



Micro-influencer template 2018

Prepared by



INTRODUCTION

The rise and explosion in popularity of the use of influencer marketing by brands has been nothing short of a cultural and social phenomenon in the last few years. Whilst there appears to be no collective agreement on how to describe influencers (social talent, digital first talent, blogger, vloggers, content creators...) there is no doubt that use of this social talent has opened the doors to a new form of highly effective marketing for some brands.

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

2 years on from the launch of the first ISBA influencer templates, and in recognition of how the influencer space is evolving, ISBA and Lewis Silkin have worked together again to create a new micro-influencer marketing template. This will be added to the existing suite of influencer templates. This micro-influencer version is aimed at lower value campaigns than the original ISBA social influencer templates. We hope that this template will provide a useful starting point when brands need a template that is easy to use, implement and get signed without the need for lengthy negotiation. This micro-influencer template does not cover all of the areas covered by the previous longer form ISBA templates for influencers. The longer form influencer templates still have their place and we expect them to still be useful for relationships with influencers that last beyond one off campaigns, and for higher value campaigns. The longer form influencer templates will also be useful, where the brand is contracting with a service company or talent agency on behalf of the talent.

Throughout the drafting process for this new micro-influencer template we consulted with ISBA members who were heavy users of influencers and micro-influencers to ensure that the different templates meet your objectives as brands. We are grateful for the detailed feedback that many brands chose to give us, and we've tried to reflect your suggestions where possible in these new templates.

We have also added more detailed guidance on the labelling of content and the desired quality of audiences to help guide on issues such as fake or fraudulent likes and use of bots to inflate effect.

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

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

Debbie Morrison, Director of Consultancy & Best Practice, ISBA (debbiem@isba.org.uk)

Jo Farmer, Joint Head of Commercial, Lewis Silkin LLP (jo.farmer@lewissilkin.com)

October 2018

SCOPE OF WORK

ISBA BRIEFING TEMPLATE

Commented [LS1]: Drafting note: The template Scope of work is based on the ISBA Briefing template. It is for guidance only, and clients should feel free to use their own templates here.
Brands should refer to ISBA influencer marketing toolkit for more guidance on this.

Name of Talent (“Influencer”) and contact details	[INSERT NAME AND ADDRESS]	Brand and Product/Service (“Brand”)	[INSERT NAME OF BRAND AND ADDRESS]
Campaign (“Campaign”)	[INSERT] <i>Set out detail of the campaign The creatives and what style of video should be discussed with the influencer/their management to determine exactly how the product/service would best be integrated into their channels. However, a steer on the project title will help shape this.</i>	Deliverables and Services (“Deliverables”)	[INSERT] <i>This should include details of all the content being created by the influencer for both the influencers channels as well as anything for brand owned channels, event attendance, competitions etc. Where the Deliverables are based on objectives / outcomes (eg driving number of likes or clicks) rather than number of pieces of content, this should be specified here</i>
Commencement Date	[INSERT] <i>The Commencement Date is relevant for the length of the Usage Period – ie the duration that the influencer’s materials are uploaded and available for.</i>	Campaign Budget (“Consideration”)	[INSERT] <i>Full campaign fee excluding VAT if applicable</i>
Payment Milestones (“Payment Milestones”)	[INSERT] <i>This section needs to outline when the Consideration will be paid, eg, 50% on signature,50% when completed)</i>	Brand Social handles	[INSERT] <i>These are the brand social handles to be included in the content text.</i>
All campaign key messaging	[INSERT] <i>This should include any key</i>	Campaign Hashtags	[INSERT] <i>This needs to list the</i>

Commented [LS2]: Drafting note: Each box should be filled in with the relevant details for your campaign (and the explanatory text in this table should be deleted)

<p>to be included</p>	<p><i>messaging you want included in regard to the product /service (educating the consumer on the product, price points, where it is available to buy etc) as well as any key information you would like to include around your brand.</i></p> <p><i>This needs to list what disclaimers that are to be used to show that this content is advertising (eg #advert) and where these labels should be placed. . This should be in line with the ASA guidelines.</i></p>		<p><i>disclaimers that are to be used to show that this content is advertising (eg #advert) and where these labels should be placed. This should be in line with the latest ASA and CMA guidance. See https://www.asa.org.uk/resources/influencers-guide.html</i></p>
<p>Dates content to be sent for approval</p>	<p>[INSERT]</p>	<p>Product/brand links to be included (blog, vlog, Instagram stories, twitter and Facebook only)</p>	<p>[INSERT]</p> <p><i>These should be trackable links to allow you to track the results of the campaign on top of the total engagement generated per influencer.</i></p>
<p>Go Live Date/s for content.</p>	<p>[INSERT]</p> <p><i>This should be a timeline of when you need the campaign deliverable/s to be pushed live. However you should always build this up with the influencer/their agent so they can let you know the best times for going live in terms of follower engagement.</i></p>	<p>Look/Feel/Tone of the content.</p>	<p>[INSERT]</p> <p><i>This should include any visual inspiration of what you want the content to be in line with.</i></p>
<p>Content Do's/Don'ts</p>	<p>[INSERT]</p> <p><i>This section needs to outline the do's and don'ts for both visual aspects of the campaigns (i.e no mess in the background, clothing</i></p>	<p>Media ("Media") and Media Schedule ("Media Schedule")</p>	<p>[INSERT]</p> <p><i>This refers to what media channels you are planning for the content created by the influencer, including any channels under the</i></p>

