.2(a) above;
  - (b) the Agency or any person performing the Agency's obligations to Chivas on the Agency's behalf (or any officer or agent of that person or of the Agency) is charged with or investigated in relation to or engages in any conduct that may constitute an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 or breaches the terms of its applicable anti-bribery policy or Chivas' anti-slavery policy (the Slavery and Human Trafficking Policy);
  - (c) the Agency is subject to a Change of Control unless Chivas provided its Written Approval to such Change of Control; or
  - (d) in Chivas' reasonable opinion, the Agency or its Personnel or subcontractors act or omit to act in any way whatsoever which is likely to be detrimental to the goodwill, reputation or image of Chivas, the Brands or the Brand Owner.

## 15. Post-termination Arrangements

- 15.1 The termination of the Agreement shall be without prejudice to any other rights or remedies of either party.
- 15.2 The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice.
- 15.3 On expiry or termination of this Agreement: (i) the Agency shall promptly return to Chivas, and in any event within 14 days of expiry or termination of the Agreement (whichever applies) all copies of the Work Plans as well as any Deliverables in all formats in which they may exist and all other property belonging to Chivas; and (ii) all Work Plans will terminate automatically.
- 15.4 On termination of the Agreement, any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect, including: clauses 6 to 19.

## 16. Data Protection Legislation

- 16.1 In performing its obligations under this Agreement, the Agency shall comply with all Data Protection Legislation and shall not do or omit to do anything that shall place Chivas or any Group Company in breach of the Data Protection Legislation.
- 16.2 When the Agency processes Personal Data on Chivas' or any Group Company's behalf under this Agreement or as part of a Work Plan, the Agency shall ensure that such a Work Plan details the type of Personal Data involved, the type of processing, the categories of Data Subject and the duration of processing. The Agency shall only process Personal Data collected under this Agreement for the purposes of fulfilling its obligations under this Agreement or in accordance with Chivas' written instructions.
- 16.3 The parties agree that Chivas is the Data Controller and that the Agency is the Data Processor of any Personal Data which the Agency obtains from Chivas or its Group Companies or Processes under the Agreement (such data being "**Relevant Personal Data**").
- 16.4 The Agency hereby undertakes to Chivas that where the Agency or its employees/partners are Processing Relevant Personal Data as a Data Processor: (i) it will comply with and act only on Chivas' instructions (and shall immediately inform Chivas upon becoming aware that the Agency's performance of any such instruction would infringe, or is reasonably likely to infringe, Data Protection Legislation); (ii) it will ensure that those employees or personnel authorised to process personal data have committed themselves to confidentiality obligations; and (iii) it will implement and maintain appropriate technical and organisational measures (including staff training) to ensure a level of security appropriate to the risk and to protect the Relevant Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and the Agency shall provide a written description of such measures to Chivas promptly upon request.
- 16.5 The Agency shall not: (i) transfer any Relevant Personal Data to any country or territory outside the European Economic Area; or (ii) allow any sub-processor to process any Relevant Personal Data, unless in either case, Chivas provides its prior Written Approval to such transfer or sub-processing.
- 16.6 The Agency shall provide such assistance and information as Chivas reasonably requires to: (i) demonstrate the Agency's compliance with the Data Protection Legislation and this clause 16; (ii) respond appropriately to enquiries from regulatory authorities; (iii) comply with the rights of Data Subjects; and (iv) comply with legal obligations under Data Protection Legislation, and agrees to carry out a privacy impact assessment (if and where required by Chivas).
- 16.7 The Agency shall not engage another processor to process Personal Data unless agreed in advance by Chivas - and, if the appointment is agreed by Chivas, the Agency shall be responsible for sub-processor compliance - and shall accordingly ensure that the sub-processor: (i) is reasonably reputable and has been selected diligently; (ii) processes the Personal Data in compliance with contractual terms substantially the same as the Agency's data protection obligations under the Agreement; and (iii) ceases to process the Personal Data on termination of the Agreement.
- 16.8 The Agency shall enter into, and comply with, any standard contractual clauses issued under the Data Protection Legislation in order to ensure compliance with such Data Protection Legislation.
- 16.9 In the event of any actual or suspected Data Breach, the Agency shall immediately upon the discovery by the Agency, notify Chivas in writing providing all available details (including in all cases the nature of the breach, the likely number of affected data subjects, anticipated consequences and any actual or proposed remedial steps) and will take reasonable steps to mitigate the effects of any breach on Chivas and Data Subjects, and will co-operate at the Agency's own expense as Chivas may request.
- 16.10 The Agency shall notify Chivas (within two (2) Working Days), if it receives: (i) a request from any person or entity to access a Data Subject's Personal Data; or (ii) a complaint or request relating to Chivas' obligations under the Data Protection Legislation. In both cases, the Agency shall provide Chivas with full co-operation and assistance including by: (a) providing Chivas with full details of the complaint or request; (b) complying, where required by the Data Protection Legislation or instructed to do so by Chivas, with a Data Subject access request within the relevant timescales set out in the Data Protection Legislation and in accordance with Chivas' instructions; (c) providing Chivas with any Personal Data it holds in relation to a Data Subject (within the timescales required by Chivas); and (d) providing Chivas with any information requested by Chivas.
- 16.11 The Agency shall maintain records of all information reasonably necessary to demonstrate compliance with this clause 16 and the Data Protection Legislation and make such records available to Chivas, Chivas' auditors and any Regulator on demand.
- 16.12 The Agency shall permit Chivas or Chivas' representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Agency's Data Processing activities.
- 16.13 Without prejudice to clause 15.3, on termination or expiry of this Agreement, the Agency shall at the request of Chivas delete or return any Relevant Personal Data (unless prevented from doing so by applicable Legislation).
- 16.14 The Agency shall notify Chivas immediately if it or any Agency Affiliate is approached by any Regulator investigating either Chivas', the Agency's or any Agency Affiliate's compliance with Data Protection Legislation and (without limiting the foregoing, cooperate as required under the Data Protection Legislation or as instructed by Chivas with any such Regulator in connection with either the Agency or Chivas' compliance with Data Protection Legislation).
- 16.15 In the event the Agency or its Personnel loses any Personal Data and/or commits a breach of this clause 16), such loss or breach shall be deemed to be a material breach of the Agreement.
- 16.16 Nothing within the Agreement is intended to relieve the Agency of its own direct responsibilities and liabilities under Data Protection Legislation.

