# STANDARD TERMS AND CONDITIONS

# FOR POINT OF CARE MEDIA ADVERTISING

These Standard Terms and Conditions for Point of Care Media Advertising (“Terms”) are intended to offer Media Companies and Agencies (each defined below, and individually referred to as “Party,” and collectively as “Parties”) a standard for conducting business in a manner reasonable and acceptable to both. These Terms may be incorporated into an insertion order (“IO”) to represent the Parties’ common understanding for doing business under the IO or any other agreement between the Parties. As agreed upon between the Parties, these Terms can be amended or modified as mutually agreed between the Parties.

1. **DEFINITIONS**

“Ad” means any Point of Care advertisement, or clinically relevant message, including but not limited to Collateral Materials, provided by Advertiser or by Agency, on Advertiser’s behalf.

“Advertiser” is the entity whose product, program or service is marketed under an applicable IO.

“Advertising Materials” means artwork, copy, Advertising Marks or other materials furnished by Advertiser or by Agency, on Advertiser’s behalf, for use in Advertiser’s Ads.

“Advertising Marks” means the trade name, trademarks, logos, and trade dress of Advertiser.

“Affiliate” means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such entity.

"Agency” is the advertising agency and other third-party marketer who has authority (pursuant to Section IX. b., below) to enter into the IO and these Terms on Advertiser’s behalf and to market an Advertiser’s products, programs, or services.

“Agreement” means these Terms and any IO or services agreement entered into between the parties for the Services.

“Applicable Law” means all federal, state, and local laws, ordinances, regulations, and codes which are applicable to the performance of the Parties’ respective obligations under these Terms and includes without limitation the IFPMA Code of Marketing Practices, the EFPIA Code of Practice on the Promotions of Medicines, and the PhRMA Code on Interactions with Health Care Professionals.

“Buyer” refers to the Advertiser, or Agency acting on Advertiser’s behalf.

“Collateral Materials” means legal disclosures (including, without limitation, a prescription product’s prescribing information (“PI”) and important safety information (“ISI”) and other information or materials provided by Advertiser or by Agency, on Advertiser’s behalf, to Media Company, which is to be delivered or distributed, as applicable, in connection with an Ad and as set forth on an IO (as updated from time to time).

“Content” may include Ads provided by the Advertiser or by Agency, on Advertiser’s behalf, and can include Ads developed by Media Company.

“Deliverable” or “Deliverables” means the inventory (whether paid or value add inventory) delivered by Media Company (e.g., list of Media Company Properties, number of times a video Ad is viewable, etc.).

“Discloser” means a party that discloses Confidential Information to another party.

“IO” means a mutually agreed insertion order, services agreement or other written agreement (and any attachments, exhibits, addendums or schedules thereto) that incorporates these Terms (as such Terms may be modified by the IO to which such Terms are explicitly incorporated), under which Media Company will deliver Ads in the Media Channels for the benefit of Advertiser.

“Media Channels” are the media set forth on the IO in which Ads may be delivered.

“Media Company” means the traditional Point of Care media company that offers Ads or service provider that offers clinically relevant messaging to Advertiser that is a party to the applicable IO.

“Media Company Properties” are the Point of Care digital and/or physical locations where Media Company distributes or displays Ads, as applicable.

"Point of Care” means the moment a patient receives care via an interaction with a healthcare professional in a healthcare setting, including doctor offices, pharmacies, hospitals, other healthcare facilities and via virtual care.

“Recipient” means a party that receives Confidential Information from a Discloser.

“Representative” means, as to an entity and/or its Affiliate(s) and their respective directors, officers, employees, consultants, contractors, agents, and/or attorneys.

“Services” mean services as required to perform Media Company’s obligations under an IO, including without limitation the distribution, maintenance, installation, storage and removal of the Ads from current and any new Media Company Properties.

“Terms” means the covenants, representations, and promises set forth herein or in an applicable services agreement and/or IO.

“Third Party” means an entity or person that is not a party to an IO, and shall not include, a Media Company, Agency, Advertiser, or any Representatives of a Party.

“Third Party Contractor” means a Third Party engaged by Media Company or engaged directly by Agency or Advertiser to provide analytics, research, distribute, track, remove, audit or otherwise provide services in connection with the distribution of Ads and Deliverables.

