

# Welcome to the Progyny Terms of Use

These Progyny Web & Mobile Terms of Use (the “Terms”) apply to those websites and software applications (including mobile applications) that we operate and that contain a link to these Terms (an “Application” or together the “Applications”).

By using our Applications you are agreeing to these Terms. Please read them carefully.

**IF YOU ARE EXPERIENCING A MEDICAL EMERGENCY, YOU SHOULD NOT RELY ON ANY INFORMATION ON THE APPLICATIONS or WEBSITE AND SHOULD SEEK APPROPRIATE EMERGENCY MEDICAL ASSISTANCE, SUCH AS CALLING "911".**

We may modify these Terms at any time by posting the revised Terms on the Applications. Any modifications will be effective immediately upon such posting. Your use of or access to the Applications after such modifications are posted will signify your acceptance of the modifications and your agreement to be bound by them. Notwithstanding the foregoing, any modifications to these Terms shall not apply to any dispute between us arising prior to the date on which we post the revised Terms that contain such modifications.

Portions of the application are viewable without registering with us, but to actively participate or store your information, you must register as a member and authorize the use and disclosure of your information for purposes of allowing us to provide the services and as otherwise disclosed in our Privacy Policy.

The contents of the Applications, such as text, data, graphics, images, photographs, video, audio, information, suggestions, guidance, and other materials provided, made available or otherwise found through the app and/or website, including without limitation Content provided in direct response to your questions or postings (“Content”) are for informational purposes only.

WE MAKE NO GUARANTEES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WITH RESPECT TO PROFESSIONAL QUALIFICATIONS, EXPERTISE, QUALITY OF WORK, PRICE OR COST INFORMATION, INSURANCE COVERAGE OR BENEFIT INFORMATION, OR OTHER CONTENT THROUGH THE APPLICATION OR WEBSITE. IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DECISION MADE OR ACTION TAKEN BY YOU IN RELIANCE ON ANY

SUCH CONTENT. FURTHERMORE, WE DO NOT IN ANY WAY ENDORSE OR RECOMMEND ANY INDIVIDUAL LISTED OR ACCESSIBLE THROUGH THE APPLICATION OR WEBSITE.

Please note that once you leave an Applications or arrive at an Applications from another non-Progyny location, either by using a link we may have provided for your convenience or by specifying your own destination, Progyny accepts no responsibility for the content, products and/or services provided at these non-Progyny locations. Progyny does not control, endorse, promote or have any affiliation with any other website or software application (including mobile applications) unless expressly stated herein.

### **Restrictions on use**

You agree:

- not to use the Application or Content in any way not explicitly permitted by these Terms or the text of the Applications itself;
- not to copy, modify or create derivative works involving the Content, except you may print a reasonable number of copies for your personal use;
- not to misrepresent your identity or provide us with any false information in any information-collection portion of the Applications, such as a registration or enrollment application page;
- not to take any action intended to interfere with the operation of the Applications;
- not to access or attempt to access any portion of the Applications to which you have not been explicitly granted access;
- not to share any password assigned to you with any third parties or use any password granted to a third party;
- not to directly or indirectly authorize anyone else to take actions prohibited in this section;
- to comply with all applicable laws and regulations while using the Applications or the Content. You represent and warrant that you are at least 18 years of age.
- Regardless of whether you schedule or intend to schedule appointments through the Application or Website, if you are a Healthcare Provider or other person or entity in the healthcare or medical industries, you acknowledge and agree that:
  - (A) You will not use the Application or Website to view, access or otherwise use, directly or indirectly, price, availability, or other Content for any purpose other than your own personal use as a patient or prospective patient.
  - (B) You will not use the Application or Website to establish, attempt to establish, or enforce, directly or indirectly, any agreement or coordination of the prices charged for any product or service; the kinds, frequencies or amounts of any product or service offered; or the customer or customer categories for any product or service, or otherwise

engage or attempt to engage in price fixing, output restriction, or customer or market allocation.

(C) You will not use the Application or Website, directly or indirectly, to engage in any anti-competitive, deceptive or unfair practices, or otherwise violate applicable antitrust, competition or consumer protection laws, or regulations.

