

SOCIETY FOR ETHICS IN EGG DONATION AND SURROGACY

STANDARDS of ETHICAL CONDUCT for SEEDS MEMBER AGENCIES

Note to SEEDS Members from the Standards Committee:

Following are the final standards as passed by the SEEDS' membership now with the initial guidelines included. The guidelines are intended to both clarify the existing standards and suggest more specific non-mandatory aspirational practices. Unless a guideline is specifically interpreting a standard, it does not require further compliance. It is merely a recommendation.

The guidelines were added to help you fully understand the purpose and intent of the standards as a whole. Not every standard has a guideline. If the committee believed the standard was clear on its face and easily applied, no guideline was proposed. It is important to note that, if any member believes additional clarification or interpretation of a standard is necessary or beneficial, the standards committee is happy to add to and/or amend the guidelines so they are clearer and more comprehensive. Simply communicate any additional questions, issues, or additions that you believe would be beneficial, and the committee will review and incorporate them if reasonably appropriate. The guidelines are flexible and easily enhanced. They do not require further membership vote or approval.

Please send any and all comments to Jennifer McGill, Standards Committee Co-Chair:
jennifer@creativefamilyconnections.com

Remember:

Standards are the mandatory requirements for membership that set forth minimum best practices in the industry.

Guidelines are intended to provide more extensive perspective/advice around best practices. Guidelines provide support to and expand on directions provided by the standards.

Thank you for your continued support and patience with our committee. We appreciate all of your feedback and words of encouragement. We serve our members.

Thank you for your input,
The Standards Committee

Diane Hinson (Committee Chair)
Jennifer McGill (Committee Co-Chair)
Rich Vaughn (Committee Member)

Wendie Wilson-Miller (Committee Member & SEEDS Board Member)
Steve Snyder (Committee Member & SEEDS Board Member)
Sunday Crider (Committee Member & SEEDS Officer)
Sam Hyde (Committee Member & SEEDS Officer)

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.

Guideline: This definition is intended to cover only entities and individuals that meet the Agency definition. It is not intended to cover entities or individuals (e.g., attorneys or other professionals) who work with Agencies but do not have a Matching Program. It is also not intended to apply to sperm banks.

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.

Guideline: This term has also been referred to as “benefit package” or “compensation package,” which are considered to be synonymous terms.
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** - 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. Previously, this arrangement was referred to as a “known” donation.
- 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** - 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** - 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. Previously, this arrangement was referred to as “Unknown” or Anonymous Donation.”

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.

Guideline: Records do not include emails, drafts, etc. Rather, for purposes of this definition, Records are the necessary structural documents of a journey (e.g., Service Agreement, escrow agreement, retainer agreement, gestational carrier agreement, Donor agreement, etc.). This distinction is important because the Standards require Record retention. Notwithstanding the foregoing, we recommend you keep emails and other written substantive communication with the Participants.

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.

Guideline: For details on how to license, the Agency can look to the US Small Business Administration for guidance: <https://www.sba.gov/business-guide/launch-your-business/pick-your-business-location>. In addition, there are a number of business law attorneys who are experienced in business formation in each state who can help the Agency determine what business form is desirable (e.g., LLC, S Corporation, etc.) and how to register.

In addition to obtaining a license to operate as a business, an Agency may be required to obtain a license to operate as a Matching Program in a particular state (e.g., New York State).

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.

Guideline: While the state law that governs the Agency's business may include even more protected groups in its anti-discrimination laws, general anti-discrimination laws and policies limit businesses' ability to deny services to prospective clients on the basis of race, color, sex, age, veteran status, disability, sexual orientation, gender identity, religion, national origin, or citizenship status. However, if those laws and policies do not apply to an Agency's services, an Agency does have the right to refuse service for reasons that are deemed to be non-discriminatory. Agencies can also deny services for such other reasons as the Agency deems appropriate, e.g., if a prospective client is disrespectful or could be disruptive to the business. Some agencies have a policy that a client must be sufficiently fluent in English to provide support to the Surrogate, and so failure to speak any English would violate the Agency's policy and be grounds for rejecting a prospective client. An Agency may also refuse service if it is already at capacity for existing clients.

3. A Member shall not engage in coercion, fraud, misrepresentation, or unethical conduct.

Guideline: A Member shall not lie, threaten, withhold material details, or otherwise mislead any Participant in the surrogacy or egg donation process. In addition, a Member shall not engage in any other behavior that violates state or federal law or that violates any of the SEEDS Standards. It is recommended that an Agency have a confidentiality agreement with its Participants. If such an agreement exists, the Agency should comply with its provisions.

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.

