

## IMT Matcher general terms and conditions

## 1. Definitions

The following definitions apply in the standard terms and the EULA:

<b>Affiliate</b>	in respect of a party (whether or not registered in the United Kingdom), a holding company or subsidiary, or any subsidiary of such holding company, in each case from time to time, and the expressions "holding company" and "subsidiary" shall have the meanings specified by Section 1159 of the Companies Act 2006 (as amended from time to time);
<b>Authorised Equipment</b>	means any equipment or products which meet IMT Matcher's technical specifications as set out in the IMT Matcher online support portal <a href="https://matchersupport.zendesk.com/hc/en-us">https://matchersupport.zendesk.com/hc/en-us</a> and which authorised for use in conjunction with the Materials and the Equipment by IMT Matcher and/or the Company;
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Company</b>	means the person identified as the Company in the Order Form;
<b>Company Materials</b>	means all materials, documents and other property of the Company;
<b>Confidential Information</b>	information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information;
<b>Contract</b>	the contract between the Company and the End User for the sale and purchase of the Products, Licence, Equipment and/or related Services in accordance with the standard terms;
<b>Control</b>	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and <b>controls</b> , <b>controlled</b> and the expression <b>change of control</b> shall be construed accordingly;
<b>Cycles</b>	a Major Cycle, Minor Cycle or Other Cycle;
<b>Data Protection Legislation</b>	means the Data Protection Act 2018, the General Data Protection Regulation ("GDPR"), the UK GDPR and any other data protection legislation applicable in the UK and/or the European Union from time to time, and the terms appropriate safeguards, appropriate technical and organisational measures, controller, data portability, joint controller, processor, data subject, personal data, personal data breach, restriction of processing and supervisory authority shall, unless the context otherwise requires, each have the respective meanings given to them in the Data Protection Legislation;
<b>Effective Date</b>	the date stated in the Order Form;



<b>End User</b>	means the person identified as the End User in the Order Form;
<b>Equipment</b>	means, without limitation, the benchtop devices, the pocket devices, the label sheets and any other equipment and items supplied by IMT Matcher, either directly or indirectly via a Reseller, on a lease basis; but, for the avoidance of doubt, excludes any such devices or equipment supplied to the End User by IMT Matcher directly or indirectly on a purchase basis provided that they have been paid for in full;
<b>EULA</b>	the end user licence agreement granting the End User the right to use the Software and some or all of the Products from time to time the current version of which is available here <a href="#">EULA</a> ;
<b>IMT Matcher</b>	means Matcher Technologies Limited, registered in England and Wales, with company number 8345284, whose registered office is at Unit 1b Canalside Business Park, Tattenhall, Chester, CH3 9BD, United Kingdom;
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks 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, 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;
<b>Legislation</b>	any statute, statutory provision or subordinate legislation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable party;
<b>Licence</b>	means the licence granted by IMT Matcher to the End User pursuant the EULA to Use the Equipment and/or the Software;
<b>Major Cycle</b>	any IVF cycle, including any ICSI, IMSI, GIFT, gamete thawing, altruistic oocyte sharing, fresh embryo transfer, and cryopreservation of excess material at the end of the cycle, within the Software <b>but excluding</b> any Minor Cycles or Other Cycles;
<b>Materials</b>	means the Software and the User Guides;
<b>Minor Cycle</b>	any frozen embryo transfer, IUI, donor sperm insemination, elective or donor sperm cryopreservation, elective or donor oocyte cryopreservation, standalone genetic testing (e.g. material received from an external centre), or other cycle type not defined herein, within the IMT Matcher Software <b>but excluding</b> any Major Cycles or Other Cycles;
<b>Order</b>	the End User's order for the supply of Products and/or Services, as set out in the End User's written acceptance of the Company's quotation;
<b>Order Form</b>	means the separate document or spreadsheet setting out the term, quotation, Cycles, Products and Services to be purchased by the End User;

