

TERMS OF SERVICE

(Updated October 2, 2017)

WELCOME TO ADVICE MEDIA! The following Terms of Service (“**Terms of Service**”) contain information about Advice Media’s services and policies and what legal rights Advice Media and its Clients have and what obligations that they owe to each other. The provisions outlined in these Terms of Service are intended to describe our business relationship and define the terms and conditions that will govern it. These Terms of Service cover your use of Advice Media’s products and services (defined in these Terms of Service). Our **Privacy Policy** explains what information Advice Media collects and how it’s used and shared in providing our Services.

PLEASE TAKE THE TIME TO READ THESE TERMS. When you sign the **Order Form** to engage Advice Media and use its Services, you are agreeing to these **Terms of Service** and the **Privacy Policy**. Advice Media has tried to make these **Terms of Service** simple, but if you have questions or suggestions, please **Contact Us**.

1. **Getting Started.**

1.1. **Our Agreement.** The Order Form entered into between Advice Media, LLC (“Advice Media”) and client specified therein (the “Client”)(collectively referred to as the “**Parties**”), together with these Terms of Service, constitute the “**Agreement**.”

1.2. **Effective Date.** The Effective Date of the Order Form shall constitute the “**Effective Date**” of the Agreement.

1.3. **Advice Media Services; Scope of Work.** Advice Media shall provide Client with the services listed in the Order Form (the “**Services**”) in accordance with the specifications and timeline set forth therein and in any applicable services documents exchanged between the Parties and incorporated herein by reference, which may, from time to time, be executed by the Parties under the Agreement. For purposes of the Agreement, Services shall include, but are not limited to, designs, layouts, programming, computer code, algorithms, databases, scripts, informational content, writings, articles, custom or stock photography, illustrations, artwork and other media created by Advice Media, its suppliers or provided by the Client for the Services hereunder to create a website(s) for Client, and modifications thereto (“**Website**”), as well as digital marketing, social media management and any other products or services agreed to under the Agreement.

1.4. Any Services not listed on the Order Form or outside the scope of Services, shall not be included in the Services, but may be added or modified in an additional Order Form to be approved in writing by both Parties. Each such additional Order Form is hereby incorporated into the Agreement by this reference.

1.5. Advice Media will, from time to time, update the Services and service provisions in accordance with current industry practices to provide the best service for Client.

1.6. Advice Media reserves the right in its sole and exclusive discretion to determine if additional Web Programming Services are necessary to accommodate requests for changes by Client.

1.7. Advice Media makes no guarantees with respect to the effectiveness of any of the Services, whether or not the Services are described in this section.

1.8. **Services Description.** Advice Media provides design, development and ongoing digital marketing Services for its clients. The Services vary. Some of the Services are outlined below in general, non-specific terms. Advice Media reserves the right, in its sole discretion, to modify the Services to provide what Advice Media believes to be the best service for the Client.

1.8.1. **Website Development.** All services provided herein are to be performed by Advice Media in accordance with commonly accepted standards and practices of the Internet Web Services Industry. Advice Media will use website technologies that that can be accessed and viewed using most popular Internet web browsers.

1.8.2. **Website Management and Web Power.** Advice Media uses enterprise class servers to provide Client websites with optimal uptime, file management, database backup, and load speed. Advice Media manages the servers and client websites by installing security updates, Wordpress plugin updates, and Wordpress core updates as they are made available and proven to be

stable. Advice Media also provides Client editor access to the back end of the website's content management system (CMS) enabling client to make changes to their website. If Client has an hour of updates included in its Services, the hour includes simple content edits, swapping of images within the content area (images to be provided by Client), updating links, and embedding videos. All other changes are billed at our hourly rate then in effect.

1.8.3. **E-Commerce & Merchant Service.** If the Client requires an E-Commerce enabled website, Advice Media will recommend that the Client obtain a secure certificate for online transactions. Client understands that if it does not obtain its own secure certificate it is possible that design capabilities on the website may be limited. If the Client's website requires the ability to accept credit cards as payment for products offered on the website, the Client understands that it may need to obtain a merchant account. Client acknowledges that any charges necessary to secure a merchant account for the Client are not covered in this agreement. If the Client anticipates its website operating with a high volume of sales transactions it is possible that a "real-time" credit card processing system will be necessary in addition to a merchant account. Client acknowledges and agrees that disputes between, claims of, and losses or damages to Client and third parties arising from online payment interactions are not the responsibility of Advice Media, and Client shall indemnify, defend and hold harmless Advice Media from all losses, damages, proceedings, claims and actions arising from such interactions. Furthermore, Client shall comply with all laws in processing end user payments, including but not limited to data privacy regulations, usury laws and implied warranties (if any).