## 17. Cessation of Service

- 17.1 If, on Cessation, any contract of employment or engagement of any Assigned Employee has effect or is claimed by such Assigned Employee to have effect as if originally made between (i) Chivas, the Brand Owner or any Group Company and such Assigned Employee; and/or (ii) any New Agency and such Assigned Employee, by operation of TUPE, the Agency will on demand, indemnify, keep indemnified and hold harmless each of Chivas, the Brand Owner and the Group Companies and any New Agency against all Losses arising out of or in connection with the employment or engagement, or the claimed employment or engagement, and/or the termination or claimed termination thereof of any such Assigned Employee (whether such Losses are incurred before, on or after the Relevant Date).
- 17.2 The Agency will, if so requested by Chivas, promptly enter into an appropriate deed of indemnity with any New Agency on terms which give effect to the indemnity contained in clause 17.1 in favour of the New Agency and the Agency will on demand, indemnify, keep indemnified and hold harmless each of Chivas, the Brand Owner and each Group Company against any Losses which result from a failure to do so, including for the avoidance of doubt, any Losses arising out of or in connection with any back-to-back indemnity provided by any of Chivas, the Brand Owner or any Group Company to any New Agency to confer the benefit of the indemnity in clause 17.1 on such party.

## 18. Notices

- 18.1 Any notice to be given under this Agreement shall be in writing and shall be served by (i) delivering it personally; or (ii) where notice is to be served at an address within the United Kingdom, by prepaid first class recorded delivery post; or (iii) commercial courier; or (iv) (except in relation to any legal notice) by email, in each case sent for the attention of the person, and to the address set out in the Work Plan or to such other person or address as the receiving party may be notified.
- 18.2 Any notice is deemed to have been received: (i) if delivered personally, at the time of delivery; (ii) if sent by prepaid first class recorded delivery post, at 9.00 am on the second Working Day after posting; (iii) if delivered by commercial courier, on the date and at the time that the courier's receipt is signed; and (iv) if sent by email, at the time of transmission.

