

# **GetOrthoCases OrthoSearch Advertising Terms & Conditions**

These Advertising Terms and Conditions ("Terms & Conditions") shall be incorporated by reference into and made a part of any insertion order (the "Insertion Order") submitted to GetOrthoCases ("Company") by the Practice set forth in the Insertion Order. All Insertion Orders are subject to acceptance by Company. Company reserves the right to refuse or cancel any Insertion Order, without cause, at any time. The Terms & Conditions, which are subject to change at any time, with or without notice, and the Insertion Order shall be collectively known as the "Advertising Agreement" or "Agreement."

**1. Advertising.** (a) In connection with each Insertion Order, Company will establish an advertising campaign for Practice (the "Campaign") for the amounts ("Campaign Budget") and duration set forth in the Insertion Order, subject to adjustment as set forth herein. Practice agrees and understands that Company may take up to 10 business days to review the Campaign and may require further input from Business, in which case the date that Ads are live with one or more Publishers (the "Actual Start Date") may be later than the Target Start Date set forth in the Insertion Order. In addition, Business acknowledges that Publishers may take several additional days to distribute the Campaign through their network and publications. Company shall have no liability, and Business shall not be entitled to terminate this Agreement other than as set forth in Section 6, as a result of any such delays,

(b) Company shall manage the Campaign for the number of months (or Periods, as defined below) specified in the Insertion Order. "Period" shall refer to the amount of time required to spend each unit of Campaign Media set forth in the Insertion Order which, due to the fact that Company has limited control over the amount of Advertising actually displayed by Publishers in any time period, may not be equal to a calendar month.

(c) The Target End Date specified on the Insertion Order is an estimate of when the Campaign Budget will be exhausted and that it may actually take less or more time to exhaust the Campaign Budget. Furthermore, the Target End Date shall automatically be adjusted by the number of days, if any, that the Actual Start Date is later than the Target Start Date.

(d) The term of this Advertising Agreement commences on the date that the Insertion Order is accepted by Company and, subject to Sections 6 and 12, terminates when all amounts set forth on the Insertion Order (the "Campaign Budget") have been spent and all amounts due to Company have been paid.

**2. Fees.** Business agrees to pay the following fees, in the amounts set forth in the Insertion Order, in accordance with Section 3:

(a) **Campaign Media.** "Campaign Media" refers to advertising, in whatever format ("Advertising" or "Ads") placed with online or offline businesses that accept advertising orders from Company ("Publishers"). The total and/or monthly spend on Campaign Media shall be as set forth in the Insertion Order, but may consist of flat fee, cost per click, cost per visit or other forms of Advertising, determined by Company in its sole discretion, consistent with Campaign objectives.

(b) **Campaign Fees.** "Campaign Management and Tracking Fees" ("Campaign Fees") shall refer to the periodic amount charged by Company for managing and/or tracking Campaigns. These Campaign Fees are in addition to the Campaign Media and are set forth in the

Insertion Order, the total amount of which will be equal to the per Period Campaign Fees multiplied by the number of Periods specified in the Insertion Order.

(c) Company makes no guarantee with respect to usage, visit, or cost per visit statistics for any Ads. Business acknowledges that any such statistics provided by Company shall be conclusive and binding on Business for all purposes of this Agreement and not subject to review or challenge by Practice for any reason.

(d) All fees are subject to change upon notice to Practice, but Advertising rates (which are set by Publishers) are subject to change at any time without notice.

**3. Payment Terms.** (a) Payment for first period's Campaign Media, Campaign Management and Tracking Fees shall be made at the time the Insertion Order is accepted by Company. Each subsequent Period of Campaign Media and Campaign Management and Tracking Fees may be paid for, in advance, by charging Practice's pre-authorized credit card, which card will be automatically charged again for the next Period's Campaign Media and Campaign Management and Tracking Fees immediately upon the exhaustion of the prior Period's pre-paid Campaign Media.

(b) In the event of any failure by Practice to make payment (including any denial of the payment methods set forth in Section 3(a), Practice will be responsible for all reasonable expenses (including attorneys' fees) incurred by Company in collecting such amounts. All payments due hereunder are in U.S. dollars and are exclusive of any sales, use or similar applicable taxes. Business shall promptly pay all such taxes and any associated interest and penalties.