## **NO WARRANTIES**

ALL CONTENT ON THE APPLICATIONS IS PROVIDED TO YOU ON AN "AS IS", "AS AVAILABLE" BASIS. PROGNY, ALL THIRD PARTIES, IF ANY, PROVIDING CONTENT FOR THE APPLICATIONS, AND ALL THIRD PARTIES PROVIDING SUPPORT OR INFORMATION FOR THE APPLICATIONS (COLLECTIVELY, "RELATED-PARTIES") HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

THE RELATED-PARTIES MAKE NO WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF ANY CONTENT AVAILABLE THROUGH THE APPLICATIONS. WITHOUT LIMITING THE FOREGOING, THE RELATED-PARTIES SPECIFICALLY DO NOT REPRESENT OR WARRANT THAT ANY INFORMATION REGARDING PARTICULAR PLAN BENEFITS OR SCOPE OF COVERAGE IS ACCURATE OR COMPLETE. THE RELATED-PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE APPLICATIONS WILL BE UNINTERRUPTED OR ERROR-FREE. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS NECESSARY TO ENSURE THAT ANY CONTENT YOU MAY OBTAIN FROM THE APPLICATIONS IS FREE OF VIRUSES AND ANY OTHER POTENTIALLY DESTRUCTIVE COMPUTER CODE.

Some states do not allow limitations on implied warranties, so one or more of the above limitations may not apply to you.

## **Limitation of Liability**

IN NO EVENT WILL PROGNY BE LIABLE TO ANY PARTY FOR ANY DIRECT, INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THE APPLICATIONS, OR ANY OTHER HYPER-LINKED WEBSITE OR SOFTWARE APPLICATIONS (INCLUDING MOBILE APPLICATIONS), INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR DATA ON YOUR EQUIPMENT, OR OTHERWISE, EVEN IF WE ARE EXPRESSLY ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

## **Changes to the Applications**

Information may be changed or updated without notice. Progyny has no obligation to update information presented on the Applications, so information contained herein may be out of date at any given time. Progyny may also make improvements and/or changes in the products and/or programs described in this information at any time without notice. In addition, please note that although our goal is to provide accurate information, certain features that may be offered through the Applications, such as participating healthcare providers, pricing information or other Content, may not be accurate or up to date. In addition, please note that features of any plan or plans described in this Applications may change over time as permitted by law, including benefit levels, items included in any covered service, formulary, pricing or lists of participating providers or other associated vendors.

## **Content**

In general, it is not Progyny's intention to provide specific medical advice to users of the Applications, but rather to provide users with information to help them better understand their health, diagnosed conditions, and the current range of approaches related to fertility treatment, screening, and supportive care. The Content may be provided by individuals in the medical profession, the provision of such Content does not create a medical professional/patient relationship, and does not constitute an opinion, medical advice, or diagnosis or treatment, but is provided to assist you with locating appropriate medical care from a doctor other healthcare specialist, professional or provider ("Healthcare Provider"). THE CONTENT IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN OR OTHER QUALIFIED HEALTH PROVIDER WITH ANY QUESTIONS YOU MAY HAVE REGARDING A MEDICAL CONDITION. NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON THE APPLICATIONS.

Certain portions of this Applications may be configured to permit users to post messages, comments, or other content. Any such Content is only the opinion of the poster, is no substitute for your own research, and should not be relied upon for any purpose. You agree not to post any content:

- which is profane, libelous, defamatory, obscene, pornographic, indecent, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory, or otherwise objectionable; or
- where the transmission of which could violate, or facilitate the violation of, any applicable law, regulation, or intellectual property rights.

You are solely responsible for the content of any postings you submit and Progyny assumes no responsibility or liability for any content submitted by you or any other site visitor. We may, but are not obligated to, restrict or remove any and all content from a message that we determine in our sole discretion violates these Terms or is otherwise harmful to us, our customers, or any third party. We reserve the right to remove the content you provide at any time, but you understand that we may preserve and access a backup-copy, and we may disclose the content if required to do so by law or in a good faith belief that such access, preservation, or disclosure is required by law or in the best interests of Progyny. To protect your own privacy and the privacy of others, please do not include personally identifiable information, such as Social Security number, account numbers, phone numbers or email addresses in the body of your comment. If you do voluntarily include personally identifiable information in your comment, such as your name, that comment may or may not be posted on the page. If your comment is posted, your name will not be redacted or removed. The default for the posting of comments is “anonymous”, but if you opt not to, any information, including your login name, may be displayed on our site.

Any content you submit is for non-commercial use only. Any content you submit will be routed through the Internet and you understand and acknowledge that you have no expectation of privacy with regard to any content you submit. Never assume that you are anonymous and cannot be identified by your posts.