## 19. Independent contractor status

The Agency warrants that none of the people which the Agency arranges to perform any of the Services (including, without limitation, workers provided to Chivas under a contract for labour supply), will, in connection with that performance, be classified by any relevant public authority (including HMRC or any court/employment tribunal) as an employee, worker or agent of Chivas - and the Agency shall indemnify Chivas against any liabilities, costs, expenses, damages, fines and losses that Chivas suffers or incurs in connection with such classification being made (including any applicable income tax and National Insurance contributions).

## 20. General

- 20.1 The Agency agrees that Chivas enters into this Agreement for itself and for the benefit of each Group Company and that all provisions expressed to be for the benefit of Chivas shall also be for the benefit of each of Chivas' Group Companies. Any Losses incurred by such a Group Company shall be deemed to be Losses incurred by Chivas (and shall not be deemed to be indirect, consequential or special losses for being suffered by a Group Company of Chivas), provided that the Agency shall have no greater liability to Chivas and its Group Companies (together) than the Agency would have to Chivas pursuant to clause 13.
- 20.2 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under the Agreement caused by a Force Majeure Event provided the same arises without the fault or negligence of such party. Failure to perform by a subcontractor shall not be deemed to be a Force Majeure Event unless that subcontractor's failure to perform was caused by any of the foregoing circumstances to the extent that they are beyond the relevant subcontractor's reasonable control. If the Force Majeure Event continues for more than 30 days in aggregate, the party which is not claiming the Force Majeure Event may terminate the Agreement with immediate effect on giving written notice to the other party and neither shall be liable to the other for such termination.
- 20.3 Any New Agency shall be entitled to directly enforce clause 17. Except as set out in clause 8.5 and this clause 20.3 and without prejudice to clause 20.1, a person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 20.4 Except as set out in this clause, neither party shall assign, novate, transfer, charge or deal in any other manner with the Agreement or any of its rights under it without the prior written consent of the other party. Chivas shall be entitled to assign, novate, subcontract or otherwise transfer this Agreement or any of rights and obligations hereunder in whole or in part to a Group Company without requiring the prior written consent of the Agency.
- 20.5 Other than amendments to the Deliverables in the Work Plan which may be amended via an email exchange between the Key Individuals and the Project Manager, no variation of the Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties, and in respect of Chivas, by an Authorised Person only.
- 20.6 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.
- 20.7 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.
- 20.8 Should any of the provisions of this Agreement be invalid or unenforceable then such invalidity or unenforceability will not affect the remaining provisions of the Agreement herein. The parties agree that they will replace an invalid or unenforceable provision with a new provision which closely approximates the lawful intent of the invalid or unenforceable provision.
- 20.9 This Agreement and the Work Plans (and the documents referred to in this Agreement and the Work Plans) constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter herein. No other term or condition submitted, proposed or stipulated will apply to the Agreement. Provided that nothing will exclude or limit Chivas' liability for fraudulent misrepresentation, the Agency acknowledges that it has not, in entering into this Agreement, relied on any statement, representation or assurance that is not expressly set out in this Agreement or a Work Plan.
- 20.10 The Agency shall, at the request and expense of Chivas, execute any document and do any deeds and other things reasonably necessary to carry out the provisions of the Agreement.
- 20.11 The Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.
- 20.12 The Agreement shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with the Agreement or the legal relationships established by the Agreement.

**Schedule 1**  
**Definitions and Interpretation**

1.1 In this Agreement the following words and phrases shall, unless the context otherwise requires, have the following meanings.