**4. Tracking Information.** (a) Practice agrees that Company, in an effort to provide statistics to Practice, may apply certain tracking solutions to the Practice's Campaign. Specifically, Practice agrees that Company has the right, but not the obligation, to do the following for each Campaign: (i) Provision "Tracking Phone Numbers" that will be displayed to the user in lieu of the Business' phone number and which will forward to the Business' phone number; (ii) Substitute Business' e-mail address(es) with e-mail form(s) in order to be able to track e-mails associated with the Campaign; (iii) Require users to provide registration information in order to print a Practice's coupon; (iv) Deploy click tracking code to track the pages that users may access as a result of the Campaign. Practice agrees and understands that Company is not responsible for the original phone numbers and e-mail addresses entered by Business and which the Tracking Phone Numbers and e-mail form(s), respectively, will forward to. Furthermore, Practice acknowledges that, for local Practice phone numbers, Company will first try to provision a local Tracking Phone

Number, but, in the event such a local Tracking Phone Number is not available, Practice hereby gives Company permission to provision a toll free Tracking Phone Number instead. Practice further agrees that, as part of provisioning Tracking Phone Numbers, Company has the right, but not the obligation, to turn on enhanced phone tracking features. Those features may include, but are not limited to: call review (whereby a recording of the inbound phone call is made and stored for review by Practice for a period of time to be determined solely by Company); caller ID (whereby the phone number of the caller is used to look-up their name and address). In the case of call review, Practice hereby agrees and understands that an initial recording may be played to callers prior to the completion of calls notifying the caller that the call may be recorded. The exact message to be played to the caller is at the sole discretion of Company or Company's vendors.

(b) "*Destination Page*" shall refer to the website that users will visit when they click on one of the Practice's Ads. Company currently provides two Destination Page options: (i) With a "Standard Offer Page", Company provides Practice with a basic website based on information provided by Practice. Practice agrees that Company may restrict the ability of Practice to modify or request modifications to Practice's Standard Offer Page once the Campaign is running. Practice agrees that Company has the right, but not the obligation, to review and modify any and all content on the Standard Offer Page, whose content – other than any content substituted by Company pursuant to Section 4(a) – remains the sole responsibility of Practice; (ii) With an "Existing Website", Practice agrees that Company will direct all users who click on Practice's Ads to a website owned and operated exclusively by Practice. Practice hereby gives Company permission – during the duration of the Campaign – to do one or more of the following for users visiting the Practice's website as part of the Campaign ONLY: (i) substitute Tracking Phone Numbers for the Practice's website phone numbers; (ii) substitute Tracking E-Mail forms for the Practice's website e-mail addresses; (iii) place click tracking code on pages (URLs) specified by Practice; (iv) place a frameset above the Practice's website with the Tracking Phone Numbers and Tracking e-Mail form link as well as additional pertinent Campaign information; (v) place a frameset above the Practice's website with links to the Company's website, including, but not limited to, the Company's Local Offers Directory. Practice agrees that users visiting the Practice's website other than as a result of the Campaign will not see any of the above substitutions or modifications. Practice agrees that Company may provide a mirrored or proxied version of the Practice's website ("*Mirrored Site*") and that, in order to do so, Practice's website must be operational, functional, and accessible through the Internet. In addition, Practice agrees that, in order for Company to provide the functionality associated with the Mirrored Site, the URL visible above the Mirrored Site to users clicking on the Practice's Ad will reflect the website address for the Mirrored Site and NOT that of the Practice's website. Practice agrees that Company is in no way responsible for the operation and functionality of the Practice's website.

**5. Credits and Rebates.** Practice may be offered financial credits to be applied to future Campaigns

("Campaign Credits") in the following instances:

(a) If the actual dollar amount of Campaign Media utilized at the end of a Campaign is less than the amount paid in advance by Practice, then Practice may be allocated a Campaign Credit in the amount of such difference, in Company's discretion.

(b) One or more Publishers may issue rebates to Company, in the form of cash, credits or discounts, for promotional purposes, per negotiated agreements with the company, due to irregularities in Publishers' systems or otherwise. Company may, in its sole discretion, allocate Campaign Credits to affected Practices, in whatever form Company deems appropriate. Practice acknowledges that Company is not obligated to offer any such credits, rebates, etc. to Practice and that if Company does offer any such rebates, credits, etc., that Practice shall not be entitled to any more than its pro rata shares, based on all Campaign Media placed by Company for all of its advertisers with such Publisher(s) during the relevant period(s).

(c) The terms and conditions applicable to any such Campaign Credits shall be communicated to Practice at the time such Campaign Credits are issued.

**6. Cancellation and Refunds.** Once an Insertion Order has been accepted by Company, Practice will be responsible for full payment of all fees related to the Campaign. If Practice cancels the Campaign for any reason (other than as set forth in the next sentence), all fees for the remainder of the scheduled Campaign shall be immediately due and payable, and all pre-paid fees shall be forfeited. If the entire Campaign Media has not been spent within one month of the Target End Date as adjusted pursuant to Section 1(c), then Practice shall have the right to terminate the Campaign and receive a credit equal to any amount of the Campaign Media that was pre-paid less the actual Campaign Media spent, to be applied toward future Insertion Orders.

