

# SOCIETY FOR ETHICS IN EGG DONATION AND SURROGACY

## STANDARDS of ETHICAL CONDUCT for SEEDS MEMBER AGENCIES

*Note: Throughout this document, the singular is meant to include the plural and vice versa.*

### **DEFINITIONS**

1. **Agency** is defined as a person or business entity (to include the Owners, Directors, and Principals of such entity) that conducts any of the following activities:
  - a. Planning and arranging matching services with Intended Parents (including but not limited to Matching Programs);
  - b. Acquiring or coordinating the services of the professionals involved in third-party assisted reproduction among the Participants as part of the matching services;
  - c. Advertising, recruiting, or obtaining personal information regarding Donors, Surrogates, or Intended Parents;
  - d. Directing, having real or apparent authority over, or supervising, directly or indirectly, the third-party assisted reproduction arrangement between Intended Parents, Donors, or Surrogates; or
  - e. Using in connection with one's name or employment the words or terms "Agency," "Agency owner," "Matching Program," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such person or entity is engaged in the practice of agency ownership or that such person or entity is holding herself or himself out to the public as being engaged in the practice of providing services related to matching Donors, Surrogates, or Intended Parents.
  
2. **Assisted Reproductive Technology** (ART) is defined as the treatments or procedures that include the handling of eggs, sperm, or embryos by a medical professional for the purpose of establishing a pregnancy and establishing the pregnancy by means other than through sexual intercourse.
  
3. **Base Compensation** is defined as the minimum base fee the surrogate will receive for completing her services as specified in her surrogacy agreement without any additional milestone or contingent payments.

4. **Base Compensation Package** is defined as Base Compensation plus all payments a Surrogate is guaranteed to receive for milestone services completed as specified in her surrogacy agreement (e.g., medication start, embryo transfer, nonaccountable monthly allowance). It does not include Contingent Compensation payments..
5. **Child** is defined as an individual born pursuant to Assisted Reproduction.
6. **Contingent Compensation** is defined as those additional payments that may or may not be paid to the Surrogate depending on whether certain contingencies occur (e.g., doctor-ordered bed rest, lost wages, cesarean section, loss of reproductive organs, invasive procedures, miscarriage, multiple gestation, repeat journeys, the status of the Surrogate’s insurance coverage, etc.).
7. **Donor** is defined as a Gamete Donor or an Embryo Donor.
  - a. **Gamete Donor** is defined as a person other than an Intended Parent who contributes eggs or sperm for use in ART and relinquishes all present and future parental and inheritance rights and obligations to the resulting Child.
  - b. **Embryo Donor** is defined as the individual with dispositional control of an Embryo who provides it to another Intended Parent for gestation and relinquishes all present and future parental and inheritance rights and obligations to the resulting Child.
  - c. Types of Donations
    - i. “Directed (Identified)” Donation – Previously referred to as a “known donation.” Describes an arrangement in which Intended Parents and a Donor have a pre-existing relationship. The Donor could be a friend, sibling, family member, or even a neighbor.
    - ii. “Open” Donation - Describes an arrangement in which the Intended Parents and the Donor can meet and/or have a telephone and/or video conference. In these arrangements, the Participants also agree to exchange full identification and contact information. The level of communication beyond this initial interaction will vary. Some relationships may continue to grow, while others will leave the door open to communication only if medically necessary or if the resulting Child wishes to know more.
    - iii. “Semi-open” Donation - Describes an arrangement in which the Intended Parents and the Donor do not know each other’s identities; however, they may exchange first names and may have restricted communication facilitated by an Agency, donor registry, or an attorney. The Intended

Parents and Donor do not communicate directly with one another. Communication may be limited to emails, letters, Agency correspondence, or meeting each other in person by video or by telephone. Generally, the Participants do not communicate beyond this interaction and do not exchange full contact information.

- iv. “De-identified” Donation - Previously, referred to as unknown or anonymous donation. Describes an arrangement in which the Intended Parents and the Donor do not know each other’s identities and do not intend to contact one another in the future. Aliases such as “Intended Mother,” “Intended Father,” “Intended Parent,” and “Donor ID Number/ First Name” may be used in the direct written agreement between the Participants. The Intended Parents will typically only view a Donor’s profile through a Matching program’s website.