"Advertising"	means (i) the output of any work carried out by or on behalf of the Agency or its Affiliates pursuant to this Agreement in the process of supplying the Services and (ii) any advertising planned, created or produced by or on behalf of the Agency or its Affiliates pursuant to this Agreement in the process of supplying the Services;
"Advertising Regulations"	means any present or future applicable code of practice (including without limitation the British Codes of Advertising and Sales Promotion), and any adjudication, decision, guideline, direction or rule on a statutory or self-regulatory basis of any Advertising Regulator and includes any applicable modification, extension or replacement thereof in force from time to time, and the Pernod Ricard Code of Commercial Communications, the Pernod Ricard Social Media Checklists notified in writing to the Agency by the Client, as the same may be amended from time to time and provided to the Agency;
"Advertising Regulator"	means the Office of Communications ("Ofcom"), the Broadcast Committee of Advertising Practice ("BCAP"), the Committee of Advertising Practice ("CAP"), the Advertising Standards Authority ("ASA"), the ASA (Broadcast), and any other UK or EU regulator or statutory or regulatory body relevant to the Advertising and/or the Services to be provided under this Agreement;
"Agency Affiliate"	means any subsidiary, holding company, subsidiary undertaking and any parent undertaking of the Agency and shall include for the avoidance of doubt any group undertaking in relation to the Agency where (i) "subsidiary" and "holding company", (ii) "group undertaking" and (iii) "subsidiary undertaking" and "parent undertaking" each have the meanings given in the Companies Act 2006;
"Agency Existing Materials"	means any materials owned by the Agency and which are incorporated in a Deliverable or used by the Agency in the course of the Services and which were already in existence as at the Effective Date;
"Agreement"	means the Letter of Appointment, these Ts&Cs (including the Schedules) and the Work Plan;
"Assigned Employee"	means any individual employed or engaged or formerly employed or engaged by the Agency or any subcontractor of the Agency to provide the Services or any part thereof;
"Assigned Materials"	means all of the Deliverables excluding (i) the Agency Existing Materials and (ii) any Deliverables or parts of them which are Third-Party Materials in respect of which Chivas has been unable to obtain an assignment (pursuant to clause 8.9(b));
"Authorised Person"	means a person whose title is Brand Director, Marketing Manager or Senior Brand Manager;
"Brands"	means the products and brands listed or referred to in the Work Plans from time to time;
"Brand Materials"	means the materials provided to the Agency by the Brand Owner or on behalf of the Brand Owner by Chivas from time to time in any format for incorporation in any Deliverable;
"Brand Owner"	means in respect of each Work Plan the brand owner(s) as set out in that Work Plan or if no brand owner is mentioned in the Work Plan, shall be one (or more if applicable) of the following: (i) Allied Domecq Spirits & Wine Limited for Beefeater, Ballantine's, Scapa and Long John; (ii) Chivas Holdings (IP) Limited for Chivas Regal, Royal Salute, Passport, 100 Pipers, Aberlour and Clan Campbell; (iii) The Glenlivet Distillers Limited for The Glenlivet and Longmorn; or (iv) Hill, Thomson & Co., Limited for Something Special and Queen Anne, in all cases, the brand owner(s) as intended by Chivas and the Agency;
"Cessation"	means the cessation or partial cessation of the Services or any part thereof, for whatever reason, including, for the avoidance of doubt, the termination, partial termination, or expiry of this Agreement, and any reduction in the level of the Services;
"Change of Control"	means a change or proposed change in the holding of, or the acquisition or proposed acquisition of, either: (i) the voting rights attaching to 25% or more of the voting shares or stock in the Agency; or (ii) the power to direct or cause the direction and management of the policies of the Agency in accordance with the holder's or acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the Agency or otherwise;