If you do post content including but not limited to remarks, emails, complaints, suggestions, improvements, ideas, graphics, feedback, edits, concepts, comments, reviews, ratings, illustrations and other materials, and unless we indicate otherwise, you grant Progyny a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media. You grant Progyny and any of its sublicensees the right to use the name that you submit in connection with such content, if they choose. You represent and warrant that you own or otherwise control all of the rights to the content that you post; that the content is accurate; that use of the content you supply does not violate these Terms and Conditions and will not cause injury to any person or entity; and that you will indemnify Progyny or its affiliates for all claims resulting from content you supply. Reliance on any information provided by Progyny, others appearing on the Applications at the invitation of Progyny, or other visitors to the Applications is solely at your own risk. Therefore, mention of any specific tests, physicians, products, procedures, opinions, service or other

information that may be mentioned on the Applications, cannot be construed as an endorsement or recommendation.

The Applications may contain health- or medical-related materials that are sexually explicit. If you find these materials offensive, you may not want to use our Applications.

### **Success Rates**

Success Rates posted are based on data provided by clinics to the CDC. Many people considering Assisted Reproductive Technology (“ART”) will want to use these success rates to find the “best” clinic. However, comparisons between clinics must be made with caution. Many factors contribute to the success of an ART procedure. Success varies with many factors. The age of the woman is the most important factor, when women are using their own eggs. Success rates decline as women age, specifically after the mid-30’s. Part of this decline is due to a lower chance of getting pregnant from ART, and part is due to a higher risk of miscarriage with increasing age, especially over age 40.

Success rates vary with the number of embryos transferred. However, transferring more and more embryos at one time does not increase the chance of live birth significantly, but may only increase the risk of a multiple pregnancy, and its associated risks. The impact of the number of embryos that are transferred also varies with the age of the woman.

Progyny recommended the use of SMART Cycle bundles. These bundles are only guidelines and not a substitute for doctor’s recommendation or advice. Patients may require several cycles of treatment to have a baby. Success rates remain fairly constant over several cycles, but may vary greatly between individuals.

It is important to note that patient characteristics vary among programs; therefore, success rates should not be used to compare treatment centers.

### **No Doctor Patient Relationship**

NO LICENSED MEDICAL PROFESSIONAL/PATIENT RELATIONSHIP IS CREATED BY USING THE CONTENT, WHETHER SUCH CONTENT IS PROVIDED BY OR THROUGH THE USE OF THE APPLICATION OR WEBSITE OR THROUGH ANY OTHER COMMUNICATIONS FROM PROGNY INCLUDING, BUT NOT LIMITED TO, THE “FIND A DOCTOR” FEATURE, BLOG, EMAILS OR TEXT MESSAGES LINKS TO OTHER SITES OR ANY ASSISTANCE WE MAY PROVIDE TO HELP YOU FIND AN APPROPRIATE HEALTHCARE PROVIDER IN ANY FIELD.

We have no control over, and cannot guarantee the availability of any Healthcare Provider at any particular time. We will not be liable for cancelled or otherwise unfulfilled appointments, or any injury resulting therefrom, or for any other injury resulting or arising from or related to the use of the Application or Website whatsoever.

You are strongly advised to perform your own investigation prior to selecting a Healthcare Provider by making confirming telephone calls to the appropriate licensing or certification authorities to verify listed credentials and education, and to further verify information about a particular Healthcare Provider by confirming with the Healthcare Provider's office, your current Healthcare Providers, the medical association(s) relevant to the Healthcare Provider's specialty and your state medical board(s).

In connection with using the Application and Website to locate and schedule appointments with Healthcare Providers, you understand that:

**YOU ARE ULTIMATELY RESPONSIBLE FOR CHOOSING YOUR OWN HEALTHCARE PROVIDER.**

Progyny uses reasonable efforts to ensure that Healthcare Providers hold all active licenses required by law to practice the specialties of the services offered by them, and are not excluded from participation in the Medicare and Medicaid programs. Progyny may exclude Healthcare Providers who, in Progyny's discretion, have engaged in inappropriate or unprofessional conduct.

