



## **MEDTECH PUBLISHING COMPANY TERMS AND CONDITIONS FOR INTERNET ADVERTISING**

[www.HealthcareITNews.com](http://www.HealthcareITNews.com)

[www.HealthcareFinanceNews.com](http://www.HealthcareFinanceNews.com)

### **I. INSERTION ORDERS AND INVENTORY AVAILABILITY**

a. From time to time, MedTech Publishing Company (“MedTech”) and Agency may execute IOs that will be accepted as set forth in Section I (b). As applicable, each IO will specify: (a) the type(s) and amount(s) of Deliverables, (b) the price(s) for such Deliverables, (c) the maximum amount of money to be spent pursuant to the IO, (d) the start and end dates of the campaign, and (e) the identity of and contact information for any Third Party Ad Server. Other items that may be included are, but are not limited to, reporting requirements, any special Ad delivery scheduling and/or Ad placement requirements, and specifications concerning ownership of data collected. MedTech will make commercially reasonable efforts to notify Agency within two (2) business days of receipt of an IO signed by Agency if the specified inventory is not available. Acceptance of the IO and these Terms will be deemed the earlier of (a) written (which, unless otherwise specified, for purposes of these Terms, will include paper, fax, or e-mail communication) approval of the IO by MedTech and Agency, or (b) the display of the first Ad impression by MedTech, unless otherwise agreed in the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless signed by both MedTech and Agency.

b. Revisions to accepted IOs will be made in writing and acknowledged by the other party in writing.

### **II. AD PLACEMENT AND POSITIONING**

a. MedTech will comply with the IO, including all Ad placement restrictions, and will create a reasonably balanced delivery schedule, except as set forth in Section VI(c). MedTech will provide, within the scope of the IO, an Ad to the Site specified on the IO when such Site is visited by an Internet user. Any exceptions will be approved by Agency in writing.

b. MedTech will use commercially reasonable efforts to provide Agency at least 10 business days prior notification of any material changes to the Site that would materially change the target audience or materially affect the size or placement of the Ad specified in the applicable IO. Should such a modification occur with or without notice, as Agency’s and Advertiser’s sole remedy for such change, Agency may cancel the remainder of the affected placement without penalty within the 10-day notice period. If MedTech has failed to provide such notification, Agency may cancel the remainder of the affected placement within 30 days of such modification and, in such case, will not be charged for any affected Ads delivered after such modification.

c. MedTech will submit or otherwise make electronically accessible to Agency final technical specifications within two (2) business days of the acceptance of an IO. Changes by MedTech to the specifications of already-purchased Ads after that two (2) business day period will allow Advertiser to suspend (without impacting the end date, unless otherwise agreed by the parties) delivery of the affected Ad for a reasonable time in order to (i) send revised Advertising Materials; (ii) request that MedTech resize the Ad at MedTech’s cost, and with final creative approval of Agency, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within five (5) business days, immediately cancel the remainder of the affected placement without penalty.

### **III. PAYMENT AND PAYMENT LIABILITY**

#### **a. Invoices**

The initial invoice will be sent by MedTech upon completion of the first month’s delivery, or within 30 days of completion of the IO, whichever is earlier. Upon request from the Agency, MedTech should provide proof of performance for the invoiced period, which may include access to online or electronic reporting, as addressed in

these Terms, subject to the notice and cure provisions of Section IV. MedTech should invoice Agency for the services provided on a calendar-month basis with the net cost (*i.e.*, the cost after subtracting Agency commission, if any) based on actual delivery, flat-fee, or based on prorated distribution of delivery over the term of the IO, as specified in the applicable IO.

**b. Payment Date**

Agency will make payment 30 days from its receipt of invoice, or as otherwise stated in a payment schedule set forth in the IO. MedTech may notify Agency that it has not received payment in such 30-day period and whether it intends to seek payment directly from Advertiser pursuant to Section III(c), below, and MedTech may do so five (5) business days after providing such notice.

