



## FertilityAuthority.com, LLC

### Advertising Terms and Conditions

These ADVERTISING TERMS AND CONDITIONS (“Terms”) are made and entered into, as applicable, the Advertiser signing these terms or any document, including but not limited to insertion orders, statements of work or service agreements (“IO”), that references these Terms. These Terms and any applicable IO are collectively referred to as the “Agreement.” FertilityAuthority.com, LLC (the “Company”) and Advertiser hereby agree and acknowledge:

#### 1. **Insertion Orders.**

1.1 Advertiser and the Company will negotiate IOs under which the Company will deliver advertisements provided by Advertiser (or Advertiser’s authorized agent (“Agency”)) for the benefit of an Advertiser. The IO will be binding only if accepted as provided in Section 1.2 below. Each IO shall specify: (a) the type(s) and amount(s) of inventory to be delivered (e.g., impressions, sponsored content or leads) (the “Deliverables”); (b) the price(s) for such Deliverables; (c) the amount of money to be spent pursuant to the IO, and (d) the start and end dates of the campaign.

1.2 The Company will make commercially reasonable efforts to notify Advertiser within three (3) business days of receipt of an IO if the specified inventory is not available.

1.3 Acceptance of the IO and these Terms will be made upon the earlier of (a) signed approval (which, unless otherwise specified, for purposes of these Terms shall include paper, fax, or e-mail communication) of the IO by the Company and Advertiser; or (b) the display of the first Ad impression by the Company, unless otherwise agreed upon in the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless signed by both parties.

1.4 Advertiser will deliver all advertisements to the Company no later than five (5) days before the Start Date listed on the IO. In the event Advertiser has requested Ad Design services as per the Insertion Order, the Advertisement’s Start Date shall be the earlier of (a) the date upon which the Advertiser approves Advertisement and (b) the second business day following delivery of the Advertisement to the Advertiser; provided, however, Advertiser may request up to two sets of changes to the Advertisement before delivery is final.

1.5 This Agreement shall be for a term (the “Term”) as specified by the earliest Start Date, subject to Section 1.4, and the latest End Date of the campaign(s) specified on the IO.

2. **Terms of Payment.** The Company will invoice the Advertiser upon execution of the IO, payable net 10 days. Invoices are sent electronically (via email) to Advertiser’s address unless there is an Agency of Record, in which case the Invoice would be sent to the Agency’s billing address as set forth in the IO. All payments are due on the first business day of every month via online credit card payment, ACH, wire, or other electronic means. Advertiser agrees to reimburse Company for any fees that may be incurred as a result of such payment method. Late payments bear interest at the rate of 2% per month, or if less, the highest rate

FERTILITYAUTHORITY.COM • FERTILETHOUGHTS.COM • TOPFERTILITYDOCS.COM

FERTILITYAUTHORITY.COM, LLC

150 EAST 49<sup>TH</sup> STREET, SUITE 5A, NEW YORK, NY 10017 • PHONE: (212) 888-3124 • FAX: (212) 813-1845

permitted under law, after 30 days have passed from the invoice date. Advertiser further agrees to reimburse the Company for all expenses (including attorney's fees) incurred in collecting amounts due in connection with any Advertisement. If the IO specifies an Agency, both Agency and Advertiser shall be jointly and severally liable for payment under this Agreement.

3. **Company's Representations and Warranties.** Company represents and warrants as follows:

3.1 The Company has the right to operate FertilityAuthority.com, including, but not limited to, FertilityAuthority.com's main website located at the url [www.FertilityAuthority.com](http://www.FertilityAuthority.com), and/or any of the company's networks, third party networks and the company's mirror, co-branded or derivative sites (collectively, the "FertilityAuthority Network") and other methods at the Company's discretion, and Advertiser's advertisements will appear as provided in this Agreement. Company, in its sole and complete discretion, may refuse the use of any advertisement that it deems inappropriate for any reason or no reason. Company, in its sole and complete discretion may remove or adjust promotion of listings in an attempt to limit the number of inquires to stay within the Advertiser's monthly impression and/or lead target, or for any reason the Company deems necessary.

