

## **Subscription Agreement**

This Subscription Agreement ("Agreement") governs your acquisition and user of our services.

This Agreement is effective between You and Us as of the date of You accepting this Agreement.

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### **1. DEFINITIONS**

"Purchased Services" means Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"Services" means the products and services agreed to in the Services Contract.

"Users" means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, speakers, sponsors and third parties with which You transact business.

"We," "Us" or "Our" means Sponsumo.

"You" or "Your" means Fertility Planit.

"Your Data" means all electronic data or information submitted by You to the Purchased Services.

### **2. PURCHASED SERVICES**

#### **2.1 Provision of Purchased Services**

We shall make the Purchased Services available to You pursuant to this Agreement during a subscription term. You agree that Your purchases hereunder are contingent only on the services specified in the Services Contract.

### **3. USE OF THE SERVICES**

#### **3.1 Our Responsibilities**

We shall:

- (i) provide reasonable support for the Purchased Services to You at no additional charge

(ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for:

- (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or
- (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and

(iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

### **3.2 Our Protection of Your Data**

We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not

- (a) modify Your Data,
- (b) disclose Your Data
- (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

### **3.3 Your Responsibilities**

You shall

(i) use the Services only in accordance with applicable laws and government regulations. You shall not

- (a) make the Services available to anyone other than Users pertaining to your event,
- (b) sell, resell, rent or lease the Services (though you can of course market the fact that you will be providing the services to participants in your event),
- (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights,
- (d) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or
- (e) attempt to gain unauthorized access to the Services or their related systems or networks.

### **3.3 Usage Limitations**

Services may be subject to other limitations, such as, for example, limits on disk storage space. Any such limitations are specified in the Services Contract.

## **4. FEES AND PAYMENT FOR PURCHASED SERVICES**

### **4.1 Fees**

You shall pay all fees specified as specified in the Services Contract

### **4.2 Invoicing and Payment**

Payments shall be made by check on or before the payment due dates specified in the Services Contract.

### **4.3 Overdue Charges**

If any charges are not received from You by the due date, then at Our discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

## **5. PROPRIETARY RIGHTS**

### **5.1 Reservation of Rights in Services**

Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

### **5.2 Restrictions**

You shall not

- (i) permit any third party to access the Services except as permitted herein,
- (ii) create derivative works based on the Services except as authorized herein,
- (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes,
- (iv) reverse engineer the Services, or
- (v) access the Services in order to
  - (a) build a competitive product or service, or
  - (b) copy any features, functions or graphics of the Services.

### **5.3 Your Data**

We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

### **5.4 Suggestions**

We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

## **6. CONFIDENTIALITY**

### **6.1 Definition of Confidential Information**

As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that

- (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
- (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or
- (iv) was independently developed by the Receiving Party.

### **6.2 Protection of Confidential Information**

The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party

shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

## **7. WARRANTIES AND DISCLAIMERS**

### **7.1 Our Warranties**

We warrant that

- (i) We have validly entered into this Agreement and have the legal power to do so,
  - (ii) the Services shall perform materially in accordance with the Services Contract
- For any breach of a warranty above, or if You or a User uploads a file containing Malicious Code into the Services and You or a User later downloads that file containing Malicious Code, your exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

### **7.2 Your Warranties**

You warrant that You have validly entered into this Agreement and have the legal power to do so.

### **7.3 Disclaimer**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. MUTUAL INDEMNIFICATION**

### **8.1 Indemnification by Us**

We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against You"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court- approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

### **8.2 Indemnification by You**

You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Us"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us

unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

### **8.3. Exclusive Remedy**

This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

## **9. LIMITATION OF LIABILITY**

### **9.1 Limitation of Liability**

NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

### **9.2 Exclusion of Consequential and Related Damages**

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **10. TERM AND TERMINATION**

### **10.1 Term of Agreement**

This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

### **10.2 Term of Purchased Subscriptions**

Subscriptions purchased by You commence on the start date specified in the Services Contract and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

### **10.3 Termination for Cause**

A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

### **10.3 Refund or Payment upon Termination**

Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

### **10.4 Return of Your Data**

Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

### **10.5 Surviving Provisions**

Section 4 (Fees and Payment for Purchased Services), 5 (Proprietary Rights), 6 (Confidentiality), 7.3 (Disclaimer), 8 (Mutual Indemnification), 9 (Limitation of Liability), 10.3 (Refund or Payment upon Termination), 10.4 (Return of Your Data), 11 (Notices, Governing Law and Jurisdiction) and 12 (General Provisions) shall survive any termination or expiration of this Agreement.

## **11. NOTICES, GOVERNING LAW AND JURISDICTION**

### **11.2 Manner of Giving Notice**

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

### **11.3 Agreement to Governing Law and Jurisdiction**

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

### **11.4 Waiver of Jury Trial**

Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **12. GENERAL PROVISIONS**

### **12.1 Relationship of the Parties**

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

### **12.2 No Third-Party Beneficiaries**

There are no third-party beneficiaries to this Agreement.

### **12.3 Waiver**

No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

#### **12.4 Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

#### **12.5 Assignment**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

#### **12.6 Entire Agreement**

This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.