Healthcare Providers listed through the Application and Website with whom you may book appointments enter into contracts with us, and may pay us a fee in order to be marketed. We will provide you with lists and/or profile previews of Healthcare Providers who may be suitable to provide the healthcare services you seek based on information that you provide to us (such as insurance information, geographical location, and healthcare service). In an effort to aid in the discovery of Healthcare Providers and enable the maximum choice and diversity of Healthcare Providers participating, these lists and/or profile previews may also be based on other criteria (including, for example, Healthcare Provider availability, past selections by and/or ratings of Healthcare Providers by you or by other Progyny users, and past experience of Progyny users with Healthcare Providers); but Progyny (a) does not recommend or endorse any Healthcare Providers, and (b) does not make any representations or warranties with respect to these Healthcare Providers or the quality of the healthcare services they may provide. Star rating system is provided for your reference. We do not warrant or guarantee that our star rating system is equal to or consistent with any other rating system, or it truly reflects the

Healthcare Providers ability, qualification, knowledge or experience and we reserve the right to change a Healthcare Provider's rating at any time with or without notice. Note, however, to the extent that you use the Application or Website as provided by your employer, Progyny may provide lists and/or profile previews based also on criteria determined by your employer and your employer's agents or advisors.

Healthcare Provider and practice Content is intended for general reference purposes only. Healthcare Provider Content maybe provided by the Healthcare Provider and/or office staff, and collected from multiple other data sources that may not be confirmed by the Healthcare Provider. Such Content often changes frequently and may become out of date, incomplete or inaccurate.

### **Insurance Content:**

The insurance and insurance related Content (including, without limitation, insurance coverage and benefit Content) is intended for general reference purposes and for your convenience only ("Insurance Content"). Such Insurance Content is based on Personal Information (as defined below) you provide to us or provided by your employer. The Insurance Content is provided either directly by the employer you identify or via a third-party clearinghouse. Insurance Content often changes frequently and may become out of date, incomplete or inaccurate. In order to improve (but not guarantee) the accuracy of the Insurance Content, you acknowledge and agree that you will (a) provide accurate and complete insurance-related Personal Information, and (b) verify and update your insurance-related Personal Information (including, without limitation, verifying such Personal Information obtained by automated means from an insurance card you provide); Progyny will not be responsible for your failure to comply with subparts (a) or (b) hereof, nor for any inaccurate, incomplete or outdated Insurance Content, regardless of the reason.

### **NOT AN INSURANCE**

#### **PROGYNY IS NOT AN INSURANCE PLAN**

Progyny is NOT insurance. Parts of the program may be provided to individual not enrolled in employer plans for discounts at certain health care providers for medical services.

The program may be offered to existing members of certain programs underwritten or provided by employer or its affiliates to provide specific discounts and to encourage participation in the programs. Progyny does not endorse or guarantee health products/services

available through the program. This program may not be available in all states or for all groups. Components subject to change.

### **YOUR PERSONAL INFORMATION**

In order to register, you must provide certain basic information about yourself. Also, you may opt to voluntarily share additional information in order to benefit from all the Application or Website we provide. Our Privacy Policy details how we may use, share and maintain your information, which may include without limitation your name, address, social security number and contact information; insurance information; medical history and current needs; billing information; and other information that is either requested by Progyny or voluntarily provided ("Personal Information"). By submitting such information, you authorize Progyny, its employees, agents and others operating on its behalf to use and/or disclose such information in accordance with our Privacy Policy. Please review the Privacy Policy carefully, as your use of the Application or Website constitutes your agreement to it.

If you elect to enter medical history ("Medical History") on behalf of yourself or a third party from whom you have authorization to provide such information, on your request you authorize us to provide such information to the specified Healthcare Provider. You acknowledge and agree that such information will be reviewed and approved by you or someone authorized by you at the time of your appointment to ensure its accuracy. You also acknowledge that Progyny may use the data or information you provide on a Medical History in accordance with our Privacy Policy.

### **PRICING DISCLAIMER**

Prices Subject to Change Without Prior Notice. Prices are estimates and approximate cost for the services or procedures indicated. Final cost and price will not be determined until execution of an agreement between you and Progyny.

### **Products and Services Offerings**

"Progyny" is the brand name used for products and services provided by Progyny, Inc. or one of its subsidiary companies. Companies include FertilityAuthority.com, LLC (IVFAdvantage or Eggbanxx).

The product and/or services descriptions, if any, provided on this site are not intended to constitute offers to sell or solicitations in connection with any product or service. All products are not available in all areas and are subject to applicable regulation areas and in many

instances may be offered only through employers or other plan sponsors. Specific products may not be available in both self-funded and insured forms.

