World Federation of Advertisers

Media Contract Guidance for Advertisers:

Global Best Practice

In partnership with:

FirmDecisions

Contents

Disclaimer: Please note that the recommendations included in this document are non-binding and are to be seen as mere suggestions. WFA members are entirely free to depart from them. Please also note this guidance does not constitute legal advice. All advertisers are responsible for obtaining independent legal advice about contract wording and inclusions.

Introduction from the WFA

‘Transparency’ is a constantly evolving topic in media. We’ve moved from a focus on rebates or AVBs, to arbitraged or ‘inventory’ media, to the complex programmatic media supply-chain, with its various intermediaries.

In all of these areas, clients need transparency to ensure that they receive fair value for money. And while the contract between a client and its agency partners can’t fix all of the issues, it’s a critical and foundational document that can be used to promote transparency and value.

Over the past year or so since WFA and Ebiquity made available our Transparency Scorecard, results from 50 advertisers suggest that contracts are now generally being well drafted. Nearly three quarters of members who have completed our “instant transparency audit” now have a structured governance processes in place to ensure all Scopes of Work, Master Service Agreements and other addenda are properly reviewed. The number is even higher for those members in global roles.

Equally encouraging is the finding that 46% are revisiting and auditing their contracts quarterly, half-yearly or annually.

But even among this sophisticated set of brands, there are areas that are ripe for improvement. In the current media ecosystem, a contract much older than one-year-old is already beginning to age and reveal vulnerabilities. And clearly 54% of our sample are conducting contract reviews on a less frequent basis than this.

Even worse, a small share of respondents (8%) concede that they do not have comprehensively signed contracts with all their agency partners globally. And 12% either do not have (or do not know if they have) financial audit rights enshrined in their contracts.

Framework media contracts developed by national advertiser associations, such as ANA in the US and ISBA in the UK, have become powerful tools that can help clients to get the foundations right. We hope that this WFA & FirmDecisions Media Contract Best Practice guide serves as a reminder to clients of the importance of contracts and the areas where they need to pay particular attention.

“For some time now, P&G has been calling on the media industry to create a responsible media supply chain, one that is safe, efficient, transparent and accountable. Now it’s time to create that responsible media supply chain, built for the future and that serves the needs of everyone, especially the consumers we serve. The WFA Media Contract Guidance for Advertisers is a significant step in this direction and will help advertisers to establish and maintain an equitable relationship with its media agency partners by establishing 10 Areas of Best Practice that can be tailored to meet the needs of individual advertisers.”

Gerry D’Angelo
Co-chair WFA Media Forum
and VP Global Media
P&G

“The transparency agenda has broadened beyond its financial roots. It’s no longer just about money. We also need transparency to ensure our brands show up in safe environments, that consumers’ privacy is protected, and our media investment is being directed towards diverse media and trusted journalism. The contract is the place to enshrine all these criteria. If it matters to you or your agency, it should be grounded in the contract. I hope that this document serves as a reminder of this.”

Isabel Massey
Co-chair WFA Media Forum and
Global Media Director
Diageo

Introduction from FirmDecisions

A fair and comprehensive contract is the foundation stone of any equitable commercial relationship between an advertiser and its agency partner. The right contract for all parties ensures that the partnership runs smoothly, brand-side and agency-side. It keeps the day-to-day relationship on an even keel and helps all parties understand and fulfil their key roles and responsibilities. Given the complexities and the fast-evolving nature of the media and marketing ecosystem, having a contract in place that promotes transparency and drives optimum performance is a must-have.

In many markets around the world, local advertiser trade bodies have created framework media contracts for their members to use as the starting point for negotiations with their media agency partners. These contracts contain all the clauses required to ensure the advertisers' rights are fully protected, especially around transparency of trading, and particularly of digital media.

Contracts should contain no ambiguities and clarity is key to foster partnership between brand teams and their agencies. It is best practice for advertisers to commission contract compliance audits regularly to ensure that the contractual terms are being adhered to by the agency. This should happen every one or two years, to accommodate and reflect the dynamic and fast-evolving nature of the media marketplace. Learnings from these audits should be incorporated in updated contracts.

Many contracts are created by an advertiser's in-house legal team. Although professional and well-meaning, they often lack the knowledge of the bigger picture view of how the media market is developing. This is why the World Federation of Advertisers (WFA) asked the world's leading independent contract compliance auditing business, FirmDecisions, to provide some guidance for advertisers as to what should be included in a Media contract to ensure the best levels of protection, transparency and accountability in the relationship. Importantly, this Guidance also provides some explanation of the reasons why these issues need to be addressed in the Contract. This will enable the advertiser to tailor their Contracts to suit their own circumstances, based on the advice and explanations provided in this Guidance.

The knowledge that forms the basis of this Guidance has been drawn from FirmDecisions' 24-year experience of auditing thousands of media contracts globally. This guide highlights key learnings and the clauses that are essential in a media agency contract in the 2020s.

The purpose of this guide is threefold:

- To ensure full transparency in return for fair remuneration
- To protect advertisers' best interests for the long-term future
- To encourage the widespread adoption of best practices

It is our aspiration that this guide will assist advertisers in understanding and implementing the important measures that will provide appropriate levels of transparency and accountability in the relationship with the media agency. Advertisers that follow this guidance can be assured that their best interests will be protected.

David Brocklehurst
Chairman & Founder,
FirmDecisions

Media Agency Contracts: Ten Areas of Best Practice

There are ten principal areas connected with media agency contracts where advertisers should pay particular attention, wherever they operate. Focusing on these priority issues will ensure the structure and terms of the contract protect their best interests.

