

**TERMS AND CONDITIONS FOR  
SPARK MARKETING, INC. CONSULTING SERVICES**

Your use of the Services provided by Spark Marketing, Inc. is conditioned on your acceptance of and compliance with these Terms. These Terms are binding upon, and shall inure to the benefit of the parties themselves, as well as their respective representatives, successors, permitted assigns, heirs and estates. By accepting these services you agree to be bound by these Terms. If you disagree with any part of the terms then you may not utilize our services.

NOW, THEREFORE, Client hereby agrees as follows:

**1. Consulting Services**

1.1 Schedule of Work: Subject to the terms and conditions of this Agreement, the Client hereby retains the Agency to perform the services specifically set out in the Schedule of Work (hereafter referred to as the "SOW"), attached to these Terms and Conditions and hereby incorporated herein by reference, or as said SOW may be amended in writing from time to time, and the Agency agrees, subject to these terms and conditions, to render such Services during the term of the Consultancy Period. These Terms and Conditions shall govern the provision of services to the Client by the AGENCY ("Agency"). In the event of any conflict between the terms of any SOW and these Terms and Conditions, the Terms and Conditions shall control.

1.2 Additional Services, Changes to SOW: Any services outside the scope of the SOW or changes to previously approved work requested by the Client shall be the subject of an additional SOW to be approved in writing by both parties. Each such additional SOW is hereby incorporated herein by this reference and subject to these Terms and Conditions.

1.3 Hosting: In addition to all other services set forth herein, Agency may provide the Client with hosting services in accordance with the Hosting terms set forth in the SOW. In consideration for such hosting services, the Client shall pay Agency the Monthly Hosting Fee set forth in the SOW.

1.4 ADA Website Accessibility: ADA website accessibility standards have not yet been finalized by the U.S. Department of Justice or any other federal governmental authority under Article III of the ADA. Accordingly, Agency makes no representation or warranty that any website that is developed by Agency for Client is ADA-compliant. Agency may offer Client the option of selecting an accessibility tool offer by a third-party provider, however, Agency's referral or the offering of the option to Client to use a third-party provider to provide Client such services will not create any liability of Agency for the responsibility of the Client's website to become ADA-compliant. The sole responsibility to ensure ADA-Compliance of Client's website is the Client. Agency shall provide minimal levels of ADA-Compliance pursuant to terms as agreed to in the SOW, if any.

**2. Consultancy Period**

2.1 Commencement – Initial Term: Services shall commence on the Effective Date and shall remain in effect until such date as specified in the SOW, (the "Consultancy Period") or the early termination date as provided in paragraph 2.2.

2.2.1 Early Termination of Services: During the initial Consultancy Period, either Party may terminate the Services, without cause, by giving **ninety (90) calendar days** written notice of such early termination to the other Party, ("Early Termination").

2.2.2 Early Termination Penalty: Upon the Early Termination of Services by the Client, without the Agency's fault or consent, Client shall pay Agency, an early termination fee equal to forty percent (40%) of the total remaining fees payable to Agency hereunder (as specified in the SOW), plus any and all expenses and third-party costs reasonably incurred by Agency through the effective date of cancellation.

2.3 Automatic Renewal after initial Consultancy Period: After the initial Consultancy Period, Services shall renew automatically on a month-to-month basis until such time as either Party terminates by providing **thirty (30) days** written notice.

2.4 Effect of Termination. Upon the effective date of termination of Services, all legal obligations, rights and duties arising out of these Terms and Conditions shall terminate except for such legal obligations, rights and duties as

shall have accrued prior to the effective date of termination and except as otherwise expressly provided in these Terms and Conditions.

### **3. Consultancy Fee and Expenses**

3.1 Consultancy Fee: In consideration of the Services to be rendered, the Client shall pay the Agency at the rates and payable at the time and pursuant to the procedures set forth in the SOW, (the "Consultancy Fee"). All payments are to be made in USD. In no event will any payment be contingent on receipt of any monies or other compensation by the Client. For the avoidance of doubt, fees or commissions payable to Agency for media planning and buying services are in addition to, and not inclusive of, Agency's fees for other services which may be listed in the SOW, such as design, branding, hosting, and content distribution and syndication.

