



**CANADIAN PRIVACY LAW REGULATORY COMPLIANCE &  
NON-DISCLOSURE AGREEMENT**

THIS **AGREEMENT** (THE "AGREEMENT") SUPPLEMENTS, IS COLLATERAL TO, AND MADE PART OF THE **CONTRACT** ("CONTRACT") BETWEEN **FERTILITY PRO**, BUSINESS ASSOCIATE ("BA"), AND **PRACTICE**, COVERED ENTITY (CE), AND THIS AGREEMENT IS ATTACHED TO AND MADE PART OF THE **SUBSCRIPTION AGREEMENT FOR SERVICES**

**WHEREAS** the parties intend to enter into business transaction for which the transfer and use of private information is necessary for the assessment or valuation of the transaction. **AND WHEREAS** each Party ("Receiving Party") understands that the other Party ("Disclosing Party") may disclose information concerning the Disclosing Party's business, operations, financial position, forecasts, strategies, marketing plans, product plans, product services, customers, markets, surveys, questionnaires, inventions, software, patents and other intellectual property, trade secrets and technical or proprietary data and methods used or developed and any written or oral plans, lists or other documentation regardless of how memorialized or communicated (including oral, written or electronic communications) by the Disclosing Party, whether furnished before or after the date hereof, whether prepared by the Disclosing Party, its Representatives (as defined below), or otherwise, whether or not marked as being confidential (collectively, the "Proprietary Information" of the Disclosing Party). The Proprietary Information shall include, without limitation, the existence and details of discussions between the Parties regarding a Transaction, the potential terms of any Transaction, the fact that either party has provided or will provide Proprietary Information to the other party and such other party's Representatives (as defined in para. 2. below), any and all other private and confidential information that is necessary to proceed with the business transaction, as federal or provincial privacy laws allow, and this Agreement.

In consideration of the Parties' discussions and any access the Receiving Party may have to Proprietary Information of the Disclosing Party, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree as follows:

**1. Confidentiality and Non-Disclosure**

- (a) Each Receiving Party agrees: (i) to use the Disclosing Party's Proprietary Information solely in accordance with the Permitted Use; (ii) to hold such Proprietary Information in strict confidence and/to exercise a reasonable degree of care with respect to the Proprietary Information and to take reasonable precautions to protect such Proprietary Information , including, without limitation, all precautions the Receiving Party employs with respect to its own strictly confidential materials; (iii) not to divulge such Proprietary Information or any information

derived therefrom to any third person without the prior written consent of the Disclosing Party, except that the Receiving Party may disclose Proprietary Information to its Representatives on a need-to-know basis in accordance with the Permitted Use and subject to the restrictions contained herein; (iv) not to make any use whatsoever at any time of such Proprietary Information except in accordance with the Permitted Use; and (v) not to copy or reverse engineer any such Proprietary Information. Any Representative granted access to Proprietary Information in accordance with para. 2 shall be similarly bound in writing to maintain the confidentiality and degree of non-disclosure contemplated in this Agreement, and each Party will be responsible for any breach of this Agreement by its Representatives, except those Representatives who have entered into a separate written agreement with the Disclosing Party regarding the use or disclosure of the Proprietary Information, and agrees, at its sole expense, to take all reasonable measures to restrain its Representatives from prohibited or unauthorized disclosures or use of the Proprietary Information.