These issues are:

1. **The Master Services Agreement (MSA)**
2. **The Challenges of Digital Media**
3. **Transparent Models in Programmatic Media Buying**
4. **Inventory Media**
5. **Unbilled Media, Media Credits and Holds**
6. **Media Benefits, including Agency Volume Benefits (AVBs)**
7. **The Right to Audit**
8. **Data Ownership and Management**
9. **Payment Terms**
10. **Remuneration**

1. The Master Services Agreement (MSA)

The Master Services Agreement is the embodiment of the ways of working between advertiser and agency. It is critical that the Contract is clear, succinct, current and comprehensive. It needs to make sense and not allow ambiguity or omission to lead to confusion or disagreement. Hence, by following the below recommended inclusions, the advertiser and agency will be clear in what is required in managing the relationship. In return for being fairly remunerated the agency should be prepared to agree to the measures discussed in this Guidance in a bid to prove their willingness to be totally transparent and accountable in their relationship with the advertiser.

"We feel the media contract should reflect the relationship, and be specific whilst allowing for flexibility when required. It should become a strong foundation for both parties to work off, and therefore ambiguous clauses should be avoided"

James Taylor
Global Procurement Director, Media, Digital and Consumer Planning
Diageo

1. **Advertisers should ensure that the terms are signed before the contracted period begins.** The agency is responsible for managing substantial sums of money on behalf of the client, and without a signed contract, neither party is adequately protected. Delays in agreeing terms can require retrospective reconciliation, which is time-consuming, potentially costly – and, in fact, unnecessary.

2. **It is important to ensure that all Appendices or Annexures are complete before signing.** These can include important matters such as: remuneration, agency KPIs, incentives, and bonuses; the staffing plan; Data Protection rules and so on. Too often, these elements are left "to be completed afterwards". Too often, they are forgotten once both parties have signed the agreement.

3. **The MSA should cover all entities within the agency group, not just the Agency of Record (AOR).** Agency holding companies often have many companies within the group that work on client business, such as the trading division (where the vendor contracts reside), programmatic, Inventory Media, digital, and influencer marketing. So, it is best to ensure that the whole group operates within the terms of a single MSA contract.

4. **Advertisers should seek an annual representation from a senior executive within the agency holding company – such as the Group CFO or Group Trading Director – to confirm the agency's compliance with all terms of the contract.** This allows you to adjust any areas where there has been non-compliance, or where circumstances have changed. This representation needs to come from the agency holding company level because the local agency may not be sufficiently familiar with all the issues that are managed across the whole group. The contract should require that, as part of a Financial Compliance audit, the agency should provide a Management Representation Letter – signed by the Group CFO, not the local agency CFO. This should confirm that, to the best of their knowledge, the agency has complied with the terms of the contract.

5. **When crafting the right contract for your business and your specific circumstances, consider whether the MSA could be overridden by a Local Services Agreement (LSA), local purchase orders, or small print on media plans.** While many markets have their own idiosyncrasies that may need to be reflected in an LSA, there are usually clauses in the global MSA that should prevail over any LSA. Make it clear which clauses in the MSA cannot be over-ridden, stating that, in the event of a conflict between the MSA and the LSA, the MSA prevails.

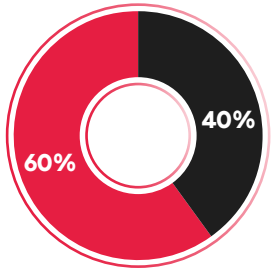
6. **Consider nominating levels of authority at a global level that are required before any variations to the terms of the MSA.** For example, some agencies insert footnotes on a media plan that state that, by signing that plan, the media placement can be billed per the plan, or the ad serving fee is as shown, rather than per cost. This may be in contravention of the MSA. By nominating the levels of authority required to vary the MSA terms, a contract compliance audit can easily identify that the agency cannot rely on the signature of – say – the Brand Manager.

2. The Challenges of Digital Media

The complexities, difficulties, and challenges of the digital media ecosystem are well-documented. The sheer scale, rate of change, and number of links in the digital media supply chain are dizzying and hard to keep up with, even for the most curious and studious of marketers.

Forty percent of respondents to the WFA and Ebiquity Transparency Scorecard say that they are not sure that all programmatic buying made on their behalf includes the application of technologies/ techniques to prevent ad misplacement. A clear area for improvement.

Are you sure that all programmatic buying made on your behalf includes the application of technologies/ techniques to prevent ad misplacement in relation to brand safety, fraud and viewability?



Source: WFA & Ebiquity Transparency Scorecard; Jan 2022; Base = 48 (company) respondents

For these reasons, it's important to ensure that your operating framework covers ad verification, which should include brand safety, ad-fraud, viewability and measurement. As you look to capture the complexities of digital media in your media agency contract, ask yourself the following questions.

1. **On quality:** What inventory quality standards do you require? Review your internal policy on this issue and ensure your standards are mirrored in your contract.

2. **On ad-fraud and viewability:** How are ad-fraud and viewability defined? Do you adhere to an industry methodology? If so, ensure that this is also documented in the contract, to be clear on what is and isn't acceptable and what will and won't be considered as fraudulent or viewable.

3. **On brand safety:** What type of inventory is included on your approved list – and excluded via your blocked list – to ensure brand safety? How often do you plan to review and update these lists? Who is responsible for the updating of the lists (agency or advertiser)? Who within the client organisation should approve the list?

4. **On ad serving:** Clarify in the contract whether you should be charged per actual or planned impressions, based on your marketing KPIs and brand requirements. Be clear on whether you prefer to be charged at cost or using a pre-approved rate card. If you decide to use a rate card, there is likely to be limited to no ability to understand the underlying cost of serving ads. If you are charged at cost, the agency may look to levy additional fees for campaign set-up and ongoing optimisation. If you decide that this is the right option for your business, consider including these fees as remuneration in the contract to make charging for this service transparent.

