

OPT-IVF LLC

Usage Agreement

By purchasing Opt-IVF LLC Services, I, the "Client" of Opt-IVF LLC, along with its direct and indirect subsidiaries and affiliates, and all of their employees, contractors, officers, directors, agents, representatives, sponsors, volunteers and any other covered entity or person acting for them, and all of their successors and assigns (hereinafter, "Opt-IVF"), agree to the terms and conditions in this Usage Agreement ("Agreement"), including without limitation the ASSUMPTION OF RISK, WAIVER OF LIABILITY, and ARBITRATION AGREEMENT WITH CLASS ACTION WAIVER below:

1. **ASSUMPTION OF RISK.** I, the Client, understand that there are dangers and risks of injury or damage, some of which are inherent in utilizing Opt-IVF services, directly or indirectly, whether utilized directly from Opt-IVF or by those individuals receiving medical or other services from clients of Opt-IVF.

a. **Use of Services.** I understand that the use of Opt-IVF's services or products may include but are not limited to (1) use of reports, calculations, data, dosage, recommendation, indications, usage criteria, or other information which I, the Client, have may, at my discretion, utilize for my own professional and/or personal activities; (2) use of specialized training, classes, programs, discussions, research publications/abstracts, literary works, or other informational programing and/or content; and (3) all other programs, seminars, workshops, assessments, events, education, recommendations, or advice that are provided by, endorsed, or operated by Opt-IVF in electronic or other format.

b. **Risks.** I understand that the dangers, hazards, and risks of injury or damage in the use of Opt-IVF's services or products ("Risks"), whether for personal or for professional purposes, direct or indirect, and whether potentially impacting the me or those patients/clients/customers or other individuals served by me ("Third Party Users"), may include but are not limited to (1) personal, physical, bodily, emotional, mental, economic, property, or other types of injuries, including death; (2) service and/or equipment failure, malfunction, or misuse; (3) property or information theft, loss, misuse or damage, including from data, files, systems, reports, indications, dosage recommendations or the like; and (4) other accidents or incidents that may result in injury or damage to me, or to Third-Party Users.

c. **Injuries.** I understand that such injuries or damages may include but are not limited to major or minor personal, physical, bodily, emotional, mental, economic, property, or other types of injuries or damages ("Injuries") to me or Third-Party Users, including but not limited to (1) death; (2) pregnancy, paralysis, brain damage, heart attacks, strokes, reproductive system harm, infertility, ectopic pregnancy, miscarriage, multiples pregnancy, vascular system injury, dehydration, diabetes, allergic reactions; (3) aggravation of pre-existing injuries or medical conditions; (4) pain and suffering; (5) loss of consortium, love, affection, comfort, companionship, or care; (6) emotional distress, embarrassment, humiliation, or shock; (7) lost wages or lost earning capacity; (8) identity theft, computer hacking, malware, spyware, stolen, misused or damaged property or information; and (9) any other disability, impairment, incapacity, injury or damage.

I understand that Risks and Injuries in the use of Opt-IVF products and services (collectively, "Risks of Injury") may be caused, in whole or in part, by the Negligence of Opt-IVF, me (the Client), Third-Party Users, other third-party service and/or product-providers, and/or other persons. **I FULLY UNDERSTAND, AND VOLUNTARILY AND WILLINGLY ASSUME THE RISKS OF INJURY.**

2. **WAIVER OF LIABILITY.** On behalf of myself and my spouse/partner, children, other clients, parents, guardians, heirs, Third-Party Users, next of kin, personal representatives, heirs, and assigns, I hereby voluntarily and forever release and discharge Opt-IVF from, covenant and agree not to sue Opt-IVF for, and waive any claims, demands, actions, causes of action, debts, damages, losses, costs, fees, expenses or any other alleged liabilities or obligations of any kind or nature, whether known or unknown (collectively, "Claims") for any Injuries to me, my patients/clients/customers/Third-Party Users, other Clients, and/or any other persons and, if outside of the United States of America, any breach of comparable and relevant liability act, law, policy, precedent, or procedure (collectively, "Negligence Claims").