- (b)** Without granting any right or license, the Disclosing Party agrees that the term "Proprietary Information" shall not include any information that: (i) through no improper action or inaction by the Receiving Party or any subsidiary, affiliate, agent, consultant or employee thereof, is or becomes generally available or known to the public; (ii) through no improper action or inaction by the Receiving Party or any subsidiary, affiliate, agent, consultant or employee thereof, was in possession or known by it prior to receipt from the Disclosing Party; (iii) was disclosed to the Receiving Party by a third party without violation of any confidentiality obligations, provided the Receiving Party complies with any restrictions imposed by said third party; or (iv) was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who had no access to such information. In the event that Receiving Party is requested or required by legal action (including oral question, interrogatories, requests for information or documents, subpoenas, civil investigation or similar process) , or pursuant to a formal request from a regulatory examiner, to disclose any of the Disclosing Party's Proprietary Information received under this Agreement, the Receiving Party will, unless prohibited by applicable law, provide the Disclosing Party with prompt written notice of such request so that the Disclosing Party may seek a protective order or other appropriate relief, and the Receiving Party will reasonably assist the Disclosing Party in such efforts. In the event that such protective order or other remedy is not obtained, the Receiving Party shall use reasonable efforts to furnish only that portion of the Proprietary Information which it is legally required to provide; provided that Receiving Party's accountants may disclose any such Proprietary Information to the extent such disclosure is required by regulations applicable to accounting firms provided that such disclosure is made to a regulatory body regulating the accounting profession that is subject to confidentiality obligations with respect to such disclosed Proprietary Information.
- (c)** The Receiving Party understands that nothing herein: (i) requires the disclosure of any Proprietary Information of the Disclosing Party, which shall be disclosed, if at

all, solely at the option of the Disclosing Party; or (ii) requires the Disclosing Party to proceed with any proposed transaction or relationship in connection with the Transaction.

**2. Access and Use of Private Information.** The parties hereby agree that neither shall use or disclose protected health information other than as permitted or required by the Agreement or as required by laws of the jurisdiction; the legislative requirements for federal and similar provincial statutes are set forth in Appendix A to this Agreement. For clarity, the parties hereby agree and understand that at the date of execution of this agreement, the following applies with respect to Canadian Privacy Laws:

**(a) General Application.** The parties hereby Acknowledge that Provincially regulated organizations in provinces that do not have privacy legislation substantially similar to PIPEDA must comply with PIPEDA for commercial activities. Thus, the parties understand that PIPEDA does not apply to provincially regulated organizations in Alberta, British Columbia or Quebec. However, the parties agree to be bound by the terms of PIPEDA in Quebec until its provincial legislation comes into force on September 22, 2023.

**(b) Alberta.**

The parties hereby agree that in the province of Alberta, the Personal Information Protection Act, SA 2003, c. P-6.5 ("Alberta PIPA") applies. The Alberta PIPA, applies to every organization, in respect of all personal information, except as otherwise provided in the Act (Alberta PIPA, s. 4(1)). An organization is defined to include corporations, unincorporated associations, trade unions as defined in the Labour Relations Code, RSA 2000, c. L-1, partnerships as defined in the Partnership Act, RSA 2000, c. P-3, and individuals acting in a commercial capacity. The parties hereby acknowledge that the Alberta PIPA prohibits an organization or business from collecting, using or disclosing personal information about an individual unless the individual has consented (Alberta PIPA, s. 7(1)). The organization or business may only collect, use or disclose personal information for reasonable purposes, and it may only do so to the extent that it is reasonable to meet the purposes for which the information is collected, used or disclosed (Alberta PIPA, ss. 11, 16 and 19). Consent may be implied when a person voluntarily provides information to an organization for a particular purpose and it is reasonable that a person would voluntarily provide that information (Alberta PIPA, s. 8(2)). In particular, the parties acknowledge and agree to be bound by the following Alberta PIPA provisions:

**22(1)(a).** A business transaction is defined as a transaction consisting of the purchase, sale, lease, merger or amalgamation or any other type of acquisition or disposal of, or the taking of a security interest in respect of, an organization or a portion of an organization or any business or activity or business asset of an organization and includes a prospective transaction of such a nature.