"Chivas' Minimum Commercial Purposes"	means (unless Chivas provides its prior Written Approval of alternative usage rights), use of the Deliverables by Chivas, Brand Owner, Group Companies and their respective licensees and assigns: (i) in the media and Territory and for the period specified in the Work Plan (as may be amended by the Parties' written agreement) or, if none are specified, for the use reasonably required by Chivas, the Brand Owner and Group Companies (including such use to enable the relevant campaign to be conducted in respect of the Brands); and (ii) use in perpetuity for historical reference, investor communications, archiving purposes, training and other internal and not primary advertising purposes (including retention on Chivas' requested trademark asset database);
"Concepts"	means any ideas, plans or schemes (whether expressed orally, graphically or in writing);
"Content"	means any and all text, information, data, software, executable code, images, audio and video materials in whatever medium or form which can be incorporated in a Deliverable for access by a User;
"Contract Year"	means a period of twelve months starting on the Effective Date or the relevant anniversary thereof (as appropriate);
"Data Breach"	means any data breach or security breach in respect of any Relevant Personal Data (whether or not such breach is the responsibility of the Agency), including if the Agency or its Personnel misplaces or loses any Personal Data and/or commits a breach of clause 16);
"Data Controller"	has the same meaning as set out in the Data Protection Legislation;
"Data Processor"	has the same meaning as set out in the Data Protection Legislation;
"Data Protection Legislation"	Regulation (EU) 2016/679 (The General Data Protection Legislation) and any legislation in force from time to time which implements it or the European Community's Directive 95/46/EC and Directive 2002/58/EC and any other similar national privacy legislation and any guidance and codes of practice issued by data protection regulators;
"Data Subject"	has the same meaning as set out in the Data Protection Legislation;
"Deliverables"	means all outputs and deliverables set out or referred to in the Work Plans including all Materials contained therein (whether such outputs and deliverables were created, developed or produced before, on or after the Effective Date), along with all other documents, materials, content and items in whatever form, which are produced and/or delivered to Chivas as output of the Services;
"Diageo Group"	means Diageo plc and any subsidiary, holding company, subsidiary undertaking and any parent undertaking of Diageo plc and shall include for the avoidance of doubt any group undertaking in relation to Diageo plc, where (i) "subsidiary" and "holding company", (ii) "group undertaking" and (iii) "subsidiary undertaking" and "parent undertaking" each have the meanings given in the Companies Act 2006 in sections (i) 1159, (ii) 1161, and (iii) 1162 respectively;
"Effective Date"	means the date set out in the Letter of Appointment;
"Fees"	means the fees in respect of the Services as set out in the Work Plan;
"Force Majeure Event"	means any of the following circumstances to the extent that they are beyond the reasonable control of the relevant party: Act of God, natural disaster, epidemic or pandemic, war, armed conflict, terrorist attack, fire, explosion, extreme adverse weather or interruption of utility service;
"Good Industry Practice"	means in relation to any activity and under any circumstance, exercising the same skill, expertise and judgement and using facilities and resources of a similar or superior quality as would be expected from a person who: (i) is skilled and experienced in providing the services in question, seeking in good faith to comply with his contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply; and (ii) takes all proper and reasonable care and is diligent in performing his obligations; and (iii) complies with all applicable Legislation including relevant industry standards that may apply