For each of these critical dimensions of digital media, consider including in the contract how you expect your agency to address any breaches of your terms.

- What are the timelines for agency response?
- Have you established liability?
- Is there clarity on non-payment for breach?

"To push the boundaries of digital media ROI, it is not only important to align on brand safety, and quality goals along with your agency partners, but also to have a shared measurement strategy and platform to ensure execution and governance can scale consistently"

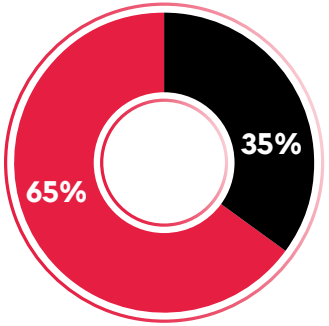
Vidyarth Eluppai Srivatsan
Global Ad Tech & Media Platforms Director
The Coca-Cola Company

3. Transparent Models in Programmatic Media Buying

Agencies typically provide media traded programmatically to advertisers on either a disclosed or non-disclosed (Inventory Media) basis. It can be hard to access log-level data, even for advertisers operating on a disclosed basis.

Just over a third of respondents to the WFA and Ebiquity Transparency Scorecard identify that they do not have full access to data used on their behalf. Having the right to this data enshrined in contracts is critically important.

Do you have full access to data held within DSPs used on your behalf, including log files and financial reporting?



Source: WFA & Ebiquity Transparency Scorecard; Jan 2022; Base = 48 (company) respondents

As we ask in the WFA Media Charter, if you've opted to activate your programmatic spend through a disclosed model, ensure you have full transparency into the:

- component pricing and the costs of the media, data, and technology applied;
- platforms used;
- resources deployed.

For a **fully disclosed model**, your contract should ensure audit access to:

1. **4th-party invoices,** meaning invoices provided by media, tech, or data vendors to the agency or trading desk used to buy media inventory on your behalf.
2. **Agency trading desk systems,** including campaign management platforms and proprietary tools used by the trading desk or agency to consolidate campaign and investment data sets.
3. **Side Platforms and other reporting interfaces, including ad verification platforms.**

Additionally, for all components of your programmatic media supply chain, you might also want to:

1. **Clarify the ownership of rebates and other media benefits** to which the disclosed investment model might contribute.
2. **Ensure there is full disclosure on media plans** so that all parties know what is being approved, how, and by whom.
3. **Ensure that agencies inform advertisers of any investment or other financial interests** held by any member of the agency group in any ad tech, media, or data company that provides services to the client.

This is particularly true of programmatic trading desks which – with increasing proportions of media bought programmatically – could represent a significant conflict of interest.

4. Inventory Media

Understanding Inventory Media
Agencies and their holding companies may offer advertisers the opportunity to buy what is known as Inventory or Proprietary Media. These terms were first used to describe non-disclosed trades in purchases of free-to-air media, but, over time, digital has become the dominant media type being sold to clients in this non-disclosed manner, while still including all media types – but just to a lesser extent.

"The opportunity exists to capture considerable value via use of agency inventory media, but clients have to recognise that they can lose transparency and control. Inventory media quality may not meet your usual expectations and your audit rights will likely be waived. At the very least it makes sense to include clear and explicit 'opt-in' controls for inventory media in your contracts. Advertisers on the more conservative end of the spectrum may decide it may not be for them. In the end it comes down to your contract and whether or not it will deliver against your strategic goals."

Sameer Amin
Global Director of Data Driven Marketing & Media, **RB**

Common conditions that apply to Inventory Media

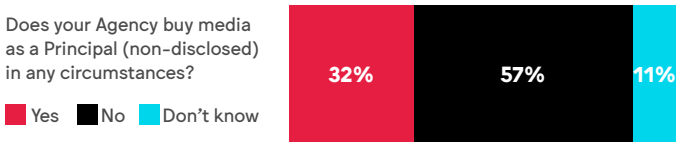
With Inventory Media, the agency buys media at its own risk and in this way creates its own inventory of that media. As a result, the agency then becomes the principal and can sell that media to its clients at whatever price it can negotiate, irrespective of what it cost the agency to acquire or its true market value. Inventory Media is not transparent, nor is it auditable. Indeed, Inventory Media typically comes with strict non-audit clauses attached. Advertisers and their auditors are prevented from seeing actual cost and earn no rebates or other purchase benefits (e.g., unbilled media) from these transactions.

Considerations when buying Inventory Media from Agency

A third of respondents to the WFA and Ebiquity Transparency Scorecard buy inventory from their agency acting as a principal, on a non-disclosed basis. The motivations for clients choosing this route are often linked to price - Inventory Media can offer a way to reduce costs and make budgets go further.

But advertisers buying agency inventory should expect to trade-off transparency for any price reduction. The practice also creates a conflict of interest for the agency. With the agency acting as both agent and principal, it's important to ask whose best interests are being served when they choose to place their Inventory Media on the media plan.

Does your Agency buy media as a Principal (non-disclosed) in any circumstances?



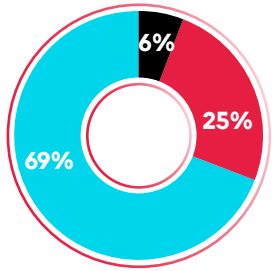
Source: WFA & Ebiquity Transparency Scorecard; Jan 2022; Base = 48 (company) respondents

There are a number of ways in which advertisers can control the use and spread of Inventory Media and bake these controls into their agency contracts:

1. **It's important to clearly define what is and isn't considered to be Inventory Media,** and this often means prohibiting agencies from repackaging free space or realised benefits as Inventory Media.

