

## OPEN DONATION AGREEMENT

This agreement is made and entered into as of the date set forth below, by and between \_\_\_\_\_ (male) and \_\_\_\_\_ (female) (referred to hereafter as “Embryo Donors”), and \_\_\_\_\_ (husband) and \_\_\_\_\_ (wife) (referred to hereafter as “Embryo Recipients”);

### W I T N E S S E I H

WHEREAS, the Embryo Donors wish to transfer all their cryopreserved embryos (the “Embryos”) to the Embryo Recipients for the sole purpose of implantation with the ultimate objective of one or more viable pregnancies for the Embryo Recipients; and

WHEREAS, the Embryo Recipients desire to receive the transferred embryos for the aforesaid purpose; and

WHEREAS, the identity of each party is known to the other parties and the parties wish to agree on certain terms and conditions relative to communication and future contact between themselves and their related offspring;

NOW, THEREFORE, in consideration of the foregoing, as well as the mutual benefit to be derived from herein, the parties hereto agree as follows:

1. Transfer of Embryos. Embryo Donors hereby donate, transfer and convey any and all right, title, and interest which Embryo Donors now have or may have in the future in and to the Embryos to Embryo Recipients for the purposes contained herein.

2. Informed Consent/Waiver of Liability; Applicable Laws. The parties have each previously signed or agree to subsequently sign an Informed Consent/Waiver of Liability form (“Consent Form”) as provided to them by the \_\_\_\_\_ wherein the risks inherent in transferring, transporting, thawing and implanting cryopreserved embryos are identified, with liability for the same being knowingly waived, as well as liability for any long-term health complications of children conceived or born as a result of the anticipated embryo transfer between the parties. The parties understand that embryo donation is a new, developing and unsettled area of the law and that few states have laws regulating the transfer and implantation of embryos. The general state of the law treats embryos as personal property subject to the ownership rights of the genetic parents or persons or organizations to whom ownership rights have been legally transferred. The parties desire that this Agreement and their Consent Forms shall, to the extent not previously proscribed by law, define their legal rights, duties and responsibilities in connection with the transfer and implantation of the embryos of the Embryo Donors, as well as future communications between the parties. In the event of any conflict between the Consent Forms and this Agreement, the terms of this Agreement shall prevail. Should any subsequent laws be established affecting the transfer of embryos or contact between the parties to an embryo transfer, it is the intention of the parties that such laws not supercede or alter the terms of this Agreement or the Consent Forms, except to the extent required by law.

3. Embryo Donation Center. The parties recognize, understand and agree that the \_\_\_\_\_) is a \_\_\_\_\_ corporation which exists for the purpose of facilitating the transfer of embryos between persons such as the parties to this agreement. The parties understand that \_\_\_\_\_ is not a licensed child-placing

agency under the laws of the State of \_\_\_\_\_ or any other state. The role of \_\_\_\_\_ in facilitating the embryo donation between the parties shall not vest in \_\_\_\_\_ any title or ownership interest in the transferred Embryos, it being the sole responsibility of \_\_\_\_\_ to use reasonable efforts to implement the mutual agreements and intentions of the parties as set forth in this Agreement. \_\_\_\_\_ shall be a third-party beneficiary of this Agreement and shall undertake its responsibilities hereunder solely as agent of each of the parties hereto. Each party hereby waives, releases and relinquishes any and all rights, claims or causes of action of any kind, whether known or unknown and whether now existing or occurring in the future, over and against \_\_\_\_\_ and agrees to protect, defend, hold harmless and indemnify \_\_\_\_\_, its directors, officers, agents, employees and contractors from and against any and all expenses, claims, actions, liabilities, attorney's fees, damages, losses, penalties, fines, and interest of any kind whatsoever (including without limiting the foregoing, death of or injury to persons or Embryos and damage to property) actually or allegedly resulting from or connected with the matters contemplated in this Agreement.

4. Shared Information. The parties have and/or will share identifying information with each other. Notwithstanding that fact, however, the parties agree to respect each other's privacy by adhering to the following agreed upon time and manner restrictions concerning post-embryo transfer communication:

a. Embryo Recipients agree to promptly advise the Embryo Donors and \_\_\_\_\_ of the results of any implantation of the Embryos, including the expected delivery date of any child(ren). Upon the birth of any child(ren) born to the Embryo Recipients as a result of the implantation of the Embryos transferred hereunder, the Embryo Recipients agree to notify the Embryo Donors and \_\_\_\_\_ of the name, sex, and birth date of each child. Other information to be shared upon birth (for example, photos, baby \_\_\_\_\_, footprints, \_\_\_\_\_ etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

b. Given the birth of any child(ren) born to Embryo Recipients as a result of the implantation of the Embryos transferred hereunder, the Embryo Recipients may periodically provide the Embryo Donors with additional information. If there is agreement to provide additional information, such information will be provided as follows:

