

## TERMS AND CONDITIONS OF USE AND SERVICE

*This is a legally binding document. Please read completely and carefully before agreeing to these terms and conditions of use and service.*

This agreement (the "Agreement") is made between Make Families (the "**Company**") and ("**Applicant**"). Company and Applicant are collectively referred to as ("Parties"). By submitting this application and clicking on "I Agree" below you are confirming that you have you understand, agree and accept the terms of this Agreement and acknowledge that you have been given the opportunity to download and print the Agreement.

### **1. APPLICANT REPRESENTATION AND WARRANTIES OF TRUTHFUL DISCLOSURE.**

a. The information the Applicant is providing in application will be relied upon by the Company when submitting the Applicant to various egg donor agencies. Should the Company later discover the information provided by the Applicant is false or materially inaccurate, then the Applicant may be subject to a lawsuit by the Company for damages.

b. As such, the Applicant hereby warrants that she has personally filled out this application and that she has fully disclosed all information known to her, such information is truthful, is complete without any intentional omissions and that she has not withheld any information sought in her application.

### **2. COMPANY REPRESENTATION AND WARRANTIES**

a. While the Company's submission of the Applicant's Application to an Agency is provided completely free of charge to the Applicant, Applicant acknowledges that the Company will be entitled to a referral fee from the Agency for such submission.

### **3. NOTICE AND CONSENT TO DISCLOSE APPLICANT'S PERSONAL AND MEDICAL INFORMATION.**

a. Applicant hereby authorizes Company to provide any Agency with the

Applicant's full application, which includes the Applicant's identification information, including her medical history as provided in the Application. Applicant understands that in the event the Company provides any Agency with the Applicant's Application, the Company is not and cannot guarantee that any Agency will maintain and insure that the Applicant's information will be kept confidential. Applicant authorizes Company to speak with an Agency about Applicant's application details as needed.

#### **4. NO GUARANTEES MADE BY THE COMPANY.**

a. Applicant understands and agrees that Company cannot and does not guarantee that it will be able to match Applicant with any Agency and does not and cannot guarantee that Applicant will go on to be matched with Recipient Parent(s.) Applicant also understands and agrees that any of the information provided by the Company to the Applicant about any Agency is not a guarantee or representation of warranty from the Company to the Applicant regarding that Agency.

**b. The Applicant is solely responsible to research and verify information regarding any Agency and professional the Applicant is referred to by the Company, including but not limited to, medical, financial, insurance, and psychological professionals.** Applicant understands that the Company is not and cannot warrant or verify the competency, quality or adequacy of the services provided by any Agency and professional referrals. Nor is any information the Company may provide regarding any Agency, or any professionals referred by the Company and the egg donation process in general intended to or should be relied upon or viewed by the Applicant as qualified legal, tax, insurance, medical or psychological advice by the Company. The Applicant alone is responsible to verify the competency of any such professional.

c. Further, the Company is not and cannot make any guarantees that any Agency will, including but not limited to, accept the Applicant into their egg donor program, match the Applicant with Recipient Parents, the Applicant will be provided the support, compensation stated by the Agency and/or any other kind of future promise, whether implied or expressed to the Applicant by the Company or the Agency.

#### **5. ASSUMPTION OF RISK.**

a. Applicant acknowledges and understands that egg donation and in vitro

fertilization (“IVF”) have known and unknown medical and psychological risks. Applicant is aware that her participation as an egg donor could lead to serious personal injuries and mental health issues and that participating in such activities may result in serious bodily injury to and including but not limited to short term and/or long term disabilities or even death as a consequence of the actions, inactions, negligence or fault of others.

## **6. INDEMNIFICATION, RELEASE AND WAIVER OF LIABILITY.**

a. Applicant, in consideration of the Company’s review and consideration as an egg donor referral of the Application submitted herein, agree, for myself, my heirs, personal representatives, assigns and executors **HEREBY RELEASE, WAIVE, DISCHARGE, DEFEND, AND COVENANT NOT TO SUE** the Company and its officers, employees, agents, from and against any and all liability, including any and all claims, demands, causes of action (known or unknown), suits, or judgments of any and every kind (including attorneys' fees and costs), arising from any injury, damage or death that I may suffer as a result of or relating to any referral or recommendation made by the company to any Agency or professional, my involvement with any egg donor program or Agency, or any selection or rejection as an egg donor, **REGARDLESS OF WHETHER THE INJURY, DAMAGE OR DEATH IS CAUSED BY THE COMPANY, UNLESS THE INJURY DAMAGE OR DEATH IS CAUSED BY THE COMPANY’S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.**

b. Applicant further agrees that the Company is not in any way responsible for any injury or damage that I the Applicant sustain as a result of my own negligent or grossly negligent acts or my own intentional misconduct and I hereby release and covenant not to sue the Company from any liability for the same.

c. The Applicant further agrees that, in the event that I or any of my family members, personal representatives, heirs, executors, administrators, agents, assigns or any other third party attempts to assert any claims, demands, causes of action (known or unknown), suits, or judgments of any and every kind (including attorneys' fees), arising from any injury, damage or death to the Applicant, including but not limited to any injury resulting from my own negligence, gross negligence or intentional misconduct during or related to the, **I AGREE TO DEFEND AND INDEMNIFY THE COMPANY AGAINST SUCH CLAIMS, DEMANDS, CAUSES OF ACTION (KNOWN OR UNKNOWN), SUITS, AND/OR JUDGMENTS OF ANY AND**

EVERY KIND (INCLUDING ATTORNEYS' FEES) TO THE FULLEST EXTENT PERMITTED BY LAW.