2. **Contracts should clearly spell out requirements for the agency to disclose the inclusion of their Inventory Media** on the media plan. A quarter of respondents to the WFA and Ebiquity Transparency Scorecard require senior client authorisation for the use of Inventory Media - a valuable governance protocol. Clients should also consider limiting use of Inventory Media to a certain % of total spend.

Our agency requires us to sign-off on any plan which involved non-disclosed/ principal-based media buying



Source: WFA & Ebiquity Transparency Scorecard;Jan 2022; Base = 48 (company) respondents

3. In addition, **advertisers should have access to data and supporting information for Inventory Media**, as well as to **establish – and enforce – penalties** if their agency partners do not fulfil their contractual obligations in this area.

5. Unbilled Media, Media Credits and Holds

Unbilled media arises when the client is billed for media costs before the media vendor invoice has been received or when the media invoice cost is less than what has been billed to the client. With digital media, this has become more prevalent. This is because digital campaigns are often billed monthly according to the media plan. Actual impressions delivered often differ significantly from the plan, requiring a reconciliation adjustment – or rollover – at the end of that campaign.

Permanent vs Timing Differences

Permanent Differences
Sometimes, the costs on media vendor invoices differ from what was booked or billed to the client. These differences are permanent differences because spots or insertions have been billed, but at different amounts. These should be returned to the client in the month in which they're realised.

VS

Timing Differences
Sometimes, the agency is waiting for the media vendor invoice to arrive. This delay can be a matter of months and, occasionally, the invoice never arrives. These delays are timing differences and are generally retained by the agency while they wait for the vendor invoice to be received.

1. It is best practice for the contract to state that the **permanent differences should be returned to the client in the same month in which they are realised. The return of any timing differences is subject to agreement between client and agency.** It is common practice that, if the vendor invoice has not been received after 12 months, then the money should be returned to the client. This comes with the proviso that, if that media invoice is ever received, then the agency can re-invoice that cost.

2. **Ask your agency to provide you with regular reporting** – quarterly or half-yearly "Aged updates" on these balances to ensure that they are being managed in line with the contract, be they permanent or timing differences. This approach helps to manage expectations for year-end returns and enables you to stipulate the agreed treatment of balances and timings of returns.

3. **We recommend that these balances should not be offset against other campaigns without explicit approval.** The money often relates to specific campaigns or brands and many clients prefer to ensure no cross-over of funding between brands or budgets. What's more, the use of media credit balances as offsets can undermine the purchase orders and approvals within the client accounting system.

6. Media benefits, including Agency Volume Benefits (AVBs)

Rebates and media benefits can be earned in a variety of ways. Make sure the contract is clear about what is defined as a rebate as it relates to income or benefits received by the agency group because of client billings.

"One of the key priorities for the advertisers over the last few years has been fighting for improved transparency. AVBs, the infamous media rebates, is one of the areas where we still have not achieved it. Having the right contractual clauses that enable you to claim and audit rebates is a solid first step, the next one, and probably more challenging, is having a team knowledgeable enough on the category to know what and where are you entitled to in order to drive the conversation."

Marco Dogliani
Senior Director,
Global Media Procurement
GSK

1. **Ensure that your definition captures all types of rebates:**
   a. fair share
   b. fixed or minimum
   c. cash
   d. offsets
   e. free space

2. **If it is your spend that results in rebates being received within the agency group, ensure they are all passed to you,** no matter which agency entity or country receives them.

3. **Digital media rebates are borderless.** All rebates earned from your billings should be yours, no matter where or how they are received.

4. **Make sure that your contract requires the agency to make all reasonable efforts to pay media invoices on time so that rebates are not lost.** In some markets, media vendors only award rebates if the agency has paid the vendor invoice within the prescribed payment terms.

5. What's more, **you should not be financially penalised by loss of rebate if late payment by your agency or another client caused a loss or reduction of rebate.**

6. To remain aware of anticipated rebate levels, you might **choose to nominate timing of reporting and the return of rebates by the agency.**

7. While it should be covered by the Right to Audit clause (see section 7, next page), **rebates should be auditable.** This includes vendor contracts and the ability to audit the whole of agency turnover if the rebates are based on a 'fair share' calculation.

8. **Consider requiring all relationships with vendors to be subject to a contract.** In some markets, agencies do not enter into contracts with all vendors. This can make it difficult to determine if there is a contractual agreement to offer rebates.

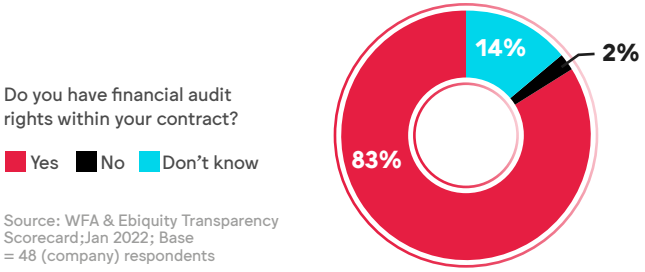
9. **Timing of receipt.** Rebates are received by agencies at varying times during the year following the year of expenditure. Some agencies wait until they have received every rebate before remitting to the client. We recommend that the rebates are provided to advertisers by the agency every quarter, commencing at June the following year, with each remittance being accompanied by a report that estimates the amount of rebates yet to be received.

10. Some agencies have negotiated Service Level Agreements (SLAs) with selected media vendors. **A best-in-class contract should seek for evidence of these SLAs to be shown to the auditors.** This ensures that the financial basis of them is for a legitimate commercial purpose and that there is no link to client spend.