1. **SERVICES AND INSERTION ORDERS** 
   1. Services in General. Media Company shall use commercially reasonable efforts to provide Services to Advertiser in compliance with and as described in the applicable IO and these Terms. Advertiser or Agency may request removal if an Ad is not correct or if a change in law requires editing but shall bear the costs associated with the removal and down time insofar as the reasons necessitating removal is not attributable to conduct of the Media Company.
   2. IO Details. Media Company and Agency shall execute IOs and each IO will specify details of a campaign, which may include: (i) the type(s) and quantity(s) of Deliverables, (ii) the applicable Media Channel, specifications of Media Company Properties, and target audience for which Deliverables will be provided (iii) the price(s) for such Deliverables, which may include the maximum dollar amount allowed, (iv) the start and end dates of the campaign and the details of Buyer’s right of first refusal to extend the term of the IO, if any, and (v) any delivery or performance guarantees applicable to the campaign. Other items that may be specified in an IO include, but are not limited to, special reporting and auditing requirements, any special Ad delivery scheduling and/or Ad placement requirements, and Collateral Material placement requirements. If applicable, for IOs that contemplate the provision of Media Company developed Content, the IO shall specify the (i) applicable timelines; (ii) detailed description of or specifications for such Content; (iii) materials and other content to be provided by Buyer to Media Company for the generation of such Content; (iv) acceptance criteria for such Content, (v) amounts due for such Content, and (vi) any applicable creative licensing fees.
   3. IO modification. Any modifications to an executed IO will not be binding unless approved in writing by both Media Company and Buyer.