2. Client Responsibilities.

2.1. **Client Responsibilities re: Content and Materials.** Client shall provide Advice Media all materials necessary for Advice Media's performance of its Services, including but not limited to text copy, images, informational content, writings, artwork, images, photography or other media or material submitted to Advice Media or uploaded to the Website by Client or its appointed agents or representatives (collectively, the "**Client Content**") for the Website or any other products or services being developed by Advice Media hereunder, in a form satisfactory to Advice Media. Advice Media's ability to perform its obligations under the Agreement may be dependent on the Client fulfilling its obligations. Advice Media shall not be liable for any costs, charges or losses sustained by the Client arising directly from any failure of the Client to fulfill its obligations under the Agreement.

2.2. **Content Format.** All copy provided by the Client shall be in electronic format, in length and subject matter appropriate for its intended use. Where photographs, illustrations or other visual materials are provided by the Client, they shall be of professional quality and in a form suitable for reproduction without further preparation or alteration. The Client shall pay all fees and expenses required to bring nonconforming materials up to such standards.

2.3. **Client Approval of Work.** Within five (5) business days following receipt of any deliverables, the Client shall provide Advice Media with either (a) written approval and acceptance of such deliverable (which will not be unreasonably withheld), or (b) a written list of reasonable modification guidelines that will bring the deliverables into compliance with the description of Services provided by Advice Media. Each deliverable hereunder will be deemed accepted by the Client if, within five (5) business days of its delivery to the Client, Advice Media does not receive the foregoing written approval or a written list of reasonable modifications.

2.4. **Client Approval of Expenditures.** Client agrees to and authorizes Advice Media to make expenditures up to one-thousand dollars (\$1000.00) on its behalf that Advice Media determines, in its sole discretion, are necessary to give effect to the Services, without first obtaining prior approval from Client. Client will receive advance notice from Advice Media of the need to obtain its approval for any additional expenses related to the Services in excess of one-thousand dollars (\$1,000.00) and shall obtain such approval before proceeding with the expenditure. At Advice Media's discretion, Client shall either pay such expenditures directly to the third-party vendor or reimburse Advice Media upon presentation of applicable invoices. Subject to the terms in this section, Advice Media may, but will not be obliged, to commit to any expenditure on behalf of the Client without first receiving written confirmation of the Client's instructions and Advice Media will not be responsible for the consequences of any delay on the part of the Client in providing such written confirmation.

2.5. **Appointment of Client Representative; Approval Binding.** To avoid miscommunication, the Client shall appoint one or more representatives with full authority to provide or maintain any necessary information and approvals that may be required by Advice Media (the “**Client Representative**”). The Client Representative shall be responsible for coordination and review of the Advice Media’s Services and notifying Advice Media of Client’s instructions, change orders and approvals. The Signature, e-mail, or oral approval of the Client Representative shall be final and binding on Client. If the Client or any authorized person alters the scope of work or requires additional Services after the Client Representative has approved any work element related to the Services, the Client shall pay all associated fees and expenses arising from such changes and additional Services and/or reimburse Advice Media for any costs or expenses it incurs related thereto, including those imposed by third parties. The Client Representative’s approval of any site pages, materials, copy or other work produced by Advice Media during the commission of the Services, or any cost estimate, will constitute Advice Media’s authority to purchase, publish, make contracts necessary to the performance of Services and otherwise to do any other act or thing which Advice Media considers reasonable to do in order to carry out its obligations under the Agreement.

3. **Payment and Fees.**

3.1. **Monthly Fee.** The monthly fees set forth on the Order Form shall be payable on the Effective Date and on the monthly anniversary of the Effective Date for each subsequent month of the Term. The Monthly Fee is non-refundable. The Monthly Fee is subject to change at the election of Advice Media for each successive Term beyond the Initial Term. The Monthly Fee shall not increase more than 5% at each Renewal Term without the prior authorization of the Client. Any changes in fees for the Services will be effective only at the end of any period for which Client has prepaid. Utilization of the Advice Media Services by Client following the Effective Date of such change shall constitute acceptance by Client of such change.