	<i>needs to have no obvious branding etc) as well as key messaging (i.e we cannot claim it makes your hair shinier but can say it makes it feel smoother).</i>		<i>influencers control eg their Facebook, Instagram, Snap, YouTube channel. It also needs to specify when the content will be posted. This aspect needs to be included in agreed fee from the start.</i>
Reporting obligations	<p>[INSERT]</p> <p><i>If you have any reporting requirements they should be added here. For example, you may wish to ask for analytics on some of the following aspects:</i></p> <ul style="list-style-type: none"> - <i>Reach, impressions, Engagement rate</i> - <i>CPM / CPE / CTR / CPV</i> - <i>Followers</i> - <i>Views / view through rate</i> - <i>Video completion rate</i> - <i>Drop off rate</i> 	Paid ad spend to be put behind the content? If so which platform and amount	<p>[INSERT]</p> <p><i>This refers to what you plan to invest in terms of paid spend behind the influencers content on your online channels. Again, this aspect needs to be included in agreed fee from the start.</i></p>
Territories (“Territories”)	<p>[INSERT]</p> <p><i>Add details of countries where content is to be used</i></p>	Usage Period (“Usage Period”)	<p>[INSERT]</p> <p><i>This section needs to list the agreed length of time during which the Brand can use the content</i></p>
Additional Information	<i>For any information you feel you haven’t been able to insert above.</i>		

The parties agree to the Scope of Work above , which shall be governed by the terms and conditions set out below

Signed by [Influencer]:

Name:

Date:

Signed for and on behalf of [Brand]:

Name:

Position:

Date:

TERMS AND CONDITIONS FOR APPOINTMENT OF MICRO INFLUENCER

1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the meaning specified in the Scope of Work:

- (a) Brand;
- (b) Campaign;
- (c) Commencement Date;
- (d) Consideration;
- (e) Deliverables;
- (f) Influencer;
- (g) Payment Milestones;
- (h) Media;
- (i) Media Schedule;
- (j) Territories; and
- (k) Usage Period.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words importing the singular shall include the plural and vice versa; words importing the masculine shall include the feminine and neuter and vice versa; and
- (b) "including" means "including, without limitation" and "include" shall be construed accordingly.

Commented [LS3]: Drafting note: throughout this template we have used gender neutral third party personal pronoun (ie "it")

2 APPOINTMENT

2.1 The Scope of Work set out above, together with these terms and conditions shall be the agreement between the Influencer and the Brand relating to the Campaign ("**Agreement**").

2.2 The term of this Agreement shall be the period commencing on Commencement Date and terminating on the expiry of the Usage Period ("**Term**").

2.3 The Influencer shall create the Deliverables and will provide its services in connection with the Campaign, in accordance with the reasonable instructions of the Brand and the terms of this Agreement.

3 DELIVERABLES

3.1 The Influencer shall :

- (a) comply with its obligations set out in the Scope of Work;
- (b) comply with the reasonable instructions of the Brand and its suppliers;

- (c) create the Deliverables and submit it to the Brand for approval in accordance with the approval timetables set out in the Scope of Work (and amend the Deliverables and resubmit for approval in line with any feedback from the Brand);
- (d) once approved by the Brand, upload the Deliverables onto the Media owned or controlled by the Influencer in accordance with the timing deadlines set out in the Media Schedule, and maintain such Deliverables during the Usage Period;
- (e) allow Brand and its suppliers to upload the Deliverables onto the Media that is outside of the Influencer's control during the Usage Period;
- (f) (at any time, both during and after the Usage Period) remove or amend the Deliverables immediately from the Media owned or controlled by the Influencer at the request of the Brand; and
- (g) use reasonable skill and care in the provision of the Deliverables in connection with the Campaign .