1. **AD DEVELOPMENT, PLACEMENT AND POSITIONING** 
   1. Changes to Media Company Properties. Media Company will use commercially reasonable efforts to provide Agency with reasonable notice of changes to Media Company Properties, where Media Company would reasonably know the campaign would result in an under-delivery of 10% or more (or at a percent otherwise specified in an IO) of the target audience, size of the audience, Ad, and/or placement of the Ad as specified on the applicable IO.
   2. Technical Specifications. Media Company will provide technical specifications to Agency within ten (10) business days or as otherwise agreed by the Parties in writing after execution of an IO and/or the Parties shall participate in a “kick-off” meeting, or applicable campaign launch process, at which Buyer shall provide an overview of professional marketing strategies, contact(s) to obtain digital and/or print assets and collaborate with Media Company to determine the types of Content needed for the campaign.  In the event that the Agency will be developing an Ad on behalf of Advertiser, Agency must adhere to the technical specifications shared by Media Company, that addresses the creative design, animation, and timing associated with each Ad. If Media Company changes technical specifications and the Parties are unable to negotiate an alternate or comparable replacement in good faith within fourteen (14) business days, Agency may immediately cancel the remainder of the affected placement without penalty, and upon such cancellation by Agency, Media Company shall return the pro-rata portion of any fund paid by Agency.
   3. Content.
      1. Buyer Provided Content. When Buyer is responsible for providing Content, including Ads, for campaigns, Buyer shall deliver Content to Media Company based upon an agreed upon deadline to meet the campaign start date. Buyer shall only provide Content that contains accurate information (including accurate medical information), which does not contain any false or misleading claims, and Buyer shall be responsible for ensuring that Content is properly licensed where necessary and is otherwise in compliance with all Applicable Laws. Media Company will not edit or modify the Content submitted by Buyer in any way, including, but not limited to, resizing any Ad, without Buyer’s written approval.
      2. Media Company Developed Content. Media Company may develop and create content as agreed under the IO. Such Content will conform to specifications set forth on the IO, and any other specifications mutually agreed upon by Media Company and Buyer in writing. Buyer shall promptly provide all Advertising Materials necessary for Media Company to develop such Content. Media Company shall be responsible for ensuring that the Content that it created under the IO complies with all Applicable Law and shall include any disclosure requirements furnished to Media Company by Buyer. Advertiser shall be responsible to ensure all Advertising Materials that Buyer provides to Media Company for use in the Content is in compliance with Applicable Law. Media Company and Buyer agree to work together to include any needed disclaimers/disclosures or other Collateral Materials as necessary in the Content, subject to the terms of this section. Media Company shall provide Buyer a draft of Media Company’s developed Content for approval or revision. If Buyer requests meaningful revisions, Media Company shall provide a revised draft for approval within a reasonable time or as mutually agreed upon by the Parties. If applicable, Media Company and Agency shall agree in advance in the IO on the number of revisions allowed within the contract before an additional fee would be required. These details may be noted in the IO, including what constitutes a meaningful revision. If Buyer does not accept or reject each draft within five (5) business days of receipt, Buyer shall provide notice to Media Company and the parties shall agree in writing to a date by which Buyer shall accept or reject the draft.
      3. License to Advertising Materials. With respect to Advertiser Materials provided by Buyer for use in the Content, Advertiser hereby grants to Media Company a limited, nonexclusive, revocable, non-transferable, royalty-free license, without the right to sublicense, to use the Advertiser Materials as approved by Buyer solely as provided by these Terms. Buyer shall review and approve all use of Advertiser Materials and Content prior to publication thereof, such approval not to be unreasonably withheld or delayed. In connection with the foregoing license grant, Media Company will comply with such reasonable written trademark usage guidelines as may be provided by Buyer and will abide by any usage restrictions pertaining to the Advertiser Marks of which Buyer notifies Media Company in writing.
      4. Media Company Educational Content. Buyer acknowledges that as part of Media Company’s delivery of Services to its Media Company Properties, Media Company may distribute editorial material, including unbranded general educational content (“Educational Content”). Buyer shall not have any control over Media Company’s distribution of such Educational Content. Neither Agency nor Advertiser shall attempt to alter, modify or influence the Educational Content, unless specified in the IO. Media Company retains all ownership rights in all Educational Content, trademarks, copyrighted materials, and Agency and Advertiser shall not reproduce, copy or use any of Media Company’s Educational Content, trademarks, or copyrighted materials without Media Company’s prior written consent. Media company shall be responsible that such Educational Content complies with Applicable Law and rights and permissions have been obtained, and be responsible for associated fees, unless otherwise agreed in the IO.
      5. Media Company Content Approval. Media Company reserves the right in its sole discretion to reject any Ad, or part of any Ad, that it, or any person or entity who owns or controls Media Company Property where the Ad has been delivered, in its reasonable discretion deems objectionable in nature or content or would be objectionable or offensive to its other advertiser clients or Media Company Properties.
      6. Compliance. The Parties shall promptly notify the other if Content is not in compliance with these Terms, the IO, or Applicable Law, and the Parties shall agree in good faith upon modifications to the Services or Content to address and correct such infirmities. Both Parties reserve the right to reject or remove Ads or Content that do not comply with Applicable Law.
   4. Buyer Delays/Unacceptable Creative.
      1. Media Company shall not be responsible or liable under these Terms for delay or non-performance of Services due to Buyer’s delay in providing Ads, Content or Advertiser Materials needed for Media Company developed Content, or where the campaign is otherwise delayed solely as a result of Buyer’s acts or omissions (each, a “Buyer’s Delay”). If Ads, Content or Advertising Materials provided by Buyer do not comply with Media Company’s specifications provided to Buyer in advance, Media Company will notify Buyer within five (5) business days of its receipt of such Ads, Content or Advertising Materials. If a Buyer Delay causes a campaign to be delayed or suspended twenty (20) business days beyond the original campaign start date, then Media Company reserves the right to, in its sole discretion to: (i) charge Buyer fees for the campaign under the IO on a pro rata basis through the date Buyer agrees to resume the campaign; or (ii) release the advertising space on the inventory held for the applicable campaign. Any fee collected in connection with this provision will be credited against any other amounts owed by Buyer under the applicable IO. There shall be no extension of the campaign term, the end date of the applicable campaign, or any other Deliverables, unless agreed to in writing by both Parties. In the event of a Buyer’s Delay, Media Company shall use commercially reasonable efforts to meet any performance dates specified in an IO, and where Media Company cannot meet the performance date specified in the IO, the Parties shall mutually agree on alternative dates in writing.