Covered services and preferred benefits are provided under the terms of the applicable plan contract, including limitations and exclusions.

Anyone interested in a particular product should contact their local Progyny representative to determine whether the product and/or service is available in their jurisdiction, and to request a complete description of the product and/or service in question.

### **Trademarks**

The Progyny logo, Progyny, FertilityAuthority, IVFAdvantage, Eggbanxx, FertileThoughts, Auxogyn, and all other trademarks, service marks, trade names, logos, domain names, URLs and icons ("Marks") appearing on this Applications, registered or not, are the property of Progyny Inc. or their respective owners. Nothing on this Applications grants you any right or license to use any of the Marks on this site without the express written permission of Progyny Inc. or the third party owners of the Marks. Unauthorized use may violate trademark and other laws.

### **Ownership of the Applications**

The Applications (including any content made available through the Applications) are the property of Progyny (or its licensors) and are protected by applicable intellectual property laws. The Applications are licensed, not sold, to you. You may utilize the Applications only as permitted by these Terms. You may not, and will not permit any other party to: (1) modify, adapt, alter, translate or create derivative works of the Applications; (2) use or merge the Applications, or any component or element thereof, with other software, databases or services not provided by Progyny; (3) sublicense, distribute, sell or otherwise transfer the Applications to any third party; (4) use the Applications as a service bureau, or lease, rent or loan the Applications to any third party; (5) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code or structure of the Applications; (6) interfere in any manner with the operation of the Applications; (7) circumvent, or attempt to circumvent, any electronic protection measures in place to regulate or control access to the Applications; (8) create a database by systematically downloading and storing the Applications; (9) use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or in any way gather the Applications or reproduce or circumvent the navigational structure or presentation of the Applications without our express prior written consent; or (10) use the Applications for any commercial purposes. You agree not to develop,

distribute or sell any software or other functionality capable of launching, being launched from or otherwise integrated with the Applications. You may not remove, alter or obscure any copyright notice or any other proprietary notice that appears on or in the Applications.

### **Termination**

Progyny may suspend or terminate your use of or access to the Applications if you fail to comply with these Terms. Such suspension or termination may result in the permanent deletion of your information or other previously available content.

### **Not a Solicitation**

Nothing in this site should be construed as a solicitation or offer to purchase coverage or services from Progyny or any of its affiliated companies.

### **Governing Law and Statute of Limitations**

The laws of the State of New York govern these Terms and any cause of action arising under or relating to your use of the Applications, without reference to its choice-of-law principles. You agree that the only proper jurisdiction and venue for any dispute with Progyny, or in any way relating to your use of the Applications, is in the state and federal courts in the State of New York, U.S.A. You further agree and consent to the exercise of personal jurisdiction in these courts in connection with any dispute involving Progyny or its employees, officers, directors, agents and providers. If any provision of these Terms are determined to be invalid under any applicable statute or rule of law, such provision is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

### **ARBITRATION AND CLASS ACTION WAIVER**

Any controversy or dispute between you and Progyny (the “parties”) concerning the Application or Website, the Content, this Agreement and/or all matters or issues collateral thereto (each, a “Dispute”) shall be submitted to final and binding arbitration as the sole and exclusive remedy for such Dispute. Any claim shall be made by filing a demand for arbitration within one (1) year following the occurrence first giving rise to the claim. The right and duty of the parties to resolve disputes by arbitration shall be governed exclusively by the Federal Arbitration Act, and arbitration shall take place according to the Commercial Rules of the American Arbitration Association. The arbitration will be held in New York, New York. Each of the parties shall bear all of its own costs of arbitration, except that the fees of the arbitrator shall be divided equally between the parties. The arbitrator shall have no authority to amend or modify the terms of this Agreement or to award punitive or exemplary damages, and the award may be enforced by

judgment. Before, during, or after arbitration each party shall have the right, without awaiting the outcome of the arbitration, to seek interim injunctive relief from an appropriate court including but not limited to temporary restraining orders or preliminary injunctions. Seeking any such remedies shall not be deemed a waiver of either party's right to compel arbitration. You agree that any arbitration or proceeding shall be limited to the Dispute between Progyny and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST US ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

**Contact us**

To contact us regarding these Terms or the operation of the Applications itself, contact us at: [LegalNotices@progyny.com](mailto:LegalNotices@progyny.com)

**Effective date**

The Effective Date of these Terms is June 15, 2016.