

Donor #: _____ Recipient #: _____



OPEN DONATION AGREEMENT - DONOR

*Working Document

*Please complete the questions below as a guide towards your future open donation preferences. This form does not need to be notarized as it is a working document version. You will receive a formal version of an agreement at a later date when you do an open donor agreement mediation plan with a specific Recipient that you approved.

This Agreement is made and entered into as of the date set forth below, by and between the **Embryo Donors** _____ **and** _____ (referred to hereafter as “Embryo Donors”), and **Embryo Recipients** NAME and NAME (referred to hereafter as “Embryo Recipients”) and accepted by and approved by the National Embryo Adoption Center/National Embryo Donation Center as a third party beneficiary of such as such relates to embryos in the legal ownership and possession of such.

WITNESSETH:

WHEREAS the Embryo Donors have previously legally conveyed cryopreserved embryos (the “Embryos”) to the National Embryo Adoption Center/National Embryo Donation Center (hereinafter “NEDC”) and which have been in the exclusive legal ownership, control and possession of the NEDC based on separate agreement with Embryo Donors and to be made available to the Embryo Recipients for the sole purpose of transfer to the uterus of one of the Embryo Recipients with the ultimate objective of one or more viable pregnancies for the Embryo Recipients, and

WHEREAS the Embryo Recipients desire to receive the Embryo(s) for the aforesaid purposes from the NEDC, all parties understanding that the ownership and custody of the embryos remains with the NEDC through implementation through medical transfer.

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 have previously donated, transferred and conveyed any and all right, title, and interest which Embryo Donors had or may have in the future in and to the Embryos to the NEDC for the future matching with Embryo Recipients for the purposes contained herein. Embryo Donors understand and agree that the NEDC continues to be the legal owners of such Embryos until transferred to the uterus of the recipient and that their only right under previous agreement known as the Informed Consent to Donate Embryos/Waiver of

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Liability and Legal Transfer of Embryos was to be involved in the process of matching Embryo Recipients with the embryos after review of information provided to them by the NEDC. Pursuant to such agreement and as stated to therein, the Embryo Recipients hereunder have been confirmed by the Embryo Donors as individuals the NEDC will allow to accept the Embryos for transfer to the uterus of one of the recipients. Embryo Donors also agree that in the event of their divorce or separation, that this contract cannot be altered by only one of them and continues to bind both of them. All parties must agree on a change in order for this contract to be amended or changed. Embryo Donors acknowledge that in signing this agreement, the Embryo Recipients hereunder have been approved by them to accept the Embryos for transfer to the uterus of one of the recipients with the ultimate objective of pregnancy.

2. Informed Consent/Waiver of Liability; Applicable Laws. Embryo Recipients and Embryos Donors have each previously signed an Informed Consent/Waiver of Liability form for Embryo Recipients and Informed Consent to Donate Embryos/Waiver of Liability and Legal Transfer of Embryos for Embryo Donors ("Consent Forms") provided to them by the NEDC 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 any embryo transfer, it is the intention of the parties that such laws not supersede or alter the terms of this Agreement or the Consent Forms, except to the extent required by law.

3. National Embryo Donation Center. The parties recognize, understand and agree that the National Embryo Adoption Center/National Embryo Donation Center (as previously referenced and hereafter as "NEDC") is a Tennessee nonprofit corporation which exists for the purpose of facilitating the transfer of embryos between persons such as the parties to this agreement. Further, the NEDC is a third-party beneficiary of this agreement as the current owner of the Embryos, however, it plays no role in enforcing or having responsibility of enforcing any rights or obligations between the Embryo Donors and Embryo Recipients as to their relationship, right or duties post transfer to the uterus of Embryos to the Embryo Recipients. The parties understand that NEDC is not a licensed child-placing agency under the laws of the State of Tennessee or any other state and is not a medical provider of any type. The NEDC accepts donation of Embryos for the purpose of matching such with Embryo Recipients to bring about pregnancy. Each party hereby agrees to irrevocably waive, release and relinquish 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 the National Embryo Adoption Center/National Embryo Donation Center, our physician, his/her physician, and all

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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.

12. Attorney Fees and Costs. In the event it becomes necessary for the NEDC to enforce this Agreement against either the Embryo Donors or Embryo Recipients through legal action or through the hiring of counsel as a third party beneficiary, or the NEDC is forced to defend itself in any way related to this Agreement from any action taken by any other party, the party against whom this Agreement is sought to be enforced or against whom it is used to defend the NEDC shall be responsible for all costs and attorney fees incurred by the NEDC.