3.2. **Cost of Additional Services.** If Client requests Services outside the scope of or in addition to the Client’s contracted Services identified in the Order Form, Client will be billed in 30-minute increments at our hourly rate as may then be in effect.

3.3. **Method of Payment.** Unless otherwise stated in the Order Form, credit card and ACH payments will be invoiced monthly, and payments by check will be invoiced every three (3) months. Declined credit cards and bounced checks will be charged \$100.00 for each attempt.

3.4. **Time of Payment.** The Client shall pay Advice Media the entire balance on an invoice (or the invoiced portions thereof) immediately upon receipt of the invoice.

3.5. **Late-Payments; Collection.** Late payments shall accrue interest at the rate of 1.5% per month (18% per annum). Advice Media shall be entitled to recover all of its costs of collection of any amount outstanding hereunder, including without limitation, the fees of its attorneys and/or collections agencies.

3.6. **Right to Suspend Work for Late or Non-payment; Reinstatement Fee.** All rights of the Client herein are conditioned on Advice Media’s receipt of full payment. Advice Media may withhold delivery of materials, or suspend or cease performance of Services (including taking down a Website), until payment in full of all amounts due are received. Advice Media shall not be liable for any damages, losses or liabilities that may arise because of Advice Media’s suspension or cessation of Services and/or withholding of materials due to Client’s non-payment. If Advice Media is forced to suspend providing Services due to non-payment, there will be a \$250 reinstatement fee for resumption of Services and Website.

4. **Term and Termination.**

4.1. **Term.** The Term of the Agreement shall be the period of time identified on the Order Form (the “**Term**”). The initial Term and any subsequent renewal Term may sometimes be referred to collectively as the “**Term**”.

4.2. **Initial Term.** The initial Term of the Agreement shall be the period of time identified on the Order Form and shall commence on the Effective Date (the “**Initial Term**”).

4.3. **Renewal.** The Term of the Agreement shall automatically renew at the completion of the Initial Term for the same length of time as the Initial Term (the “**Renewal Term**”). All subsequent Renewal Terms shall automatically renew for the same length of time as the immediately preceding Renewal Term.

4.4. **Advice Media’s Right to Terminate Without Cause.** Notwithstanding the foregoing, Advice Media shall have the right to terminate the Agreement or any Services for any reason upon giving thirty (30) days prior written notice to Client. Upon termination by Advice Media not based on Client’s fault, Advice Media will refund to Client the prorated balance of any fees paid for Services not yet performed, excluding non-cancellable and/or out-of-pocket expenses.

4.5. **Advice Media’s Right to Immediately Terminate with Cause.** Advice Media may have the right to immediately terminate for cause the Agreement or any specific Services upon notice if (i) Client fails to pay any sums due to Advice Media within thirty (30) days after the due date thereof; (b) Client breaches any of its covenants, representations, warranties or obligations, or any other material provision of the Agreement; (ii) Client becomes insolvent or is bankrupt; (iii) Client undergoes a substantial change in management or control; or (iv) Client exceeds its authorized access to the Services or Website, including but not limited to attempting to decompile, download or reverse engineer the Website’s source code or HTML. If Advice Media terminates the Agreement pursuant to this paragraph, all fees or deposits due and owing to Advice Media by Client under this Agreement, including any amounts for Services not yet billed but due under this Agreement for the duration of the Term, will be immediately billed to Client and shall be payable upon receipt.

4.6. **Client’s Right to Terminate.** The Agreement shall continue indefinitely unless terminated by Client in a written notice to Advice Media not later than forty-five (45) days prior to the end of the Initial Term or any Renewal Term. Client may terminate the Agreement early, but will be responsible for all fees due and owing to Advice Media under this Agreement, including any amounts for Services not yet billed but due under this Agreement for the duration of the Term. Upon receipt of Client’s early termination notice, Advice Media will issue a final bill to Client which shall be payable upon receipt.

5. **Suppliers.** Unless otherwise stated in the Agreement or agreed by the Parties in writing, Advice Media’s contracts with suppliers in respect of the Services shall be made in accordance with suppliers’ standard terms or such other terms as Advice Media is able to negotiate with the relevant supplier. Advice Media shall act as principal in all such contracts, but all rights and liabilities as between the Client and the Advice Media shall correspond to those between Advice Media and the various suppliers under such conditions, including any service levels and any rights of amendment, omission and cancellation.

6. **Third Party Agreements.** Advice Media reserves the right to enter into third-party agreements for products or services that it determines are necessary to give effect to Advice Media’s Services. Advice Media further reserves the right to share these Terms of Service with third-party providers.