<b>Other Cycle</b>	Pre-cycle semen assessment or pre-cycle blood drawing, within the IMT Matcher Software, <b>but excluding</b> any Major Cycles or Minor Cycles;
<b>Party</b>	means IMT Matcher, End User and/or the Company;
<b>Products</b>	means any Authorised Equipment which is marketed, supplied and licensed by the Company to the End User which is not Equipment and is more particularly described in the Order Form;
<b>Quarter</b>	the period ending 3 calendar months after the Effective Date and each consecutive period of 3 calendar months thereafter during the Term;
<b>Reseller</b>	means the Company for so long as they remain an authorised reseller of IMT Matcher;
<b>Services</b>	the services performed by or on behalf of IMT Matcher for the benefit of the End User;
<b>Site</b>	means the End User's site(s) where the Equipment is, or is to be, located as notified to IMT Matcher by the End User and/or the Company;
<b>Software</b>	means IMT Matcher's proprietary computer programme(s) known as IMT Matcher for use in a fertility centre and/or a donor bank at the Site;
<b>Specification</b>	the functionality and performance specifications for the Products, the Equipment and the Services, as set out in the Order Form;
<b>Standard Contractual Clauses</b>	means the standard contractual clauses for use between controllers and processors for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection which are published by the Information Commissioners Office from time to time or, failing such publication, by the European Commission from time to time.
<b>Term</b>	means, subject to early termination in accordance with the provisions of the relevant document, the term specified in the Order Form;
<b>UK GDPR</b>	means the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;
<b>Upgrade</b>	means any upgraded or modified release of the Software which corrects faults or adds minor improvements to the Software which IMT Matcher may develop and commercially release during the Term but which does not constitute a new Product;
<b>Use</b>	means (as appropriate) either the reading and possession of the User Guides, or the loading and subsequent processing of the Software on the Equipment and/or Authorised Equipment in relation to a Cycle in accordance with the terms of the EULA, in each case solely by staff and employees of the End User;
<b>User Guides</b>	means the operating manual, user instructions, training materials and any other documentation and related materials supplied to the End User for aiding the use by the End User of the Equipment and the Software and describing the facilities and functions of the Equipment and the Software, as may be updated by IMT Matcher from time to time as necessary; and

<b>Year</b>	the period of 12 months from the Effective Date and each consecutive period of 12 months thereafter during the Term.
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## **2. Interpretation**

The following rules of interpretation will apply to the standard terms and the EULA:

- 2.1 Clause, Schedule and paragraph headings shall not affect the interpretation of the relevant document.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.6 The words 'include', 'includes', 'including' and 'such as' are to be construed as if they were immediately followed by the words 'without limitation'.
- 2.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.8 A reference to writing or written includes faxes and e-mail.
- 2.9 A reference to "£" or "GBP" shall be to Pounds Sterling.
- 2.10 A reference to "€" or "EUR" shall be to Euros.
- 2.11 A reference to "\$" or "USD" shall be to US dollars.
- 2.12 References to clauses and Schedules are to the clauses and Schedules of the document and references to paragraphs are to paragraphs of the relevant Schedule.

## **3. Confidentiality**

- 3.1 A Party may have access to Confidential Information of the other Party under pursuant to a Contract and/or the EULA. A Party's Confidential Information shall not include information that:
  - 3.1.1 is or becomes publicly known through no act or omission of the receiving Party; or
  - 3.1.2 was in the other Party's lawful possession prior to the disclosure; or
  - 3.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
  - 3.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or
  - 3.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 3.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of these standard terms.
- 3.3 Each Party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these standard terms.
- 3.4 These obligations of confidence shall survive termination of the Contract and/or the EULA.

- 3.5 To the extent that the Parties enter into a separate non-disclosure or confidentiality agreement in relation to the processing of the personal data under the control of the End User then the provisions of that separate non-disclosure or confidentiality agreement shall take precedence and shall supersede the provisions of this clause.