3.2 Expenses: Client will be notified in advance for pre-approval of any additional expenses in excess of more than ten percent (10%) of those set forth in the SOW. Agency shall be entitled to reimbursement for all pre-approved expenses reasonably incurred in the performance of the Services within **thirty (30) days**. At Agency's discretion, Agency may have Client pay such expenses directly to the third-party vendor, rather than seeking reimbursement from Client. Where applicable, Agency will invoice Client for all costs related to acquisition of talent or talent services in advance and will only secure talent services upon receipt of all such costs from Client. *Client is solely responsible for any and all additional fees and costs resulting from unanticipated delays due to the actions or inaction of Client.*

3.3 Late-Payment Charges: Each invoice hereunder is due and payable within thirty (30) days after its invoice date. All rights of the Client herein are conditioned on Agency's receipt of full payment. In addition, Agency may suspend performance of services and withhold delivery of materials until payment in full of all amounts due. Agency shall not be liable for any damages, losses or liabilities that may arise out of Agency's suspension of performance and/or withholding of materials due to Client's non-payment. Late payments shall accrue interest at the rate of one and one-half percent (1.5%) per month. Agency shall be entitled to all of its costs of collection of amounts outstanding hereunder, including without limitation, the fees of its attorneys.

3.4 Credit Card Authorization: Client shall provide Agency with a signed Credit Card Authorization for payment of Agency Fees and necessary third-party expenses as filled out and signed in the attached Agreement. Client agrees to timely provide updated Credit Card information as necessary. Client is responsible for any fees Agency incurs due to Client's failure to provide updated Credit Card payment information.

### **4. Client Representative**

4.1 Sole Representative: In order to avoid miscommunication, the Client shall appoint a sole representative with full authority to provide or maintain any necessary information and approvals that may be required by Agency (the "Client Representative"). The Client Representative shall be responsible for coordination and review of the Agency's services and notifying Agency of Client instructions, change orders and approvals. The signature or e-mail approval of the Client Representative shall be final and binding on Client. The Client Representative cannot be a third-party marketing company.

4.2 Changes after approval/Change of Sole Representative: Once the Client Representative has approved a design, if the Client or any authorized person alters the scope of work or requires additional services, the Client shall pay all fees and expenses arising from such changes and additional services as set forth in paragraph 1 above. Client is responsible to inform Agency of a change to the Sole Representative of the Client. Agency is not responsible for any work performed under the authorization of a former Sole Representative due to the Client's failure to inform Agency of a change to the Sole Representative.

### **5. Client Materials; Rights, Ownership and Usage of Work**

5.1 Client provided materials: All copy provided by the Client shall be in electronic, Macintosh-compatible format suitable for typesetting. Where photographs, illustrations or other visual materials are provided by the Client, they shall be of professional quality and in a form suitable for reproduction without further preparation or alteration. The Client shall pay all fees and expenses required to bring nonconforming materials up to such standards. The Client warrants that all assets, concepts, materials, specifications, information and instructions provided by Client or its agents may be exploited pursuant to these Terms and Conditions and any applicable SOW, including on the Internet, without violating any laws and without violating or infringing any rights of any third parties.

**5.2 Client Rights, Ownership and Usage of Work Product:** Subject to Agency's receiving full payment for Services, Agency assigns to the Client, without representation or warranty, all rights, title and interest Agency may have in any work specifically created by Agency for the Client pursuant to these Terms and Conditions, except that:

(i) Agency may use and distribute such work as part of its portfolio for promotional purposes;

(ii) Agency shall own and retain all rights to any and all concepts, ideas, designs, proposals and other work and materials (collectively, "Work") which have been presented to the Client but not included in the final work product;