7. **Confidentiality; Non-Solicitation.**

8.1. **Confidential Information.** Advice Media and the Client shall mutually respect and maintain each other’s Confidential Information in confidence and shall use it only to perform their respective obligations hereunder. Confidential information is that which relates to the Client’s or Advice Media’s research, development, trade secrets or business affairs and includes but is not limited to, in the case of Advice Media’s confidential information, its computer programs, source code, algorithms and inventions (collectively, “**Confidential Information**”). For the avoidance of doubt, Confidential Information does not include information which is public knowledge, was in the recipient’s possession before receipt of it or is independently developed by the recipient. Notwithstanding the foregoing, Advice Media does not intend to grant access to its Confidential Information for any reason. In the event Client receives Advice Media’s Confidential Information, Client shall immediately destroy it or return it to Advice Media.

8.2. **Non-Solicitation.** Neither Party shall solicit the other's employees, independent contractors or consultants or engage them in any work independent of the Parties' relationship under the Agreement during the term of the Agreement and for eighteen (18) months thereafter.

8.3. **Privacy Policy.** See the **Privacy Policy** for additional information concerning the use of any Advice Media Services.

8.4. Any conflict between this provision in the **Terms of Service** and the **Privacy Policy**, will be resolved with the Terms of Service prevailing.

9. **Intellectual Properties.**

9.1. **Advice Media's IP Rights.** As between the Parties, Advice Media shall own and retain all intellectual property rights (e.g. copyright, trademark, patent, and trade secrets) to work that it creates and commissions pertaining to the Services provided hereunder including but not limited to algorithms, architectures, source and object code, frameworks, images, videos, content and libraries, and all derivatives, enhancements and modifications thereto (collectively, the "**Proprietary Technology**"). Client Content is not Proprietary Technology.

9.2. **Client's IP Rights.** Client shall own and retain all rights in and to all Client Content, unless such material is already in Advice Media's possession when it is provided to Advice Media, in which case it will be deemed Advice Media's property under Section 9.1.

9.3. **License to Work Product in Exchange for Full Payment.** Subject to payment of all amounts owed to Advice Media, Advice Media hereby assigns to Client all rights, title and interest in all original work produced by Advice Media, its employees, or its subcontractors for the Website, other than Client Content and Proprietary Technology (the "**Work Product**"). To the extent the Work Product is not transferable to Client, and subject to Advice Media's receiving full payment for the Services it provides to Client hereunder, Advice Media hereby grants to Client a nonexclusive, royalty-free, worldwide license to use, reproduce and display the Website and all intellectual property incorporated therein for the term and duration of the Agreement. Upon Termination of the Agreement, Client shall be solely responsible for clearing and licensing all imagery, video and other content provided to Client by Advice Media.

9.4. **License to Client Content.** Client hereby grants to Advice Media, and any third-party provider necessary to the Services, a nonexclusive, royalty-free, perpetual, irrevocable, worldwide, unlimited, sublicensable (through multiple tiers of sublicensees) license to use, reproduce, prepare derivative works of, display and distribute Client Content (as defined herein) in connection with Client Strategies and Advice Media's products and Services subject to the special protections described in Section 10.

9.5. **Rights to Client Content.** Client represents that it owns or has obtained rights and permissions necessary to grant all relevant rights and permissions for use of Client Content herein. For those materials that Client does not own, Client shall obtain from its associates, employees, customers, patients and any other individual whose photographs, illustrations, or likenesses (each, an "Image"), in whole person or in select body parts, a written release or license allowing for use of such person's Image to be used on the Website and for advertising and commercial purposes. Client further warrants that all Client Content may be used pursuant to the Agreement, including without limitation on the Internet and for commercial purposes, without violating any laws and without violating or infringing any rights of any third parties. Client represents and warrants that use of Client Content will not infringe on third party intellectual property rights nor violate applicable law.

9.6. **Claims of Illegal or Infringing Content.** If Client receives notice that content on the Website, whether Client Content or otherwise, is unlawful or infringing, Client shall promptly provide Advice Media notice identifying the allegedly unlawful or infringing content. Upon notification, Advice Media may, in its discretion, suspend hosting of the Website, remove the allegedly unlawful or infringing content from the Website, or completely remove the Website from its hosting servers. If Client fails to expeditiously notify Advice Media of content that Client knows to be allegedly infringing or unlawful, Client shall indemnify, defend, and hold harmless

Advice Media from claims, proceedings, losses, and damages arising from such content. If Advice Media has reason to believe that Client has repeatedly infringed on the intellectual property rights (including copyright and trademark rights) of another person or entity, Advice Media reserves the right to terminate the Agreement and the Services therewith immediately upon notice.