Guideline: A Member must be licensed to practice law, tax, medicine, mental health, and/or insurance before providing advice on these issues. A Member is not qualified to give advice on any of these topics merely based on experience alone and must refer Participants to the appropriate third-party professionals (see relevant SEEDS professional Member directories for some resources).

5. An Agency shall identify, document, and obtain appropriate written waivers for prospective conflict of interests that may exist between any parties.

Guideline: An Agency shall provide advance written notice of any conflict of interest to a prospective client of a conflict of interest. A conflict of interest exists when the Member's interests (i.e., loyalty to family and/or friends, financial, or social interests) or the Agency's professional interests (i.e., contractual or legal obligations to employees, employer, business partners, etc.), fiduciary duties, business interests, or financial ties may compromise or give the appearance of compromising the Member's judgment or ability to make decisions or take actions on behalf of the Member or the Agency. A conflict of interest also exists when a Member is involved in multiple interests and finds his or herself in a decision-making situation where serving one of those interests could harm another interest.

As an example, an Agency purports to represent the interests of both the Intended Parents and the Surrogate. After matching and all parties' agreement to a certain Base Compensation rate, the Surrogate asks for an even higher compensation based on her location and experience. The Agency knows they can rematch her to new Intended Parents who will pay the higher rate. Is the Agency responsible for trying to negotiate down the compensation of the Surrogate on behalf of the existing Intended Parents or finding new Intended Parents for her that are willing to pay the higher rate.

For more on waiving conflicts of interest, see Standard 10.k.

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;

Guideline: It is recommended that the Agency obtain a valid HIPAA release from any Participant prior to any outreach to any professional or entity facilitating their Matching Program. E.g., an Agency will want to obtain a HIPAA release prior to

requesting medical records.

- b. Attorney-client privilege waivers; or

Guideline: The attorney-client privilege ensures confidentiality to all communications between an attorney and client. The communication loses its privilege of confidentiality if it is shared with a third party. Attorneys (but not non-attorneys) are required to collect attorney-client privilege waivers, as necessary. For example, if an attorney learns information from their client that may compromise the Matching Program, the attorney cannot share the information with the Agency or anyone else without a valid attorney-client privilege.

- c. Other such written consent from the Participant prior to conversation with other relevant ART professionals on behalf of the Participant.

Guideline: It is important to obtain consent from the client in advance of discussing information or a communication that would otherwise be confidential or if information is disclosed that can be used to identify, contact or name the client (name, address, other contact information, social security, etc.), because confidentiality is then lost as to that communication or information. Such consent can be obtained in an email or in a provision in the Service Agreement.

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.

Guideline: Agencies should recruit, qualify and match only Donors and Surrogates who are physically, psychologically and emotionally suited to safely participate in the process. Despite possible challenges in locating and qualifying an adequate number of Donors or Surrogates, it is recommended screening standards not be lowered or compromised.

- b. No Agency shall intentionally initiate any interference with any pre-existing and ongoing relationship of another Agency and the Agency's Participants.

Guideline: No Agency shall actively initiate communication for the purpose of recruiting any Donor or Surrogate that has been fully screened by another Agency and is currently available to be or is in the process of being circulated to or matched with the other Agency's clients. This also applies to Intended Parents who have entered into a written Service Agreement (or other agreement) with another Agency. This does not apply to Participants who themselves actively initiate contact with an Agency. The key to compliance with this standard is who initiates the communication. It should not be the Agency.

- 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.

Guideline: An Agency can reference monetary aspects of working with that Agency, but the monetary aspects should not be the primary or sole inducement in any ads or marketing material presented to the Donor or Surrogate. It is strongly recommended that Agencies emphasize altruism as the main focus for recruiting Donors and Surrogates.

- 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.

Guideline: See definitions of Base Compensation Package and Contingent Compensation for interpretation of this Standard.

- 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.

Guideline: There should be transparency in the presentation of all surrogacy-related compensation to both the Surrogate and Intended Parents, to include a clear understanding of the amount of Base Compensation, which excludes Contingency Compensation such as a C-section fee or invasive procedure fee, as well as expenses that are being reimbursed back to a third party, such as insurance premiums, physician office co-pays, and lab invoices, or to the surrogate providing receipts. The Base Compensation should also exclude items such as “cycle start fee,” “embryo transfer fee,” or a “non-accountable monthly allowance” (which allowance is typically intended to cover non-receipted small expenses), as detailed in the gestational carrier agreement.

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.

Guideline: Reimbursement is acceptable for some expenses, e.g., storage fees, embryo transfer fees, psychological evaluation fees, and legal fees. It is generally not acceptable to reimburse for the costs of the IVF process that created the embryos. For further information, refer to the ASRM guidelines (compensation for embryos is unethical, but it is permissible to pay a fee for thawing, etc.).