Commented [LS4]: Drafting note: If there is payment, plus the content is "approved" by brand (ie brand gets editorial control), this means that this falls within definition of "advertising" under CAP Code. Even if it isn't approved, there may be a need to label the content (see notes below on latest guidance re compliance with labelling requirements)

Commented [LS5]: Drafting note: if brands want an obligation on the influencer for it to not remove the content after the campaign has finished, see optional clause 4.3

Commented [LS6]: Drafting note: Brands should consider whether there are any other obligations relevant to the campaign (such as any marketing policies issued by the Brand)

3.2 Labelling of Deliverables and compliance with laws:

Under applicable laws and self regulatory codes of practice (including the Committee of Advertising Practice Code), the fact that a brand has paid an influencer to create content, or include a product reference in its marketing must be transparent to the public. The Influencer shall:

- (a) Comply with all applicable laws and all rules, guidance, codes of practice and adjudications relating to the CAP Code and the guidance issued by the Advertising Standards Authority and the Committee of Advertising Practice (available at www.asa.org.uk and www.cap.org.uk), as well as the Consumer Protection from Unfair Trading Regulations 2008 and all guidance issued by the Competitions and Markets Authority (available at ; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/512882/Online_endorsements_-_being_open_and_honest_with_your_audience.pdf)
- (b) Ensure that the labels #ad or #advert or #paid (as well as any campaign hashtags as set out in the Scope of Work) is placed prominently and legibly on all Deliverables, and that such label is visible to the viewer prior to the viewer engaging with such Deliverables;
- (c) Obtain the Brand's prior approval before using any other hashtag disclosure that is not specified in this Agreement;
- (d) Comply with the Brand's instructions when referring to the Brand's products or services in the Deliverables [and comply with the content guidelines set out in the Appendix];
- (e) Ensure all Deliverables are truthful, socially responsible, not defamatory or harmful to any third party, not illegal or offensive, not violent and do not depict dangerous or anti social behaviour;
- (f) Not do anything or authorise any activity (whether directly or indirectly) in post production of the Deliverables which could be misleading in relation the effects of use of the Brand;

Commented [LS7]: Drafting note: this guidance and link is correct as at October 2018; as and when guidance from the CMA is updated this link may need updating

Commented [LS8]: Drafting note: the requirements of labelling are evolving, and you are advised to review the latest guidance from both the ASA, CAP as well as the CMA about any labelling requirements. Your preferred regulatory labels should be discussed with the influencer upfront, and added to the briefing sheet/. In particular, at the time of writing the ASA has made it clear that #ad or #advert or #advertisement are preferred labels to #sponsored or #brought to you by.

NB The ASA is currently reviewing the labels being used for disclosure to see what consumers understand. This includes the labels that use the platforms functionality such as Instagram's "Paid Partnership", and guidance is expected on around the end of 2018. Until then, the safest way of denoting influencer content is by using the labels set out here.

Commented [LS9]: Drafting note: Some members may wish to attach their influencer content guidelines here

- (g) Ensure that any opinions expressed by the Influencer in the Deliverables are honestly held and are not exaggerated; and
- (h) Not include any third party content or intellectual property rights (including by way of example, music, logos, other people, other branded products) in the Deliverables unless it has obtained permission from the owner of intellectual property rights or third party content ;

3.3 Reputational issues

3.4 During the Usage Period, the Influencer agrees not to do or say anything (or omit to do or say anything) that may cause adverse publicity to the Influencer, the Brand, its business or its products or brands or the Campaign.

3.5 [The Influencer agrees that during the Usage Period, the Influencer will not provide its services in connection with any brand, product, service or entity that competes with the Brand.]

4 USAGE RIGHTS

4.1 The Influencer grants to the Brand the following usage rights in respect of the Deliverables:

- (a) use the Deliverables in the Media and the Territory for the duration of the Usage Period; and
- (b) use the Influencer's name, image, likeness, voice in the Media and the Territory for the duration of the Usage Period

4.2 Brand will not repost the Deliverables after the Usage Period, but given the nature of the internet, the Deliverables may be available online after the Usage Period. The Influencer agrees that Brand shall not be responsible for removing any Deliverables from any third party media after the Usage Period, or for any use of the Deliverables by third parties either during or after the Usage Period.

4.3 [After the Usage Period, the Influencer shall not take down any Deliverables from the Media under its control without the prior approval of the Brand].

4.4 Where Brand provides any materials, copy, product names, logos, trade marks or other information for inclusion in the Deliverables ("Brand Materials"), the Influencer shall follow all instructions in relation to such usage, and shall cease use of the Brand Materials on termination of this Agreement or on the Brand's request.