   5. Collateral Materials. If Applicable Law requires Collateral Material to accompany an Ad and/or Content, the IO shall include requirements for placement of Collateral Materials within Media Company Property. Media Company acknowledges and agrees that delivery, replenishment, and/or providing such instruction to Media Company Property is mandatory under these Terms.
   6. Placement Restrictions. Ads shall only be distributed in the United States unless explicitly stated in the IO
   7. Replacement Ads. Buyer shall have the right to submit replacement Ads or Advertising Materials at any time but shall be responsible for any actual costs incurred by Media Company, unless such replacement ad is within the scope of the IO, or the replacement Ad is required due to Media Company’s error or negligence.
   8. Exclusivity: If specified in writing on an applicable IO, the Agency/Advertiser shall have campaign exclusivity, the parameters of which shall be set forth in the IO in the specific campaign contracted footprint of the Media Company Properties.
   9. Target Lists: If specified in an IO, Buyer must provide final campaign target list no later than thirty (30) days before the contracted beginning of a campaign, unless otherwise agreed in the IO. If Buyer's campaign target list changes during the course of the campaign, Media Company will work with Buyer and reasonably accommodate changes to the inventory to align with the new campaign target list. Media Company shall not be responsible for any under delivery caused solely by such changes to the campaign target list.
      1. Prior Approval and Notification:
         1. Before implementing any changes to the campaign target list, Buyer must seek prior approval from the Media Company.
         2. The Buyer shall provide a written request detailing the proposed changes, including the specific criteria, e.g., NPI numbers or provider locations to be added or removed.
         3. Upon receipt of the request, the Media Company will review the proposed changes and respond with feedback within an agreed-upon timeframe.
      2. Review and Acceptance:
         1. Media Company reserves the right to review and evaluate the proposed changes in light of operational constraints and feasibility.
         2. The Media Company may, at its’ discretion, decline the request for mid-campaign changes.
      3. Contract Amendment:
         1. Any agreed-upon changes to the target list will be documented in a formal contract amendment, signed by both parties.
         2. The contract amendment shall outline the revised target list and any associated terms, including additional charges, if applicable.
2. **PAYMENT, PAYMENT LIABILITY, AND MAKEGOOD**
   1. Payment Terms/Invoice. Buyer shall pay Media Company the Fees for the Services as set forth in the applicable IO. Buyer will make payment within the net number of days set forth in the IO from the date of invoice for Ads delivered in accordance with the IO. Penalties for late payments shall apply if and as specified in the IO.
   2. Advertiser Responsibility. If funds have not been received/cleared by Agency from Advertiser for Services under the IO, Media Company agrees to hold Advertiser solely liable for payment, except in situations where Agency breached its representations or warranties concerning agency authority to act on behalf of Advertiser in Section IX. b., below, or Advertiser is otherwise withholding payment contending that Agency did not have sufficient authority to bind Advertiser to the IO in question. The Agency agrees to make every reasonable effort to collect and clear payment from Advertiser on a timely basis. If Advertiser proceeds have not been received/cleared by Agent for Services under the IO, other advertisers from Agency will not be prohibited from advertising under other IOs with Media Company. To the extent Agency has received/cleared funds from Advertiser for Services performed by Media Company under the IO, then Media Company shall hold Agency liable for payment.
   3. Makegood Procedure for Under Delivery of Ads. Where applicable, in the event that Media Company does not deliver to the Buyer the guaranteed metric of Media Company Properties or reach as set forth on the IO, then subject to agreement by Buyer and based on availability, Media Company will provide either (i) a makegood credit to compensate for an shortfall in the composition, placement, reach or timing of the Ad by rerunning the corrected Ad in the approved placement or for the guaranteed reach, or (ii) provide Buyer with a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign, or if a pre-payment does not apply, Buyer may withhold from outstanding amounts due to Media Company the amount attributed to the under-delivery.
3. **AUDITS AND REPORTING**
   1. POCMA Verification and Validation Audit. Notwithstanding and in addition to any other audit provisions in the Terms, the Parties’ IO may specify that Media Company shall conduct audits on an annual basis, or as often as otherwise agreed, pursuant to the Point of Care Marketing Association’s (“POCMA”) Verification and Validation Guidance (“Guidance”)[[1]](#footnote-1) to verify the applicable product line under the IO is certified. The parties may further agree that such audit be conducted by a POCMA approved auditor, and/or whether Media Company be required to obtain an annual POCMA Guidance Certification.
   2. Other Audit Rules. Upon reasonable prior written notice during the term of the IO, Buyer may initiate a campaign audit of Media Company’s records relevant to the Ad campaign Deliverables to confirm Media Company’s compliance with the Deliverables. The audit right in this subsection is subject to the following conditions:
      1. such audit must be performed by an independent auditor agreed upon by the Parties;
      2. such audit is limited solely to those materials related to the subject matter of the audit;
      3. the independent auditor executes a confidentiality agreement with Media Company agreeing not to disclose any confidential information.
   3. Reports on Campaign
      1. Confirmation of Campaign Initiation. Unless otherwise specified in the IO, Media Company will, within five (5) business days of the distribution start date on the IO, provide confirmation to Agency by email, stating whether the components of the IO have begun delivery.
      2. Media Company Campaign Metrics Reporting. Media Company will deliver reports containing the campaign metrics and reporting requirements agreed upon between the Parties in the IO in accordance with the delivery schedule described in the IO. Reasonable evidence of performance shall be due by Media Company upon request by Buyer.
      3. Campaign Reconciliation Report(s). If applicable and Media Company guarantees Deliverables at a specified level, Media Company will provide a reconciliation on the actual Deliverables with the final invoice, or at other intervals specified under the IO. In the event of under delivery, Media Company and Buyer will agree to a mutual remedy, including for example a financial credit which can be applied to the future quarters or taken in the form of increased reach or frequency. Buyer may carry the credit into the following calendar year or adjust final invoice payment accordingly.
4. **INTELLECTUAL PROPERTY**