**c. Payment Liability**

Unless otherwise set forth by Agency on the IO, MedTech agrees to hold Agency liable for payments solely to the extent proceeds have cleared from Advertiser to Agency for Ads placed in accordance with the IO. For sums not cleared to Agency, MedTech agrees to hold Advertiser solely liable. MedTech understands that Advertiser is Agency's disclosed principal and Agency, as agent, has no obligations relating to such payments, either joint or several, except as specifically set forth in this Section III(c) and Section X(c). Agency agrees to make every reasonable effort to collect and clear payment from Advertiser on a timely basis. Agency's credit is established on a client-by-client basis. If Advertiser proceeds have not cleared for the IO, other advertisers from the representing Agency will not be prohibited from advertising on the Site due to such non-clearance if such other advertisers' credit is not in question. Agency will make available to MedTech upon request written confirmation of the relationship between Agency and Advertiser. This confirmation should include, for example, Advertiser's acknowledgement that Agency is its agent and is authorized to act on its behalf in connection with the IO and these Terms. In addition, upon the request of MedTech, Agency will confirm whether Advertiser has paid to Agency in advance funds sufficient to make payments pursuant to the IO. If Advertiser's or Agency's credit is or becomes impaired, MedTech may require payment in advance.

**IV. REPORTING**

a. MedTech will, within two (2) business days of the start date on the IO, provide confirmation to Agency, either electronically or in writing, stating whether the components of the IO have begun delivery.

b. If MedTech is serving the campaign, MedTech will make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified in the IO. Reports will be broken out by day and summarized by creative execution, content area (Ad placement), impressions, clicks, spend/cost, and other variables as may be defined in the IO (*e.g.*, keywords). Once MedTech has provided the online or electronic report, it agrees that Agency and Advertiser are entitled to reasonably rely on it, subject to provision of MedTech's invoice for such period.

c. If MedTech fails to deliver an accurate and complete report by the time specified, Agency may initiate makegood discussions pursuant to Section VI, below. If Agency informs MedTech that MedTech has delivered an incomplete or inaccurate report, or no report at all, MedTech will cure such failure within five (5) business days of receipt of such notice. Failure to cure may result in nonpayment for all activity for which data is incomplete or missing until MedTech delivers reasonable evidence of performance; such report will be delivered within 30 days of MedTech's knowledge of such failure or, absent such knowledge, within 180 days of delivery of all Deliverables.

**V. CANCELLATION AND TERMINATION**

a. Unless designated on the IO as non-cancelable, Advertiser may cancel the entire IO, or any portion thereof, as follows: i. With 14 days' prior written notice to MedTech, without penalty, for any guaranteed Deliverable, including, but not limited to, CPM Deliverables. For clarity and by way of example, if Advertiser cancels the guaranteed portions of the IO eight (8) days prior to serving of the first impression, Advertiser will only be responsible for the first six (6) days of those Deliverables. ii. With 30 days' prior written notice to MedTech, without penalty, for any flat feebased or fixed-placement Deliverable, including, but not limited to, roadblocks, timebased or share-of-voice buys, Resource Central postings and some types of cancelable sponsorships. iv. Advertiser will remain liable to MedTech for amounts due for any custom content or development ("**Custom Material**") provided to Advertiser or completed by MedTech or its third-party vendor prior to the effective date of termination. For IOs that contemplate the provision or creation of Custom Material, MedTech will specify the

amounts due for such Custom Material as a separate line item. Advertiser will pay for such Custom Material within 30 days from receiving an invoice therefore.

b. Either MedTech or Agency may terminate an IO at any time if the other party is in material breach of its obligations hereunder, which breach is not cured within 10 days after receipt of written notice thereof from the non-breaching party, except as otherwise stated in these Terms with regard to specific breaches. Additionally, if Agency or Advertiser breaches its obligations by violating the same Policy three times (and such Policy was provided to Agency or Advertiser) and receives timely notice of each such breach, even if Agency or Advertiser cures such breaches, then MedTech may terminate the IO or placements associated with such breach upon written notice. If Agency or Advertiser does not cure a violation of a Policy within the applicable 10-day cure period after written notice, where such Policy had been provided by MedTech to Agency, then MedTech may terminate the IO and/or placements associated with such breach upon written notice.

c. Short rates will apply to canceled buys.

## **VI. MAKEGOODS**

a. MedTech will monitor delivery of the Ads, and will notify Agency either electronically or in writing as soon as possible (and no later than 14 days before the applicable IO end date unless the length of the campaign is less than 14 days) if MedTech believes that an under-delivery is likely. In the case of a probable or actual under-delivery, Agency and MedTech may arrange for a makegood consistent with these Terms.

b. If actual Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit), Agency and MedTech will use commercially reasonable efforts to agree upon the conditions of a makegood flight, either in the IO or at the time of the shortfall. If no makegood can be agreed upon, Agency may execute a credit equal to the value of the under-delivered portion of the contract IO for which it was charged. If Agency or Advertiser has made a cash prepayment to MedTech, specifically for the campaign IO for which under-delivery applies, then, if Agency and/or Advertiser is reasonably current on all amounts owed to MedTech under any other agreement for such Advertiser, Agency may elect to receive 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. In no event will MedTech provide a makegood or extend any Ad beyond the period set forth in the IO without the prior written consent of Agency.