#### **4. Data processing and restricted transfers**

- 4.1 Each Party to a Contract and a EULA will (and will procure that any of their respective directors, officers, employees, permitted agents, licensees and contractors will) comply with all applicable requirements of the Data Protection Legislation. Each Party's obligations under this clause are in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

- 4.2 In respect of personal data, the parties acknowledge that:

- 4.2.1 pursuant to a Contract:

- 4.2.1.1 the Company is the controller of personal data relating to the End User's directors, officers, employees, permitted agents, licensees and contractors;
- 4.2.1.2 the End User is the controller of personal data relating to the Company's directors, officers, employees, permitted agents, licensees and contractors; and
- 4.2.1.3 both the End User and the Company will be processors in relation to any personal data that relates to the clients of the End User and that they will each comply with their obligations under this Data Processing and Restricted Transfer clause in this regard.

- 4.2.2 pursuant to a EULA:

- 4.2.2.1 IMT Matcher is the controller of personal data relating to the End User's directors, officers, employees, permitted agents, licensees and contractors;
- 4.2.2.2 the End User is the controller of personal data relating to IMT Matcher's directors, officers, employees, permitted agents, licensees and contractors; and
- 4.2.2.3 both the End User and IMT Matcher will be processors in relation to any personal data that relates to the clients of the End User and that they will each comply with their obligations under this Data Processing and Restricted Transfer clause in this regard.

- 4.3 The End User shall be responsible for collecting personal data its clients and sharing that personal data with the Company and/or IMT Matcher; in doing so the End User shall:

- 4.3.1 ensure that it has in place all necessary appropriate legal bases, consents (if required), notices and policies to enable the lawful transfer of personal data to the Company and/or IMT Matcher;
- 4.3.2 not instruct the Company or IMT Matcher to undertake any processing activity that does not comply with, or which would result in either party breaching its obligations under, the Data Protection Legislation;
- 4.3.3 ensure that all personal data transferred to the Company and/or IMT Matcher by or on behalf of the End User shall be accurate and up-to-date;
- 4.3.4 not knowingly or negligently do or omit to do anything which places the Company and/or IMT Matcher in breach of its obligations under the Data Protection Legislation; and

- 4.3.5 defend, indemnify and hold harmless the Company and/or IMT Matcher, to the fullest extent permitted by law, against any claims, actions, proceedings, losses, damages, expenses, fines and costs (including court costs and legal or other professional costs) incurred by the Company and/or IMT Matcher arising out of or in connection with the Company's and/or IMT Matcher's processing of personal data under the Contract and/or the EULA, as the case may be.
- 4.4 To the extent that a Party is acting as a processor (Processor Party) on behalf of the other Party (Controller Party), it shall:
- 4.4.1 process personal data only on the written instructions of the controller Party (which shall comprise the standard terms or the EULA (as the case may be, this Data Protection and Restricted Transfer clause and the controller Party's direct or indirect instructions), save where otherwise required by law (in which case the Processor Party will notify the controller Party of such requirement prior to such processing, unless prohibited from doing so by such law);
  - 4.4.2 obtain a commitment of confidentiality from any person it allows to process personal data and engage third parties to process personal data on its behalf only with the prior consent of the controller Party and on contractual terms no less restrictive than this Data Protection and Restricted Transfer clause;
  - 4.4.3 implement appropriate technical and organisational measures to (a) ensure an appropriate level of security of personal data; and (b) assist the controller Party to respond to requests for exercising data subjects' rights;
  - 4.4.4 assist the controller Party to comply with its obligations in respect of any personal data breach (including notification of the same to the supervisory authority and/or data subjects);
  - 4.4.5 make available to the controller Party all information reasonably necessary to demonstrate compliance with this Data Protection and Restricted Transfer clause;
  - 4.4.6 provide the controller Party all assistance that the controller Party may reasonably require in order to meet the controller Party's obligations under the Data Protection Legislation, including but not limited to:
    - 4.4.6.1 keeping personal data secure;
    - 4.4.6.2 conducting privacy impact assessments; and
    - 4.4.6.3 consulting with the Information Commissioner's Office; and
  - 4.4.7 on termination or expiry of the Contract or the EULA, as the case may be, at the controller Party's choice and cost, delete or return to the controller Party all personal data and copies thereof that it has within its power, ownership or control.
- 4.5 For the purposes of this Data Protection and Restricted Transfer clause, a Restricted Transfer means a transfer of personal data:
- 4.5.1 which is subject to the restrictions in Article 44 of the GDPR, except where such transfer is based on an adequacy decision adopted by the European Commission pursuant to Article 45 GDPR; or
  - 4.5.2 which is subject to the restrictions in Article 44 of the UK GDPR, except where such transfer is based on adequacy regulations issued by the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 (if and to the extent that such section is in force as at the time of transfer).