3.2 The Company is in compliance with all relevant privacy laws and regulations and that it shall provide notice for, and clearly disclose, its privacy policies and practices to visitors to its Website(s), including its policies and practices with respect to the collection of information on consumers who may visit its Website(s).

3.3 The Company will comply with the IO, including all advertisement placement restrictions, requirements to create a reasonably balanced delivery schedule, and provide within the scope of the IO. Any material exceptions must be approved by Advertiser in writing.

3.4 The Company will be responsible for assuring Advertisements link through to the "Linking URL" specified on the IO and for sending Leads to the email address indicated by the Advertiser specified on the IO.

4. **Advertiser's Representations and Warranties.** Advertiser represents and warrants as follows:

4.1 Advertiser is fully authorized to publish, and authorizes Company to publish content on its behalf, all content, once approved by Advertiser, complies with all applicable laws and regulations and does not infringe upon the rights of third parties. Company reserves the right to refuse any advertising request or to immediately cancel any campaign that does not completely conform to every detail, instruction, method, and guideline set forth in this Agreement.

4.2 Advertiser grants Company a non-exclusive worldwide right and license to use Advertiser's trademarks, copyrights, and other intellectual property for the purpose of fulfilling its obligations under this Agreement. Company shall use Advertiser's trademarks, copyrights, and other intellectual property in conformance with any reasonable usage policies of which it is notified in writing by Advertiser.

4.3 Advertiser (a) is the sole owner of its trademarks licensed hereunder and of any and all rights, including intellectual property rights, in and to such trademarks and (b) holds any and all awards, accreditations, rankings or other indicia of academic prestige or legitimacy that it states that it holds on Advertiser or Company's Web site or in any written or oral statements to Company.

4.4 Advertiser will deliver banners, ads and other advertising materials and listing profile information in a format acceptable to Company.

4.5 Advertiser is responsible for informing Company in any changes to linking URL or inquiry email address required. Company will fulfill any change requests within five (5) business days of written request by Advertiser. Maintenance of a functional website landing page is the responsibility of the Advertiser.

4.6 Advertiser is in full compliance with all relevant privacy laws and regulations and that it shall provide notice for, and fully disclose, its privacy policies and practices to visitors to its Web site(s), including its policies and practices with respect to the collection of information on consumers who may visit its Web site(s); and entering into this Agreement does not create such a violation.

4.7 Advertiser will limit its use of the data provided by Company to the purposes of this Agreement. Advertiser is prohibited from re-selling, repurposing, or any other unauthorized use of Lead data.

4.8 Advertiser acknowledges that fees paid under this agreement are for marketing and advertising. Company is not a referral agency, and does not refer to, recommend or endorse providers of medical services. Company is an online aggregator of consumer interests that attempts to connect consumers with expressed interests in specified medical service to self reported providers of such services. Company does not represent or guarantee that a consumer will respond to Advertiser's follow-up, seek or need treatment or make an appointment with Advertiser, as a result of material forward by Company to Advertiser. Advertiser is not obligated to follow up on any particular information provided to it.

4.9 To the extent that any act or service performed by Company under this is construed by a court, board, or other state or federal governmental agency or professional association to be illegal or unethical, Company shall not be obligated to perform such act or service.

4.10 Advertiser agrees to indemnify, defend and hold harmless Company from any and all claims, demands, and causes of action arising from any information, health care advice and/or treatment that Advertiser provide and with regard to inquiries, investigations' and inquiries from federal and state agencies. Advertiser agrees not to represent that services Advertiser will or may provide are or will be authorized by or under the direction or control of Company. Advertiser further represents and warrants to Company, without limitation to any of the foregoing, that Advertiser's physicians and/or specialists, as applicable, have the academic degrees, training and expertise consistent with the information you provided to Company, that any success rates, outcome or health claims made by Advertiser in the material that Company posts or distributes, has prior substantiation sufficient to meet applicable legal standard, and that other information provided to the Company is materially true, correct, and not misleading to an ordinary consumer.