- 22(3)** Organizations that are parties to a business transaction may,
- (a) during the period leading up to and including the completion, if any, of the business transaction, collect, use and disclose personal information about individuals without the consent of the individuals if
    - (i) the parties have entered into an agreement under which the collection, use and disclosure of the information is restricted to those purposes that relate to the business transaction, and
    - (ii) the information is necessary
      - (A) for the parties to determine whether to proceed with the business transaction, and
      - (B) if the determination is to proceed with the business transaction, for the parties to carry out and complete the business transaction, and
  - (b) where the business transaction is completed, collect, use and disclose personal information about individuals without the consent of the individuals if
    - (i) the parties have entered into an agreement under which the parties undertake to use and disclose the information only for those purposes for which the information was initially collected from or in respect of the individuals, and
    - (ii) the information relates solely to the carrying on of the business or activity or the carrying out of the objects for which the business transaction took place.

**22(4)** If a business transaction does not proceed or is not completed, the party to whom the personal information was disclosed must, if the information is still in the custody of or under the control of that party, either destroy the information or turn it over to the party that disclosed the information.

**22(5)** Nothing in this section is to be construed so as to restrict a party to a business transaction from obtaining consent of an individual to the collection, use or disclosure of personal information about the individual for purposes that are beyond the purposes for which the party obtained the information under this section.

The parties hereby agree that the personal information is necessary to evaluate whether to proceed with the transaction, and if the transaction proceeds, to carry out and complete it. To address this requirement, the parties will carefully consider whether the transaction can be evaluated without the disclosure of personal information, such as by using anonymized or aggregated information. If the personal information is required, the parties will treat it with the utmost discretion and respect. If the business transaction does not proceed or is not completed, the prospective purchaser either destroys the information or turns it over to the vendor or the target.

**(c) British Columbia.**

The parties hereby agree that in the province of British Columbia the Personal Information Protection Act, S.B.C. 2003, c. 63. ("Alberta PIPA") applies. In British Columbia, the BC PIPA applies to every organization, in respect of all personal

information, except as otherwise provided in the Act (**BC PIPA, s. 3(1)**). An organization is defined to include persons, unincorporated associations, trade unions, trusts or not-for-profit organizations, but does not include an individual acting in a personal or domestic capacity or acting as an employee; a public body, the Provincial Court, the Supreme Court or the Court of Appeal; the Nisga'a government; or a private trust for the benefit of one or more designated individuals who are friends or members of the family of the settlor (**BC PIPA, s. 1 "organization"**). The parties hereby acknowledge and agree to be bound by the following:

The organization or business may only collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances and that fulfill the purposes that the organization discloses or are otherwise permitted under the Act (**BC PIPA, ss. 11, 14 and 17**). Consent may be implied if, at the time consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and the person voluntarily provides the personal information to the organization for that purpose (**BC PIPA, s. 8(1)**).

**Section 20** of the BC PIPA sets out the rules relating to "business transactions." A business transaction is defined as the purchase, sale, lease, merger or amalgamation or any other type of acquisition, disposal or financing of an organization or a portion of an organization or of any of the business or assets of an organization (**BC PIPA, s. 20(1)**).

In particular, the BC PIPA contains the following provisions:

**20(2)** An organization may disclose personal information about its employees, customers, directors, officers or shareholders without their consent, to a prospective party if

- (a) the personal information is necessary for the prospective party to determine whether to proceed with the business transaction, and
- (b) the organization and prospective party have entered into an agreement that requires the prospective party to use or disclose the personal information solely for purposes related to the prospective business transaction.

**20(3)** If an organization proceeds with a business transaction, the organization may disclose, without consent, personal information of employees, customers, directors, officers and shareholders of the organization to a party on condition that

- (a) the party must only use or disclose the personal information for the same purposes for which it was collected, used or disclosed by the organization;
- (b) the disclosure is only of personal information that relates directly to the part of the organization or its business assets that is covered by the business transaction; and
- (c) the employees, customers, directors, officers and shareholders whose personal information is disclosed are notified that

- (i) the business transaction has taken place; and
- (ii) the personal information about them has been disclosed to the party.

**20(4)** A prospective party may collect and use personal information without the consent of the employees, customers, directors, officers and shareholders of the organization described in s. 20(2) if the prospective party complies with the conditions applicable to that prospective party under that subsection.