8. **Guidelines** are defined as those supplemental provisions that are intended to provide more extensive guidance/advice around the best practices set forth in the Standards and are not mandatory. Guidelines provide support to and expand on directions provided by the Standards. Guidelines have been developed to assist Members with decisions regarding their operations and care of their Participants. Guidelines are not intended to be a protocol to be applied in all situations and cannot substitute for the individual judgment of the Members based on their knowledge of the Participants and specific circumstances. The recommendations contained in Guidelines may not be the most appropriate approach for all situations. Ethics and Agency practices are constantly changing, and Members should not rely solely on the Guidelines.
9. **Intended Parent** is defined as an individual, married or unmarried, who manifests the intent to parent the Child and to be legally bound as the parent of the Child resulting from assisted reproduction.
10. **Matching** Program is defined as services or a program in which Intended Parents are introduced to a Donor and/or a Surrogate for the purpose of leading to a formal match, to start a third-party ART journey.
11. **Member** is defined as an active SEEDS member as defined in the SEEDS bylaws.
12. **Participant** is defined as an Intended Parent, Donor, or Surrogate, whether or not a written understanding exists with an Agency.
13. **Record** is defined as a document identifying the Participants or signed between the Agency and any Participant or among the Participants to initiate or facilitate the

process inscribed in a tangible medium or stored in electronic format that is retrievable.

14. **Service Agreement** is defined as a written agreement between an Agency and Intended Parents describing the services to be performed. This may also be referred to as a retainer or engagement agreement.
15. **Standards** are defined as the mandatory requirements for SEEDS membership that set forth minimum best practices.
16. **Surrogate** is defined as an individual who is not the Intended Parent and does not intend to parent the Child, but who agrees to become pregnant on behalf of an Intended Parent through assisted reproduction with the intention of gestating and delivering the Intended Parent's Child. It includes both a Gestational Surrogate and a Traditional (or Genetic) Surrogate.
  - a. **Gestational Surrogate** is defined as an adult, not an Intended Parent, who enters into a surrogacy arrangement to bear a Child and who is not a Gamete Donor for the Child.
  - b. **Traditional (or Genetic) Surrogate** is defined as an adult, not an Intended Parent, who enters into a surrogacy arrangement to bear a Child and who is also the Gamete Donor for the Child.

**STANDARDS OF ETHICAL CONDUCT**  
**FOR ALL SEEDS MEMBERS**

1. No Agency shall operate without a license issued in accordance with applicable state law, if any.
2. An Agency shall provide services to its Participants in a non-discriminatory manner; this shall not inhibit the Agency's ability to accept or decline prospective Participants based on its own policies and screening procedures.
3. A Member shall not engage in coercion, fraud, misrepresentation, or unethical conduct.
4. An Agency shall refer clients to all necessary legal, tax, medical, psychological, insurance, or other professionals for advice and provision of services in areas of expertise in which they are not licensed.
5. An Agency shall identify, document, and obtain appropriate written waivers for prospective conflict of interests that may exist between any parties.
6. With respect to incoming or outgoing disclosures of a Participant's confidential information, an Agency shall obtain any necessary and required external releases, which may include:
  - a. HIPAA releases;
  - b. Attorney-client privilege waivers; or
  - c. Other such written consent from the Participant prior to conversation with other relevant ART professionals on behalf of the Participant.
7. Advertising and Recruiting for Donors and Surrogates
  - a. Recruitment of Donors and Surrogates should be made with the intention of minimizing potential risks to the Participants and Child.
  - b. No Agency shall intentionally initiate any interference with any pre-existing and ongoing relationship of another Agency and the Agency's Participants.
  - c. An Agency or other Member shall not use inaccurate, misleading, or coercive information in their advertising practices. An advertisement shall be considered coercive if undue emphasis is placed on monetary incentive to the Gamete Donor or Surrogate.
  - d. Advertisements stating compensation for recruiting Gamete Donors or Surrogates shall state the average single cycle Base Compensation Package.

Advertisements that include Surrogate compensation shall not conflate the Base Compensation Package with other fees or expenses paid to a Surrogate typically considered to be Contingent Fees.

- e. Eligibility for amounts payable other than the Base Compensation Package shall be clearly identified and itemized.