7. The Right to Audit

Eighty-three percent of respondents to the WFA and Ebiquity Transparency Scorecard have financial audit rights included in their contracts. This is a key step which means that, through your auditors, you can nominate what paperwork needs to be needs to be examined, and by whom, to ensure to ensure that the agency is compliant with all terms of the contract.

Do you have financial audit rights within your contract?

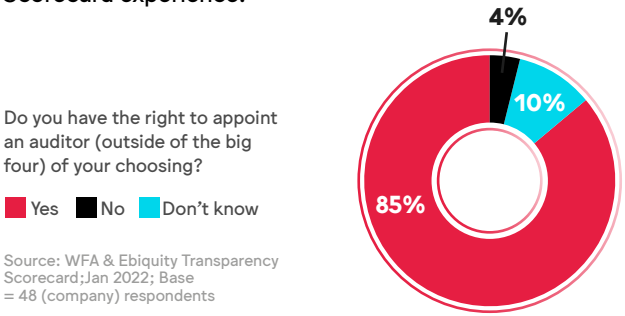


Source: WFA & Ebiquity Transparency Scorecard;Jan 2022; Base = 48 (company) respondents

The following ten principles should drive, and be captured in, your contract on your Right to Audit.

1. **No limits on audit partners:** there is no justification for being limited in your choice of audit firm. However, for your own benefit, you should ensure the audit firm has the appropriate credentials to be able to conduct an independent and informative audit, based on their accounting qualifications and depth of understanding of agency financial processes. A financial audit is not a statutory audit so does not require a chartered accounting firm. The agency should not be able to limit client choice of auditor as it creates a conflict of interest. Reassuringly this restriction is something that just 4% of respondents to the WFA and Ebiquity Transparency Scorecard experience.

Do you have the right to appoint an auditor (outside of the big four) of your choosing?



Source: WFA & Ebiquity Transparency Scorecard;Jan 2022; Base = 48 (company) respondents

2. **Digital rebates are borderless:** all rebates earned from your media investment should be auditable, regardless of where they are received.

3. **Direct contact matters:** consider including a far-reaching clause that allows the client – or its authorised third party, namely the auditor – to contact all relevant vendors directly. This will enable you (or your auditor) to verify all accounts, bookings, media benefits, and the declared remuneration of all media suppliers and tech service providers.

4. **Get to the bottom of benefits:** in auditing media benefits (see section 6., above), auditors should not simply rely on a list provided by the agency. Vendor contracts should be made available for scrutiny to allow the audit to assess whether any rebates were, in fact, due from those vendors that were shown as providing "zero rebates". It is not possible to prove a negative. That is, if the agency states that it hasn't received rebates from a vendor, how do they prove that no rebate was received or due to be received if no contract exists? Consider requiring the agency to provide written correspondence from those vendors that do not have contracts to confirm that no rebates were due. This correspondence needs to be signed and authorised by a senior executive from that vendor.

5. **Don't be limited to one entity:** ensure the contract allows audits of all entities in the agency group or holding company. This means that if other entities become involved in delivering activity on your behalf, these transactions will also be audited.

6. **History sets perspective:** advertisers should be able to conduct an audit of the contract up to three years after termination.

7. **Auditors should preferably work on a fixed-fee basis:** paying an auditor on a contingency basis – where fees are related to recoveries or savings identified – immediately creates bias in how the audit is conducted. Working on a contingency basis can focus auditors on maximising their own fees rather than providing an independent audit. Auditors should be remunerated on a fixed-fee basis instead.

7. The Right to Audit, continued

8. **Non-compliance should come with consequences:** consider applying a penalty on the agency for material non-compliance of your Right to Audit. You will need to define what "non-compliance" means and this should include the failure to provide documentation required for the audit. Some advertisers choose to penalise the agency for non-compliance. For example, if the financial recoveries are more than a specified percentage of billings, then either the agency pays the cost of the audit, and/or the agency pays a nominated penalty, often based on a percentage of the recoveries. This is like paying interest on your monies that have been withheld.

9. **Timely repayment matters:** any recoveries detected by the audit should be paid back to the advertiser within a specified and binding time.

10. **Audit matters to agencies, too:** the Right to Audit clause in your contract should require the agency to provide the auditor with a Management Representation Letter – signed by the CFO or CEO – that confirms that, to the best of their knowledge, the contract has been complied with and that all information has been passed to the audit firm, as requested.