**20(5)** A party may collect, use and disclose personal information without the consent of the employees, customers, directors, officers and shareholders of the organization in the circumstances described in s. 20(3) if the party complies with the conditions applicable to that party under that subsection.

**20(6)** If a business transaction does not proceed or is not completed, a prospective party must destroy or return to the organization any personal information the prospective party collected under s. 20(2) about the employees, customers, directors, officers and shareholders of the organization.

**20(7)** This section does not authorize an organization to disclose personal information to a party or prospective party for purposes of a business transaction that does not involve substantial assets of the organization other than this personal information.

**20(8)** A party or prospective party is not authorized by this section to collect, use or disclose personal information that an organization disclosed to it in contravention of s. 20(7).

The parties hereby agree that the personal information must be necessary to determine whether to proceed with the transaction. Upon completion of this transaction, the parties acknowledge that they must:

- notify the employees, customers, directors, officers and shareholders whose personal information is disclosed that the business transaction has taken place, and the personal information about them has been disclosed to the purchaser. It should be noted that the vendor may provide this notification, although from a business perspective it is preferable for the purchaser to do so as it can serve as part of its introduction to the applicable individuals;
- ensure that the personal information is only used and disclosed in manners permitted prior to the completion of the acquisition. If the purchaser or post-closing target wishes to collect, use or disclose personal information for other purposes, it should obtain consent of the individuals in accordance with the BC PIPA.
- ensure that the disclosure to the purchaser is only of personal information that relates directly to that part of the organization or its business assets that is covered by the purchase transaction.

**(d) Quebec.**

The parties hereby acknowledge that the Quebec Act was the first private-sector privacy law in Canada. As such it does not currently contain an exception for business transactions. However, Bill 64, which received royal assent on September 22, 2021, includes an exception for commercial transactions, which is aligned with PIPEDA, the Alberta PIPA and the BC PIPA. Generally, the Quebec Act restricts the collection, use and disclosure of personal information (Quebec Act, ss. 6, 13 and 14). The provisions of Bill 64 which apply to commercial transactions will come into force on September 22, 2023. Pursuant to Bill 64, only the personal information necessary for concluding an acquisition may be communicated to a prospective purchaser without the consent of the person to whom the personal information relates. In addition, the parties must enter into an agreement that stipulates that the prospective purchaser undertakes to use the information only for concluding the commercial transaction; not to communicate the information without the consent of the person concerned, unless authorized to do so by the Act; to take the measures required to protect the confidentiality of the information; and to destroy the information if the commercial transaction is not concluded or if using the information is no longer necessary for concluding the commercial transaction. Until the amendments to the Quebec Act are in force, parties agree to comply with PIPEDA in its place. Following September 22, 2023, the parties agree to comply with the Quebec Act (once in force) as well.

**(e) Federally Regulated Provinces.** The parties hereby agree that the federal Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 (“PIPEDA”) applies to all commercial activities in every Canadian province and territory unless the province or territory enacts “substantially similar” legislation. Once a province has enacted such legislation, PIPEDA vacates the jurisdiction and does not apply to intra-provincial treatment of personal information. The parties further that in order for the PIPEDA business transaction exemption to apply to a proposed acquisition, the parties and their counsel must ensure, and hereby agree to reasonably undertake to ensure, compliance with the following statutory provisions set forth in the PIPEDA:

Personal information is defined as information about an identifiable individual other than business contact information that an organization collects, uses or discloses solely for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession (**PIPEDA, ss. 2 (1) and 4.01**).

PIPEDA requires the informed consent by an individual to the collection, use and disclosure of personal information concerning the individual, absent a valid basis for implied consent or a statutory exemption (**PIPEDA, Schedule 1, s. 4.3**).

Personal information may only be collected, used, disclosed and retained for the purposes identified by the organization (**PIPEDA, Schedule 1, ss. 4.4 and 4.5**).