a. **Negligence Claims.** I understand that Negligence Claims include but are not limited to claims of Opt-IVF's (1) negligent design, construction, maintenance, operation, supervision, monitoring, storage, backup, or provision of Opt-IVF products or services, including web-based products and/or services; (2) negligent failure to provide upkeep of web-based and physical products and/or services in or operating-in a reasonably safe condition; (3) negligent failure to warn of or remove a hazardous, unsafe, dangerous, or defective condition, circumstance, or occurrence including data breaches, hacks, spyware, malware, identity theft, cybercrime/cyberwarfare or the like; (4) negligent provision of or failure to provide emergency repair, internet protection, identity protection, notice of data or identity breach (i.e. hacking), notice of apparent spying/apparent breach; (5) negligent hiring, selection, training, instruction, certification, supervision or retention of employees, independent contractors or volunteers; (6) negligent collection, use, disclosure or storage of personal, sensitive, or other information, including HIPAA Protected Health Information, (including negligent failure to implement or maintain information security controls); or (7) other negligent act(s) or omission(s).

b. **Opt-IVF's Fees and Costs.** I specifically agree that, if I (on my own behalf or on behalf of another, including any patient/customer/client/Third Party User or on behalf of an estate) assert a Negligence Claim against Opt-IVF and/or breach my agreement not to sue Opt-IVF, I will pay all reasonable fees (including attorneys' fees), costs, and expenses incurred by Opt-IVF ("Opt-IVF's Fees and Costs") to defend (1) the Negligence Claim(s) and (2) all other Claims based on the same facts as the Negligence Claim(s).

3. **DEFENSE AND INDEMNIFICATION.** On behalf of myself and my spouse/partner, children, other clients, parents, patients, customers, patients/clients/customers/Third-Party Users, heirs, next of kin, personal representatives, heirs and assigns, I agree to defend, indemnify and hold Opt-IVF harmless to the fullest extent permitted by law from and against any Claim (including any Negligence Claim) asserted against Opt-IVF by any other person (including but not limited to any other client, family member of a client, Third-Party User or family member of a Third-Party User, or any other person or entity) arising out of, resulting from, caused by the Use of Opt-IVF products and/or services by me, other customers, my patients/clients/customers,

or Third-Party Users. My agreement to defend Opt-IVF means that I will pay all Opt-IVF's fees and costs incurred to defend the Claim from the date the Claim is asserted. My agreement to indemnify and hold Opt-IVF harmless means that I will pay any settlement, judgment, or other damages, fees, or costs of any type incurred by Opt-IVF to resolve the Claim.

4. **HEALTH AND SAFETY.** I, the Client, acknowledge that I may, at my discretion, utilize Opt-IVF products and/or services in the production and servicing of my own patients, customers, clients, partners, colleagues, associates, and other individuals, including Third-Party Users, and as such I represent that I am duly qualified to determine the safety and efficacy for utilizing Opt-IVF products and services on, for, or on behalf of my patients, customers, clients, partners, colleagues, associates, and other individuals, including Third-Party Users. The use of Opt-IVF software as a medical device is to inform treating physicians of options for treating a non-serious condition, as defined in the International Medical Device Regulators Forum (IMDRF) Software as a Medical Device Working Group Framework 2014. I will utilize my own professional skill and knowledge in determining the application and usage of Opt-IVF products and/or services for my own professional and/or personal activities and endeavors and, to the extent that I am not duly licensed or otherwise competent to determine the appropriate usage of Opt-IVF products and services, I will consult with the appropriate medical or other professional before utilizing Opt-IVF products and services, which Opt-IVF strongly recommends. I acknowledge that Opt-IVF **does not and will not provide medical advice.** I agree to remove myself, my patients/clients/customers or other Third-Party Users from or discontinue use of Opt-IVF products and/or services if I observe any hazardous, unsafe, dangerous, or defective condition or information. I acknowledge that I am responsible for my own conduct, practice of medicine (if applicable), other professional conduct or decision-making, health and safety and that of any individual or entity under my care or direction and that Opt-IVF is not responsible for any medical expenses incurred by me, my patients/clients/customers or any individual or entity under my care and direction, in connection with the use of Opt-IVF products and/or services.