- 4.6 If the Company is outside of the European Economic Area (EEA), then where any transfer of personal data by the controller Party to the processor Party constitutes a Restricted Transfer, the Parties shall comply with the Standard Contractual Clauses. If and to the extent that the provisions of the Standard Contractual Clauses conflict with any other provisions in this agreement, the provisions of the Standard Contractual Clauses shall prevail.
- 4.7 The processor Party shall not carry out a Restricted Transfer of personal data to any third party unless:
- 4.7.1 it obtains the controller Party's prior written approval;
  - 4.7.2 it ensures that data subjects (whose personal data is to be transferred to the third party) have enforceable rights and effective legal remedies; and
  - 4.7.3 it ensures that such transfer can be lawfully carried out under the Data Protection Legislation, such as where:
    - 4.7.3.1 there are appropriate safeguards in place pursuant to Article 46 of the GDPR (or Article 46 of the UK GDPR) which may include a contract incorporating the Standard Contractual Clauses; or
    - 4.7.3.2 one of the derogations for specific situations in Article 49 of the GDPR (or Article 49 of the UK GDPR) applies to the transfer.

## 5. General

### 5.1 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or the EULA, as the case may be, 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.

### 5.2 Severance

- 5.2.1 If any provision or part-provision of the standard terms or the EULA 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 standard terms or the EULA, as the case may be.
- 5.2.2 If one party gives notice to the other of the possibility that any provision or part-provision of the standard terms or the EULA 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.

### 5.3 Entire Agreement

- 5.3.1 Except where expressly stated otherwise, the standard terms and/or the EULA constitute the entire agreement between the Parties concerned and supersedes and extinguishes all previous drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 5.3.2 Each Party acknowledges that in entering into the Contract and/or the EULA it does not rely on, and 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 standard terms and/or the EULA.

5.3.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement pursuant to the Contract and/or the EULA

5.3.4 Nothing in this clause shall limit or exclude any liability for fraud.

#### 5.4 Variation

5.4.1 No variation of standard terms or the EULA shall be effective unless it is in writing and signed by the relevant Parties (or their authorised representatives).

#### 5.5 Assignment

5.5.1 The End User shall not, without the prior written consent of the Company or IMT Matcher (as the case may be), assign, transfer, charge, sub-contract, appoint agents or delegates, or deal in any other manner with all or any of its rights or obligations under the Contract or the EULA.

5.5.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under a Contract and IMT Matcher may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the EULA.

#### 5.6 No Partnership or Agency

5.6.1 Nothing in the Contract or the EULA 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, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party except as expressly provided.

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

#### 5.7 Third Party Rights

No one other than a Party to the standard terms and/or the EULA shall have any right to enforce any of its terms.

#### 5.8 Rights and Remedies

The rights and remedies provided under the standard terms and/or the EULA are in addition to, and not exclusive of, any rights or remedies provided by law.

#### 5.9 Notices

5.9.1 Any notice given to a Party under or in connection with the Contract or the EULA shall be in writing and shall be:

5.9.1.1 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

5.9.1.2 sent by email to a known and commonly used email address of the other Party.

5.9.2 Any notice or communication shall be deemed to have been received:

- 5.9.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 5.9.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
  - 5.9.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm on a Business Day.
- 5.10 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.