#### 8. Surrogacy Compensation

- a. Contingent Fees and expenses, as defined above, shall not be included in Base Compensation paid to a Surrogate.
- b. Bundling Contingent Fees and expenses with Base Compensation does not make them non-contingent.

- 9. Embryo Donation. There shall be no compensation paid to an Embryo Donor for the Embryos themselves other than reimbursement for reasonably related reimbursable expenses incurred after the creation of the Embryos to store and legally transfer the Embryo to the recipient.

#### 10. All Service Agreements must be in writing and include the following provisions:

- a. Adequate identification of the Agency as a party to the Service Agreement;
- b. Adequate and properly documented identification of the Intended Parents as a party to the Service Agreement;
- c. A detailed description of the services to be provided by the Agency;
- d. A detailed description of the estimated costs of the services to be provided by the Agency as well as the Agency's billing, cancellation, and refund policies (any refund policy shall be described in detail), including allocation of costs and expenses in the event of the disqualification of the Gamete Donor or Surrogate;
- e. A description of other known Agency costs, fees and expenses that may be incurred, if any;
- f. A timetable for the payment of known Agency costs, fees, and expenses;
- g. Notification of the right, and a reasonable opportunity, to have the Service Agreement reviewed by independent legal counsel;
- h. An explanation of which Records an Agency keeps and the length, manner, and location of their retention;
- i. In a Donor Service Agreement, disclosure of the Agency's policies regarding their facilitation or lack of facilitation of future contact among the Participants;
- j. Disclosure of any and all relationships, whether financial or other outside interests of the Owners of the Agency or its employees, that may constitute an actual or potential conflict of interest and an opportunity for the Participant to waive the conflict, if permitted;

- k. Disclosure of whether the Agency primarily represents the Intended Parent, Surrogate, and/or Donor. The Agency may choose to represent multiple parties or no party so long as the necessary written disclosure and consent forms are executed and included in the body of or executed separately and simultaneously with the Service Agreement. Representing multiple parties, including more than one Intended Parent, represents an inherent conflict of interest that is waivable unless and until a conflict actually arises between the parties;
  - l. Disclosure that the Agency requires Intended Parents to notify the Agency of any other ART attempts they are undertaking to achieve a pregnancy.
  - m. Disclosure as to the Agency's policy with respect to preserving and deleting Participant Records.
11. An Agency shall carry professional liability insurance in an amount sufficient to cover reasonable potential claims.
12. An Agency shall create and maintain reasonable and ordinary business Records.
13. An Agency shall have and follow a written policy that covers the following:
- a. A protocol for creating, storing, backing up, accessing, transferring, and disposing of Participant Records under the Agency's control; and
  - b. A policy for transfer of such Records, in the event the Agency ceases to exist or is otherwise unable to continue to maintain the Records for the required time period.
14. No Agency shall permit, encourage, or facilitate a Gamete Donor or Surrogate to begin a cycle until the following tasks have been completed:
- a. A Service Agreement between the Agency and Intended Parents has been signed;
  - b. Intended Parents have undergone a psychoeducational mental health consultation;
  - c. Donors and Surrogates (and their live-in partners) have undergone comprehensive psychological evaluation with a mental health professional; and Intended Parents and Surrogates have completed a joint consultation with a mental health professional;
  - d. Donor has undergone genetic screening and counseling by a licensed and/or certified geneticist;
  - e. All Participants have had the opportunity to consult with a licensed attorney of their own choosing;

- f. A direct written agreement between the Participants has been executed (i.e., a direct written agreement between Intended Parents and the Agency's Donor, or a direct written agreement between Intended Parents and a Surrogate); (Agree
  - g. Intended Parents have deposited, at a minimum, into a bonded escrow account or an attorney-managed trust account the Base Compensation Package amount in accordance with the direct written agreement among the Participants;
  - h. The Participants have been informed to seek advice regarding their life insurance, accidental death, and health insurance/benefits policies and the respective coverage of the ART procedures, complications, and obstetric costs and fees;
  - i. Intended Parents have agreed to provide to their Surrogate a policy or sudden accidental death policy, at Intended Parents' expense, with a face amount of at least \$250,000; and
  - j. The Participants have been required to seek advice from the necessary medical, psychological, insurance, legal, and any other relevant third-party professionals to discuss the potential risks and outcomes of the process.
15. Participant Records shall be kept confidential and may only be disclosed by the Agency in accordance with the signed written consent of the Participant or pursuant to a valid court order. Participant Records shall be kept for a minimum of 18 years after the completion of the case. Electronic format will suffice.
16. Continuing Education: Owners and Managing Principals of an Agency must complete the required number of units of Continuing Education each calendar year as specified in Guidelines established by the SEEDS Education Committee.
17. All unearned or undisbursed funds belonging to Intended Parents, Surrogates, or Donors must be held in either:
- a. An escrow account held by a licensed escrow company with a minimum bond (crime policy) greater than the amount of funds held in all escrow accounts and not controlled by the Agency associated with the journey; or
  - b. A law firm's client trust or escrow account maintained by an attorney with the proper disclosures and conflict waivers where applicable (e.g., when the attorney holding escrow also represents one or all Participants in any of the legal services).

