

## Association of National Advertisers

### Summary of Material Changes in Version 2.0 of the Master Media Buying Services Agreement Template

- **Removal of the definition of “Advertiser Rebates and Incentives” (formerly Section 1.8):** The ANA determined that, in practice, the definition of “Advertiser Rebates and Incentives” mirrored the definition of “Rebates and Incentives” such that it rendered the term “Advertiser Rebates and Incentives” unnecessary. To further avoid any ambiguity between the two terms, the ANA decided to remove the term “Advertiser Rebates and Incentives” from the template and instead incorporate the calculation of Advertiser-specific Rebates and Incentives within the definition of “Rebates and Incentives” in Section 1.82 of the Template.
- **Revisions to definition of “Affiliates” (Section 1.8):** Agency conglomerates have complex structures often with hundreds of affiliates and multiple holding companies. Advertisers should ensure the defined term “Holding Company” is the highest holding company entity possible.
- **Deletion of definition of “Blacklist” (formerly Section 1.24):** The definition of “Blacklist” has been omitted because it was not used in the Template. Instead, the definition of “Blacklist Content” is used to address the type of content with which the Advertiser does not want to be associated.
- **Updates to definition of “Conflicts of Interest” (Section 1.32):** Language was added to subsection (b) to clarify that disclosures should be made about investments if the Agency or its Affiliates have a financial connection to a company that provides services to the Advertiser.
- **Digital Media Placements (defined in Section 1.36):** Given the continued increase in digital media, and how certain aspects of buying digital media differs from buying traditional media, the ANA inserted this term throughout the Template. Section 6.19 covers transparency terms and conditions specific to Digital Media Placements. Section 15 includes additional terms that set forth new reporting obligations in connection with Digital Media Placements.
- **Addition of defined term “EU Data Protection and Privacy Laws” (Section 1.40):** The term “EU Data Protection and Privacy Laws” was added to address the increase in relevant privacy laws, including the GDPR.
- **Deletion of definition of “Holding Company Member(s)” (formerly Section 1.47); addition of “Related Parties” (Section 1.84):** The definition of “Holding Company Member” has been removed because there was confusion about the difference between Agency Affiliates and Holding Company Members. The Holding Company Member definition was intended to capture not only all Agency Affiliates, but also non-Affiliates in which Agency or its Affiliates have a material financial interest. To address any confusion, a new definition of “Related Parties” has been added to capture the second part of the definition of Holding Company Members. Thus, the use of “Agency Affiliates” and “Related Parties” can now be used to capture what was initially captured by “Holding Company Members.” The net effect is the same.
- **Updates to definitions of “Principal or Inventory Mark-Up” and “Principal or Inventory Sale” (Sections 1.73-1.74):** The K2 Intelligence Report found that mark-ups on principal or inventory sales (e.g., non-disclosed services, proprietary media, etc.) can be between 30-90 percent. The ideal scenario calls for only disclosed transactions, but agencies continue to offer non-disclosed services. As such,

the new template is designed to put guard rails around “non-disclosed” agency services by providing for a capped amount of mark-up the media inventory seller (typically an agency affiliate) can make. Advertisers need to ensure the agency is not improperly increasing fees by having multiple affiliates in the supply chain marking up costs as the media makes its way between advertisers and the publishers.

- **Update to definition of “Programmatic Media” (Section 1.76):** The updated definition more closely reflects the definition used by the Interactive Advertising Bureau.
- **Deletion of “Barter inventory” from definition of “Rebates and Incentives” (Section 1.82):** Barter inventory has been removed from the definition of rebates and incentives following a debate about whether barter inventory should be considered a rebate or incentive. To the extent that advertisers agree to a barter transaction, the parties should enter into separate written agreements covering such services. Similar to other non-transparent purchases, advertisers should confirm that true value is received in barter and that there are no unreasonable mark ups by the agency or its affiliates.
- **Addition of defined term “Transaction Data” (Sections 1.95, 6.17-6.18):** Language was added to the template to ensure that advertisers have access to transaction data over which any vendor or media owner claims rights that limit an advertiser’s access and/or ability to leverage transaction data. If access is denied by any supply chain participant, the agency should assist to remediate the issue and/or the advertiser may consider removing the vendor or media owner from future media purchases to ensure advertiser's unfettered access and control of transaction data critical to measurement and ROI.
- **Added definition of Value Pots (Sections 1.82, 1.97):** “Value Pots” are considered Rebates and Incentives to which an advertiser is entitled its proportionate share. A value pot is free or discounted media offered to agencies by media in advance on the basis of anticipated volume of media purchased by an agency on behalf of an advertiser, collectively or individually. Value pots are a rebate and incentive that were covered by the original definition of “Rebates and Incentives” in the original template but “Value Pots” have been added as a defined term in the updated version. Value Pots should be completely transparent and an advertiser should receive its fair share as it should with all other rebates and incentives.
- **Updates to Content Verification, Brand Safety and Standards (Section 7):** The ANA is aware of the increase in fraud as well as the growing concerns of Advertisers regarding where media is placed online. Section 7 has been updated to reflect the changing digital landscape and to include additional measures to protect against fraud (e.g., TAG certification and IAB initiatives).
- **Approvals (Sections 13.6, 16.1):** To ensure that only authorized individuals within the Advertiser’s organization are approving Media Placements, language has been added to the Template regarding the Media Placement approval process.
- **Reimbursements for Audit (Section 18.6):** Regarding the threshold amount of an overcharge that triggers the Agency’s obligation to reimburse the Advertiser for the cost of an Audit, Advertisers should consult with their auditors as to what is a reasonable percentage in each instance.
- **Auditor Nondisclosure Agreement (Section 18.7):** The NDA between an auditor retained by an advertiser and the agency being audited has become a major battleground for agencies. It is recommended that Advertisers attach an auditor NDA form as an exhibit to their media buying agreements with agencies. The ANA intends to release a recommended NDA form in the future.
- **Liability for Disclosing Trade Secrets (Section 19.8):** The ANA made this language mutual as this limit of liability should apply to both the Agency and Advertiser.