## **VII. BONUS IMPRESSIONS**

a. Where Agency uses a Third Party Ad Server, MedTech will not bonus more than 10% above the Deliverables specified in the IO without the prior written consent of Agency. Permanent or exclusive placements will run for the specified period of time regardless of overdelivery, unless the IO establishes an impression cap for Third Party Ad Server activity. Agency will not be charged by MedTech for any additional Deliverables above any level guaranteed or capped in the IO. If a Third Party Ad Server is being used and Agency notifies MedTech that the guaranteed or capped levels stated in the IO have been reached, MedTech will use commercially reasonable efforts to suspend delivery and, within 48 hours of receiving such notice, MedTech may either (1) serve any additional Ads itself or (2) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser but only (A) after such notice has been provided, and (B) to the extent such charges are associated with overdelivery by more than 10% above such guaranteed or capped levels.

b. Where Agency does not use a Third Party Ad Server, MedTech may bonus as many ad units as MedTech chooses unless otherwise indicated on the IO. Agency will not be charged by MedTech for any additional Deliverables above any level guaranteed in the IO.

## **VIII. FORCE MAJEURE**

a. Excluding payment obligations, neither Agency nor MedTech will be liable for delay or default in the performance of its respective obligations under these Terms if such delay or default is caused by conditions beyond its reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes (“**Force Majeure event**”). If MedTech suffers such a delay or default, MedTech will make reasonable efforts within five (5) business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or makegood

is reasonably acceptable to Agency, MedTech will allow Agency a pro rata reduction in the space, time, and/or program charges hereunder in the amount of money assigned to the space, time, and/or program charges at time of purchase. In addition, Agency will have the benefit of the same discounts that would have been earned had there been no default or delay.

b. If Agency's ability to transfer funds to third parties has been materially negatively impacted by an event beyond the Agency's reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Agency will make every reasonable effort to make payments on a timely basis to MedTech, but any delays caused by such condition will be © 2009 Page 7 of 12 excused for the duration of such condition. Subject to the foregoing, such excuse for delay will not in any way relieve Agency from any of its obligations as to the amount of money that would have been due and paid without such condition.

c. If a Force Majeure event has continued for five (5) business days, MedTech and/or Agency has the right to cancel the remainder of the IO without penalty.

## **IX. AD MATERIALS**

a. Agency will submit Advertising Materials pursuant to Section II(c) in accordance with MedTech's then-existing Policies. MedTech's sole remedies for a breach of this provision are set forth in Section V(c), above, Sections IX (c) and (d), below, and Sections X (b) and (c), below.

b. If Advertising Materials are not received by the IO start date, MedTech will begin to charge the Advertiser on the IO start date on a pro rata basis based on the full IO, excluding portions consisting of performance-based, non-guaranteed inventory, for each full day the Advertising Materials are not received. If Advertising Materials are late based on the Policies, MedTech is not required to guarantee full delivery of the IO. MedTech and Agency will negotiate a resolution if MedTech has received all required Advertising Materials in accordance with Section IX(a) but fails to commence a campaign on the IO start date.

c. MedTech reserves the right within its discretion to reject or remove from its Site any Ads for which the Advertising Materials or the website to which the Ad is linked do not comply with its Policies, or that in MedTech's sole reasonable judgment, do not comply with any applicable law, regulation, or other judicial or administrative order. In addition, MedTech reserves the right within its discretion to reject or remove from its Site any Ads for which the Advertising Materials or the website to which the Ad is linked are, or may tend to bring, disparagement, ridicule, or scorn upon MedTech or any of its Affiliates (as defined below), provided that if MedTech has reviewed and approved such Ads prior to their use on the Site, MedTech will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from Agency.

d. If Advertising Materials provided by Agency are damaged, not to MedTech's specifications, or otherwise unacceptable, MedTech will use commercially reasonable efforts to notify Agency within two (2) business days of its receipt of such Advertising Materials.

e. MedTech will not edit or modify the submitted Ads in any way, including, but not limited to, resizing the Ad, without Agency's approval. MedTech will use all Ads in strict compliance with these Terms and any written instructions provided on the IO.

f. When applicable, Third Party Ad Server tags will be implemented so that they are functional in all aspects.

g. MedTech, on the one hand, and Agency and Advertiser, on the other, will not 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.