9.7. **DMCA Compliance.** The DMCA provides recourse to those who believe that material appearing on the Internet infringes their rights under U.S. copyright law. Client shall comply with the Digital Millennium Copyright Act (the “DMCA”) to the extent it is applicable. If Client receives a DMCA takedown notice from a third party alleging copyright infringement, Client shall promptly forward that notice to Advice Media, and Advice Media may or may not, in its discretion subject to applicable law, remove the content or access to it.

9.7.1. **Submission of DMCA Counter-Notice.** If Client believes in good faith that a notice of copyright infringement has been wrongly issued, the DMCA permits Advice Media and/or Client to send a counter-notice to the notifying party. Notices and counter-notices must meet current statutory requirements imposed by the DMCA; see <http://www.copyright.gov> for details. Notices and counter-notices under the DMCA, as well as all other communications addressed to Advice Media relating to the Agreement, should be sent Advice Media at its headquarters address listed on its website. Advice Media strongly recommends that you consult your legal advisor before filing a notice or counter-notice. Also, please be aware that penalties may apply for false claims under the DMCA.

10. **Special Protections to Healthcare Providers, Health Plans and Healthcare Clearinghouses.** If Client, or its customer, client, patient, associate, employee or agent, or a third-party beneficiary to this Agreement shall be required under any state or federal law by the very nature of their industry, occupation, service or product, and/or if any information used or shared pursuant to this Agreement qualifies for special state or federal law protections, the following terms and conditions shall apply and incorporated into the Agreement and these Terms of Service:

10.1. **Definitions.** The following terms used in this section shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

10.1.1. **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103. The business associate under this Section shall mean Advice Media.

10.1.2. **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103. The covered entity under this Section shall mean Client.

10.1.3. **Data Controller.** “Data Controller” shall also refer to and mean Client. A data controller has control over the purpose and manner of which personal data, personally identifiable information, and any protected health information (PHI) (as those terms are defined under applicable law) is collected, stored and analyzed.

10.1.4. **Data Processor.** “Data Processor” shall also refer to and mean Advice Media. A data processor collects, stores, or analyzes personally identifiable information at the direction of the data controller.

10.1.5. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

10.2. **Obligations and Activities of Business Associate.** Advice Media agrees to be bound by the following provisions:

10.2.1. Not to use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

10.2.2. To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Section;

10.2.3. To report to covered entity any use or disclosure of protected health information not provided for by this Section of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

10.2.4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Advice Media agree to the same restrictions, conditions, and requirements that apply to the Advice Media with respect to such information;

10.2.5. To make available protected health information in a designated record set to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

10.2.6. To make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

10.2.7. To maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;

10.2.8. To the extent the Advice Media is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, to comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

10.2.9. To make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

10.3. Obligations and Activities of Covered Entity. Client as the Covered Entity agrees to be bound by the following provisions:

10.3.1. Not to furnish, deliver, or disclose protected health information to Advice Media other than as expressly provided in this Section, or as permitted under applicable law, and for no other reasons;

10.3.2. Not to furnish, deliver, or disclose the identity, name, address, phone number, email address or any other contact information (collectively, the "Identity Information") of any patient of covered entity or of any other person for any reason, other as expressly provided in this Section, or as permitted under applicable law, or pursuant to an informed written consent signed by any such patient or person;

10.3.3. Not to furnish, deliver, or disclose any photographs, images, videos, or likeness, in any format, whether analog, physical, digital, or otherwise (collectively, the "Images") of any patients of covered entity or any other person for any reason other than as expressly provided in this Section, or as permitted under applicable law, or pursuant to an informed written consent signed by any such patient or person;

10.3.4. To indemnify, defend, and hold Advice Media harmless, to the maximum extent permitted by law, from any and all damages, fines, amounts paid in settlement, judgments, investigations, government and administration proceedings, claims, lawsuit, proceedings or any other liabilities (including the reasonable fees of attorneys, experts, and other professionals) with respect to or arising out of, (i) the breach of this Section, or (ii) the retention, possession, use, or disclosure by covered entity or Advice Media of protected health information, Identity Information or Images on the Internet, to a webhost, to another covered entity, to another Advice Media, to a subcontractor, or to any other party in any manner or via any medium whatsoever, or whether transmitted by encrypted or unencrypted e-mail, Internet file transfer or other web or Internet protocol, text or SMS messaging, or any other mode of telecommunications.