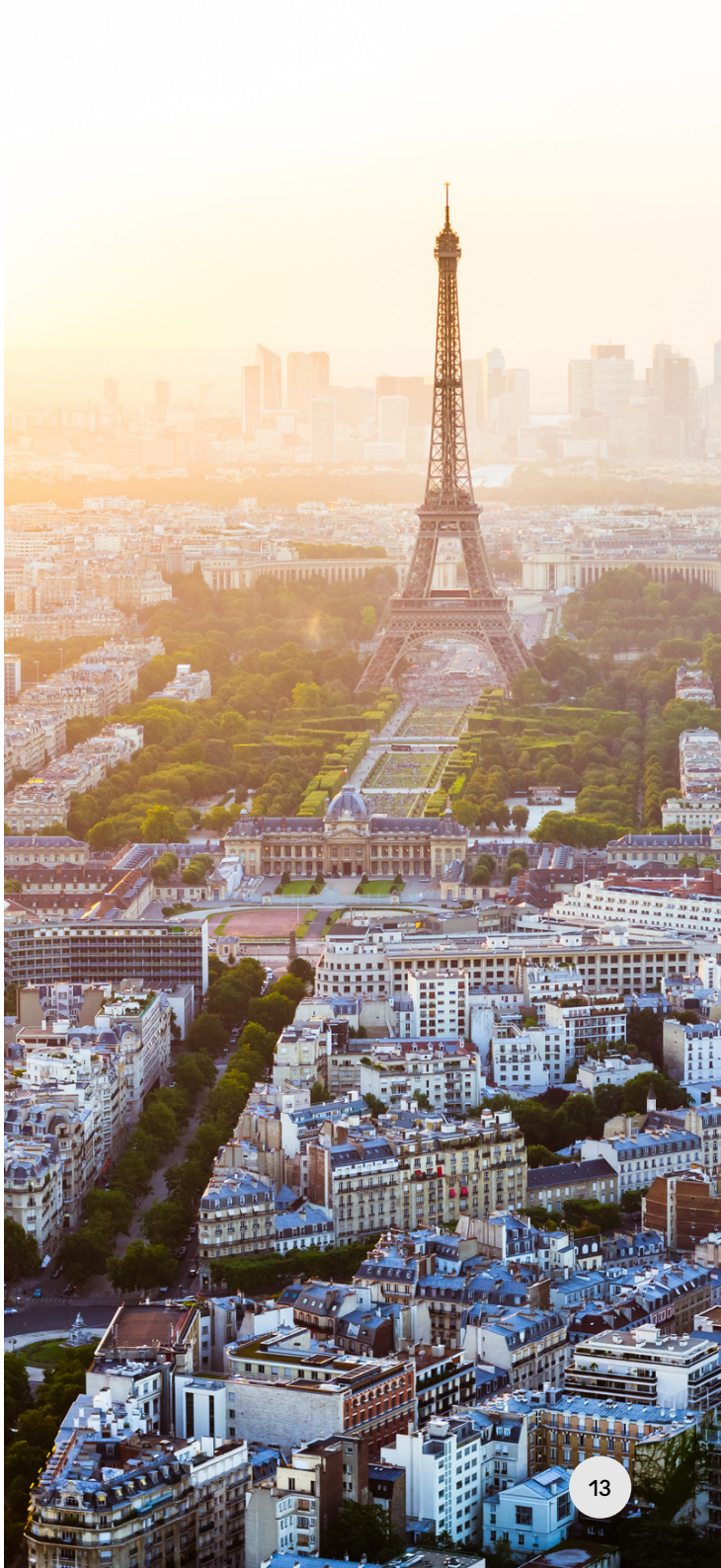
"Audits allow both parties the comfort of independence and as long as the audit is set up to look forward as well as review performance commitments, they should be seen by both parties as positive."

James Taylor
Global Procurement Director, Media, Digital and Consumer Planning, **Diageo**

DIAGEO

Contract compliance auditing is an increasingly important financial management discipline that enables advertisers to ensure that their agencies are investing hard-won media and marketing budgets as intended and as specified in their agency contracts. Just as it's vital to capture the spirit and essence of these ten principles in the Right to Audit clause in your contract, so it's critical to apply the learnings raised by the audit and amend the contract accordingly.

In the rapidly evolving, ever-more digital media ecosystem, auditing the agency's contract compliance enables advertisers to revise and reset the terms and conditions of their agency contracts according to both best practice and past agency behaviour.



8. Data Management

As the long-anticipated demise of the cookie approaches, many brands are now taking active steps to replace third-party customer data with first-party data. Important as it is, Personally Identifiable Information (PII) is not the focus of this section. We are interested here in the management of data related to campaign performance.

When developing a best-in-class media agency contract, consider how any campaign-related data might be stored, managed, and used by your agency partners.

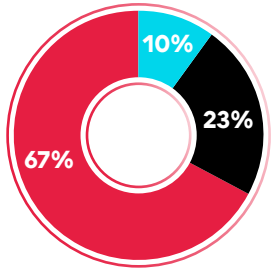
Make sure you have the right protocols in place to ensure that data is only used as detailed in your scope of work and to minimise the risks of it being used in any other way.
Three issues to consider for the contract might include:

1. **Programmatic:** ensure your agency is using a unique seat on programmatic platforms, earmarked solely for your marketing activities

2. **Data management:** agree upfront how campaign data will be managed by the agency. For instance, does the agency capture digital campaign-related data – such as DSP log files – anonymise it, and aggregate it in an agency pool or database? Should this be the same protocol for disclosed and non-disclosed models (see section 4, above)?

3. **Regulation and legislation:** Two thirds of respondents to the WFA and Ebiquity Transparency Scorecard report having data protocols in place to ensure compliance with relevant regulation. A critical step which other clients should consider. Some of this may be covered by legal frameworks and regulation already in place in some markets, including the General Data Protection Regulation (GDPR) in the EU and the California Consumer Privacy Act (CCPA) in the US. Make sure that you approve how and by whom your data can be used. Set up contingencies for what happens when you stop working with your agency partners, if and how it will be transferred to new partners, and whether and how it should be destroyed. Ensure that your media data is not shared with other clients or partners (unless you specifically agree that it should be). Ideally, data should be kept separate to assure you of its exclusivity.

Do you have any data protocols to ensure compliance with relevant regulation for both your data and data provided by suppliers?



Source: WFA & Ebiquity Transparency Scorecard;Jan 2022; Base = 48 (company) respondents

To provide the desired levels of transparency, advertisers should make sure that they have direct access to campaign-related data, either through their own logins or via agreed reporting

9. Payment Terms

It is best practice for both parties in the advertiser-agency relationship to adopt a position of Cash Neutrality. This recognises the cost of cash for both parties and ensures that neither party ends up funding the other. The principle of Cash Neutrality should be enshrined in your contracts.