* 1. Content. Advertiser retains all ownership and intellectual property rights in all Advertiser Content used in any Media Company campaign excluding any Educational Content. Except as set forth in these Terms or in the applicable IO, all Content provided by Media Company to Buyer under an applicable IO whether or not patentable, copyrightable, or subject to any other form of legal protection which are made, conceived, reduced to practice, or developed by Media Company in connection with an Advertiser campaign, or to the extent derived from use or possession of Advertiser’s Confidential Information (as defined below) shall be the sole and exclusive property of Advertiser upon payment of all sums due to Media Company for each Deliverable under these Terms or the applicable IO. Ownership of Media Company developed creative for an advertising campaign may be agreed upon in the IO.
  2. Media Company Works. Notwithstanding anything to the contrary set forth herein, to the extent any Deliverable includes intellectual capital and property that Media Company has developed, created, or acquired independent of performing the Services or independent of any Advertiser’s Confidential Information, including but not limited to Media Company Educational Content and Media Company Confidential Information (“Media Company Works”), Media Company shall retain exclusive ownership in such Media Company Works.
  3. Third-Party IP. Without limiting the general rights of Advertiser as provided in this Section, it is understood and agreed that certain Content may contain the intellectual property of third parties (“Third-Party IP”) pursuant to a license or other arrangement which would require additional payments depending on the use. The Parties shall provide written notification to the other of any material conditions, costs, or limitations relating to such Third-Party IP, and the Parties shall agree on payment for such costs or other charges associated with any use of such Third-Party IP.
  4. Use of Parties’ Trademark. Neither Party will use the other’s trade name, trademarks, logos, or Ads in any public announcement (including, but not limited to, in any press release) regarding the existence or content of these Terms or an IO without the other’s prior written approval.

