OPINION

LEGACY CONTRACTS, MODERN MESS: WHY CMOS SHOULD RETHINK THEIR AGENCY AGREEMENTS

Edited by Staff Writers
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TrinityP3's senior consultant Nick Hand.

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In a tumultuous marketing landscape, too many CMOs are failing to keep their agency agreements up to date, argues TrinityP3's senior consultant Nick Hand in this op-ed. He notes there's a very real cost to ignoring this important area.

For many CMOs, the agency contract is filed away the moment it's signed – pulled out again only if there's a dispute or the next time there's a renegotiation. That might have worked a decade ago when marketers operated within simpler scopes, fewer channels, and relatively fixed agency rosters. But today, that approach is no longer fit for purpose.

In a landscape where marketers engage multiple specialist agencies, operate across fluid campaign calendars, and tap into everything from influencers to AI-generated content, many of the underlying contracts haven't kept up. The commercial terms of many agreements we see still reflect a world of annual media plans and three TV campaigns a year – when in reality modern marketing teams are juggling short-form content pipelines, owned-channel BAU, and overlapping scopes between creative, digital, media, and PR partners.

And that disconnect is costing marketers more than they realise.

Contract complacency has a real tangible cost

Outdated contracts create friction. Not always in a way that explodes into formal disputes, but in the form of grey zones, blurred expectations, duplicated efforts, and invisible leakage.

For example, if a contract doesn't clearly outline which campaigns or service lines fall within retainer vs. project fees, you may find yourself paying twice – once via monthly fees and again through incremental quotes.

Or if influencer usage rights or content IP clauses haven't been revisited in five years, you're likely exposed, especially with the rise of platform-specific creators and generative AI tools. And in media, vague definitions around "pass-through" costs or tech fees can quickly compound into margin layering that's difficult to audit, let alone unwind or unpick.

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When the Scope Doesn't Match the Structure

One of the most common gaps is around scope and structure. Agency scopes are often described in vague, catch-all language—"strategic counsel," "creative ideation," "digital asset production" – but there's no breakdown of volume, cadence, or level of seniority expected. That leaves the agency guessing what resourcing is needed and leaves marketers with little leverage if outputs fall short.

Worse still, multiple agencies may be engaged for overlapping and duplicate services – say, digital content creation and paid social delivery – but no one has defined who owns the strategy versus execution. Suddenly, you're in a triangle of conflicting advice, duplicated costs, and inefficiencies.

Modern marketing requires clarity: about roles, responsibilities, and the commercial boundaries of each engagement.

What should an agency agreement look like for 2026?

This isn't about making contracts longer or more complicated. Quite the opposite. The best agency contracts are dynamic agreements: commercially robust, but flexible enough to evolve as the partnership matures.

A few key principles stand out:

Firstly, define the deliverables and cadence clearly. Not just "campaign creative" but "4 campaigns per year, each requiring 1x hero film, 6x cutdowns, and x times social assets." Make the volume explicit where possible.

Separate retainer from project-based work. A retainer should ideally be reserved for consistent, recurring services. Anything else should be quoted transparently and tied to output.

Address multi-agency collaboration. Outline expectations for ways of working across creative, media, social, and PR agencies – especially where scopes overlap.

Update IP and content usage clauses. Especially in the context of AI tools, influencer content, and short-form platforms with limited shelf life.

Schedule formal commercial reviews. Not just "performance reviews" on output, but actual reviews of the fee structure, deliverables, and whether the agreement still reflects how both sides are operating.

The important thing here is CMOs can't afford to delegate this or put this over to procurement. They need to be involved in the commercials

While it's tempting to hand contracts off to procurement or legal, smart marketers know the commercial terms define more than just billing, they shape the rhythm, resourcing, and accountability of your agency relationships.

5.2 million* Australians. One trusted network.
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If you want clarity around what your agencies are doing – and how you're paying for it – the contract needs to reflect the real-world complexity of modern marketing.

And if it doesn't, you're not just at risk of overspend. You're likely under-leveraging the strategic value your agencies could be providing.

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