5. **USAGE POLICIES: Usage Termination or Suspension by Opt-IVF.** I understand that Opt-IVF retains complete control over all matters affecting or relating to its clients and usage of Opt-IVF products and services, including but not limited to usage of individual or packaged platforms, websites, data, calculations, literature, education, information, or advice, price, usage types, access, dues, fees, equipment, services, products, programs, classes, sessions, seminars, add-ons, upgrades, or benefits, all of which are subject to change at any time without notice. I will comply, and ensure that my employees, patients, customers, partners, associates, colleagues, or any other individual or entity which I govern, control, or advise comply with Opt-IVF's policies, procedures, rules and regulations ("Opt-IVF Policies") whether set forth on paper, verbally, or online. Opt-IVF may change, modify or otherwise alter any Opt-IVF Policies at any time without notice. I understand that Opt-IVF may in its sole discretion terminate or suspend my access or ability to use all or part of Opt-IVF's products and/or services for any reason, including but not limited to any conduct by me, other clients, patients, customers, clients, Third-Party Users or other individuals that violate Opt-IVF Policies or that Opt-IVF determines to be improper, inappropriate, or contrary to its best interests.

6. **INTELLECTUAL PROPERTY.** The User expressly agrees that any and all ideas, concepts, processes, discoveries, computer programs, algorithms, improvements, and inventions

conceived, discovered, made, designed, researched or developed by any owner, agent, employee, or other individual under Opt-IVF's control and direction, either solely or jointly with others, before, during, or after the User's purchase and usage of Opt-IVF products and services is the Intellectual Property of Opt-IVF (collectively the "Intellectual Property"). The User hereby agrees to refrain copying, reproducing, making improper reference-to, or "reverse engineering" (defined as the reproduction of another creator's product following detailed examination of the construction, outcome, or composition) any product or service of Opt-IVF. The User acknowledges that any and all Intellectual Property, and any and all other property of Opt-IVF protectable by patent, copyright or trade secret law, developed in whole or in part by Opt-IVF in connection with the performance of services and/or production of products by Opt-IVF are the sole property of Opt-IVF. The User acknowledges that Opt-IVF will utilize all rights available to it under law in the event of any infringement of Opt-IVF's ownership rights to any and all Intellectual Property.

7. **ELECTRONIC COMMUNICATIONS.** I expressly consent to receive electronic messages from Opt-IVF at any email address I have provided to Opt-IVF, including messages for which the primary purpose is to advertise or promote products or services ("Marketing Messages") and messages for which the primary purpose relates to my transaction or relationship with Opt-IVF, including usage, purchase of products or services, publication, research, or amendments to this Agreement ("Transactional Messages").

8. **ARBITRATION AGREEMENT WITH CLASS ACTION WAIVER.**

a. **Mandatory Binding Individual Arbitration.** Except as expressly provided below, Opt-IVF and I (each a "party" or, together, "us," "we," or "parties") agree that any dispute, claim, case, or controversy (whether based in tort, contract, statute, regulation, ordinance, equity, or any other legal theory) between us (whether arising out of or relating to past, present, or future acts or omissions) ("Claims") shall be exclusively resolved by binding arbitration on an individual basis, rather than in court ("Arbitration Agreement").

b. **Waiver of Class Actions.** We each agree that we will assert Claims in arbitration only in our individual capacity, and not as a representative or member of any purported class. We each agree that we will not participate in any class, mass, collective, consolidated, private attorney general or other representative arbitration proceeding. Each party agrees that the arbitrator has no authority to arbitrate Claims on a class-wide basis and shall not consolidate, combine, or jointly arbitrate Claims of more than one person in a single arbitration.