10.3.5. The indemnity, hold harmless, and defense obligations of covered entity that are specified in the immediately preceding paragraph (d) shall apply and be binding upon all of the following (each, an "affiliate"): the present, former, and

future shareholders, officers, directors, members, managers, and agents of covered entity, and parties under common control or affiliated with covered entity or any of the foregoing persons or entities.

10.3.6. Covered entity is, and shall be, responsible and liable to Advice Media for any actions taken, or omissions made, by any affiliate with respect to the obligations, liabilities, rights, or remedies of covered entity or any affiliate, whether occurring under this Section, under the Terms and Conditions, or otherwise.

10.3.7. Each affiliate is, and shall be, jointly and severally liable to Advice Media, for any actions taken, or omissions made, by covered entity or another affiliate with respect to the obligations, liabilities, rights, or remedies of covered entity or any affiliate, whether occurring under this Section, under the Terms and Conditions, or otherwise.

10.4. Permitted Uses and Disclosures by Advice Media.

10.4.1. Advice Media may only use or disclose protected health information as provided in this Section, the Terms and Conditions, and as permitted or required by applicable Laws.

10.4.2. Advice Media is authorized in its sole discretion to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

10.4.3. Advice Media may use or disclose protected health information as required by law.

10.4.4. Advice Media agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

10.4.5. Advice Media may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.

10.5. Client's Duty to Inform re: Privacy Practices and Restrictions.

10.5.1. Covered entity shall notify Advice Media of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect Advice Media's use or disclosure of protected health information, Identity Information, or Images.

10.5.2. Covered entity shall notify Advice Media of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, Identity Information, or Images, to the extent that such changes may affect Advice Media's use or disclosure of protected health information, Identity Information, or Images.

10.5.3. Covered entity shall notify Advice Media of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Advice Media's use or disclosure of protected health information.

10.5.4. Covered entity shall post a notice of privacy practices on its Website that is compliant with the HIPAA Rules, and shall, whenever it updates or modifies the notice of privacy practices that it uses in its general business, post such updated or modified notice of privacy practices on the covered entity's Website.

10.5.5. The notice of privacy practices shall set forth that covered entity has the right to transmit protected health information, Identity Information, and Images via unencrypted email or other unsecure means.

10.6. **Impermissible Requests by Covered Entity.** Client (or the Covered Entity) shall not request Advice Media to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

10.7. Client acknowledges and agrees that, in the context of the Agreement, Client shall be responsible for compliance with applicable law pertaining to data controllers. Notwithstanding anything herein to the contrary, Advice Media shall not be liable for, and Client agrees to indemnify and hold harmless Advice Media and its affiliates and intended third-party beneficiaries from and against any and all claims, investigations, proceedings, demands, liabilities, costs, losses and expenses whatsoever (including,

without limitation, reasonable attorneys' fees) arising from collection, storage, sharing or usage of personal data or placement of cookies.

10.8. Right to Terminate for Cause Under this Section.

10.8.1. Either Party authorizes termination of this Agreement by the other Party, if such Party determines that the other Party has violated a material term contained within Section 10 and the other Party has not cured the breach or ended the violation (after written notice) within thirty (30) days of receiving such notification.

10.8.2. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement, Advice Media, with respect to protected health information received from Client or the covered entity, or created, maintained, or received by Advice Media on behalf of Client or the covered entity, shall:

10.8.2.1. Retain only that protected health information which is necessary for Advice Media to continue its proper management and administration or to carry out its legal responsibilities;

10.8.2.2. Return to covered entity (or, if agreed to by covered entity, destroy) the remaining protected health information that the business associate still maintains in any form;

10.8.2.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

10.8.2.4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions which applied prior to termination; and

10.8.2.5. Return to Client or the covered entity (or, if agreed to by Client or the covered entity, destroy) the protected health information retained by Advice Media when it is no longer needed by Advice Media for its proper management and administration or to carry out its legal responsibilities.

10.9. **Survival.** The obligations of Advice Media under this Section shall survive the termination of the Agreement.