How to create Cash neutrality through your contract

1. If the agency receives client money in advance of payment to the vendor, then the agency's cash flow benefits from this money to the detriment of the client.
2. If the agency needs to pay the vendor before they receive payment from the client, then they are being asked to fund the client business and should receive compensation.
3. With a Cash Neutrality clause, interest is payable to the agency if they pay vendors before receipt of funds from client. Meantime, interest accrues to the advertiser for time the funds are held by the agency before paying vendor. This can be reconciled and paid out at the end of each year and be subject to audit.

In addition to Cash Neutrality, there are three other aspects of payment terms you should ensure feature in contracts.

1. **Sunset clauses:** it's a very good idea to have a sunset clause on charging of late payment interest in your contract. This means that the agency is obliged to charge on invoices received within a specified number of months of late payments crystallising – not after three years when you have decided to terminate the contract.
2. **Credit notes:** are sometimes not taken up as they do not always have matching purchase order numbers. To prevent this from happening, there should be monthly reporting of any outstanding credit notes by the agency to the client.
3. **Early Payment Discounts:** can be offered by some vendors. Advertisers should be advised of the availability of these EPDs and allowed to participate in the discounts if the appropriate payment terms can be met. A formal opt-in/opt-out letter should be issued every year.

10. Remuneration

It's important to make sure that the remuneration is agreed by the beginning of each year and that it is fair – on both sides. Remuneration needs to reflect the entire suite of services provided by the agency group under the scope of work. Use of related parties or entities should not create any opportunity for agencies to either duplicate fees or charge mark-ups.

Percentage Commission Model

An unintended consequence of percentage commission models is that they can lead to incentivising the agency to maximise client spend. As a result WFA has seen declining usage among members of this remuneration model. If you do choose to use a commission-based model, consider ensuring that:

- it is calculated on net media costs (not gross) and
- a definition of net media is agreed by both parties and included in the contract.

The Fee-based Model

Whether labour, value or performance-based, fees are increasingly the basis for WFA members' remuneration models. These approaches can be used to encourage and reward media neutrality – making the right selection of media to create maximum success in achievement of client objectives at the optimum cost. For more guidance on fee models please get in touch with WFA.

Principles of using a Fee Model

1. Make sure it's built upon defined statements of work (SOWs). Be sure they are detailed and crystal clear when the contract begins and that they are available before the start of the year to which they relate.

2. Determine how out of scope work will be managed, accounted for, and authorised. If the fee is fixed and is based on a specific SOW, spell out what happens to the fixed fee if the agreed SOW increases or decreases in scope.

10. Remuneration, continued

When setting remuneration models, clarify your expectations. Specifically, address the following:

1. Is the fee fixed or is it reconcilable against actual FTEs (Full Time Equivalent members of staff)?

2. If it's fixed, then the fee is neither reconcilable nor adjustable. However, it is still important for those allocated to your business to maintain accurate timesheets. The agency is required to produce an accurate timesheet report to allow negotiation of the following year's fee, based on actual time spent in the previous year compared with the percentage of FTEs in the fee model.

3. If the fee is reconcilable or adjustable to allow for a changing scope – and if you are nominating FTEs to work on your account – consider whether the use of standard annual hours is relevant in preparing the fee reconciliation. It may be more appropriate to use actual hours for the reconciliation. That is, if your fee includes a 0.5 FTE, then the year-end reconciliation should show how much time was worked on your account as a percentage of total time worked. In that case, the standard hours calculation is irrelevant.

a. If standard hours are used to calculate FTEs in a fee model, ensure that anyone working more than the standard annual hours is capped at 1.0 FTE. That is, if standard hours are 1,800 but the employee works 2,000 hours on client business, the FTE is still 1.0 not 1.11

b. Adjustments need to be made for staff churn, as multiple people doing one role can easily go over 1.0 FTE if this situation is not clarified

c. Ensure consideration or allowance is made for gaps in the staffing plan through staff leaving or going on leave and not being replaced. Have they been replaced or covered by someone already in your fee model or by someone more junior and so a different cost?

How should Reconciliations be managed?
Reconciliations should be prepared and submitted quarterly to allow monitoring of any material differences and so avoid year-end surprises for either party. Try to ensure that the contract is as clear as possible on the remedy for dealing with over- or under-delivery.

If there is a material change to the SOW, consider coming back to the table to re-negotiate the fee based on the revised SOW. Remuneration needs to be fair in both directions: clients should pay for the services they receive; agencies should charge for the services they deliver.

For the sake of total clarity, unless other fees, rebates, or commissions have been allowed elsewhere:

- The contract should state that the only revenue earned by the agency group from client's business is as outlined in the remuneration clause.

- If there are any extra charges applicable to other services provided by the agency – such as tech fees – these should be identified.

- A clear statement is needed that all third-party costs must be passed on at cost, with no mark-up.

How should Timesheets be managed?
Timesheets should be maintained and be auditable, at least insofar as they relate to a client's business. Agencies need to ensure there is a robust system in place with appropriate authorisation controls for time being allocated to your account.

In Summary

Contracts between advertisers and their agency partners really matter. They are the most effective risk management tool in any advertiser's toolkit, assigning responsibilities and risk exposures between them and their agency partners, financial and otherwise.

The areas covered in this guide – from the MSA to digital and programmatic, from Inventory Media to unbilled media, from the Right to Audit to data ownership and management and much more besides – can seem like a never-ending to-do list. **But advertisers that do choose to address these issues with their agency partners in a water-tight contract, one that's regularly reviewed and updated, are those that prosper and thrive.**

"For us, transparent relations with our agency partners are a key component of successful partnerships. In essence, that means contract terms which provide full clarity and accuracy in scope, commitments, procedures and renumeration. This guide provides a solid platform for everyone to enable fair, transparent and trustful media agency relations"

Andreas Sjöberg
Procurement Category Manager
IKEA Retail (Ingka Group)

About FirmDecisions

FirmDecisions is the largest independent contract compliance consultancy in the world. We provide financial transparency into the client-agency relationship for the world's biggest advertisers as well as advertisers of all sizes in regional and local markets.

