

# THE ULTIMATE MARKETING AGENCY LEGAL AUDIT CHECKLIST



## What is this “Checklist?”

### The word “Audit” sounds scary.....

The Checklist is a simple way to take an internal, guided inventory of your Agency’s legal processes and habits. It helps you identify areas where the Agency might need some additional tools and resources, and the process of reviewing the Checklist with the Agency’s team helps everyone understand best practices.

*Plus, who doesn’t love checking things off their lists?*



## How do we use this Checklist?

You can take a couple of different approaches to performing your own legal Audit of the Agency.

**One Way:** Review one section or legal area at a time, as a team. Once the Agency is in good shape in that area, move on to the next.

**Another Way:** Assign different areas of the Audit to different members of your team, or break up into multiple teams, and have each team tackle one area. For example, have the account services or business development team look at the Agency-Client documents and the creative team look at the freelance and trademark areas. If the Agency has a business affairs, operations, or HR leaders, have each take responsibility for an area.

*Maybe have a pizza and beer party for the team that finishes first.....*

## OK, I’m ready to START. What do we look at?

### New Business / Business Development – Protecting the Agency

Does the Agency have a standard Nondisclosure Agreement ready for potential clients?

Does the Agency put copyright notices on its concept pieces or sample assets for a pitch?

Does the Agency have IP ownership statements in its Proposal documents?

Does the Agency have a policy in place for prospective Clients who want to own pitch materials or concepts? Or a standard position on those requests? Do all the new business team members know the policy?

## Agency-Client Relationship Matters

Does the Agency have a standard Master Services Agreement?

If no Master Services Agreement, does the Agency have a standard set of Legal Terms and Conditions to include in its Proposals or Scope of Work documents?

Does the Agency's Master Services Agreement or do its Legal Terms and Conditions include these points:

### A description of the type of relationship or engagement (AOR, Project, Retainer)

#### Billing and payment policies

- Interest on late payments
- Attorneys fees for collection actions
- Clear rate structure
- Billing and Payment Due Dates

#### Intellectual Property ownership and transfer provisions

- Intellectual property transfers to Client on payment
- Agency retains rights in unaccepted or rejected work
- Agency retains rights in its own proprietary work, solutions, content
- Agency retains portfolio display rights for select assets

#### Restrictive Covenants

- Mutual confidentiality
- Mutual nonsolicitation of one another's employees or contractors
- Noncompetition for Agency (and, if so, exclusivity for Agency)

#### Client Responsibilities and Approvals – timely approvals and communication by Client

#### Liability Limitation for Agency; Indemnifications between Parties

#### Insurance Requirements

## Agency-Freelancer Relationship Matters

Does the Agency have a written Independent Contractor Agreement?

Does the Agency Independent Contractor Agreement include:

#### Intellectual property transfer provisions from Contractor to Agency

#### Restrictive Covenants

- Confidentiality
- Nonsolicitation (of Agency clients and employees)

#### Representations of work originality and noninfringement

#### Work portfolio display rights

#### Liability and Indemnification

#### Insurance

Does the Agency have an Intellectual Property Rights Assignment document for completed work?



## Trademark Considerations for Branding Work

Does the Agency have a process for pre-clearance, or research of potential new brands or names?

Does the Agency have a short list of resources for the Client for legal clearance of trademarks?

Has the Agency clearly communicated with the Client about the need for trademark clearance?

Has the Agency clearly communicated the Client's responsibility regarding trademark clearance?

Has the Agency provided all information and assets to the Client, or Client legal counsel, to support trademark protection and application efforts?

## Content Marketing and Social Media

Does the Agency have a written social media policy for internal use?

Does the Agency have a model social media policy to assist Clients?

Does the Agency have a written content marketing compliance policy?

Is the Agency's team knowledgeable about regulations related to testimonials in social media or content marketing?

Does the Agency have model disclaimer language for use by bloggers, influencers or affiliate marketers?

Does the Agency have content publication rights documents for republication of third party content?

## Digital Marketing-Specific Issues

Does the Agency have a model website development agreement?

Does the Agency have a separate website hosting and maintenance agreement?

Has the Agency reviewed its insurance coverage for digital work?

Does the Agency have a model set of website / mobile app Terms and Conditions?

Does the Agency have a model website / mobile app Privacy Policy?