(iii) Agency shall own and retain all rights to any technology, technical documentation, inventions, algorithms, software, architecture, logic, navigation, 3d modeling files, animation files and other source files for front-end deliverables, computer programs, source codes, game engines or other backend and background elements, files and features incorporated into or utilized by the Work (collectively, "Background Technology"). Unless the parties agree otherwise in a written and signed Statement of Work, Agency shall retain ownership of any and all Background Technology, including any and all associated intellectual property rights. Agency hereby grants to Client a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to use, reproduce, distribute, display and perform Agency's Background Technology, in compiled machine readable object code form only, to the extent incorporated into deliverables provided hereunder strictly for the purposes and in the territories set out in the applicable Statement of Work. Use of Background Technology for any other project, on any other website or in any other medium shall be subject to additional fees and licenses which may be granted or withheld by Agency in its sole discretion; and

(iv) If the Client desires to utilize any of the Work, whether accepted or rejected by the Client hereunder, for any marketing campaign, promotion, product, service, advertisement or any other purpose outside the scope of these Terms and Conditions, then the Client shall hire Agency to design, create, develop, market and otherwise implement such work. The Client may solicit or hire a third party to implement such Work if, and only if, Agency declines to do so and such third party is hired on terms in no way more beneficial than the terms first offered to Agency.

**5.3 Agency Rights, Ownership and Usage of Work Product:** Subject to the services provided hereunder, Agency shall retain all rights to any illustrations and other proprietary artwork, if any, listed in any SOW (each item, a "Design"), provided that Agency shall not, without Client's prior written consent, use, license, sell or otherwise authorize the use of any Design for use in connection with the marketing or promotion of any consumer product, in any format or medium, electronic or otherwise, for a period of one year from date on which such Design is first published. Except as otherwise set forth in this Section 5, Agency grants Client the limited, exclusive, irrevocable right to use the Designs as set forth in any SOW.

**5.4 Agency Rights to Administrative Access Social Media Accounts:** If Agency is utilizing Social Media advertising for Client's marketing campaign, Agency requires administrative access to Client's Facebook Business page throughout the entire term of campaign or SOW. Client understands that this access is required for Agency to carry out Client's marketing campaign.

## **6. Approval of Work**

6.1 **Written Approval by Client:** Work will not commence until the signed Agreement has been received. Within five (5) business days following receipt of any deliverables, the Client will provide Agency with either (i) written approval and acceptance of such deliverable (which will not be unreasonably withheld), or (ii) a written list of reasonable modification guidelines that will bring the deliverables into compliance with the SOW. Each deliverable hereunder will be deemed accepted by the Client if, within five (5) business days of its delivery to the Client, the Client does not receive the foregoing written notice. However, Client agrees that the Agency shall have the right to change out the imagery for a Client ad or other service without approval under a SOW in order to optimize the Client ad performance and in furtherance of Agency of performing its services under this Agreement or SOW.

Client acknowledges that Agency is unable to provide legal advice or guidance as to whether Work created by Agency complies with the laws, rules and/or guidelines of all local, state, territory, federal or regulatory bodies governing Client's State or Country of operation, industry or professional practice. It is Client's sole responsibility to ensure all Agency deliverables, materials, plans or other Work created or produced by Agency comply with these laws, rules and/or guidelines before accepting said Work. Client's acceptance or deemed acceptance of each deliverable is also Client's agreement that said deliverable complies with all such laws, rules and/or guidelines. In the event that any Work created or produced by Agency violates the laws, rules and/or guidelines governing Client, Client agrees that Client is solely responsible for any penalties, fines or liability incurred due to this violation and further agrees to waive any claims Client may have against Agency and to indemnify, defend (at its own cost and expense)

and hold Agency and its officers, employees and agents harmless from and against any and all claims, suits, demands, damages, losses and expenses arising from any violation if at any time it is determined that Agency Work fails to comply.

The Client's written approval of any deliverables, materials, plans or other Work created or produced by the Agency in the course of the provision of the Services, or any cost estimate, will constitute the Agency's authority to purchase, publish, and make contracts for talent, space, time and other facilities and otherwise to do any other act or thing which the Agency considers it reasonable to do in order to carry out its obligations under these Terms and Conditions or any Statement of Work.