**7. Advertising Information.** (a) Practice shall provide Company with true, accurate and current information for all Ads placed with Publishers. Practice will provide all materials for the Advertising in accordance with Company's policies in effect from time to time, including without limitation the manner of transmission to Company and the lead-time prior to publication of the Advertising. Practice agrees that Company has the right but not the obligation to make modifications to Ads prior to their delivery to Publisher and further understands that, once Ads are delivered to Publisher, Practice may be limited in its ability to make further modifications to said Ads. Practice hereby grants to Company a non-exclusive, worldwide, fully paid license to use, perform, reproduce, display, transmit and distribute in accordance herewith the Ads and any derivative works based thereon created by Company hereunder.

(b) All contents of Ads are subject to Company's approval. Company reserves the right to reject or cancel any Ad, agreement, URL link, or Publisher position commitment, at any time, for any reason whatsoever (including belief by Company that any placement thereof may subject Company to criminal or civil liability). This right to refuse a listing does not constitute endorsement of any Ad that is accepted by Company, nor does it constitute a warranty that Company will continue to run an Ad once

accepted. Company has no obligation to inspect ads or to reject ads that it inspects for any reason.

(c) Company reserves the right to modify Ads, including the associated keywords, target geographies and Publishers, consistent with Practice's objectives, at any time, even while a Campaign is active.

(d) Practice agrees that Company, while it will take all reasonable efforts to promote the various products and services that the Practice has selected to promote, makes no guarantee – financial or otherwise – that all such products and services will be advertised, particularly if advertising all such products and services would result in exceeding the Campaign Media amount in the Insertion Order.

(e) Practice may select certain individual words or word phrases ("Keywords") to be used in the Campaign. Practice agrees that Company, while it will take all reasonable efforts to promote these Keywords at the Publishers, makes no guarantee – financial or otherwise – that all Keywords will be advertised, particularly if advertising all Keywords would result in exceeding the Campaign Media amount in the Insertion Order. In addition, Practice agrees that the rules for displaying Ads when certain Keywords are entered by a user at a Publisher are controlled by the Publisher and, as such, Practice agrees that Company makes no guarantee – financial or otherwise – about when or where Ads will be displayed when certain Keywords are entered by a user at a Publisher.

(f) Practice agrees that, while Company will use its best efforts to place Ads in the target geographies specified by Practice, Company is not ultimately responsible for the display of Practice's Ads and, as such, cannot guarantee that the Practice's Ads will only or primarily be displayed to people in the target geographies. Practice acknowledges that Publishers may use varying means to detect where people are located when determining whether to display an Ad, including, but not limited to: (i) IP targeting; (ii) user registration information; and (iii) explicit geographic search queries made by the user.

(g) Positioning of Ads on Publisher sites is at the sole discretion of Publisher.

(h) Business may not resell, assign or transfer any of its rights hereunder. Any attempt by Practice to resell, assign or transfer such rights shall result in immediate and automatic termination of this Agreement, without liability to Company.

(i) Company shall determine, in its sole discretion, which online or offline businesses that accept advertising orders from Company ("Publishers") to use in connection with any Campaign. Practice acknowledges that Company does not produce, operate or transmit the Internet sites or services on which Ads may appear – with the exception of the Company Directory – and that Company acts only as a sales representative or reseller of advertising inventory or listing services for the operators of such Internet sites or services.

(j) Company makes no representations, warranties or guarantees of any kind as to the level of sales, purchases, clicks, sales leads or other performance that Practice can expect from the Advertising.

(k) Practice understands that Company is under no

obligation and may not be able to provide any samples of Ads in the context of any Publisher's website.

#### **8. Practice's Representations; Indemnification.**

Practice represents and warrants to Company that Practice holds all necessary rights (including the right to use all information, names, trademarks and search terms it provides or includes in its Ads) to permit the use of the Advertising by Company for the purposes contemplated under this Agreement including, without limitation, any URLs, websites and content utilized in connection with Campaign Tracking; and that the use, reproduction, distribution, transmission or display of the Ads, any data regarding users, and any material to which users can link, or any products or services made available to users, through the Ads will not (a) violate any criminal laws or any rights of any third parties or (b) contain any material that is unlawful or otherwise objectionable, including without limitation any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law. Practice agrees to indemnify, defend and hold Company harmless from and against any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to (i) breach (or alleged breach) of any of the foregoing representations and warranties, or (ii) any third party claim arising out of or in connection with use of or access to the Advertising or any material to which users can link, or any products or services made available to users, through the Advertising or to which the Advertising relates. Further, Practice agrees to indemnify and hold Company, and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of content Practice submits, posts, transmits or makes available through the online or offline services provided by Company (collectively, the "Service"), or Practice's use of the Service, connection to the Service, violation of this Agreement, or violation of any rights of others.