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;

Guideline: The Service Agreement is an agreement between the Agency and whatever party/parties the Agency represents. All parties should be aware of which party/parties the Agency represents, and each party should acknowledge and waive any potential conflict of interest if the Agency represents more than one party.

b. Adequate and properly documented identification of the Intended Parents as a party to the Service Agreement;

Guideline: It is recommended the Agency should obtain from Intended Parents an official government picture ID that verifies each parent's identity, e.g., a passport or a driver's license. If the Agency had a videoconference with the Intended Parents and the photo on the ID is consistent with the images on the videoconference, the Agency may decide that suffices. If the Agency has not seen the Intended Parents, it is recommended the Intended Parents obtain a notarization as to their identification.

c. A detailed description of the services to be provided by the Agency;

Guideline: It is recommended the Agency clearly describe all services it agrees to provide (e.g., matching services, support, rematch services should the GC quit or be disqualified, hospital birth plan, and post-delivery support). It is also recommended the Agency clearly describe services it does not provide that the Intended Parents might reasonably expect it to provide. The goal is clarity of intent.

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;

Guideline: It is strongly recommended the Agency clearly delineate rematching and other related fees, including whether the rematch fee is affected by which party initiates the event, the timing of or circumstances of such an event, and whether the underlying reason is medical or non-medical.

- e. A description of other known Agency costs, fees and expenses that may be incurred, if any;

Guideline: The goal is for the Agency to specify all known Agency fees, costs, and expenses in the Service Agreement.

- 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;

Guideline: Even if the Agency plans to represent a party during the surrogacy journey, that party has the right to have independent legal counsel review the Service Agreement on its behalf. The Agency should include clear notification of this right in every Service Agreement and should not pressure the party, directly or indirectly, to sign without the ability to obtain independent legal counsel and have that counsel review the Service Agreement on their behalf.

- h. An explanation of which Records an Agency keeps and the length, manner, and location of their retention;

Guideline: Agencies have the right to retain records solely through electronic means.

- 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;

Guideline: For clarity, a referral fee is a conflict of interest.

- 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;

Guideline: For example, if an Agency represents a couple together as the Intended Parents, and the couple becomes estranged and antagonistic during the Surrogacy journey, the Agency would have an unwaivable conflict between the two Intended Parents, and the Agency would have to withdraw from representing either Intended Parent.

- I. Disclosure that the Agency requires Intended Parents to notify the Agency of any other ART attempts they are undertaking to achieve a pregnancy.

Guideline: This Standard requires Intended Parents to notify the Agency if they are making any other efforts, including working with another agency or trying IVF or other ART efforts on their own, to achieve a pregnancy, so that the Agency can maintain compliance with Standard 27 (staggered surrogacy pregnancies).

- 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.

Guideline: A minimum of \$1,000,000 is recommended as acceptable for professional liability. It is recommended that additional insurance coverage also include cyber, E&O, and fraud.

12. An Agency shall create and maintain reasonable and ordinary business records.

Guideline: Records typically include:

- Agency ownership records;
- Business formation and operation records;
- Employee records (hire date, tenure, termination dates, any NDAs or non-competes signed as part of employment);
- Payroll records and benefits records (to the extent benefits are provided to employees), including tax and accounting records;
- Accounting of client funds (invoices and receipts for each client); and
- Screening records for Surrogates, Donors, and Intended Parents (to the extent possible with HIPAA regulations) and accounting of decisions made thereof (accepted, rejected, etc.).

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.

Guideline:

- Where feasible, it is recommended that an Agency utilize commercially available secure cloud computing platform for record storage and access (due to their relative lower risk for hacking, loss, etc.) in the form of cloud storage (e.g., DropBox, Teams) or CRM software (e.g., Salesforce, Sugar, Hubspot). It is recommended that access be secured through 2-factor authentication for users, with a requirement to periodically change passwords.
- It is recommended that email similarly is hosted on a secure, cloud platform with 2-factor authentication and rotating password requirements.
- It is recommended that an Agency develop and adhere to policy dictating how long emails are archived before deletion, taking into account state and local regulations around healthcare records. It is recommended the Agency consider the average length of a journey when creating its policy on what is deleted, and what is maintained longer (e.g., emails might be deleted after 2 years, but general records/contact information might be maintained forever)
- If an Agency is in process of “winding down” or may soon cease to exist, it is recommended an Agency consult with a local attorney to determine which Records need to be maintained or transferred and how. Every effort should be made to provide clients ample time to obtain their data – communication attempt(s) should be made with each party to notify them that the Agency is winding down, and that their data may be deleted at the time of close. It is strongly recommended that the Agency identify a successor to take possession of their Records.