	to his particular activities and the Regulatory Guidelines;
"Group Company"	means in relation to either of the parties, any body corporate which is from time to time a holding company of that party, a subsidiary of that party or a subsidiary of a holding company of that party ("holding company" and "subsidiary" having the meanings attributed to them by the Companies Act 2006 section 1159) and in the case of Chivas any company within the Pernod Ricard S.A. group of companies from time to time and "Group" shall be construed accordingly;
"Information"	means all the strategic, corporate, marketing and sales information and statistics relating to Chivas' and/or the Group Companies' businesses and the materials with which the Chivas and/or a Group Company may supply the Agency in the course of any work for Chivas or which the Agency may otherwise acquire, and (ii) any personal data processed under the terms of this Agreement, if applicable ("personal data" and "processed" to be defined by reference to applicable Data Protection Legislation from time to time);
"IP Rights"	means any copyright, extended or revived copyright, design right, registered design right, patent, performer's property right, image right (including any name, nickname, image, likeness, biographical details, portrait, caricature, silhouette, autograph, signature, voice and/or photograph as well as any words, and/or symbols, and/or photographic and/or graphic representations which identify a person and/or a person's name or likeness anywhere in the world), know-how, trade name, trade mark, domain name, right to any URL, database right or any similar right exercisable in any part of the world, including any application for registration of any patent, trade mark, registered design or similar registerable rights in any part of the world and any renewals and extensions together with the right to commence any action and recover all remedies in relation to infringement of any such rights accrued;
"Key Individual(s)"	means those of the Agency's Personnel named as a "Key Individual" in a Work Plan;
"Legislation"	means in relation to any undertaking and any circumstance all laws, statutes and statutory instruments, regulations, by-laws, codes of practice, standards determined by any governmental or regulatory authority or judgements of a competent court of law which apply or may apply to that undertaking or to that circumstance from time to time;
"Losses"	means all costs, liabilities, losses, damages, claims, actions, proceedings, awards, charges, penalties, demands and expenses (including all legal and other professional fees and expenses);
"Materials"	means all written documentation, press and publicity materials, toolkits, proofs, artwork, copy, models, designs, characters, plans, Concepts, photographs and all other materials created by the Agency or by an Agency Affiliate or the creation, development or production of which is commissioned by the Agency or by an Agency Affiliate from third parties as part of the Services;
"New Agency"	means any person, firm, company or other entity which may on Cessation be engaged by any of the Group Companies to provide the Services or any part thereof or services which formerly comprised the Services or any part thereof;
"Personal Data"	has the same meaning as set out in the Data Protection Legislation;
"Personnel"	officers, employees, consultants, agents, representatives and advisers;
"Policies"	those policies adopted by Chivas and made accessible by Chivas to the Agency either online at <a href="http://www.chivasbrothers.com/supplier-information/">http://www.chivasbrothers.com/supplier-information/</a> or otherwise including, without limitation, the Regulatory Guidelines.
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement it shall include both manual and automatic processing and "Processing" and "Processes" shall be construed accordingly;
"Project Manager"	means the project managers referred to in the Work Plan;
"Records"	means (i) financial accounts; (ii) records of the Services carried out by the Agency including records of the individuals engaged in surveys carried out by or on behalf of the Agency; (iii) the Deliverables; and (iv) any other records that Chivas wishes the Agency to maintain as set out in the Work Plans;
"Regulator"	means any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any applicable Legislation to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of Chivas or any of its Group Companies.
"Regulatory Guidelines"	means the Pernod Ricard Code of Commercial Communications (including the guidelines governing digital activity within the code), and the market accessibility list for brand websites (if applicable) provided to or available at <a href="http://www.chivasbrothers.com/supplier-information/">http://www.chivasbrothers.com/supplier-information/</a> , as the same may be amended from time to time and provided to the Agency;
"Relevant Date"	means in respect of any Assigned Employee the date of a Relevant Transfer from the Agency or any subcontractor of the Agency to any Group Company or any New Agency;
"Relevant Personal Data"	has the meaning set out in clause 16.3;
"Relevant Transfer"	means a relevant transfer for the purposes of TUPE;
"Services"	means those services set out in this agreement and those services specified or referred to in the Work Plans;
"Term"	means from the Effective Date until terminated by either party in accordance with the Agreement;
"Territory"	means those countries in which the Services are to be provided as set out in each Work Plan and all markets where the Deliverables are intended to be accessed;
"Third-Party Materials"	any work or materials authored, created or performed by a third party and either commissioned for, or used in relation to, the Services, including library images;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or the Acquired Rights Directive 77/187, as the context dictates, both as amended, re-enacted, or extended from time to time and any analogous or similar law or regulation applicable in all or the relevant part of the Territory;
"Usage Rights Summary"	means the usage rights summary form set out in Schedule 3 as the same may be amended from time to time and provided to the Agency;
"Work Plan"	means any work plan issued by Chivas to which these terms and conditions are attached or which refers to these terms and conditions (a template of which is set out in Schedule 2) which may or may not be named, amongst other things "brief", "scope of work" or any other thing having the same effect; and, where no such work plan exists in respect of services, Chivas' written instructions for delivery of services, as such Work Plans are amended from time to time in accordance with the Agreement;
"Working Day"	means any day (other than a Saturday or Sunday) when the clearing banks in the City of London are open for business; and
"Written Approval"	means approval signified by: (i) any fax, letter or purchase order on Chivas' notepaper bearing the signature of an Authorised Person, or any other person nominated in writing by an Authorised Person for the purposes of giving Written Approval; (ii) email emanating from the personal email address of an Authorised Person, or of any other person nominated in writing by an Authorised Person for the purposes of giving Written Approval; or (iii) oral approval given by an Authorised Person, or any other person nominated in writing by an Authorised Person for the purposes of giving Written Approval, provided this is in circumstances where time does not permit Written Approval and the said oral approval is confirmed in writing within one Working Day.

