

Poorly drafted contracts break the bonds of client agency relationships

 By [Johanna McDowell](#)

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Marketing directors and corporate procurement departments who pay special attention to the content of their Service Level Agreements (SLAs), together with their service providers, are very well placed to enjoy the chemistry and promise of brand growth that attracted them to each other in the first place.

In cases where the relationship is being cemented after a pitch process, it's imperative to sign such an agreement after the selection process is complete. If this can't happen immediately, it can be pushed out, but it mustn't be left for more than a month. And then only in cases when you establish a memorandum of agreement (MOA) while the negotiations take place.

There are creative ways to solve every SLA problem. Many of these sit in the minds of experienced intermediaries who lend assistance to the parties as they hone their thinking while negotiating. They play a buffering and neutralising role in the negotiating process.

A tight contract is vital

The process of concluding the agreement is almost as important as the agreement itself. All the finer details of the working relationship are ironed out. Oversights are brought to light in order to be addressed constructively. A tight contract is vital to ensure a positive way forward - so that each party understands exactly what their responsibilities are and how the campaign is to progress.

If there is a delay in agreeing to the contract terms, the client is put in a situation where the agency is busy on your account and is unsure about their costs. This puts undue pressure on it, stifling its creativity. In the meantime, the agency's finance department and the client's procurement and legal departments are in a quandary because details haven't been finalised and no one knows quite what to do. Unfortunately, this often leads to the early demise of a much sought-after relationship.

A pitch process is simply not complete until the contract is signed and sealed.

If the contract is not completed properly, especially in terms of the scope of work described in the SLA, it is hard for the client or agency to determine exactly what they are going to be doing over the time allocated to the project. Obviously, they have a broad idea - but there has to be a certain amount of estimation.

It's all about the terms

A contract should also allow for a six-month review of costs or a reasonable clause that will allow for changes should the scope of work dramatically increase or decrease during the period of the contract.

Agencies think contracting is about pricing - it's not. It's about the terms. What has to be considered are copyright rules, terms of payment; 30 or 60 days or 50% up-front. The terms of business are what is important, not the pricing. It is difficult for a client or agency to determine exactly what it is going to be doing for 12 months, it has a broad idea - so there has to be a certain amount of estimation.

These are complex things, they cannot be done overnight and there is often a lot of running backwards and forwards. This is not because one party is trying to get the better of the other. In the early stages, if client and the agency are new to each other, they need to get used to the way in which they work, what the expectations are and that can delay the finalisation of a contract.

It is all about communication and having a levelheaded, skilled negotiator to calm the waters. By acting as an impartial third party, the IAS can provide objective advice and guidance. This is just one of the many services offered by IAS.

ABOUT JOHANNA MCDOWELL

MD of the Independent Agency Search and Selection Company (IAS), and partner in Scopen Africa, with a background that includes being on both the agency and the client side of the fence, Johanna McDowell is well-placed to offer commentary on marketing and advertising in the South African and international contexts. She built her career in marketing and advertising since 1974, holding directorship in both SA and British advertising agencies. She was MD of Grey Phillips Advertising in 1988.

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