**d. Applicant understands that by agreeing to this clause she is releasing all potential future claims and giving up substantial rights, including my right to sue the Company in the future.**

## **7. NON-EMPLOYEE STATUS.**

a. I understand and acknowledge that in participating in the Company's application program, I am doing so independently and that I am not an employee or agent of the Company. I understand and agree that as a non-employee that I am not entitled to receive compensation or any other employee benefit from the Company.

## **8. WHOLE AGREEMENT.**

a. This Agreement sets forth the entire agreement between the Parties in this matter. This Agreement supersedes, merges or waives any and all prior negotiations, understandings, agreements, representations or warranties, expressed or implied, oral or written, between the Parties, with respect to this Agreement. This is an integrated Agreement. This Agreement shall not be amended, modified, altered or changed except by a written Addendum signed by the Parties.

## **9. ARBITRATION**

**ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF THE INTERPRETATION, ENFORCEMENT OR BREACH OF THIS AGREEMENT, IN LAW OR EQUITY, SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND NOT BY COURT ACTION, EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR AS REQUIRED BY LAW. ARBITRATION SHALL BE HELD IN LOS ANGELES COUNTY, CALIFORNIA, ABSENT A CONTRARY WRITTEN AGREEMENT BY THE PARTIES HERETO. ANY AWARD MAY INCLUDE MANDATORY, PROHIBITORY AND PREVENTIVE INJUNCTIONS, AND A DECLARATION OF INTEREST, RIGHTS AND DUTIES. THE SUBMISSION OF A DISPUTE TO THE ARBITRATOR. ANY AWARD SHALL STATE THE FACTS, LAW, AND LEGAL REASONING FOR SUCH AWARD, APPLYING**

**ALL CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW.**

**JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. FILING A JUDICIAL ACTION FOR INJUNCTION OR OTHER PROVISIONAL REMEDY SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT TO ARBITRATION UNDER THIS PROVISION. FOR ANY PARTY TO DEMAND ARBITRATION, THEY MUST FIRST MAKE A WRITTEN DEMAND ON THE OTHER PARTY, WITH AT LEAST TEN DAYS LAPSING BEFORE THEN FOLLOWING THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION TO INITIATE AN ARBITRATION PROCEEDING.**

**10. LEGAL ADVICE/ATTORNEY FEES.**

a. The Company is not providing the Applicant with any legal advice. The Applicant is advised to receive independent legal advice with respect to the risks and advisability of entering into this Agreement prior to agreeing. Each party shall pay their own attorney fees to advise them regarding this Agreement. In any action, proceeding or arbitration between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to receive reasonable attorney's fees, expert's fees and costs.

**11. AMENDMENTS/ADDITIONAL TERMS.** Any amendments, additions or changes to this Agreement must be made in writing, and must be signed by each of the Parties. The headings in this Agreement are for convenience of reference only, and shall not limit or otherwise affect the meaning hereof.

**12. NON-ASSIGNABLE.** This Agreement is not assignable without the express written consent of FMC and the Agency.

**13. NO JOINT VENTURE OR PARTNERSHIP.** The Parties are independent contractors and will have no power or authority to assume or create any obligation on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency or joint venture.

**14. GOVERNING LAW AND JURISDICTION.** This Agreement will be governed by and construed in accordance with the laws of the State of California,

without regard to or application of conflicts of law rules or principles. The Parties agree to bring any action arising under this Agreement and submit to jurisdiction and venue only in federal courts located in the Central District of California and any state courts located in Los Angeles County.

**15. INTEGRATION.** This Agreement contains the entire understanding of the Parties relating to the subject matter contained in this Agreement and supersedes all prior agreements and understandings, both written and oral, regarding such subject matter.

**16. AMENDMENT TO AGREEMENT.** This Agreement may not be modified nor any rights under it waived except in writing, signed by both Parties.

**17. SURVIVAL.** If any part of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

**18. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement; that is, the time in which a party has to perform an obligation, or the date when an obligation must be performed, is a crucial and vital part of this Agreement.

**19. FURTHER ASSURANCES.** The Parties agree to cooperate with one another in accomplishing the objectives of this Agreement and to sign and provide all documents, and take such actions as may be necessary or advisable to carry out the intentions of the Parties.

**20. WAIVER.** Failure of either Party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.

**21. CONSTRUCTION.** No provision of this Agreement is to be interpreted for or against any Party because that Party or that Party's legal representative or agent drafted the provisions.

**By clicking the "I Agree to Terms of Services" box you agree to accept and be bound by the terms and conditions outlined in the agreement. You also acknowledge that you have been given the opportunity to download and print the Agreement. If you do not agree to the terms and conditions, you may not use,**

**access, or submit materials from this website or obtain a user account.**