(1) Frequency of communication between Embryo Donor and Embryo Recipients (for example, quarterly, annually, etc.): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

(2) Information to be communicated (for example, developmental progress, child's activities/accomplishments, medical problems, etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(3) Method of communication (for example, internet, photos, letters, etc.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(4) Medium of communication (for example, information to be communicated directly between the parties or through \_\_\_\_\_, private attorney, or other third party): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. Medical Issues. The parties understand that genetic medical issues may arise with the Embryo Donors and/or their genetic children, which would be useful information to the Embryo Recipients and/or the child(ren) born as a result of the implantation of the Embryo(s) (and vice-versa). The parties also recognize the value of the exchange of information in the event that an organ donor or other type of medical assistance may be needed by a child or parent of the genetic relationship. Accordingly, the parties agree to a future exchange of medical information, as follows:

a. Embryo Donors. The Embryo Donors agree to give the Embryo Recipients and the Embryo Donors agree to receive from the Embryo Donors any genetic medical information or medical needs, as the same arise.

Yes \_\_\_\_\_ No \_\_\_\_\_

b. Embryo Recipients. The Embryo Recipients agree to give the Embryo Donors and the Embryo Donors agree to receive from the Embryo Recipients any genetic medical information or medical needs, as the same arise.

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Personal Contact. The parties understand and agree that any child(ren) born to the Embryo Recipients as a result of an embryo transfer under this Agreement shall be the legal child(ren) of the Embryo Recipients. The birth certificate issued by the applicable State Office of Vital Records shall be issued in the names of the Embryo Recipients as the mother and the father of the child(ren), and the Embryo Recipients shall bear the same relationship to such child(ren) as all biological parents do to their biological children, with all rights and responsibilities that arise from that relationship, including the right of inheritance. The Embryo Donors shall have no rights or responsibilities pertaining to any child(ren) born as a result of the implantation of the Embryos transferred under this Agreement, including no legal obligation to support such child(ren) and no legal right to custody, visitation, or inheritance from the estate of such child(ren), and no such child(ren) shall have any inheritance rights in the estates of the Embryo Donors. Notwithstanding the foregoing, and subject to what the parties agree to be in the best interest of the child(ren) at the applicable time, the Parties agree to contact between themselves and/or their genetic child(ren) at a future date, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

7. Disposition of Unused Embryos. In the event of the termination of the marriage of the Embryo Recipients by death, divorce, or otherwise, or in the event that the Embryo Recipients achieve a successful pregnancy without using all of the Embryos transferred hereunder and they indicate to \_\_\_\_\_ that they do not wish to implant any additional Embryos, the parties agree that all remaining Embryos in any such event shall be transferred to and shall become the property of \_\_\_\_\_ and will be made available for implantation in other Embryo Recipients. Until such time as all Embryos transferred hereunder have been thawed and implanted and/or ownership transferred to \_\_\_\_\_ under this Paragraph 6, Embryo Recipients agree to pay all transportation and storage costs for their unused Embryos.

8. Governing Law. This Agreement shall be governed by and interpreted in accordance with the terms of the laws of the State of \_\_\_\_\_.

9. Legal Advice. The parties hereto acknowledge that they have had adequate opportunity to seek and obtain separate and independent, legal counsel and advice concerning the terms of this Agreement and the Consent Forms, and the duties and responsibilities conferred therein.

10. Confidentiality. All parties of this Agreement agree that any identifying information regarding the parties shall be confidential and may only be disclosed to third parties as is necessary to carry out the purposes of this Agreement.

11. Entire Agreement. This Agreement and the Consent Forms, together represent the entire agreement between the parties hereto. No prior or subsequent oral or written statements or agreements between or among the parties with respect to the subject matter of this Agreement shall be of any force and effect unless in writing and signed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have entered in this Agreement as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**EMBRYO RECIPIENTS:**

\_\_\_\_\_  
Male Witness

\_\_\_\_\_  
Female Witness

**[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]**

**EMBRYO DONORS:**

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Male    Witness

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Female      Witness

NOTARIZATION FORM

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, \_\_\_\_\_  
\_\_\_\_\_ personally appeared and was personally  
known to me or proven to me on the basis of satisfactory evidence as the person(s) whose name is  
subscribed to this instrument (Notarization Form), and I acknowledge that he/she/they executed it. I  
declare under penalty of perjury that the person(s) whose name is subscribed to this instrument  
appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL

\_\_\_\_\_  
Signature of Notary Public