



Terms and Conditions – Fertility Consent

MD Consents Limited

www.mdconsents.com

6th March 2024

Framework G-Cloud 14

Agreed Terms

These services are provided by MD Consents Limited, with company number 11040674 whose registered office is at Riverbank house, 2 Swan Lane, London, EC4R 3TT (Service Provider) to the organisation purchasing the services (Customer). Services are provided under a Terms of Business Contract (Contract) agreed between the Service Provider and Customer.

1. Interpretation

The definitions and rules of interpretation in this clause apply in The Terms of Business Contract (Contract).

1.1 Definitions:

Business Day: any day other than a Saturday, Sunday or public holiday in England when banks in London are generally open for business.

Change Control Procedures: the procedures set out in the Terms of Business Contract (Contract) (Change control procedure).

Charges: the charges in respect of the Services set (Charges and payment) together with any charges arising from the Change Control Procedures as set out in the Terms of Business Contract (Contract).

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is:

- a) identified as confidential at the time of disclosure; or
- b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the **UK GDPR** (as defined by section 3(10) of the DPA 2018); the Data Protection Act 2018 (and regulations made thereunder) (**DPA 2018**); and the Privacy and Electronic Communications Regulations 2003 (**PECR**). The terms **Controller**, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **processing** and **appropriate technical and organisational measures** have the meaning set out in the Data Protection Legislation.

Effective Date: dd/mth/yyyy

HFEA: the Human Fertilisation and Embryology Authority

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business

names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials: the Platform Content authorised by the Customer from time to time for incorporation on the Platform.

Platform: the online platform to be provided by the Service Provider for the provision of the Services under the Terms of Business Contract (Contract).

Platform Content: the Materials which shall be included on the Platform at the request of the Customer.

Platform Software: the software for the Platform.

Regulator: any governmental or non-governmental body which regulates any aspect of Service Provider or Customer including, without limitation, the HFEA.

Services: the services to be provided under the Terms of Business Contract (Contract) (Services) as described in the Terms of Business Contract (Contract)

Term: the duration of this contract as set out in clause 11.

Visitor: a visitor to the Platform.

- 1.2 Clause and Schedule headings shall not affect the interpretation of these Terms and Conditions.
- 1.3 References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of these Terms and Conditions.
- 1.4 If there is an inconsistency between any of the provisions in the main body of these Terms and Conditions and the Schedules, the provisions in the main body of these Terms and Conditions shall prevail.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.9 References to **content** (including in relation to Platform Content) includes any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a visitor to that website.

2. Services

2.1 The Service Provider shall perform its obligations in accordance with these Terms and Conditions.

3. Customer responsibilities

3.1 The Customer shall be responsible for the accuracy and completeness of the Materials included on the Platform as Platform Content. The Customer shall approve all Platform Content.

3.2 The Customer may request that the Service Provider to provide suggested/draft content for the Customer's approval for inclusion on the Platform. Where the Service Provider agrees to provide such content it shall use reasonable endeavours to provide it for the Customer to consider adopting as Materials. Notwithstanding that the Service Provider may suggest content, all Materials included as Platform Content shall be the sole responsibility of the Customer.

4. Project management

4.1 Each party shall appoint a nominated contract manager who shall have the responsibilities and functions as set out in the Terms of Business Contract (Contract).

5. Charges and payment

5.1 The Service Provider shall issue an invoice in respect of the Charges, and the Customer shall pay to the Service Provider's Charges set out in the Terms of Business Contract (Contract).

5.2 The Customer shall pay invoices in full and no payment will be deferred or refunded should the Services provided in the Terms of Business Contract (Contract) not be used by the Customer.

5.3 If the Customer fails to make any payment due to the Service Provider under the Terms of Business Contract (Contract) by the due date for payment, then, without limiting the Service Provider's remedies under clause 12 (Change control) the Customer shall pay interest on the overdue amount from the due date until actual payment of the overdue

amount, whether before or after judgment. Interest under this clause will accrue each day at three per centum (3%) a year above the Bank of England's base rate from time to time but at four per centum (4%) a year for any period when that base rate is below zero per centum (0%).