11. Indemnification: Limitation of Liability.

11.1. **Indemnification.** Client shall indemnify, defend (at its own cost and expense) and hold harmless Advice Media and any of its owners, employees, licensees, partners, officers, directors, shareholders, agents, affiliates, successors, assigns, representatives, third-party providers and publishers, and intended third-party beneficiaries from and against all charges, claims, liabilities, damages, judgments, losses and expenses of any kind or nature (including reasonable legal fees and costs) which in any way relate to: (a) the Client Content; (b) Client's patients and related protected health information (PHI) or other third-party customers of Client; (c) a lack of permission related to or other misuse of an Image, other patient information or Client Content in general; (d) the breach or alleged breach of Client's representations, warranties, obligations or agreements herein or in any other terms and conditions agreed to in writing by the Parties; (e) any negligent or reckless or willful misconduct; and (f) any action or omission of Client. Client shall further indemnify, defend and hold harmless Advice Media and any third-party provider or publisher from any and all liability related to the products and services provided to Client in relation to Advice Media's Services, to the fullest extent under applicable law, however, for the avoidance of doubt, the foregoing does not limit any express warranties made to Advice Media or Client under any third-party agreement. At Advice Media's request, Client shall provide a defense for Advice Media in any such proceeding, actual, threatened, or potential and shall consult with Advice Media in conducting such defense (or, at Advice Media's election, reimburse Advice Media for reasonable fees and costs of Advice Media's own counsel).

11.2. **Limitation of Liability.** Advice Media shall not be liable for any indirect, third-party, incidental, special, consequential, exemplary or punitive damages arising out of the Agreement or relating to the Services provided herein, including but not limited to

losses or damages resulting from the loss of data as a result of delays, non-deliveries or service interruptions. Advice Media shall not be held responsible for delays and nonperformance (and damages and losses arising therefrom) caused by activities or factors beyond its reasonable control, including delays and nonperformance caused by viruses, denial of service attacks, other acts or omissions by third parties, Internet service providers, the Client or its contractors, strikes, lockouts, work slowdowns or stoppages, accidents, fires, acts of God, terrorism, failure by the Client to timely furnish information or approve or disapprove work, or faulty performance by the Client or others, including third-party contractors hired by Advice Media or by Client. Advice Media's maximum liability under the Agreement shall not exceed the lesser of (a) the total fees received by it during the twelve (12) months preceding the event giving rise to Advice Media's liability, or (b) Client's actual damages actually caused by Advice Media.

11.3. **Class Action Waiver.** Client agrees to waive any right to bring or participate in a class action litigation against Advice Media and any of its third-party providers, which are intended third-party beneficiaries herein, with respect to the Services or products of Advice Media or its third-party providers and publishers.

12. **Disclaimer of Warranties** THE SERVICES AND ALL OTHER PRODUCTS AND SERVICES PROVIDED OR MADE AVAILABLE HEREUNDER ARE PROVIDED BY ADVICE MEDIA, ITS THIRD-PARTY PROVIDERS AND PUBLISHERS ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS, DEFECTS AND ERRORS" BASIS. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT CLIENT'S USE OF THE SERVICES IS AT CLIENT'S SOLE RISK. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ADVICE MEDIA, ITS THIRD-PARTY PROVIDERS AND PUBLISHERS DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING, PERFORMANCE OR USAGE OF TRADE. ADVICE MEDIA, ITS THIRD-PARTY PROVIDERS AND PUBLISHERS DO NOT WARRANT THAT THE SERVICES OR CLIENT'S WEBSITE IS ERROR-FREE, FREE OF HARMFUL COMPONENTS, OR THAT IT WILL BE ACCESSIBLE ON A PERMANENT BASIS OR WITHOUT INTERRUPTION. ADVICE MEDIA, ITS THIRD-PARTY PROVIDERS AND PUBLISHERS DO NOT WARRANT THAT THE APPEARANCE OF THE WEBSITE OR ANY CLIENT STRATEGIES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE WEBSITE, SERVICES OR CLIENT STRATEGIES WILL PERFORM EXACTLY AS DESCRIBED IN ANY OF ADVICE MEDIA'S WEBSITES OR PROMOTIONAL MATERIALS. THE USE OF ANY DATA OR INFORMATION RECEIVED BY CLIENT OR ANY OTHER INDIVIDUAL FROM THE UTILIZATION OF THE SERVICES PROVIDED BY ADVICE MEDIA, ITS THIRD-PARTY PROVIDERS AND PUBLISHERS IS AT CLIENT'S SOLE AND ABSOLUTE RISK. ADVICE MEDIA, ITS THIRD-PARTY PROVIDERS AND PUBLISHERS EXPRESSLY DISCLAIMS AND DENIES ANY RESPONSIBILITY FOR THE COMPLETENESS, ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH THE SERVICES.