1. **TERM AND TERMINATION** 
   1. Term and Termination. These Terms shall commence upon the Parties fully executing the IO and shall continue in effect until completion of all outstanding IOs, or unless otherwise terminated pursuant to the following:
      1. Without Cause. Unless otherwise specified in the IO, either Party may cancel the entire IO or any portion thereof for convenience by providing sixty (60) days’ prior written notice after the digital campaign start date or 90 days prior written notice after the print campaign start date.
      2. For Cause.
         1. Buyer may cancel an IO, without penalty, upon prior written notice to Media Company (i) upon at least thirty (30) calendar days’ written notice in the event that Media Company is not delivering upon the contracted services and the Parties cannot reach amicable resolution, (ii) at any time following a material breach of an IO by Media Company which is not cured within thirty (30) calendar days and/or (iii) the FDA (1) denies or delays approval for the public release of any Advertisers product, (2) recalls any Advertisers product from continued public release, or (3) issues any other regulation, requirement, decision, ruling, order action, request, or announcement affecting the release, marketing/messaging, or packaging/labeling of/for any Advertisers product.
         2. Media Company may cancel an IO, without penalty at any time following a material breach of an IO by Buyer which is not cured within thirty (30) calendar days of written notice from Media Company of such breach.
         3. Either Party may terminate this IO immediately if the other Party ceases doing business or is the subject of an involuntary or voluntary bankruptcy or other insolvency proceeding that is not dismissed within ninety (90) days of the initial filing.
   2. Effect of Termination.In the event of the termination of an IO,Buyer, subject to Section IV, above, and in addition to any other fees payable to Media Company provided in these Terms or in any IO, will remain liable to Media Company for reasonable amounts due for Services completed under the IO prior to the effective date of termination. Except as set forth in these Terms or in any IO, Media Company shall provide a pro rata refund of any advance payments made to Media Company. Each Party shall promptly return or destroy (as instructed by the other Party) all Confidential Information. Termination shall be in addition to, and shall not prejudice, any of the Parties' remedies at law or in equity.

1. **FORCE MAJEURE** 
   1. Force Majeure Event. A “Force Majeure Event” is an act beyond the control of a party, which includes but is not limited to: (i) acts of God, including fire, flood, earthquake, windstorm or other natural disaster; (ii) the act of any government or governmental authority; (iii) power failure, failure of telecommunications lines or satellite transmission, or failure or breakdown of plant, machinery or vehicles operated by a third party; (iv) strike or lockout; (v) actual or genuine threat of war, armed conflict, terrorist attacks, civil war, explosion, nuclear, chemical or biological contamination; (vi) a state of emergency (declared or threatened) affecting any event or circumstance; (vii) a government-imposed travel ban, restriction on movement or gatherings, or other government-imposed mandate of any kind; or (viii) any actual or threatened epidemic, pandemic, or other disease, virus, sickness or outbreak which significantly disrupts or adversely affects Advertiser’s business operations.
   2. Effect of Force Majeure. Either Party subject to a Force Majeure Event may elect to suspend or cancel a media buy without penalty by providing the other Party with reasonable prior written notice of its intent to suspend Deliverables that are scheduled to be distributed.  In the event of a suspension, the Parties may collaborate in good faith to reschedule media Deliverables for an alternate date within thirty (30) days of such notice. In the event the Parties have not agreed upon acceptable alternative arrangements, the other Party may terminate these Terms via written notice, and neither Party shall have the obligation to continue with obligations related to Services that are not complete, but Buyer will remain liable to Media Company for reasonable amounts due for Services completed, costs incurred, and noncancelable obligations under the IO which occurred prior to the Force Majeure Event or as otherwise agreed to between the Parties in writing.
2. **REPRESENTATIONS AND WARRANTIES**