The Agency will not be obliged to commit to any expenditure on behalf of the Client without first receiving written confirmation of the Client's instructions and the Agency will not be responsible for the consequences of any delay on the part of the Client in providing such written confirmation.

## **7. Suppliers**

Unless otherwise stated in this Agreement or agreed by the parties in writing, the Agency's contracts with suppliers in respect of the Services shall be made in accordance with suppliers' standard terms or such other terms as the Agency is able to negotiate with the relevant supplier.

The Agency shall act as principal in all such contracts, but all rights and liabilities as between the Client and the Agency shall correspond to those between the Agency and the various suppliers under such conditions, including in particular any service levels and any rights of amendment, omission and cancellation. The Agency shall use reasonable efforts to procure best commercial terms for the Client, and on the Client's written request the Agency shall supply the Client with the relevant terms and conditions.

Notwithstanding the above, unless the parties agree to different arrangements in writing, the Agency shall negotiate with any talent or celebrities (if applicable) on behalf of the Client, but the Client shall contract with such suppliers directly in order to derive maximum benefit from the relationship.

## **8. Confidential Information; Non-Solicitation**

8.1 Confidential Information: Confidential information is that which relates to the Client's or Agency's research, development, trade secrets or business affairs and includes, in the case of Agency's confidential information, concepts presented to, but not selected by, the Client; it does not include information that is generally known or easily ascertainable by third parties. Agency and the Client shall mutually respect and maintain each other's confidential information and shall use it only to perform their respective obligations hereunder. For the avoidance of doubt, confidential information does not include information, which is public knowledge, was in the recipient's possession before receipt or is independently developed by the recipient.

8.2 Non-Solicitation: Neither party shall solicit the other's employees, independent contractors or consultants or engage them in any work independent the parties' relationship under this Agreement during Consultancy Period and for two (2) years thereafter.

## **9. Indemnification**

The Client is responsible for obtaining all legal clearances required for the performance of services hereunder. The Client shall indemnify, defend (at its own cost and expense) and hold Agency and its officers, employees and agents harmless from and against any and all claims, suits, demands, damages, losses and expenses arising from any breach, misrepresentation, copyright infringement or other act or omission of the Client.

## **10. Quality Assurance - Recorded Calls**

Agency offers several marketing options for Clients that may include recording calls with Client's potential patients and customers as part of Agency's marketing program. Agency may audit, monitor and record calls with potential patients, customers, Client's business staff and employees, as well as implement Secret Shop programs to verify the quality and ensure the success of the marketing Services being provided. Recorded calls as part of Agency's marketing campaigns, Secret Shop program or Agency's Audits are used to comply with industry regulations, capture lost details, review the marketing program performance; determine the quality of the sales leads or other Services being provided by Agency to Client.

Client acknowledges the value and importance of Agency recording calls between business staff and incoming Agency leads (potential patients) and consents to Agency recording calls.

If Client receives services from Agency's SparkConnect service, Client acknowledges that Agency will be sending emails and texts on Client's behalf as well as making calls which will be recorded by Agency. If Client is a HIPAA covered entity or business associate, Agency will offer Client the opportunity to execute its standard Business Associate Agreement (or "BAA") that satisfies the applicable subcontracting requirements under HIPAA and the HITECH Act.

Federal and state laws differ as to the legality of recording phone calls and conversations. Determining which jurisdiction's law controls in cases involving recording devices or parties in multiple states can be complex, so it is likely best to adhere to the strictest applicable law when in doubt, and/or get the clear consent of all parties before recording. Agency recommends getting consent from all parties for the call being recorded. The Agency is not responsible or liable for the failure of the Client to properly implement policies and procedures for recording phone calls and conversations and be in compliance with its own states laws. Client must look to its own states laws and seek legal counsel if necessary.