4.11 If an Agency is entering into this Agreement on behalf of an Advertiser, Agency agrees to the foregoing representations, and also represents and warrants that it is the authorized agent of Advertiser, and Advertiser is not, as of the date of this Agreement, in material breach of any agreement with or in default with respect to any amounts owed to Agency. Agency further agrees it will limit the provision of Lead data to Advertiser and will assure Advertiser's agreement to abide by this limitation.

## 5. **Display Advertising and Sponsored Content.**

5.1 The Company may place Advertiser's campaign on any of the sites in the FertilityAuthority Network. The Company will attempt (but does not guarantee) to deliver ad impressions evenly over the Term (in the case of "Capped" campaigns) or as quickly as possible (in the case of "ASAP" campaigns). If at any time, the impressions delivered exceed the expected impressions to have been to that

date, the Company may suspend the campaign until such time as the impressions delivered are less than the expected impressions delivered to that date at which time the ad will resume.

5.2 If the agreed total impression volume specified in the IO, if any, is not achieved within the Term, Advertiser has the option of extending the service period until the previously agreed impression volume is achieved, or receive a credit towards future advertising. The foregoing will be Advertiser's sole and exclusive remedy in the event of such under-delivery. Company at its discretion may deliver more impressions than contracted over the contract period.

6. **Directory Listings / Lead Generation.**

6.1 Advertiser shall pay Company an annual registration fee as provided above to market information provided by Advertiser in its online directories of physician, clinics and other fertility specialists on the FertilityAuthority Network. Company will post the initial information within a reasonable time after receipt on its website and will promptly update each specified profile on the website from time to time based on information provided to it by the Advertiser. Company will update statements concerning qualifications, publications and other achievements, practice and contact information such as phone number, email, URL link, headshots, request for an appointment link, and maps/directions in the context of overall promotion of services provided by a number of clinics, physicians and other specialists.

6.2 For Advertisers that have elected to participate in lead generation as specified on the IO, the Company will provide the Advertiser with responses submitted by consumers on the Company's online appointment request form ("Web Lead") or phone call from a specified call-tracking number ("Phone Lead"). Both Web Leads and Phone Leads shall be counted as a Lead toward the Lead Goal specified in the IO. Such Leads will initially be forwarded to Advertiser based on proximity to consumer's geographic location to Advertiser's Targeting Preferences specified in the IO. A Web Lead shall include the following information: Last Name, Phone, Email Address and Zip Code. In addition, a consumer will be prompted and may provide the following information at his/her option: First Name, Age, Months trying to conceive, Best time to contact and Comments.

6.3 If the agreed Lead Goal is not achieved within the service period, Advertiser has the option of extending the service period until the earlier of (a) six months following the End Date specified in the IO and (b) Lead Goal is achieved. The foregoing will be Advertiser's sole and exclusive remedy in the event of such under-delivery. Company at its discretion may deliver more Leads than contracted over the contract period.

7. **Cancellation/Termination.** IOs become non-cancellable by the Advertiser at 5:00 P.M. (EST) two (2) days following the signature date on the IO. No cancellation, stop order or termination shall be allowed unless the agreed insertion order is paid in full to the Company, except with the consent of both the Company in writing 15-days prior to cancellation. The Company may cancel any advertisement at any time, for any reason or for no reason, in which case Company will return to Advertiser the portion of payment made, if any, that relates to the period after cancellation and prior to the End Date. Except for such return payment, the Company will have no liability in connection with any such cancellation. Upon the termination or expiration of this Agreement, Company shall be entitled to immediate payment for all work performed including work completed but not yet invoiced.

8. **Confidential Information.** "Confidential Information" means any proprietary information or trade secrets of each party but does not include information which: (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party; (b) was rightfully known to the receiving party as of the time of its disclosure; (c) is independently developed by the

receiving party; (d) is lawfully obtained by the receiving party from a third party that has the right to make such disclosure and who is not in breach of an agreement to keep such information confidential; or (e) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority. Each party agrees to secure, protect and maintain the confidentiality of the Confidential Information of the other party using at least as great a degree of care as it uses to maintain the confidentiality of its own information of a similar nature or importance, but in no event less than reasonable care. Neither party shall use any Confidential Information received from the other party except as may be necessary in its performance under this Agreement, and neither party shall disclose any such Confidential Information to any third party without the other party's prior written consent, unless required to do so by court order or other operation of law. The parties acknowledge that unauthorized use by a party of the other party's Confidential Information will diminish the value of such information and that breach of this obligation may cause irreparable harm and entitle the non-breaching party to seek injunctive relief to protect its interest herein, in addition to any other monetary or other remedies it may be entitled to hereunder.