In accordance with the terms of the governing ART agreement and the escrow management agreement, only the attorney or escrow agent may disburse client funds.

This standard shall not apply to funds that are not held or passed through the escrow provider.



**As an exception to the two options** laid out above, in limited circumstances, unearned or undisbursed funds belonging to Intended Parents, Surrogates or Donors may be held in an escrow account held by an Agency if the Agency can demonstrate it satisfies the following requirements:

- a. The Agency is legally allowed to hold escrow directly or indirectly within the State of its incorporation,
  - b. The Agency fully and conspicuously discloses the possible conflict to all Participants,
  - c. The Agency maintains a full-time accountant on staff,
  - d. The Agency holds a minimum bond (crime policy) greater than the amount of funds held in all escrow accounts,
  - e. The Agency informs the SEEDS Board in writing prior to establishing an internal escrow account or, if one has been previously established and approved, a change in control or ownership of the Agency, and
  - f. Following a substantial review of the Agency's insurance coverage, contracts, disclosures, and accounting practices, the SEEDS Board concludes the Agency is capable and stable enough to hold escrow funds.
18. An Agency shall not present for Matching to an Intended Parent a Surrogate or Donor who the Agency reasonably knows or should know has failed or will not pass medical or psychological testing or is otherwise unavailable. This includes Surrogates and Donors who have not been vetted through and passed the Agency's full screening process. An Agency may present a Surrogate or Donor candidate who has not been fully screened, as specified in the Agency's processes, only if the Agency discloses this fact to the Intended Parents before presenting such candidate.
19. No Agency shall provide, attempt to provide, or solicit another person or entity to provide false or misleading information to:
- a. Participants;
  - b. An administrative agency; or
  - c. A court
- during the establishment of parentage.
20. No Member shall unfairly or inaccurately disparage another professional, Agency, IVF Center, mental health provider, attorney, or another Member.
21. An Agency shall provide a written disclosure to include the following with respect to each of the following Participants:
- a. Donors/Embryo Donors
    - i. Nature of Agency relationship with Donor

- (Expectations between Agency and Donor (Including that there will be verification of Donor identification and background (educational, criminal, etc.), as reasonably required under law or by the Agency, IVF Center, or Intended Parents);
  - ii. Nature of compensation/benefits/reimbursements and, if known, whether a 1099 will be issued and, if so, by whom; and
  - iii. Options regarding the nature and scope of disclosure of Donor identifying information.
- b. Surrogates
  - i. Nature of Agency relationship with Surrogate;
  - ii. Expectations between Agency and Surrogate;
  - iii. Nature of compensation/ benefits/ reimbursements and, if known, whether a 1099 will be issued and, if so, by whom; and
  - iv. Surrogate's minimum right to independent counsel before entering into any binding agreement with an Agency or Intended Parents and continuing through birth or completion of parentage proceedings (whichever occurs later) or as provided more extensively by the direct agreement between Surrogate and Intended Parents.