c. **Waiver of Jury Trial.** We waive our constitutional and statutory rights to go to court and have a trial in front of a judge or a jury, electing instead to resolve by binding arbitration all Claims.

d. **Claims not Subject to Arbitration.** There are only three (3) exceptions to this Arbitration Agreement:

i. **Small Claims.** Either party may bring individual Claims in small claims court in McHenry County, Illinois.

ii. Personal Injury Claims. Both parties must litigate personal injury Claims in court. For purposes of this exception, personal injury Claims are Claims arising from injury to the physical structure of the human body. Any claim so brought must be brought in McHenry County, Illinois, or under Federal Jurisdiction to the Northern District of Illinois.

iii. Emergency Equitable Relief. Either party may seek temporary injunctive relief or other equitable relief in court pending arbitration. A request for interim measures will not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

e. Arbitration Procedures. Either party may initiate an arbitration proceeding, which will be conducted by a single neutral arbitrator.

i. Arbitration Providers. Each party has a choice of initiating arbitration before either the American Arbitration Association ("AAA") or JAMS which are both established Alternative Dispute Resolution Providers ("ADR Providers"). If neither AAA nor JAMS is available to arbitrate, we will agree to select an alternative ADR Provider to administer the arbitration in this Arbitration Agreement.

ii. Arbitration Rules. The arbitration will be conducted under the AAA Consumer Arbitration Rules (available at www.adr.org) or JAMS Streamlined Arbitration Rules and Procedures (available at www.jamsadr.com) ("Arbitration Rules"). The rules of the ADR Provider will govern all aspects of the arbitration, except to the extent such rules are in conflict with this Arbitration Agreement.

iii. Arbitration Location. The arbitration hearing will be held at the ADR Provider's location that is closest to the claimant's primary residence, unless the claimant primarily resides outside the United States (in which case the arbitration will be held in the Chicago Metropolitan Area or remotely, if available).

iv. Fees. Payment of all filing, administrative, and arbitrator fees will be governed by the Arbitration Rules.

v. Arbitrator's Authority and Award. The arbitrator will decide the rights and liabilities, if any, of the parties, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any Claim. The arbitrator will have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the ADR Provider's Rules, and this Arbitration Agreement. The arbitrator will issue a written award and reasoned statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that judge in a court of law would have. Any award will be subject to judicial confirmation or entry in any court having jurisdiction.

f. **Governing Law.** The Arbitration Agreement is governed by the Federal Arbitration Act and federal arbitration law.

g. **Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, will be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph will not prevent a party from submitting to a court of law any information necessary to enforce this Arbitration Agreement or to enforce an arbitration award.

9. **SEVERABILITY.** I agree that this Usage Agreement, including without limitation the ASSUMPTION OF RISK, WAIVER OF LIABILITY, and ARBITRATION AGREEMENT WITH CLASS ACTION WAIVER, is intended to be as broad and inclusive as permitted under law. If a court declares any part of this Usage Agreement unenforceable, invalid, or void, that part alone shall be severed from this Usage Agreement, and the entire remainder of the Usage Agreement, including any partially enforceable provisions, shall be fully binding and enforceable to the maximum extent permitted by applicable law.

10. **OTHER PROVISIONS.** I am not relying on any oral or written promises, representations, statements, covenants, or warranties, other than those set forth herein, to induce me to sign this Usage Agreement. This Usage Agreement may be amended at any time by Opt-IVF upon such notice, if any, as may be required by law. If Opt-IVF fails to enforce any right in this Usage Agreement for any reason, Opt-IVF does not waive its right to enforce it later.

I HAVE READ, UNDERSTOOD, RECEIVED A COPY OF, AND AGREE TO ALL TERMS AND CONDITIONS OF THIS USAGE AGREEMENT, INCLUDING SPECIFICALLY THE ASSUMPTION OF RISK, WAIVER OF LIABILITY, AND BINDING ARBITRATION AGREEMENT WITH A CLASS ACTION WAIVER UNDER WHICH I AM RELINQUISHING LEGAL RIGHTS.

Client Name [Print]

Client Signature

Date