## **X. INDEMNIFICATION**

a. MedTech will defend, indemnify, and hold harmless Agency, Advertiser, and each of its Affiliates and 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 and resulting from (i) MedTech's alleged breach of Section XII or of MedTech's representations and warranties in

Section XIV(a), (ii) MedTech's display or delivery of any Ad in breach of Section II(a) or Section IX(e), or (iii) Advertising Materials provided by MedTech for an Ad (and not by Agency, Advertiser, and/or each of its Affiliates and/or Representatives) ("**MedTech Advertising Materials**") that: (I) violate any applicable law, regulation, judicial or administrative action, or the right of a Third Party; or (II) are defamatory or obscene. Notwithstanding the foregoing, MedTech will not be liable for any Losses resulting from Claims to the extent that such Claims result from (1) MedTech's customization of Ads or Advertising Materials based upon detailed specifications, materials, or information provided by the Advertiser, Agency, and/or each of its Affiliates and/or Representatives, or (2) a user viewing an Ad outside of the targeting set forth in the Insertion Order, which viewing is not directly attributable to MedTech's serving such Ad in breach of such targeting.

b. Advertiser will defend, indemnify, and hold harmless MedTech and each of its Affiliates and Representatives from Losses resulting from any Claims brought by a Third Party resulting from (i) Advertiser's alleged breach of Section XII or of Advertiser's representations and warranties in Section XIV(a), (ii) Advertiser's violation of Policies (to the extent the terms of such Policies have been provided (*e.g.*, by making such Policies available by providing a URL) via email or other affirmative means, to Agency or Advertiser at least 14 days prior to the violation giving rise to the Claim), or (iii) the content or subject matter of any Ad or Advertising Materials to the extent used by MedTech in accordance with these Terms or an IO.

c. Agency represents and warrants that it has the authority as Advertiser's agent to bind Advertiser to these Terms and each IO, and that all of Agency's actions related to these Terms and each IO will be within the scope of such agency. Agency will defend, indemnify, and hold harmless MedTech and each of its Affiliates and Representatives from Losses resulting from (i) Agency's alleged breach of the foregoing sentence, or (ii) Claims brought by a Third Party alleging that Agency has breached its express, Agency-specific obligations under Section XII.

d. 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 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.

## **XI. LIMITATION OF LIABILITY**

Excluding Agency's, Advertiser's, and MedTech's respective obligations under Section X, damages that result from a breach of Section XII, or intentional misconduct by Agency, Advertiser, or MedTech, 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 an IO, even if such party has been advised of the possibility of such damages.

## **XII: NON-DISCLOSURE, DATA USAGE AND OWNERSHIP, PRIVACY AND LAWS**

a. "**Confidential Information**" will include (i) all information marked as "Confidential," "Proprietary," or similar legend by the disclosing party ("**Discloser**") when given to the receiving party ("**Recipient**"); and (ii) 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 an employee, agent, Affiliate, or 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 in the IO.

b. 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) 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 of the Discloser in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange, or as necessary to establish the rights of either party under these Terms; provided, however, that both Discloser and Recipient will stipulate to any orders necessary to protect such information from public disclosure.

c. As used herein the following terms shall have the following definitions: i. “**User Volunteered Data**” is personally identifiable information collected from individual users by MedTech during delivery of an Ad pursuant to the IO, but only where it is expressly disclosed to such individual users that such collection is solely on behalf of Advertiser. ii. “**IO Details**” are details set forth in the IO but only when expressly associated with the applicable Discloser, including, but not limited to, Ad pricing information, Ad description, Ad placement information, and Ad targeting information. iii. “**Performance Data**” is data regarding a campaign gathered during delivery of an Ad pursuant to the IO (*e.g.*, number of impressions, interactions, and header information), but excluding Site Data or IO Details. iv. “**Site Data**” is any data that is (A) preexisting MedTech data used by MedTech pursuant to the IO; (B) gathered pursuant to the IO during delivery of an Ad that identifies or allows identification of MedTech, MedTech’s Site, brand, content, context, or users as such; or (C) entered by users on any MedTech Site other than User Volunteered Data. v. “**Collected Data**” consists of IO Details, Performance Data, and Site Data. vi. “**Repurposing**” means retargeting a user or appending data to a non-public profile regarding a user for purposes other than performance of the IO. vii. “**Aggregated**” means a form in which data gathered under an IO is combined with data from numerous campaigns of numerous Advertisers and precludes identification, directly or indirectly, of an Advertiser.

