

Terms and Conditions

The following terms and conditions govern the advertising services performed or to be performed by Company identified on the Order Form ("Order Form"). These Terms and Conditions together with the applicable Order Form constitute one agreement and are referred to herein as the "Agreement."

1. **Services:** Company shall perform the Services for Client as set forth in the Order Form ("Services"). Positioning of advertisements is at the sole discretion of Company, except where a specific position has been agreed to by Company in writing.

2. **Billing:** Client shall pay Company the fee as set forth in the Order Form. All Invoices are due upon receipt. An agency commission of 15% on charges withdrawn on accounts not paid within 60 days of invoice. A finance charge of 1.5% per month will be applied to all amounts over 60 days. Company reserves the right to hold Client and its agency jointly and severally liable for all monies that are due and payable to Company. In case Client is in default with payment of one or more invoices, Company is entitled to hold back the publication of further orders until all amounts due are paid. If Client fails to make timely payment, Client will be responsible for all reasonable expenses (including attorneys' fees) incurred by Company in collecting such amounts. Company reserves the right to suspend credit and/or performance of its obligations if Client fails to make timely payment. Fees are exclusive of all. Client shall be responsible for payment of all taxes, duties and similar charges assessed in connection with the Services or on any payments made by Client hereunder, excluding taxes on Company's net income.

The budget described in the Order Form is based on presumption of standard time, materials, and process used to perform the Services and/or develop the Deliverables. If actual efforts exceed or are expected to exceed these estimates due to additional Client requests or processes, the Client will (1) be advised of the threshold of work described in this agreement; (2) be provided an updated budget based on the change in scope of work, or (3) be billed at a blended rate of \$275 per hour for creative / editorial services plus any applicable material costs and/or out-of-pocket expenses relative to the change in scope of work. For all ad creative, any revisions exceeding two (2) iterations will be billed at the hourly rate above.

3. **Cancellation:**

- a) For Premium Positions (Cover 4, Cover 2, Opposite TOC, Cover Tips, Outserts, Belly Wraps and Cover Wraps), please note: position cancellation must be made one month in advance of issue closing date. Clients that cannot fulfill their commitment after that date will be charged the premium cost. (25%/60% charge of the earned B/W rate).
- b) Advertorial Eblasts only: Standard pricing assumes final, approved content (custom email HTML) is provided to Company. Any pricing due to labor in the form of editing client-provided HTML or labor related to medical-legal regulatory review/submission/revisions are not included in price quoted. Rates shown are based on the full completion of the program. Failure to complete the program may result in a short-rate back to published rates.
- c) Either party may terminate this Agreement upon forty-five (45) days prior written notice. Provided, however, no cancellation of contracted space by Client will be deemed valid unless received in writing by Company at least thirty (30) days prior to the space closing date. If this Agreement is terminated, Client will pay Company any monies due to Company up to the time of termination for Services performed and all non-cancellable expenses incurred. If payments are due to Company, Client shall remit payment within 30 days following the termination of the Agreement.

4. **Confidentiality:** Client agrees to keep the terms of this Agreement and Order Form and any other proprietary information it learns about Company during the term of this Agreement confidential. Client agrees that money damages may not be a sufficient remedy for its breach of this Agreement as such violation could cause irreparable injury to Company. Accordingly, Company is entitled to seek an injunction or other appropriate equitable relief to restrain any breach or threatened breach of this Agreement.

5. **Compliance with Law:** Client represents and warrants that it will comply with any and all applicable laws and regulations, including but not limited to data privacy laws and the CAN-SPAM Act. In accordance with the requirements of the CAN-SPAM Act, Client must maintain a suppression list and when applicable, Client shall provide the suppression list to Company no later than five business days before Company distributes any email campaign that advertises or promotes Client's product(s) or service(s) so that Company may remove any e-mail addresses on Client's suppression list from Company's distribution list. Client will continue to supply Company with updated suppression lists in advance of each distribution Company makes on Client's behalf. If an opt-out suppression list has not been provided to the Company, Client attests to the fact that, as of the date stated below, Client does not currently have any email addresses to suppress.