4.5 Unless agreed with Brand in writing in advance, the Influencer will not otherwise refer to any Brand Materials without the prior written approval of Brand and will not alter, adapt or edit the Brand Materials in any way unless expressly authorised to do so. All intellectual property rights in the Brand Materials shall remain the property of the Brand. The Influencer shall not obtain any rights in such Brand Materials and all goodwill in such Brand Materials will accrue to the benefit of the Brand.

5 QUALITY OF AUDIENCES

5.1 The Influencer undertakes not to engage in any practices in relation to promotion of the Deliverables which artificially increase the perceived engagement with the Deliverables. By way of example only, such prohibited practices could include:

Commented [LS10]: Drafting note: We have kept this simple and asked that influencers do not include any third party content, which would include any music (such as on Insta stories). This is to avoid any difficulties having to obtain clearance of third party rights (or worse, being sued). You may wish to give further guidance and training to influencers about this to ensure they understand the importance of not using third party content, music and trade marks without the appropriate permission.

Commented [LS11]: Drafting note: we have included a simple non compete in this microinfluencer template in square brackets. With some microinfluencer campaigns it is inappropriate to ask the microinfluencer not to work with any other competing brand. (Eg, for microinfluencers focussed on a particular specialist audience). We recommend that the brand discusses this upfront with the microinfluencer at the time of briefing. If this clause is being used, a definition of exactly what is meant by "competitor " will be necessary for clarity.

Commented [LS12]: Drafting note: this microinfluencer template does NOT give the Brand ownership over materials that are created by the Influencer. We wanted to create an easy to use template for smaller campaigns which doesn't require negotiation, and this is one of the areas that has been sacrificed. If brands wish to own the IP in materials created by the influencer, the longer form template may be a more useful template.

Commented [LS13]: Drafting note: Note that after the usage period is over, brands will need to cease reposting the content. As drafted, brands are allowed to keep the materials on the brand's own channels as part of its heritage campaign materials

Commented [LS14]: Drafting note: Some influencers may actively take down campaign materials from their own channels themselves after the campaign has ended (to minimise the number of historical brand campaigns they appear to be involved in)- if this is a concern for members, the clause in square brackets could be used.

Commented [LS15]: Drafting note: This new section has been drafted to deal with the rise of fake likes and bots. If the influencer is being paid by results/ click throughs/ likes/ engagement, this clause will be more important. For further information on the kinds of tools you might use to audit for fake likes and bots, see ISBA guidance on the topic (available for members only) at <https://www.isba.org.uk/knowledge/agency-management/influencer-marketing-management/>

- (a) paying (whether directly or indirectly) a third party to increase the number of likes on Deliverables and/or on the Influencer's channels in order to make the Influencer and/or its content appear to have a wider and more engaged audience than it actually does;
- (b) Using (or authorising others to use) automated means such as bots, software or programmes to increase the number of likes, comments, shares or other engagements with Deliverables;
- (c) Non human fraudulent likes or followers; and/or
- (d) Other unethical, dishonest, non organic or non human methods of increasing perceived engagement with the Deliverables

5.2 In the event that the Brand has a reason to suspect that the Influencer has breached this clause 5 this shall entitle the Brand to terminate in accordance with clause 11.

6 CONSIDERATION

- 6.1 The Brand will pay the Influencer the Consideration, subject to satisfactory receipt of all Deliverables in accordance with the Media Schedule.
- 6.2 The Consideration shall be payable in accordance with the Payment Milestones [subject to receipt of a valid invoice from Influencer].
- 6.3 All sums payable under this Agreement are exclusive of VAT where applicable.
- 6.4 The Consideration shall be inclusive of all fees and expenses (including any travel, accommodation, wardrobe, rehearsal, usage fees, studio, repeat fees, residual, union and/or Equity fees) which might otherwise be or become due and payable.
- 6.5 Where the Consideration includes free or discounted product or services, such product or service shall be for the Influencer's personal use only, and the Influencer shall not (whether during or after the Term) be entitled to sell or give away such product or service to third parties.

7 MEASUREMENT AND REPORTING

- 7.1 The Influencer shall provide the Brand with such reports, analytics and data as shall be requested by the Brand (and in accordance with any requirements set out in the Scope of Work) during and after the Campaign in order to assist the Brand in reviewing the Campaign's success and viewer engagement with the Deliverables.