9. **Indemnification.**

9.1 Each party (the "Indemnifying Party") agrees to hold harmless, indemnify and defend the other party (the "Indemnified Party") from and against any losses, damages, costs and expenses (including reasonable attorneys' fees and costs) arising out of or relating to any claims: (a) that the Indemnifying Party breached or allegedly breached its confidentiality obligations hereunder; (b) that the Indemnifying Party breached its warranties or representations as set forth herein; and (c) with respect to Advertiser as the Indemnifying Party, claims relating to Advertiser's (or if Advertiser is Agency, then Agency's Client's) business, education programs, content or trademarks.

9.2 The Indemnifying Party's obligations are conditioned upon the Indemnified Party: (a) giving the Indemnifying Party prompt written notice of any claim, action, suit and proceeding for which the Indemnified Party is seeking indemnity; (b) granting complete control of the defense and settlement to the indemnifying party; and (c) providing, at the Indemnifying Party's expense, reasonable assistance in the defense or settlement thereof. In any event, the Indemnified Party shall have the right to participate, at its own expense, in the defense or settlement of any claim, action, suit and proceeding that is the subject of an indemnification obligation. If any settlement results in any ongoing liability to, or prejudices or detrimentally impacts either party, and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require the party's written consent, which consent shall not be unreasonably be withheld.

10. **DISCLAIMER OF WARRANTY.** THE WARRANTIES CONTAINED HEREIN ARE THE ONLY WARRANTIES MADE BY THE PARTIES HEREUNDER. EACH PARTY MAKES NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. COMPANY DOES NOT PROVIDE ANY WARRANTY THAT OPERATION OF ANY SERVICES HEREUNDER WILL BE UNINTERRUPTED OR ERROR-FREE.

11. **LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, FOR THE OPERATION OR USE OF CONTENT OR SERVICES, SUCH DAMAGES ARISING FROM OR RELATED TO LOSS OF OR DAMAGE TO DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS OR OTHER BENEFITS, AND CLAIMS BY ANY THIRD PARTY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES PAID BY ADVERTISER TO COMPANY FOR SERVICES HEREUNDER IN THE TWELVE (12) MONTH PERIOD

IMMEDIATELY PRIOR TO THE DATE A CLAIM IS RAISED HEREUNDER. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

12. **Miscellaneous.** No conditions other than those set forth in this Agreement or these Terms shall be binding on Company unless expressly agreed to in writing by the Company. No modifications to these Terms shall be binding upon the Company without the express, written consent of the Company. In the event of any inconsistency between the provisions in any IO and these Terms, these Terms shall control, unless explicitly waived in such IO. The parties agree that Company shall have the right to reference and refer to its work for and relationship with Advertiser for marketing and promotional purposes. The parties agree that their relationship hereunder is that of independent contractors. Neither party shall be deemed to be the agent, partner, joint venture, franchisor-franchisee, nor employee of the other, and neither shall have any authority to make any agreements or representations on the other's behalf other than as set forth in this Agreement. This Agreement shall be governed by and construed in accordance with the law of the State of New York without reference to any principles of conflicts of laws which might cause the application of the laws of another state. Any action instituted by either party arising out of this Agreement shall only be brought, tried and resolved in the applicable federal or state courts having jurisdiction in New York, New York, USA. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, HAVING JURISDICTION IN NEW YORK, NEW YORK, USA.

13. **Reservation of Company Right to Revise the Terms of the Agreement and the Standard Terms and Conditions.** Notwithstanding anything to the contrary herein, the Parties agree that Company may revise these Terms upon thirty (30) days prior written or electronic notice to Advertiser. In the event Advertiser chooses not to abide by the revised Terms, Advertiser may terminate this Agreement according to the termination provisions herein.

**Revised 5/2011**