d. Use of Collected Data i. Unless otherwise authorized by MedTech, Advertiser will not: (A) use Collected Data for Repurposing; provided, however, that Performance Data may be used for Repurposing so long as it is not joined with any IO Details or Site Data; (B) disclose IO Details of MedTech or Site Data to any Affiliate or Third Party except as set forth in Section XII(d)(iii). ii. Unless otherwise authorized by Agency or Advertiser, MedTech will not: (A) use or disclose IO Details of Advertiser, Performance Data, or a user’s recorded view or click of an Ad, each of the foregoing on a non-Aggregated basis, for Repurposing or any purpose other than performing under the IO, compensating data providers in a way that precludes identification of the Advertiser, or internal reporting or internal analysis; or (B) use or disclose any User Volunteered Data in any manner other than in performing under the IO. iii. Advertiser, Agency, and MedTech (each a “**Transferring Party**”) will require any Third Party or Affiliate used by the Transferring Party in performance of the IO on behalf of such Transferring Party to be bound by confidentiality and non-use obligations at least as restrictive as those on the Transferring Party, unless otherwise set forth in the IO.

e. All User Volunteered Data is the property of Advertiser, is subject to the Advertiser’s posted privacy policy, and is considered Confidential Information of Advertiser. Any other use of such information will be set forth in the IO and signed by both parties.

f. Agency, Advertiser, and MedTech will post on their respective Web sites their privacy policies and adhere to their privacy policies, which will abide by applicable laws. Failure by MedTech, on the one hand, or Agency or Advertiser, on the other, to continue to post a privacy policy, or non-adherence to such privacy policy, is grounds for immediate cancellation of the IO by the other party.

g. Agency, Advertiser, and MedTech will at all times comply with all federal, state, and local laws, ordinances, regulations, and codes which are applicable to their performance of their respective obligations under the IO.

h. Agency will not: (i) use Collected Data unless Advertiser is permitted to use such Collected Data, nor (ii) use Collected Data in ways that Advertiser is not allowed to use such Collected Data. Notwithstanding the foregoing or anything to the contrary herein, the restrictions on Advertiser in Section XII(d)(i) shall not prohibit Agency from (A) using Collected Data on an Aggregated basis for internal media planning purposes only (but not for Repurposing), or (B) disclosing qualitative evaluations of Aggregated Collected Data to its clients and potential clients, and Media Companies on behalf of such clients or potential clients, for the purpose of media planning.

### **XIII. THIRD PARTY AD SERVING AND TRACKING (Applicable if Third Party Ad Server is**

used)

a. Ad Serving and Tracking. MedTech will track delivery through its ad server and, provided that MedTech has approved in writing a Third Party Ad Server to run on its properties, Agency will track delivery through such Third Party Ad Server. Agency may not substitute the specified Third Party Ad Server without MedTech's prior written consent.

b. Controlling Measurement. If both parties are tracking delivery, the measurement used for invoicing advertising fees under an IO ("**Controlling Measurement**") will be determined as follows: i. Except as specified in Section XIII(b)(iii), the Controlling Measurement will be taken from an ad server that is certified as compliant with the IAB/AAAA Ad Measurement Guidelines (the "**IAB/AAAA Guidelines**"). ii. If both ad servers are compliant with the IAB/AAAA Guidelines, the Controlling Measurement will be the Third Party Ad Server if such Third Party Ad Server provides an automated, daily reporting interface which allows for automated delivery of relevant and non-proprietary statistics to MedTech in an electronic form that is approved by MedTech; provided, however, that MedTech must receive access to such interface in the timeframe set forth in Section XIII(c), below. iii. If neither party's ad server is compliant with the IAB/AAAA Guidelines or the requirements in subparagraph (ii), above, cannot be met, the Controlling Measurement will be based on MedTech's ad server, unless otherwise agreed by Agency and MedTech in writing.