8 WARRANTIES AND LIABILITY

- 8.1 The Influencer warrants, represents and undertakes to Brand that:
 - (a) The Influencer has the right and power to enter into this Agreement;
 - (b) the use of the Deliverables will not infringe any intellectual property rights or any other rights of any third party;
 - (c) the Deliverables are not defamatory, libellous, slanderous, obscene or likely to cause offence;
 - (d) the Influencer has not and will not commit a criminal offence and will not commit an act or omission that would be likely cause the Brand, the Brand's products or services, the Influencer or the Campaign any adverse publicity;

Commented [LS16]: Drafting note: if the influencer is being paid for production costs for producing the content, this template is probably not appropriate and members should use the long form talent template.

Commented [LS17]: Drafting note: "consideration" doesn't just mean money. It could include free product/ services/travel etc in this contract.

Commented [LS18]: Drafting note: If there are specific reports/ analytics that are needed from the influencer, these should be specified in the Scope of Work.

Commented [LS19]: Drafting note: we have kept these warranties fairly brief and simple, given that this is aimed at microinfluencers. Brands may have other warranties that they wish to include if they are important to the brand and/or campaign, such as influencer being over 18, resident in UK

8.2 The Influencer shall indemnify Brand against all costs (including reasonable legal costs), claims, expenses and liabilities incurred by Brand in connection with any breach of its obligations set out in this Agreement.

Commented [LS20]: Drafting note: we have taken a deliberately simplified approach to legal liability in this microinfluencer template, and simply said that the microinfluencer will be liable as per this clause. However, many microinfluencers will not have the financial means to be able to deal with expensive litigation and third party claims, and brands may therefore decide it is not worthwhile suing the influencer.

9 CONFIDENTIALITY

9.1 Neither party shall disclose the content of this Agreement, the Campaign or any Scope of Work, the marketing or business plans of the Brand or the details of Consideration, or any confidential information of the other party ("Confidential Information") to any third party. This obligation shall survive termination of this Agreement

9.2 Confidential Information shall not include information which is in the public domain or which is required to be disclosed by law.

10 DATA PROTECTION

10.1 The Influencer agrees to Brand holding and processing its personal data (as defined in EC Regulation 2016/679 known as the GDPR) in connection with the Campaign.

10.2 Brand shall process the Influencer's data solely for the purposes of the Campaign and in accordance with the GDPR.

10.3 The Influencer acknowledges and agrees that it shall comply with its obligations under the GDPR and other applicable laws relating to processing data and marketing by electronic communications ("Data Privacy Laws") to the extent that it is processing any personal data of third parties when providing the Deliverables, and in such event, the Influencer will enter into such other agreements as shall be required by the Brand setting out obligations in relation to Data Privacy Laws.

Commented [LS21]: Drafting note: we have added a very simple data processing clause. Microinfluencers may well not be processing any personal data (eg of customers of the Brand). But, depending on how the Privacy and Electronic Communications Regs are implement (likely to be 2019) this may need further thought in the future

11 TERMINATION

11.1 Brand shall have the right to terminate this Agreement immediately on written notice to the Influencer:

- (a) If the Influencer commits a material breach of these Terms and, if such breach is capable of remedy, fails to remedy the breach within 7 days;
- (b) If the Influencer fails to fulfil any of its obligations;
- (c) If the Influencer commits an act or omission which causes adverse publicity to the Influencer, the Brand or its products or the Campaign; or
- (d) If the Influencer becomes incapacitated, bankrupt or otherwise unable to perform its obligations.

11.2 If Brand terminates this Agreement under this clause 11, the Influencer shall repay all Consideration that have been paid to it under this Agreement and Brand shall have no further payment obligation to the Influencer.

Commented [LS22]: Drafting note: this clause in square brackets is a relatively one sided approach, and some brands may wish to offer a more balanced position here.

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

11.4 Clauses 4, 8, 9, 10, 11, 12 of this Agreement shall continue after termination of this Agreement .

12 GENERAL

- 12.1 Any notice required to be given under this Agreement shall be in writing signed by each party and may be delivered by email.
- 12.2 No variation of this Agreement shall be valid unless it is in writing and signed by each of the parties to these Terms.
- 12.3 In the event of a conflict between this Agreement and any Scope of Work, the Scope of Work shall take precedence.
- 12.4 This Agreement is personal to the Influencer and the Influencer may not subcontract, assign or delegate any obligations under this Agreement to any third party.
- 12.5 The relationship of the Influencer to the Brand is that of independent contractor. This Agreement is a contract for the provision of services and not a contract of employment. Nothing in this Agreement is intended to or shall operate to create a relationship of employment, partnership or joint venture of any kind between the parties nor shall either party be authorised to act as agent for the other.
- 12.6 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.
- 12.7 This Agreement and any disputes or claims arising in connection with these Terms and any Scope of Work shall be governed by the laws of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of England for the resolution of any dispute arising in connection with these Terms and any Scope of Work.