1.2 Clause and schedule headings do not affect the interpretation of this Agreement and references to clauses and schedules are references to the clauses and schedules of this Agreement.

1.3 Words in the singular include the plural and in the plural include the singular.



- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate Legislation for the time being in force made under it.
- 1.5 References to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation.
- 1.6 References to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.

**Work Plan**

**AGENCY:** [Company]

**BACKGROUND**

This Work Plan sets out the Services and the Fees to be provided in accordance with the terms and conditions of the Framework Agreement (the "Agreement") agreed between Chivas Brothers International Limited ("Chivas") and the Agency.

**PART A – SERVICES BRIEF**

<b>Project name</b>	<i>Insert project name if there is one or add "N/A" if there is no name</i>
<b>Project commencement date</b>	<i>Insert date the project starts</i>
<b>Brand(s)</b>	<i>Insert brand or brands for the project</i>
<b>Brand Owner(s)</b>	<p><i>Insert company name of the relevant brand owner(s) from the list below:</i></p> <p>For Beefeater, Ballantine's, Scapa and Long John - <b>Allied Domecq Spirits &amp; Wine Limited;</b>            For Chivas Regal, Royal Salute, Passport, 100 Pipers, Aberlour and Clan Campbell, Plymouth and Malfy - <b>Chivas Holdings (IP) Limited;</b>            For The Glenlivet and Longmorn - <b>The Glenlivet Distillers Limited;</b> or            For Something Special and Queen Anne - <b>Hill, Thomson &amp; Co., Limited</b></p>
<b>Fee (GBP pounds sterling) and when payable</b>	<p><i>Insert the Fee - is this paid in a lump sum or instalments?</i></p> <p><i>If instalments, please include the date/interval on which Fees may be invoiced by Agency and the amount Agency can invoice e.g.:</i>            25% to be invoiced on 31 March 2021;            25% to be invoiced on 30 June 2021            50% to be invoiced following acceptance by Chivas of all final Deliverables</p>
<b>Territory (where the Deliverables will be used)</b>	<i>Insert details of the applicable territory e.g. worldwide</i>
<b>Agency Project Manager</b>	<i>Insert name and email</i>
<b>Client Project Manager</b>	<i>Insert name and email</i>
<b>Key Individuals</b>	<i>Insert details of any persons at the Agency (including name and title) required for the provision of any part of the Services and who are actively involved in the provision of the Services. If none have been agreed then add "N/A" (not applicable)</i>
<p><b>Any sub-contractor (a "Third Party" in this Work Plan) to be used i.e. an artist/ talent</b>  <b>For the purposes of this Work Plan any "Third Parties" used by the Agency will be sub-contractors under the Agreement and clause 7 shall apply in full</b></p> <p>The Agency will sign a written contract with the Third Party to give effect to the obligations in Appendix A.</p>	<p><i>Insert details of any third party (e.g. artists) the Agency will be managing under this Work Plan in respect of the delivery of the Deliverables. If none are involved add "N/A" (not applicable)</i></p>

<p><b>Third Party profile</b></p> <p>The Agency will ensure that the specified Third Party shall meet the criteria opposite</p>	<p><i>The Agency will procure that the specified Third Party shall:</i></p> <p><i>where they are individuals -</i></p> <ul style="list-style-type: none"> <li>• <i>be over the age of 25; and</i></li> <li>• <i>have no previous history of alcohol or substance misuse.</i></li> </ul> <p><i>where they are a company:</i></p> <ul style="list-style-type: none"> <li>• <i>not have worked with another alcohol brand in the 6 months prior to the project commencement date</i></li> </ul>
<p><b>Services to be provided by the Agency all subject to Chivas's reasonable satisfaction</b>  <b>Add any key delivery dates applicable to any services</b></p>	<p><i>Insert details of services and dates</i></p> <p><i>E.g. attend weekly meetings from 1 January 2021 – 31 January 2021; or</i>  <i>deliver all Deliverables set out in Table 1 and/or Table 2 by 31 January 2022</i></p> <p><i>In respect of any Third Party named above, the Agency shall</i></p> <ul style="list-style-type: none"> <li>• <i>enter into a signed contract with the relevant Third Party/ all Third Parties that includes as a minimum the obligations set out at Appendix A;</i></li> <li>• <i>monitor the Third Party's compliance with such obligations throughout the duration of such contract in respect of all Services and Deliverables;</i></li> <li>• <i>obtain such rights, consents, releases and approvals in respect of the Third Party's image rights and ensure that ant grants are directly to Chivas or the Brand Owner as instructed by Chivas; and</i></li> <li>• <i>ensure that any approval process agreed with the Third Party is followed and shall be communicated to Chivas but at all times managed by the Agency.</i></li> </ul>

## **PART B – Deliverables**

Under the Agreement the Agency is to obtain an assignment to ensure that Chivas owns all Intellectual Property Rights wherever possible - please insert details of the Deliverables being assigned in Table 1. If the Agency is not able to provide an assignment and Chivas have agreed to a licence, please insert details into Table 2. For the avoidance of doubt, all Deliverables including those created by a Third Party on behalf of the Agency will fall under the definition of "Assigned Materials" in the Agreement.