6. Warranties

- 6.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform the Terms of Business Contract (Contract).
- 6.2 The Service Provider shall perform the Services with reasonable care and skill.
- 6.3 The Terms of Business Contract (Contract) sets out the full extent of the Service Provider's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Terms of Business Contract (Contract) or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

7. Limitation of remedies and liability

- 7.1 Nothing in the Terms of Business Contract (Contract) shall operate to exclude or limit either party's liability for:
 - (a) death or personal injury caused by its negligence; or
 - (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (c) fraud; or
 - (d) any other liability which cannot be excluded or limited under applicable law.
- 7.2 Neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 7.3 Subject to clause 7.1, each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with the Terms of Business Contract (Contract) or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the amount paid or payable by the Customer during any 12 months of the Term.

8. Intellectual property rights

- 8.1 The Service Provider retains all Intellectual Property Rights in the Platform Software (whether owned or licenced by the Service Provider) and in any draft materials provided

by the Service Provider to the Customer for use as Materials (whether used or not by the Customer). The Service Provider grants the Customer a revocable non-exclusive licence to use the materials as Materials. For the avoidance of doubt, the Customer may not make use of the materials (or any part of them) other than on the Platform.

- 8.2 All Intellectual Property Rights in any works arising in connection with the performance of the Services by the Service Provider (**Works**) shall be the property of the Service Provider.
- 8.3 The Service Provider shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the materials used to make the Materials or the Works infringe the Intellectual Property Rights of a third party.
- 8.4 The indemnities in, clause 8.3, and clause 9.4 are subject to the following conditions:
- (a) the indemnified party promptly notifies the indemnifier in writing of the action or claim;
 - (b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
 - (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - (d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

9. Platform content

- 9.1 The Service Provider shall update the Platform with Materials approved from time to time in accordance with the Terms of Business Contract (Contract).
- 9.2 The Customer shall ensure that the Materials (including the materials supplied by the Service Provider for use as Materials) accurately reflect its needs and meet all regulatory and legal requirements, do not infringe any applicable laws, regulations and shall not include Material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing or blasphemous (**Inappropriate Content**).
- 9.3 Materials supplied by the Customer to the Service Provider can be revised or updated once per annum.
- 9.4 The Service Provider reserves the right to remove content from the Platform where it reasonably suspects such content is Inappropriate Content. The Service Provider shall notify the Customer if it becomes aware of any allegation that content on the Platform that may be Inappropriate Content.

- 9.5 The Customer shall indemnify the Service Provider against all damages, losses and expenses arising as a result of any action or claim that the Materials or any other material posted to, or linked to, the Platform, constitutes Inappropriate Content.
- 9.6 The Service Provider may include such statements (including its own marks and logos) on the home page of Platform seen by Visitors in accordance with the Terms of Business Contract (Contract).

10. Data protection

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Terms of Business Contract (Contract) and the Data Protection Legislation, the Customer is the Data Controller and the Service Provider is the Data Processor. The terms of Business Contract (Contract) sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes the Terms of Business Contract (Contract).
- 10.4 Without prejudice to the generality of clause 10.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under the Terms of Business Contract (Contract):
- (a) process that Personal Data only on the written instructions of the Customer unless the Service Provider is required by the law of the UK (or part of the UK) (**Domestic Law**) to process Personal Data. Where the Service Provider is relying on Domestic Law as the basis for processing Personal Data, the Service Provider shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Service Provider from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those

measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside the UK unless the following conditions are fulfilled:
 - (i) the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.5 The Customer shall not withhold consent to the Service Provider appointing any third party processor of Personal Data under the Terms of Business Contract (Contract) where the Service Provider has confirmed that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause and meet the requirements of the Data Protection Legislation.

10.6 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms

forming party of an applicable certification scheme (which shall apply when replaced by attachment to the Terms of Business Contract (Contract)).

11. Term and termination

11.1 The Terms of Business Contract (Contract) shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with this clause 11, until the x anniversary of the Effective Date, when it shall terminate automatically without notice unless, before the end of the Initial Term, the parties agree in writing that the term of the Agreement shall be extended annually from the Effective Date (**Extended Term**). Unless it is terminated earlier in accordance with this clause 11, the Agreement shall terminate automatically without notice at the end of the Extended Term.