Signature only, no notary needed

EMBRYO RECIPIENTS:

Male Recipient Signature _____ Date _____

Print Name: _____

Female Recipient Signature _____ Date _____

Print Name: _____

employees, officers, directors, contractors and agents of such parties and agrees to protect, defend, hold harmless and indemnify such parties 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 Embryos, the donation of the Embryos, the cryostorage of the Embryos or any other matters contemplated in this agreement. The parties acknowledge that the NEDC is not a medical facility or associated with medical treatment of any type and is rather a non-profit organization engaged in accepting donation of Embryos and to facilitate matching such Embryos with third parties who must engage a medical provider for medical transfer of such.

The parties understand and agree that any child(ren) born to the Embryo Recipients as a result of any 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.

Embryo Recipients agree to take full and complete responsibility for any and all complications that may occur as a result of the transfer of donated embryo(s). Embryo Recipients understand that the couple donating these embryos to the NEDC has relinquished any and all right, title and interests to the embryo(s) and any child or children that may result from the transfer of such embryo(s). Furthermore, Embryo Recipients agree to release the Embryo Donors from any and all responsibilities or liabilities for problems which might occur related to or as a result of our receipt of their donated embryos, including but not limited to the potential complications noted above. Embryo Recipients also agree to take full responsibility for the care and upbringing of the child or children that are born as a result of receipt of donated embryos and release the Embryo Donors and the NEDC from any and all responsibility and liability for support, care or custody of any offspring born to us as a result of our use of their embryos.

4. Shared Information. The parties have and/or will share the following information listed below 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 NEDC of the results of any implantation of all 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 NEDC of the name, sex, and birth date of each child.

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Embryo Recipients hereby agree to share the following information to the Embryo Donors from the time of any embryo transfer up to the birth of any child(ren):

Check items below that you prefer:

Embryo Recipients and Embryo Donors agree to share:

- First and last name
- First name only
- Case number only and no name

Embryo Recipients agree to provide the following information through a third-party mediator to the Embryo Donors regarding all planned embryo transfers.

- The date of any embryo transfer given prior to occurrence.
- The number of embryos thawed.
- Number of embryos that survive the thawing process.
- Number of embryos that are transferred for implantation.
- Number of embryos that remain in cryopreservation following transfer(s).
- Whether mixing of embryos occurred.

Embryo Recipients agree to provide to Embryo Donor the following information regarding the pregnancy status and outcomes from the embryo transfer:

- Pregnancy occurrence at two months after any transfer.
- Non-occurrence of pregnancy after any transfer.
- The status of the pregnancy (singleton, twin, etc).
- Pregnancy updates in event of pregnancy loss.
- Embryo Donors are open to receiving pregnancy updates at the discretion of Embryo Recipients.

Upon birth of a child(ren) from any embryo transfer(s), the Embryo Recipients agree to provide to the Embryo Donors the following information:

- Date of birth
- Sex of child(ren)
- Names of child(ren)
- General health status of child(ren) - weight, length, etc.
- Birth photo of child(ren)
- If mixing of embryos occurred, then both parties agree to DNA testing (paid for by Embryo Recipients) so that the genetic parentage of child(ren) born will be known. This information will be shared with all involved parties.

b. Embryo Recipients agree to provide their general future plans to the Embryo Donors that they have for any additional embryos remaining in storage after a child's birth, such as if they pursue a subsequent embryo transfer or if they do not plan to pursue anymore transfer attempts with remaining embryos in storage. Embryo Recipients have agreed that they will notify the Embryo Donors in the event that they contact the NEDC to no longer pursue an embryo transfer with the Embryo Donor's remaining embryos in storage, and their embryos will be returned to be matched in a new open donation agreement with another recipient couple at the NEDC.

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c. 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 hereby agree to provide the following additional information directly to the Embryo Donors as listed below after the birth of any child(ren) born as a result of the embryo transfer:

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

Embryo Recipients agree to send to the Embryo Donors a written update and pictures (annual, two times a year, etc) _____ from birth up until any child is 18 years of age. Embryo Donors are agreeable to receiving additional updates and communication, at the discretion of the Embryo Recipients. (

(2) Please list any specific information you wish to be communicated within an update (for example, developmental progress, child's activities/accomplishments, academics, medical problems, etc.):

Embryo Recipients agree to send to the Embryo Donors a written update and pictures sent _____ from a child's birth up until 18 years of age, with the information to be provided in the written update on the child(ren) to be at the discretion of the Embryo Recipients.

(3) Types of contact to be used in communication (for example, emails, written updates, photos, letters, gifts, holiday cards, etc.) **(Check your preference)**

- Email**
- Phone numbers**
- Mailing address**
- Video Conference**
- Social media or other online contact**

(4) Method of communication (for example, face to face visits, direct phone contact, email, mailing address, social media connections, etc.):

Embryo Recipients and Embryo Donors agree to mutually exchange contact information with one another at this time frame _____
(List when agree to share above contact information with Recipients)

(5) List if this information is to be communicated directly between the Embryo Donor and Embryo Recipients, private attorney, or other third party:

Embryo Recipients and Embryo Donors will begin direct communication at this time frame _____. Exchange of information, as specified within this Open Donation Agreement, will occur by way of (email, phone, etc) between the parties. The exchange of this information and any need to keep each other informed about contact information changes or the necessity of developing a new method of communication for this use, will be the sole responsibility of Embryo Recipients and Embryo Donors. Embryo Recipients and Embryo Donors agree to notify either party as soon as possible in the event of a change in their contact information to maintain their means of direct communication.