6. **Intellectual Property:** All rights to Company's trademarks, copyrights (including but not limited to its content and editorial), and other intellectual property are retained by Company. Client represents and warrants (1) it is properly authorized to grant Company a license to publish any materials it supplies to Company; (2) any materials it supplies to Company to be used in connection with Service shall not infringe on any other party's rights; and (3) materials supplied to Company are not libelous or defamatory. Client hereby grants Company a worldwide nonexclusive, fully paid license to reproduce, distribute, transmit, display, perform, and promote the materials, including all contents, trademarks and brand features contained therein, as set forth by the terms of this Agreement.

7. **Limitation of Liability; Disclaimer:** Company does not make and specifically disclaims any representations or warranties, express or implied, and under no circumstances will Company's aggregate liability hereunder or in connection herewith exceed the fees actually paid by Client to Company hereunder. All contents of advertisements are subject to Company's approval. Company may reject or cancel any advertisement, insertion order, space reservation, or position commitment at any time and is not liable for any costs or damages if for any reason Company fails to publish an ad for errors in key number, reader service number, or advertisers index. Company is not liable for any delays in the production or delivery of the publication or product due to any conditions beyond Company's control.

8. **No Warranty.** COMPANY MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO ITS SERVICES TO BE DELIVERED HEREUNDER AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ALL SERVICES ARE PROVIDED ON AN AS IS BASIS WITHOUT GUARANTEE.

9. **Representations and Warranties.** The Client hereby represents and warrants to Company that the Client has the right to publish the advertising materials or other information provided hereunder ("Ad Materials") in the form delivered and manner published without infringing or violating the rights of any third party or violation of any law, rule or regulation. The Client agrees, at its own expense, to indemnify, defend and hold harmless Company, its employees, officers, directors, representatives, agents and affiliates, against any and all claims, demands, suits, actions, proceedings, damages, liabilities, costs, expenses and losses of any kind (including attorneys' fees and costs) arising out of or related to (a) the printing, publication or distribution of any Ad Materials hereunder, (b) the Ad Materials or any matter or thing contained in any Ad Materials and/or (c) third parties' access to Client's website and/or use of Client's products and services (including but not limited to, claims of trademark or copyright infringement, libel, defamation, breach of confidentiality, privacy or data protection violation, false, deceptive or misleading advertising or sales practices).

10. **Indemnification:** Client agrees to indemnify, defend and hold harmless Company and its officers, directors, agents, affiliates, and employees from and against all claims, actions, liabilities, losses, expenses, damages and costs, including, without limitation, reasonable attorneys' fees, that may at any time be incurred by any of them by reason of any claims, suits or proceedings arising out of any material breach by indemnifying party of any duty, representation or warranty under this Agreement.

11. **Force Majeure:** Company shall be excused from performing its obligations under this Agreement if its performance is delayed or prevented by any event beyond the party's reasonable control and without the fault or negligence of the party seeking to excuse performance, including, without limitation, God, war, hostilities, blockades, civil disturbances, exchange controls, export/import controls, government regulation, terrorism, disaster, revolutions, strikes, terrorist attacks, lockouts, strikes, civil disorder, on-sight mechanical difficulties (e.g., a power failure), curtailment of transportation facilities, communicable disease, epidemics, pandemics diseases, quarantine, or public health emergencies, or any other emergency of a comparable nature, provided that performance shall be excused only to the extent of, and during, the disability and the party takes reasonable efforts to remove the disability. Company shall provide notice to the other party setting forth the nature and anticipated duration of the delay and shall use due diligence, where practicable, to minimize the effects of or end any such event so as to facilitate the resumption of full performance.

12. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state of New Jersey without regard to conflict of laws principles. Any controversy, dispute or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by a single neutral arbitrator located in New Jersey to be agreed between the parties and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. An award of arbitration may be confirmed in a court of competent jurisdiction. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

13. **Entire Agreement:** This Agreement contains the final and entire agreement of the parties and may not be modified without a writing executed by both parties.