11.2 Without affecting any other right or remedy available to it, either party may terminate the Terms of Business Contract (Contract). with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Terms of Business Contract (Contract). on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Terms of Business Contract (Contract). which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) Business Days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a

scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) the other party (being an individual) is the subject of a bankruptcy petition, application or order;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(c) to clause 11.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 11.3 Either party may suspend the operation of the Terms of Business Contract (Contract) for a period of up to 30 days where any new rule or guidance of general application is issued by a Regulator and is reasonably considered to act as a legal or ethical bar to the continued provision of or receipt of the Services. The parties shall use reasonable endeavours to take such steps as may be required to mitigate the impact of the rule or guidance and to comply with such requirements as may be required to lift the suspension.
- 11.4 On termination of the Terms of Business Contract (Contract) pursuant to clause 11.1, 11.2 or 11.3, all licences granted by the Service Provider under the Terms of Business Contract (Contract) shall terminate immediately.
- 11.5 On expiry or termination of the Terms of Business Contract (Contract) the Service Provider shall provide such assistance as is reasonably requested by the Customer to transfer data and content in which the Customer has proprietary rights or control to the Customer or another service provider, subject to payment of the Service Provider's expenses reasonably incurred.

- 11.6 On expiry or termination of the Terms of Business Contract (Contract), all provisions of the Terms of Business Contract (Contract) shall cease to have effect, except that any provision of the Terms of Business Contract (Contract) that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Terms of Business Contract (Contract) shall remain in full force and effect.

12. Change control

Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure set out in the Terms of Business Contract (Contract) (Change control procedure).

13. Force majeure

Subject to clause 11.3 neither party shall be in breach of the Terms of Business Contract (Contract) nor liable for delay in performing, or failure to perform, any of its obligations under the Terms of Business Contract (Contract) if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirty (30) days, the party not affected may terminate the Terms of Business Contract (Contract) by giving written notice to the affected party.

14. Confidentiality

- 14.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 14.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 14.3 The obligations set out in this clause 14 (Confidentiality) shall not apply to Confidential Information that the receiving party can demonstrate:
- (a) is or has become publicly known other than through breach of this clause 14 (Confidentiality); or
 - (b) was in the possession of the receiving party prior to disclosure by the other party; or
 - (c) was received by the receiving party from an independent third party who has full right of disclosure; or

- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

14.4 The obligations of confidentiality in this clause 14 (Confidentiality) shall not be affected by the expiry or termination of the Terms of Business Contract (Contract).

15. Notices

15.1 Any notice or other communication given to a party under or in connection with the Terms of Business Contract (Contract) shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) by e-mail to the address specified by that party from time to time.

15.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by e-mail, at 9:00am on the next Business Day after transmission.

15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16. Assignment

The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights or obligations under the Terms of Business Contract (Contract), in whole or in part, without the prior written consent of the Service Provider, such consent not to be unreasonably withheld or delayed.

17. Entire Agreement

17.1 The Terms of Business Contract (Contract) constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Terms of Business Contract (Contract). Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent mis-statement based on any statement in the Terms of Business Contract (Contract).

18. Third party rights

- 18.1 Unless it expressly states otherwise, the Terms of Business Contract (Contract) does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Terms of Business Contract (Contract).

19. Variation

- 19.1 No variation of the Terms of Business Contract (Contract) shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Terms of Business Contract (Contract) or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. Rights and remedies

Except as expressly provided in the Terms of Business Contract (Contract), the rights and remedies provided under the Terms of Business Contract (Contract) are in addition to, and not exclusive of, any rights or remedies provided by law.

22. Severance

- 22.1 If any provision or part-provision of the Terms of Business Contract (Contract) is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Terms of Business Contract (Contract).
- 22.2 If any provision or part-provision of the Terms of Business Contract (Contract) is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. No partnership or agency

23.1 Nothing in the Terms of Business Contract (Contract) is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. Governing law

The Terms of Business Contract (Contract) and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales.

25. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Terms of Business Contract (Contract) or its subject matter or formation.