13. **Miscellaneous.**

13.1. **Headings.** Headings are for convenience only and do not constitute terms of the Agreement.

13.2. **Independent Contractor.** The Parties agree that the relationship between them is that of independent contractors only. No agency, partnership or other relationship (other than a relationship of independent contractors) between the Parties shall be deemed to exist.

13.3. **Modifications or Amendments.** Advice Media reserves the right to unilaterally amend, change or modify the terms of the Agreement, specifically including these **Terms of Service** and the **Privacy Policy**, and any such changes shall take effect within forty-five (45) of notice to Client. Any modifications to pricing shall be subject to Section 3 herein. Utilization of the Advice Media Services by Client following the Effective Date of such change shall constitute acceptance by Client of such change.

13.4. **Notices.** Any and all notices required or permitted hereunder shall be sent as provided for in this Section.

13.4.1. **Notice to the Client shall be delivered** (1) through the Client's account on advicemedia.com; (2) through the Client Service Center (CSC) on advicemedia.com; (3) by email to the Client Representative(s) at the email address(es) identified on the Client's account on advicemedia.com; or (4) by certified mail, return receipt requested, postage prepaid to Client's mailing address registered on the Client's account on advicemedia.com. Notice shall be deemed properly given to Client the earlier of the actual date of delivery or three (3) days from the date notice is sent or posted.

13.4.2. **Notice to Advice Media shall be delivered** (1) through the CSC on advicemedia.com and (2) by certified mail, return receipt requested, postage prepaid to Advice Media's headquarters, the address of which shall be identified on advicemedia.com. Notice shall be deemed properly given to Advice Media three (3) days from the date the certified mail envelope is posted.

13.5. **Governing Law; Jurisdiction; Venue.** The Agreement shall, in all respects, be governed by the laws of the State of Utah. Each party agrees that any Claim arising out of or relating to the Agreement shall be brought in the state courts located in Summit County, Utah. Each party consents to the exclusive jurisdiction of such courts (and the appropriate state appellate courts) in any such action or proceeding and waives any objection to venue laid therein. If Advice Media is the prevailing party in any legal action, Client shall pay all costs of suit and fees incurred by Advice Media related to the dispute, including, without limitation, reasonable attorneys' fees and expert witness fees; interest on damages shall be at the rate of eighteen percent (18%) per annum.

13.6. **Entire Agreement.** The Agreement embodies the Parties' entire understanding and agreement with respect to the subject matter hereof and supersedes any and all prior and contemporaneous discussions and communications (written and oral) regarding such subject matter. There will be no force or effect to any different terms of any related purchase order or similar form even if signed by the Parties after the date hereof, unless it expressly references the Agreement and is signed by both Parties.

13.7. **Severability.** In the event any of the provisions of the Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of the Agreement shall remain in full force and effect. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation applicable to the Parties and to the Agreement, contrary to which the Parties have no legal right to contract, the latter shall prevail; but the provision of the Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

13.8. **Assignment.** Advice Media may assign the Agreement, or any of Advice Media's interests under the Agreement: (i) to any person which is a party to a merger or consolidation of/with Advice Media; (ii) to any Affiliate of Advice Media; or (iii) to any Person acquiring substantially all of the assets of Advice Media or the unit of Advice Media for which Client is rendering services, and, provided that any such assignee assumes Advice Media's obligations under the Agreement, Advice Media shall then be relieved of any and all liability under the Agreement. Client shall not have the right to assign the Agreement or delegate any duties imposed upon Client under the Agreement without the written consent of Advice Media, and any such purported assignment or delegation shall be null and void and of no effect.

13.9. **Non-Waiver.** No waiver by any Party hereto of a breach of any provision of the Agreement shall constitute a waiver of any preceding or succeeding breach of the same or any other provision hereof unless such waiver is in writing.

13.10. **Third-Party Beneficiary.** The Parties acknowledge and agree that Advice Media's third-party providers and service vendors are intended third-party beneficiaries of the Agreement.

13.11. **Survival.** In the event of the termination of the Agreement, any obligation of a party, which must, by its nature survive such termination in order to be given full effect, shall survive such termination.