<b>Table 1- Deliverables the Agency has obtained an assignment for</b>		
<b>Deliverable description and any key delivery dates</b>	<b>Any specific format needed for the Deliverable (i.e. video file, PDF)</b>	<b>Fee payable for that Deliverable</b>

Table 2 – Deliverables the Agency has obtained a licence for				
Deliverable description	Any specific format needed for the Deliverable (i.e. video file, PDF)	Fee payable for that Deliverable	Any restrictions on use (e.g. term, territory and media it can be used on)	Length of the licence

**Signed on behalf of CHIVAS BROTHERS INTERNATIONAL LIMITED**

**Signed on behalf of [Company]**

.....  
**Print name**

.....  
**Print name**

.....  
**Director / Authorised Signatory**

.....  
**Director / Authorised Signatory**

**Date**.....

**Date**.....

**Appendix A – Minimum obligations for Third Party to be included in the contract  
between the Agency and any Third Party**

Such agreement between the Agency and the Third Party shall include the following definitions

“Chivas” shall mean Chivas Brothers International Limited a company registered in Scotland with company number SC646563.

“Deliverables” shall mean any and all outputs of the Services.

“Services” shall mean the services that the Third Party carries out on behalf of the Agency as set out in this agreement.

“Relevant Products” means any products produced by or on behalf of Chivas.

1. The Third Party shall:

- (a) comply with its obligations in accordance with the relevant signed contract with the Agency;
- (b) use all due skill and care in carrying out the Services and in creating the Deliverables;
- (c) comply with all applicable laws related to the Services and Deliverables, the Pernod Ricard Code of Commercial Communications and other relevant policies or guidance provided by the Agency from time to time (particularly the CAP Code);
- (d) attend any and all activities as the Agency may reasonably require in connection with the Services and Deliverables;
- (e) act in a professional and diligent manner at all times;
- (g) not do anything nor create any content within the Deliverables which may encourage or promote irresponsible, excessive or underage consumption of alcohol;
- (h) not say anything (or omit to say anything) or engage in any conduct that may cause adverse publicity to itself or Chivas at any time or that may bring the Brand, Chivas or any company within the Pernod Ricard S.A. group of companies into disrepute;
- (i) submit the Deliverables to the Agency for approval, amend and resubmit any relevant Deliverables for approval in line with any feedback the Agency and in accordance with any agreed timeline;
- (j) not post, share or otherwise publish any Deliverables in any form on any media without the Agency's prior written approval (to include email);
- (k) not include or incorporate any third-party content or intellectual property rights (including, without limitation, music, artwork, logos, other people or their image rights or other branded products) in the Deliverables unless permission from the rights owner in writing has been obtained and the Agency has obtained written consent from Chivas (including email) regarding the content;
- (l) ensure that any persons featured in the Deliverables have given all necessary written consents, releases and approvals to use their image;
- (m) acknowledge that any dates agreed for the delivery of the Deliverables shall be of the essence;
- (n) acknowledge that Chivas shall be entitled to make and/or appoint a third party to make modifications or alterations to any Deliverables created by the Third Party;
- (o) acknowledge that if the Agency requests that the Third Party make any modifications or alterations to any Deliverables (other than any alteration or modification that is required to ensure that the Deliverables meets the Agency's criteria for that Deliverable) such modifications or alterations shall only be carried out by the Third Party or under its supervision and shall be paid for at a rate agreed between the Third Party and the Agency in writing in advance. Reprints obtained by the Agency may differ in any way from the originals supplied without the Third Party's prior written consent;

- (p) shall at its own expense effect and maintain adequate general and public liability insurance to cover the Services and, at the Agency and/ or Chivas' reasonable request, provide the Agency with information, including certificates of insurance evidencing such insurance coverage;
- (q) not grant any third party a licence to use the Deliverables at any time; and
- (r) not use the Deliverables for any purposes other than to perform the Services.