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;

Guideline: Electronic versions and signatures may suffice.

- b. Intended Parents have undergone a psychoeducational mental health consultation;

Guideline: It is recommended that the mental health professional specialize in ART.

- 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;

Guideline: These individual evaluations are intended to identify whether the Surrogate's mental health would be adversely affected by undertaking a surrogacy journey. The joint evaluations are to evaluate whether the parties are in sync on sensitive issues.

- 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;

Guideline: It is recommended that the attorneys specialize in Assisted Reproductive Technology. Referrals may be provided but each participant has the right to choose their own legal counsel.

- 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);

Guideline: Separate agreements with the IVF Center (e.g., between the Donor/Surrogate and the IVF Center and separately between the Intended Parents and the IVF Center) does not constitute a direct agreement between the Participants. If there is ever a disagreement as to intent, a court will look to what the parties' intent was at the time of donation, and the best evidence of that is a direct agreement between the Donor/Surrogate and the Intended Parents. For clarity, this recommendation is true even in cases where the donor is unidentified because the likelihood of the donor remaining unidentified is slim to none.

- 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

Guideline: It is recommended the Agency consider higher amounts in appropriate circumstances.

- 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.

Guideline: SEEDS Education Committee will outline the requirements and process to comply with this Standard.

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.

Guideline: The sentence above refers to Agency funds.

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.

Guideline: The parentage order (also referred to the pre-birth order or post-birth order) is one of the most important legal proceedings in a gestational surrogacy arrangement. False or misleading information could impact the ability of the Intended Parents to establish legal parentage of their child.

20. No Member shall unfairly or inaccurately disparage another professional, Agency, IVF Center, mental health provider, attorney, or another Member.

Guideline: In accordance with the Mission Statement of SEEDS, members are strongly encouraged to work together to define the highest ethical standards in the ART industry. Knowingly and purposely disparaging other members undermines the very nature of what we have set out to do.

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.

Guideline: Maintaining an accountant “on staff” is satisfied by either having an internal accountant as an employee or retaining an outside accountant as an independent contractor or hired professional to rectify and balance all escrow accounts pursuant to routine accounting principals on a routine and regular basis. It is recommended that all accounts be balanced and rectified at least monthly.

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.

Guideline: It is strongly recommended that an Agency only actively represent one of the Participants in the donation or surrogacy process, preferably the Intended Parents since they are paying for the Agency’s services and entering into a Service Agreement with the Agency. If an Agency purports to represent the Donor, Surrogate, all parties jointly or no party, it should be disclosed (see Standard 5).

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.

Guideline: The qualified medical professional can be an obstetrician or her primary care physician.

- 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.

Guideline: If a Surrogate is single, it is recommended that a Surrogate identify a "primary support person" who will serve as her support during the journey (e.g., sister, mother, father, aunt).

- 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.

Guideline: It is recommended that the background check should also include bankruptcy.

- 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;

Guideline: It is recommended that a Surrogate also be raising, or have raised, the child that she previously delivered.

- iii. Be financially stable (i.e., living above the federal poverty level);

Guideline: It is strongly recommended that a financial review be completed to assess that she is not being financially coerced into the process. It is recommended that the Agency not accept surrogate candidates who rely on Government income assistance.

- iv. Hold U.S. citizenship or permanent residency status;
- v. Be at least 21 years old; and

- vi. Have, or be able to obtain at Intended Parents' expense, healthcare insurance (or other medical coverage) without exclusions for a surrogate pregnancy

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.

Guideline: If a repeat Donor's records are unavailable or will not be released by the IVF Center and Donor qualifies in all other respects, the Agency may qualify the Donor to be matched with Intended Parents.

- 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. 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.

Guideline: A mental health professional used for the screening of Intended Parents should have experience in the ART field.

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.

Guideline: Important matching criteria may include (but are not limited to): vaccination status, willingness to travel out of state for medical procedures, number of embryos to transfer, views on pregnancy termination and selective reduction, working with international versus domestic Intended Parents, knowledge of Intended Parent having a medical condition such as chronic or terminal illness or communicable disease, marital status, existence of other children, number of embryos available, etc.

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.
Guideline: It is recommended the attorney have experience in the ART field.
- 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.

Guideline: It is recommended the Agency offer a translator for the International Intended Parents (at Intended Parents' cost) to understand any conversations or documents they need to review.

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;

Guideline: The staggering is subject to the discretion of the Agency. The staggering period should be approved by all Participants, Agencies and IVF Centers. A minimum staggering period of 3 months between the pregnancy confirmation by embryonic heartbeat in the first journey and the embryo transfer in the second journey is recommended.

- 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.