**The “business transaction” includes**

- (a) the purchase, sale or other acquisition or disposition of an organization or a part of an organization, or any of its assets;

- (b) the merger or amalgamation of two or more organizations;
- (c) the making of a loan or provision of other financing to an organization or a part of an organization;
- (d) the creating of a charge on, or the taking of a security interest in or a security on, any assets or securities of an organization;
- (e) the lease or licensing of any of an organization's assets; and
- (f) any other prescribed arrangement between two or more organizations to conduct a business activity (PIPEDA, s. 2(1) “business transaction”).

**7.2 (1) Prospective business transaction** — In addition to the circumstances set out in subsections 7(2) and (3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, organizations that are parties to a prospective business transaction may use and disclose personal information without the knowledge or consent of the individual if

- (a) the organizations have entered into an agreement that requires the organization that receives the personal information
  - (i) to use and disclose that information solely for purposes related to the transaction,
  - (ii) to protect that information by security safeguards appropriate to the sensitivity of the information, and
  - (iii) to return that information to the organization that disclosed it, or destroy it, within a reasonable time if the transaction does not proceed; and
- (b) the personal information is necessary
  - (i) to determine whether to proceed with the transaction, and
  - (ii) if the determination is made to proceed with the transaction, to complete it.

**7.2 (2) Completed business transaction** — In addition to the circumstances set out in subsections 7(2) and (3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, if the business transaction is completed, organizations that are parties to the transaction may use and disclose personal information, which was disclosed under subsection (1), without the knowledge or consent of the individual if

- (a) the organizations have entered into an agreement that requires each of them
  - (i) to use and disclose the personal information under its control solely for the purposes for which the personal information was collected, permitted to be used or disclosed before the transaction was completed,
  - (ii) to protect that information by security safeguards appropriate to the sensitivity of the information, and
  - (iii) to give effect to any withdrawal of consent made under clause 4.3.8 of Schedule 1;
- (b) the personal information is necessary for carrying on the business or activity that was the object of the transaction; and



(c) one of the parties notifies the individual, within a reasonable time after the transaction is completed, that the transaction has been completed and that their personal information has been disclosed under subsection (1).

**(3) Agreement binding** — An organization shall comply with the terms of any agreement into which it enters under paragraph (1)(a) or (2)(a).

Further, this agreement confirms that parties agree to use and disclose the information only for purposes relating to the transaction (such as evaluating and pricing it); to safeguard the information appropriately; and to return the information to the vendor or the target, or to destroy it, within a reasonable time if the proposed acquisition does not proceed. The parties attest that the personal information must be necessary to evaluate whether to proceed with the transaction, and if the transaction proceeds, to complete it.

**Upon execution of the Subscription Agreement, the BA shall:**

- notify the relevant individuals, within a reasonable time after closing, that the transaction has been completed and that their personal information has been disclosed. It should be noted that the vendor may instead provide this notification, although from a business perspective it may be preferable for the purchaser to do so as it can serve as part of its introduction to the affected employees, customers or other individuals;
- ensure that the personal information is only used and disclosed in manners permitted prior to the completion of the acquisition. If the purchaser or acquired target wishes to collect, use or disclose personal information for other purposes, it should obtain consent of the individuals in accordance with PIPEDA; and
- safeguard the information appropriately. This can often be accomplished by safeguarding it in the manner in which the purchaser's existing personal information is already safeguarded.

**3. Return of Proprietary Information.** Immediately upon (i) the decision by either Party not to enter into the Transaction; or (ii) a written request by the Disclosing Party, at any time, delivered to the address of the Receiving Party as set forth below its signature to this Agreement, the Receiving Party will turn over to the Disclosing Party, or destroy and provide evidence of such destruction to the Disclosing Party, all Proprietary Information of the Disclosing Party and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof.

**4. Non-Disclosure of Negotiations.** Except to the extent required by law, neither Party shall disclose the existence or subject matter of the Transaction or relationship contemplated by this Agreement.