* 1. Media Company Representations.
     1. Media Company represents and warrants that (i) it has all necessary rights and consents to enable Media Company to perform its obligations hereunder; (ii) the Content supplied by Media Company (excluding Advertiser Materials, Ads, Collateral Materials, and Content or other materials supplied by Agency, Advertiser, Buyer or any other third party) and the performance of its obligations hereunder does not infringe or violate any Third-Party rights; (iii) the Services provided will comply with all Applicable Laws; (iv) the Services will be performed according to specifications as set forth in the applicable IO and shall be consistent with the technical, visibility and safety standards generally observed in the industry; (v) it is not a party to any civil or criminal action or subject to any inquiries from any regulatory agency, and is not subject to any consent decree, order, injunction or other formal action imposed by a court, regulatory agency or self-regulatory entity, that may affect Services; and (vi) it will notify Buyer if it receives any claims regarding any of the Services performed under an applicable IO. Media Company represents and warrants that any Third-Party contractors will be bound by the applicable Terms relevant to Third Party contractors’ services that are substantially similar to the terms contained herein.
     2. To the extent “personally identifiable information” (“PII”) or “protected health information” (PHI), as respectively defined by the Federal Trade Commission or under any state or local laws, or under the Health Insurance Portability and Accountability Act, and its implementing regulations, as amended (collectively “Privacy Laws”), is used by Media Company to provide Services, Media Company represents and warrants that it shall comply with such Privacy Laws, including without limitation, maintaining adequate physical, technical, and administrative safeguards to protect such information, and complying with applicable Privacy Policy, and/or Notice of Privacy Practices requirements. Media Company shall not disclose PII or PHI to Buyer unless permitted by Applicable Law.
     3. In the event that Media Company is provided with or given access to any personally identifiable information of individual users (“PII”) by or on behalf of Agency or Advertiser, Media Company represents and warrants that it shall, unless otherwise agreed in an IO: (i) only use such PII as authorized in writing by Agency, (ii) put in place, and shall maintain, reasonable physical, technical and administrative security controls and information security programs to prevent, and shall not permit, unauthorized access, destruction, use, modification or disclosure of the PII, ensuring that all such measures shall, at a minimum, comply with applicable law and with any specific instructions or direction given by Agency, (iii) immediately notify Agency in writing in the event any unauthorized access to or use of the PII is suspected, and (iv) promptly delete all PII when no longer needed for the campaign or upon request from Agency, unless otherwise required by law.
  2. Agency Representations. Agency represents and warrants that it has the authority as Advertiser’s agent to bind Advertiser to these Terms, and that all of Agency’s actions related to these Terms will be within the scope of such agency, and that Agency is complying with all duties owed to their principle, including, for example, contractual duties, common law duties, and fiduciary duties. Insofar as Agency is providing creative materials for use in a campaign, Agency represents and warrants (i) it has all necessary rights and licenses to such materials; (ii) such materials comply with Applicable Law and do not infringe or violate any Third-Party rights; (iii) such materials do not contain viruses, trojan horses, worms, time bombs, cancelbots, or other similar harmful or deleterious programming routines; (iv) such materials shall be approved for distribution according to Advertiser’s medical, regulatory, and legal processes; and (v) no third-party licenses, releases, or permits are required for Media Company to perform the Services, unless otherwise disclosed to Media Company in writing, and such licenses, releases, or permits have been obtained by Buyer.
  3. Advertiser Representations. Advertiser represents and warrants that (i) it has all necessary rights to enable Advertiser to perform its obligations hereunder; (ii) Advertiser Materials, Content or other materials supplied by Agency, Advertiser, Buyer or any other third party comply with Applicable Law and do not infringe or violate any Third-Party rights; (iii) Ads and Advertising Materials do not contain viruses, trojan horses, worms, time bombs, cancelbots, or other similar harmful or deleterious programming routines; (iv) Ads, Collateral Materials and Advertising Materials shall be approved for distribution according to its medical, regulatory, and legal processes; and (v) it is not required to obtain any third-party licenses, releases, or permits for Media Company to perform the Services, unless otherwise disclosed to Media Company in writing, and such licenses, releases, or permits have been obtained by Buyer. Advertiser will provide to Media Company any disclosure or disclaimer information that is required under Applicable Laws in connection with any Ads or other Advertiser or Buyer Content.
  4. Parties Representations. Each Party represents and warrants that neither it nor any of its respective employees or agents has been debarred under 21 U.S.C. §335a(a) or (b), or any equivalent foreign law and that no employees or agents have committed any crime or conduct that could result in such debarment or exclusion from any governmental healthcare program. The Parties agree to promptly notify the other Party if it or any of its employees or agents becomes debarred or proceedings have been initiated against either of them with respect to debarment. The Parties represent and warrant that any payments provided under these Terms shall be consistent with arm’s length transactions for services and not in exchange for any agreement with healthcare providers for referrals related to Advertiser’s products, and such payments are not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated for which payment may be made under federal health care programs, as defined in 42 U.S.C. §1320a-7b(f).