## **11. Nonperformance by and Liability of Agency**

11.1 Delays or Nonperformance by Agency: Agency shall not be held responsible for delays or nonperformance caused by activities or factors beyond its reasonable control, including delays and nonperformance caused by:

- (i) Facebook or Google Ad disapprovals; malfunctions, outages or ad campaign disruptions;
- (ii) Third Party acts or omissions such as viruses, denial of service attacks, terrorism; strikes, lockouts, work slowdowns, or stoppages;
- (iii) Acts of God such as fire, earthquakes, accidents, blackouts, hurricanes, floods or other Force Majeure; or
- (iv) Acts or Omissions by the Client or its contractors, such as failure by the Client to timely furnish information or approve or disapprove work, and/or faulty performance by the Client or its contractors.

11.2 Material Breach/Default of Contract by Agency: In the event Agency fails to perform under this Agreement due the Act or Omission of Agency, Client shall give Agency written notice detailing the nature of Agency's fault and possible remedies, whereupon Agency shall have a reasonable period of time (but in no event less than 30 days) to cure such default. If after written notice by Client, Agency fails to cure such material breach within a reasonable period of time, Client may choose to terminate Services by providing written notice to Agency. Termination by Client without providing the foregoing notice and cure period shall be considered "Early Termination" as defined in paragraph 2.2 above.

11.3 Maximum Liability of Agency: In the event that Agency fails to perform a material provision of the Agreement, Agency's liability shall not exceed the total fees received by Agency under this Agreement prior to the Agency's breach (hereafter referred to as "Maximum Liability"). Agency's liability is limited to the Maximum Liability even if Client previously provided written notice of Agency's fault and whether Client chooses to terminate this Agreement or not. Client agrees to waive any rights Client may have to seek any indirect, third-party, incidental, special, consequential, exemplary or punitive damages from Agency arising from Agency's material breach of these Terms and Conditions.

## **12. Nonperformance or Material Breach by Client**

12.1 Delays, Nonperformance or Material Breach by Client: At Agency's election, Client's delay of work or non-payment under this Agreement for a cumulative period of more than thirty (30) days without Agency's fault or consent or other material breach (as defined in 12.2 below) shall be considered an Early Termination of the Consultancy Period by Client within the meaning of paragraph 2.2 of these Terms and Conditions.

12.2 Other Material Breach by Client: Client's act of gross negligence, wilful misconduct, insolvency, liquidation or bankruptcy shall constitute a material breach of these Terms and Conditions.

12.3 Waiver of Breach by Agency. Agency's failure to terminate Services due to Client's delay of work or Client's breach of any other provision of these Terms and Conditions shall not constitute a waiver by Agency of any

subsequent breach of the same or any other provision of these Terms and Conditions, and no waiver shall be effective unless made in writing.

**13. Severability**

In the event that any sentence, section, paragraph or portion of these Terms and Conditions shall be held by a court to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remaining portions of these Terms and Conditions and the same shall remain in full force and effect.

**14. Governing Law; Jurisdiction**

Parties agree that all terms and conditions shall be interpreted and construed in accordance with the laws of the State of Florida, without regard to any conflict of laws principles. Each party hereby irrevocably consents to the exclusive jurisdiction of the State and Federal courts sitting in Palm Beach County, Florida for the purpose of hearing and deciding any and all disputes, claims and controversies arising out of and relating to this Agreement. Client agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. The prevailing party in any such action or proceeding shall be awarded all of the costs and fees incurred by it reasonably related thereto, including the fees of its attorneys.

**15. Notices**

Notices required hereunder shall be given by written notice sent by registered U.S. mail, return receipt requested, or by electronic transmission producing a written record, to the addresses for Parties set forth above.

**16. Outcome Not Guaranteed**

Nothing in this Agreement, nor in any past or future verbal or written communication between Client and Agency can be construed as a guarantee about the outcome or results of Client retaining Agency. Any proposal of fees or fees paid by Client does not guarantee the outcome or results of Client contracting with Agency.

**17. Entire Agreement; Exhibits**

The Statement of Work and Credit Card Authorization are incorporated into these terms and conditions. In the event of any conflict between these Terms and Conditions and the Statement of Work or Credit Card Authorization, these Terms and Conditions shall govern and control. These Terms and Conditions embodies the entire agreement and understanding of the parties with respect to the subject matter of Services and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to the subject matter. These Terms and Conditions may only be modified by written amendment executed by the Client and Agency.