- We are market leaders & specialise, exclusively, in the compliance of media & marketing agency contracts
- Our team of 55+ staff is made up of qualified accountants, former agency finance & management staff, brand marketing and procurement experts, providing clients with unparalleled understanding of the issues
- We have performed more than 7,400 contract compliance audits across 104 markets since 1997 and cover over US$41bn in billings annually
- 16 dedicated offices in 14 countries across six continents
- Our unique capabilities enable us to deliver unrivaled insight into agency activity and drive actionable outcomes for our clients

Contact
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FirmDecisions

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We are market leaders, and specialize, exclusively, in the compliance of media & marketing agency contracts

7400+ audits completed in **104** markets since 1997

We provide our clients with a range of services to provide better control of their marketing investment

- **Contract compliance reviews -** Improving transparency and control of the financial relationship across all agency types
- **Exit audit -** Ensuring a clean break of the contract. No monies owed, no monies owing
- **Contract Review -** Highlighting commercial risk areas post-audit and advising on industry best practices
- **Training -** Post-audit training to clarify & inform how to ensure compliance with contract

About the World Federation of Advertisers

More information at www.wfanet.org

The World Federation of Advertisers (WFA) is the voice of marketers worldwide, representing 90% of global marketing communications spend – roughly US$900 billion per annum through a unique, global network of the world's biggest markets and biggest marketers. WFA champions responsible and effective marketing communications worldwide.

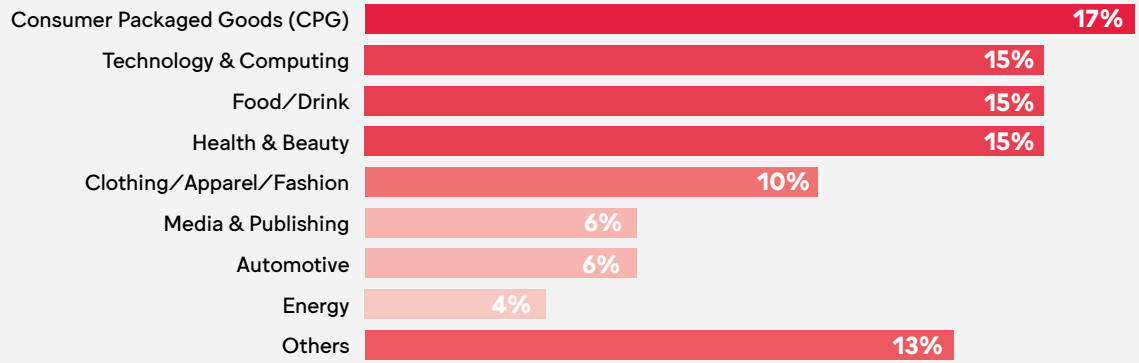
WFA and Ebiquity Transparency Scorecard – Research Summary

The WFA and Ebiquity Scorecard is designed to benchmark levels of transparency across a number of areas of a clients' organisation. The Scorecard includes sections on Governance, Contract Review, Relationship with Media Agency Partners, Data and Technology, Programmatic and Global Digital Media.

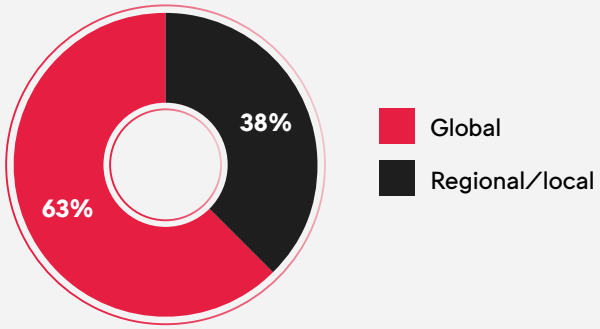
Over the past year, WFA has collected around 50 responses from clients with the majority being received from those with global responsibility. Responses range from advertisers across CPG, Technology, Food and Drink, Health and Beauty and other industry verticals. Aggregate findings from the Scorecard have been used to support the points made in this Guide.

The weighted average level of media budget for the market(s) respondents' are responsible for exceeds $170m. For two fifths of respondents this number is more than $200m.

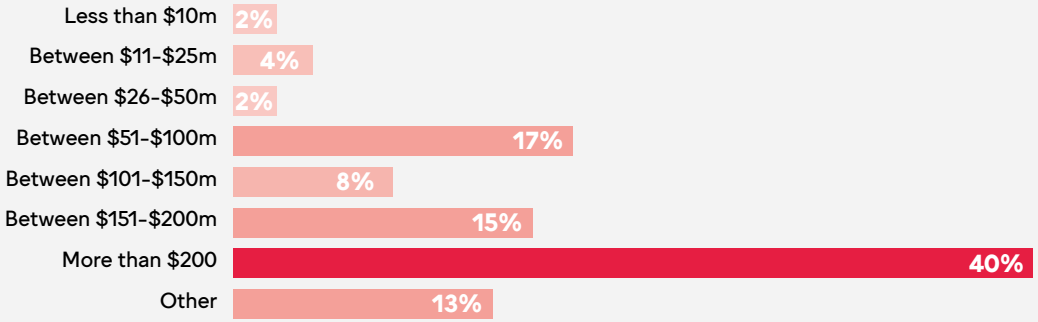
What industry/category does your company operate in?



Please state whether your role is Global, Local or Regional



What is your company's Annual Media Spend ($USD) for the market(s) or region(s) you're responsible for?



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