c. Ad Server Reporting Access. As available, the party responsible for the Controlling Measurement will provide the other party with online or automated access to relevant and non-proprietary statistics from the ad server within one (1) day after campaign launch. The other party will notify the party with Controlling Measurement if such party has not received such access. If such online or automated reporting is not available, the party responsible for the Controlling Measurement will provide placement-level activity reports to the other party in a timely manner, as mutually agreed to by the parties or as specified in Section IV(b), above, in the case of Ads being served by Media Company. If both parties have tracked the campaign from the beginning and the party responsible for the Controlling Measurement fails to provide such access or reports as described herein, then the other party may use or provide its ad server statistics as the basis of calculating campaign delivery for invoicing. Notification may be given that access, such as login credentials or automated reporting functionality integration, applies to all current and future IOs for one or more Advertisers, in which case new access for each IO is not necessary.

d. Discrepant Measurement. If the difference between the Controlling Measurement and the other measurement exceeds 10% over the invoice period and the Controlling Measurement is lower, the parties will facilitate a reconciliation effort between MedTech and Third Party Ad Server measurements. If the discrepancy cannot be resolved and a good faith effort to facilitate the reconciliation has been made, the Agency reserves the right to either: i. Consider the discrepancy an under-delivery of the Deliverables as described in Section VI(b), whereupon the parties will act in accordance with that Section, including the requirement that Agency and MedTech make an effort to agree upon the conditions of a makegood flight and delivery of any makegood will be measured by the Third Party Ad Server, or ii. Pay invoice based on Controlling Measurement-reported data, plus a 10% upward adjustment to delivery.

e. MedTech will make reasonable efforts to publish, and Agency will make reasonable efforts to cause the Third Party Ad Server to publish, a disclosure in the form specified by the AAAA and IAB regarding their respective ad delivery measurement methodologies with regard to compliance with the IAB/AAAA Guidelines.

f. Where Agency is using a Third Party Ad Server and that Third Party Ad Server cannot serve the Ad, Agency will have a one-time right to temporarily suspend delivery under the IO for a period of up to 72 hours. Upon written notification by Agency of a non-functioning Third Party Ad Server, MedTech will have 24 hours to suspend delivery. Following that period, Agency will not be held liable for payment for any Ad that runs within the immediately following 72-hour period until MedTech is notified that the Third Party Ad Server is able to serve Ads. After the 72-hour period passes and Agency has not provided written notification that MedTech can resume delivery under the IO, Advertiser will pay for the Ads that would have run, or are run, after the 72-hour period but for the suspension, and can elect MedTech to serve Ads until the Third Party Ad Server is able to serve Ads. If Agency does not so elect for MedTech to serve the Ads until Third Party Ad Server is able to serve Ads, MedTech may use the inventory that would have been otherwise used for MedTech's own advertisements or advertisements provided by a Third Party.

g. Upon notification that the Third Party Ad Server is functioning, MedTech will have 72 hours to resume delivery. Any delay in the resumption of delivery beyond this period, without reasonable explanation, will result in MedTech owing a makegood to Agency.

#### **XIV. MISCELLANEOUS**

a. MedTech represents and warrants that MedTech has all necessary permits, licenses, and clearances to sell the Deliverables specified in the IO subject to these Terms. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in the Ads and Advertising Materials as specified in the IO and subject to these Terms, including any applicable Policies.

b. Neither Agency nor Advertiser may resell, assign, or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without MedTech's prior written approval will be null and void. 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.

c. Each IO (including the Terms) will constitute 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 with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which will be an original, and all of which together will constitute one and the same document.

d. In the event of any inconsistency between the terms of an IO and these Terms, the terms of the IO will prevail. All IOs will be governed by the laws of the State of Maine. MedTech and Agency (on behalf of itself and Advertiser) agree that any claims, legal proceedings, or litigation arising in connection with the IO (including these Terms) will be brought solely in Maine, and the parties consent to the jurisdiction of such courts. No modification of these Terms or any IO will be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative.

e. 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 MedTech and Agency will be sent to the contact as noted in the IO with a copy to the Legal Department. All notices to Advertiser will be sent to the address specified on the IO.

f. Sections III, VI, X, XI, XII, and XIV will survive termination or expiration of these Terms, and Section IV will survive for 30 days after the termination or expiration of these Terms. In addition, each party will promptly return or destroy the other party's Confidential Information upon written request and remove Advertising Materials and Ad tags upon termination of these Terms.