1. **INDEMNIFICATION**
   1. Media Company Indemnity. Media Company shall defend, indemnify, and hold harmless Agency and Advertiser, and each of its Representatives from damages, liabilities, costs, and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) resulting from any claim, judgment, or proceeding (collectively, “Claims”) brought by a Third Party resulting from (i) Media Company’s breach of these Terms, or (ii) Media Company’s negligence or willful misconduct.
   2. Advertiser Indemnity. Advertiser will defend, indemnify, and hold harmless Media Company and each of its Representatives from Losses resulting from any Claims brought by a Third Party resulting from (i) Advertiser’s breach of these Terms, or (ii) Advertiser’s negligence or willful misconduct.
   3. Agency Indemnity. Agency will defend, indemnify, and hold harmless Media Company and each of its Representatives from Losses resulting from any Claims brought by a Third Party resulting from (i) a breach of these Terms by Agency, or (ii) the negligence or willful misconduct of Agency.
   4. Procedure. The indemnified party(s) will promptly notify the indemnifying party of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying party’s obligations except to the extent such party is materially prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to the indemnifying party at the indemnifying party’s expense in connection with the defense or settlement of all Claims; and (ii) be entitled to participate at its own expense in the defense of all Claims. The indemnified party(s) agrees that the indemnifying party will have sole and exclusive control over the defense and settlement of all Claims; provided, however, the indemnifying party will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on an indemnified party(s) without its prior written consent.
   5. Insurance. If agreed upon in the IO, the Parties shall carry and maintain commercially reasonable amounts of ordinary and necessary business insurance, and upon request each Party shall provide the other Party with certificates of insurance.
2. **LIMITATION OF LIABILITY** 
   1. Excluding Agency’s, Advertiser’s, and Media Company’s respective obligations under Section X, damages that result from a breach of these Terms, or from the gross negligence or intentional misconduct by Agency, Advertiser, or Media Company, in no event will any party be liable for any consequential, indirect, incidental, punitive, special, or exemplary damages whatsoever, including, but not limited to, damages for loss of profits, business interruption, loss of information, and the like, incurred by another party arising out of these Terms, even if such party has been advised of the possibility of such damages. In no event shall either Party’s liability in connection with these Terms or an applicable IO exceed the aggregate amounts paid or contractually owed by Agency and/or Advertiser to Media Company during the twelve (12) month period immediately preceding the event giving rise to such liability.
3. **NON-DISCLOSURE, DATA USAGE AND OWNERSHIP, PRIVACY AND LAWS** 
   1. Confidentiality Requirements. “Confidential Information” includes information and data provided by the Discloser, which under the circumstances surrounding the disclosure should be reasonably deemed confidential or proprietary. Without limiting the foregoing, Discloser and Recipient agree that each Discloser’s contribution to IO Details (as defined below) shall be considered such Discloser’s Confidential Information. Recipient will protect Confidential Information in the same manner that it protects its own information of a similar nature, but in no event with less than reasonable care. Recipient shall not disclose Confidential Information to anyone except Representatives or a Third Party who has a need to know same, and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this Section. Recipient will not use Discloser’s Confidential Information other than as provided for on the IO. Notwithstanding anything contained herein to the contrary, the term “Confidential Information” will not include information which: (i) was previously known to Recipient; (ii) was or becomes generally available to the public through no fault of Recipient; (iii) was rightfully in Recipient’s possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser; (iv) is or was developed by employees or agents of Recipient independently of, and without reference to, Confidential Information; or (v) was communicated by Discloser to an unaffiliated Third Party free of any obligation of confidentiality. Notwithstanding the foregoing, the Recipient may disclose Confidential Information as required by Applicable Law, or as necessary to establish the rights of either party under these Terms.
   2. Data Use and Rights.
      1. Advertiser Data. As part of the Services, Buyer may provide directly to Media Company Advertiser data relating to physicians’ offices and locations where Advertisements may run (“Advertiser Data”). Media Company may use such Advertiser Data as part of the Services solely to match such Advertiser Data to Media Company Data (as defined below) for the purpose of providing targeted Advertisements in certain medical offices (“Target Audience Data”). Media Company agrees that any Advertiser Data that is received, used or stored by Media Company in connection with any Services provided by Media Company hereunder are the exclusive property of Advertiser and nothing herein shall provide Media Company with any right, title or license to such Advertiser Data except as expressly set forth herein and Media Company waives any interest, title, lien or right to any such Advertiser Data. With respect to any Advertiser Data provided to Media Company by Advertiser hereunder, Media Company represents and warrants that it will: (i) use such Advertiser Data in accordance with Applicable Law; (ii) treat Advertiser Data as Advertiser’s Confidential Information; and (iii) use such Advertiser Data solely to perform the Services set forth in these Terms and for no other purpose; (iv) not link Advertiser Data to any other data except as expressly authorized by these Terms; and (v) only use and store Advertiser Data within the United States.
      2. Media Company Data**.** If agreed to in an applicable IO, Media Company shall provide Target Audience Data and supplemental data relating to Media Company Users (as defined below) that participated in and were necessary for running Advertiser campaigns to Agency and/or Advertiser as set forth in an applicable IO. Agency and Advertiser agree that all records, files, reports, surveys, questionnaires and other data including aggregate reports, relating to Media Company Properties (“Media Company Users”) that are contained in the Target Audience Data and supplemental data as described above, and owned by Media Company in connection with any Services provided (the “Media Company Data”) are, as between Media Company and Agency and Advertiser, the exclusive property of Media Company and Agency and Advertiser each waives any interest, title, lien or right to any such Media Company Data. With respect to any Media Company Data collected by or provided to Agency and/or Advertiser, Agency and Advertiser represents and warrants that each will: (i) use such Media Company Data in accordance with Applicable Law; (ii) treat Media Company Data as Media Company Confidential Information; (iii) use such Media Company Data solely for the purpose of campaign assessment as set forth in these Terms and for no other purpose; (iv) not link any Media Company Data to any other data except as expressly authorized by these Terms; (v) not solicit or target communications to Media Company Users or otherwise contact Media Company Users (or facilitate such solicitation or contact by others) as a result of their status as Media Company Users without an express, written opt-in agreement from such Media Company User; (vi) not refer to Media Company Users as “Media Company Users” or “Media Company Members” or “Media Company Properties of Media Company” (or otherwise make reference to Media Company) in any communications, except with Media Company’s prior written consent; and (v) only store and maintain Media Company Confidential Information in data centers located in the United States.
4. **MISCELLANEOUS** 
   1. Assignment. A Party may not resell, assign, or transfer any of its rights or obligations hereunder, and any attempt to resell, assign, or transfer such rights or obligations without other Party’s prior written approval will be null and void, such approval not to be unreasonably withheld; provided that, without such consent either Party may assign an applicable IO in connection with the transfer or sale of all or substantially all of its assets or business or its merger or consolidation with another company. All terms and conditions in these Terms and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors, and assigns.
   2. Entire Agreement. These Terms, including the terms and conditions of an applicable IO or other agreement between the Parties, constitutes the entire agreement of the parties with respect to the subject matter thereof and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties
   3. Conflicts. In the event of any inconsistency between the terms of an IO and these Terms, the IO will prevail.
   4. Dispute Resolution and Governing Law. In the event any dispute arises between the Parties concerning these Terms, the interpretation of these Terms and/or the application of these Terms, the Parties shall first settle such a dispute by good faith negotiation and consultation between themselves. If such efforts do not result in a resolution, and at least thirty (30) days have elapsed since notification of the dispute, the Parties shall mediate their dispute pursuant to the Commercial Mediation Procedures of the American Arbitration Association (AAA). If mediation does not result in resolution or sixty (60) days have elapsed since notification of the dispute, only then may the Parties commence formal proceedings.
   5. Notice. Any notice required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Media Company, Agency and/or Advertiser will be sent to the contact as noted on the IO, or to such other person or address as a Party may designate to the other in writing. All notices to Advertiser will be sent to the address specified on the IO.
   6. Headings. Section or paragraph headings used in these Terms are for reference purposes only and should not be used in the interpretation hereof.

END OF DOCUMENT

1. The Guidance is available at www.pocmarketing.org [↑](#footnote-ref-1)