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(6) **Media/Online Privacy Agreement: Embryo Recipients and Embryo Donors agree not to post pictures, names, or other personal information of the other party or their children on any website or media such as digital media, websites, television, or social media outlets without prior permission. Both parties agree to seek permission and notify each other privately through personal communication prior to any postings online or through any media that will include the personal information or photos of the other party. Both parties are not sharing social media accounts for the purposes of this Agreement. However, if in the future both Embryo Recipients and Embryo Donors agree to share social media contacts, then both parties agree to seek permission and notify each other prior to sending a contact request (friend/follower request, etc) or the posting of social media written messages, postings, pictures, tagging photos, or otherwise documenting on social media any personal information or pictures of the other party.**

5. Medical Issues. The parties understand that genetic or inherited medical conditions 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. Exchange of medical information does not constitute an agreement, obligation or responsibility for meeting or responding to an identified medical need or medical request by the Embryo Recipients or Embryo Donor or their respective children. Exchange of such genetic or inherited medical information is intended for informational purposes only. Accordingly, the parties agree to a future exchange of genetic medical information, as follows:

a. Embryo Donors. The Embryo Donors hereby agree to give the Embryo Recipients and the Embryo Recipients agree to receive from the Embryo Donors any genetic or inherited medical information or updates, as the same arise. The Embryo Donors hereby agree to receive from the Embryo Recipients any future genetic or medical questions, and Embryo Donors agree to exchange inherited medical or genetic information to the Embryo Recipients related to any specific questions to the best of their knowledge.

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

6. Personal Contact - 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:

- Check here if you prefer to list in person visit(s) with Recipient and child(ren) on the contract, here is an example: **The Embryo Recipients and Embryo Donors agree to have at minimum 2 in person visitation contacts by the time any child(ren) born from the embryo transfer turns 18 years old, with the participants at the visit including the child(ren) born via embryo donation, Embryo Donors, Embryo Recipients, and either party's children. The exact date of the visits, along with the**

exact time and location, will be determined by Embryo Recipients upon consultation with the Embryo Donors. Both parties will make a mutually agreed upon plan for the location of the meetings. Each respective party will be fully financially responsible for the payment for each of their own individual or family costs associated with, during, or following these visits, including costs such as travel, food, lodging, etc. Any further visitation between the parties shall be at the mutual agreement of the Embryo Recipients and Embryo Donors.

- **Check here if you prefer to not list in person visits as required on the contract but are open to considering them in the future. The Embryo Recipients and Embryo Donors are not seeking to have regular in person visitation contact. The Embryo Recipients have agreed that if their child(ren) expresses interest in having personal contact with the Embryo Donor family prior to their 18th birthday, that Embryo Recipients will be open to contact the Embryo Donors. The Embryo Donors agree that they are open to being contacted by the Embryo Recipients if any child(ren) born from embryo donation are seeking personal contact with Embryo Donors. Any visitation that occurs before the Embryo Recipients' child(ren)'s 18th birthday between the Embryo Donors and Embryo Recipients, and either party's child(ren), shall be at the mutual agreement of the Embryo Recipients and Embryo Donors.**

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 NEDC that they do not wish to transfer any additional Embryos owned by the NEDC, the parties agree that all remaining Embryos in any such event shall remain the property of the NEDC and will be made available for transfer to the uterus of another subsequent matched set of Embryo Recipients who will undergo the same open process as the first Embryo Recipients. In the Event that the NEDC cannot locate, with reasonable efforts, the embryo donors for another open match and agreement, the NEDC will make the remaining donated embryos available for anonymous donation. Until such time as all Embryos involved herein have been thawed and transferred to the uterus of the recipient under this Paragraph 7, 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 Tennessee.

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

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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.

12. Attorney Fees and Costs. In the event it becomes necessary for the NEDC to enforce this Agreement against either the Embryo Donors or Embryo Recipients through legal action or through the hiring of counsel as a third party beneficiary, or the NEDC is forced to defend itself in any way related to this Agreement from any action taken by any other party, the party against whom this Agreement is sought to be enforced or against whom it is used to defend the NEDC shall be responsible for all costs and attorney fees incurred by the NEDC.

Signature only, no notary needed:

EMBRYO DONORS:

Male Donor Signature

Date

Print Name:

Female Donor Signature

Date

Print Name:

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