**5. Completeness and Accuracy of Proprietary Information.** Each Party to this Agreement reserves the right, in its sole discretion, to determine what information it will provide or withhold, as well as the times at which it will make such information available. Each Party understands and acknowledges that neither Party, nor any of its Representatives makes any representation or warranty, express or implied, as to the

accuracy or completeness of the Proprietary Information. Each Party agrees that neither Party, nor any of its Representatives shall have any liability to the other Party or to any of the other Party's Representatives relating to, or resulting from the use of, the Proprietary Information or any errors therein or omissions therefrom. Only those representations or warranties made in a Definitive Agreement regarding the Transaction, when and if executed, and subject to the limitations or restrictions specified therein, will have any legal effect. "Definitive Agreement" means a written contract executed by all parties thereto for the Transaction, which binds the parties thereto to close such Transaction, subject only to such conditions to closing as may be negotiated between the parties thereto, and for greater certainty does not include any executed letter of intent or any other preliminary written agreement or any verbal or written acceptance of any offer or bid.

**6. Effect of Agreement.** Each Party understands and agrees that no contract or agreement providing for any transaction between them shall be deemed to exist between them unless and until a Definitive Agreement has been executed and delivered, and each Party hereby waives, in advance, any claims (including, without limitation, breach of contract and tortious interference claims) in connection with the Transaction unless and until the Parties have entered into a Definitive Agreement. Each Party agrees that neither Party will be under any legal obligation of any kind with respect to the Transaction by virtue of this Agreement except for the matters specifically agreed to herein unless and until the Parties have entered into a Definitive Agreement. Each Party reserves the right, in its sole discretion, for any reason or no reason, to reject any and all proposals made to it or its Representatives with regard to a Transaction and to terminate discussions and negotiations with the other Party at any time; provided that this Agreement shall thereafter continue in full force and effect.

**7. Scope and Term of Agreement.** The obligations hereunder with respect to the Proprietary Information shall remain as long as such information retains its status as Proprietary Information and is not excluded pursuant to para. (b) of this Agreement, and for information which is a "trade secret", the foregoing commitments shall remain in place as long as the applicable information retains its status as a trade secret. The Parties agree that the terms and restrictions herein shall apply fully to each of such Party's subsidiaries and affiliates.

**8. Remedies.** The Receiving Party acknowledges and agrees that there can be no adequate remedy at law for any breach of its obligations hereunder and that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party. Therefore, upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

**9. Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Any and all actions, suits, or judicial proceedings upon any claim arising from or relating to this Agreement shall be instituted and maintained in the State of Colorado. Each party waives the right to change of venue, or to file any action, suit or judicial proceeding in federal court. Notwithstanding this

provision, if it is judicially determined that either party may file an action, suit or judicial proceeding in federal court, such action, suit or judicial proceeding shall be in the Federal District Court for the District of Colorado.

**10. Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by either Party without the prior written consent of the other Party, and any such assignment without such prior written consent shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

**11. Miscellaneous Provisions.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the Parties with respect to the subject matter hereof. The Parties acknowledge and agree that they have both participated in the negotiations and preparation of this Agreement and that no presumption or burden of proof shall be raised in any question of interpretation of this Agreement based upon any assertion that one Party or the other has drafted this Agreement or any provision hereof. No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party. Neither Party shall be deemed by mere lapse of time (without giving notice or taking other action hereunder) to have waived any breach by the other party of any of the provisions of this Agreement. The waiver by either Party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement. Any notice, consent, or waiver required or permitted to be given under this Agreement shall be in writing and be deemed given to a Party when delivered by hand or received by registered or certified mail.

**IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.**

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_  
**JOHN BUTLER**  
**MANAGING PARTNER**  
Date:

**COVERED ENTITY**

By: \_\_\_\_\_  
**Authorized Signatory**

**COVERED ENTITY**  
**Date:**