## 22. Agency Screening of Surrogates

- a. An Agency should receive preliminary medical clearance of Surrogates from a qualified medical professional based on all existing pregnancy-related medical records prior to presenting the prospective Surrogate's profile to Intended Parents.
- b. If an Agency works with Intended Parents contributing genetic material who have HIPAA-protected health conditions (e.g., HIV+, Hepatitis, sexually transmitted diseases), the Agency must disclose such conditions to a Surrogate, with written permission of the Intended Parents, prior to Matching.
- c. An Agency shall require Surrogate and any live-in partners to undergo a mental health evaluation.
- d. An Agency shall obtain a comprehensive background check (including civil, criminal, and DMV Records) on Surrogate, Surrogate's Spouse, Fiancé, and/or live-in partner, and any other adults living in Surrogate's household.
- e. To be eligible as a Surrogate, the Surrogate, must, at a minimum:
  - i. Meet ASRM's guidelines (with deference to IVF Center's requirements and expertise);

- ii. Have delivered at least one child;
- iii. Be financially stable (i.e., living above the federal poverty level);
- iv. Hold U.S. citizenship or permanent residency status;
- v. Be at least 21 years old;
- vi. Have, or be able to obtain at Intended Parents' expense, healthcare insurance (or other medical coverage) without exclusions for a surrogate pregnancy; and

### 23. Agency Screening of Donors

- a. An Agency shall use best efforts to collect repeat Donors' medical Records and obtain preliminary medical clearance of Donors based on written Records by an IVF Center prior to Matching.
- b. An Agency shall require Donors to undergo or have undergone a mental health evaluation in accordance with the ASRM guidelines.
- c. An Agency shall obtain a comprehensive background check (including civil, criminal, and DMV Records) on Donor.
- d. An Agency shall require its Donors to be at least 21 years old and otherwise qualified in accordance with ASRM guidelines.
- e. An Agency shall ensure that Donor has donor complications insurance in place prior to commencing a cycle.
- f. An Agency shall ensure that a Donor is informed of and meets preliminary FDA screening requirements and ASRM guidelines (with deference to IVF Center's requirements and expertise).

### 24. Agency Screening of Intended Parents

- a. An Agency shall not provide service to Intended Parents unless they demonstrate a need for surrogacy associated with a disease, condition, or status characterized by:
  - i. the failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sexual intercourse;
  - ii. a person's inability to reproduce either as a single individual or with their partner without medical intervention; or
  - iii. a licensed physician's or mental health professional's findings based on a patient's medical, psychological, sexual, and reproductive history, age, physical findings and/or diagnostic testing.
- b. An Agency shall collect from Intended Parents their gender identity and sexual orientation and marital status.

- c. An Agency shall collect from Intended Parents any HIPAA-protected health conditions (e.g., HIV+, Hepatitis, sexually transmitted diseases) they may have, and the Agency must disclose such conditions to a Surrogate for the Intended Parent contributing genetic material before Matching, with written permission of the Intended Parents.
- d. An Agency shall obtain a comprehensive background check on Intended Parents (including civil, criminal, DMV).
- e. An Agency shall require Intended Parents to undergo or have undergone a psychoeducational mental health consultation.

25. Surrogate, Donor and Embryo Donor Matching.

- a. Prior to Matching, an Agency should determine each Participant's match preferences. An Agency should be transparent with full disclosure to the Participants of any known items that might cause any Participant to choose not to select another Participant for a match. A decision to move forward should be mutual.

26. International Intended Parents. In addition to all other applicable Standards, an Agency shall:

- a. Advise International Intended Parents to consult with an attorney in their relevant home country(ies) regarding travel documents and immigration/ nationality issues for the Child.
- b. Advise International Intended Parents they must arrange to pay their newborn medical bills (e.g., direct cash payments, pre-negotiated rate plans with the hospital, insurance coverage).
- c. Advise International Intended Parents they must make best efforts to be present at birth.
- d. Inform Surrogate that additional assistance on her part may be required to confirm parentage or nationality of the Child in the Intended Parent's home country, which may include being listed on the initial birth certificate of the Child, signing additional documents (including possibly at the Intended Parent's home country consulate or embassy in the US), or providing testimony in a foreign country court, and advise her to speak with her attorney in this regard.

27. Multiple Simultaneous Surrogacies. An Agency shall not allow Intended Parents to embark on more than two simultaneous surrogacies at a given time. If an Agency allows two simultaneous surrogacies, the Agency shall require:
- a. The pregnancies be staggered;
  - b. Full written disclosure of the arrangement to, and agreement by, all Participants and with notice to all involved professionals, including agencies, mental health professionals, and attorneys; and
  - c. Additional relevant mental health assessment of all Participants on issues specific to simultaneous pregnancies.