**9. Agency.** Practice further represents and warrants that, in the event it is purchasing advertising on behalf of another practice, it has been authorized by each such practice to act as its agent in all respects relating to the Service and this Agreement, including, without limitation, the making of any elections or giving of any consents. Without limiting the generality of the foregoing, Practice agrees on behalf of each such practice that such practice has been made aware of these Terms and Conditions and shall be bound by all of the terms and conditions of this Agreement. Practice and each such practice shall be jointly and severally responsible under this Agreement.

**10. Renewal.** Renewal of any Campaign is subject to acceptance of the then current version of this Agreement and execution of a new Insertion Order. Any renewal shall be subject to Campaign Management and Tracking Fees and any other fees applicable to new Campaigns.

**11. Confidentiality.** Practice shall not disclose the contents or existence of this Agreement to any third party (other than its employees and representatives who are made aware of and agree to this restriction) without Company's prior written consent. Company shall be permitted to identify Practice as a Company client and may

use Practice's name in connection with Company's marketing materials.

**12. Termination.** Company may immediately terminate Practice's account and access to the Service, with or without cause of any type or nature. Termination of Practice's account includes (a) removal of access to all offerings within the Service, (b) deletion of passwords and all related information, files and content associated with or inside the account (or any part thereof), and (c) barring further use of the Service. Except as expressly provided in this Agreement, Company shall not be liable to Practice or any third party for any termination of Practice's account or access to the Service. All provisions of this Agreement that by their sense or nature should survive termination of this Agreement (including, without limitation, all limits of liability, indemnity obligations, and confidentiality obligations) shall so survive. Without limiting the generality of the foregoing, in the event of any termination, Practice shall remain liable for any amount due for Advertising delivered by Company.

**13. Limitation of Liability.** (a) In the event that Company fails to publish an Ad in accordance with this Agreement, or in the event that Company fails to spend, on behalf of the Practice, the full Campaign Media, or in the event of any other failure, technical or otherwise, of such Advertising, the sole liability of Company and exclusive remedy of Practice shall be limited to, at Company's sole discretion, the issuance of a Campaign Credit not to exceed the total Campaign Media spent. ( b) PRACTICE EXPRESSLY UNDERSTANDS AND AGREES THAT COMPANY SHALL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), REGARDLESS OF THE CAUSE OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY SHALL HAVE NO LIABILITY FOR DAMAGES RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE OR THIS AGREEMENT. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT ARISING OUT OF OR IN CONNECTION WITH ANY CAMPAIGN, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNT ACTUALLY RECEIVED BY COMPANY FROM PRACTICE FOR SUCH CAMPAIGN.

(c) Practice agrees that, regardless of any statute or

law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one year after such claim or cause of action arose or be forever barred; provided that this section shall not in any way limit the time in which claims for infringement or misappropriation of intellectual property rights may be brought.

(d) Without limiting the foregoing, Company shall have no liability for any failure or delay resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown or any other condition affecting production or delivery in any manner beyond the control of Company. Practice acknowledges that Company has entered into this Agreement in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

**14. General.** (a) Practice acknowledges that no Company personnel are authorized to make any modifications to these Terms and Conditions or to make any estimates that Practice may rely on and that Practice is not relying upon any such modifications or estimates or any representations, warranties or guarantees other than as expressly stated herein.

(b) This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement may not be amended, supplemented or modified orally, but only by an agreement in writing signed by each of the parties hereto. In the event any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable part had been severed and deleted.

(c) This Agreement may not be transferred, assigned, pledged or hypothecated by any party hereto, other than by operation of law. Any such purported transfer, assignment, pledge, or hypothecation (other than by operation of law) shall be void and of no force and effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

(d) The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement. The provisions of this Agreement shall be construed according to their fair meaning and neither for nor against any party hereto irrespective of which party caused such provisions to be drafted.

(e) In the event that Company's website has any terms (including without limitation in any "click through" agreements) that are inconsistent with the provisions of this Agreement, this Agreement shall take precedence; provided, that any such agreements shall otherwise control with respect to any actions or activities outside of the domain of this Agreement.