

Sample Canadian Gestational Surrogacy Contract

This is a sample agreement for a Canadian gestational surrogacy arrangement. Because each surrogacy arrangement is unique, and laws change, we do not recommend using this sample agreement as your actual surrogacy contract, but, rather as a template or draft for discussion among the parties involved in the arrangement and their legal counsel.

This sample agreement should not under any circumstance be used as substitute for legal representation for any party involved.

CONTRACT BETWEEN A GENETIC FATHER AND A GENETIC MOTHER AND A GESTATIONAL CARRIER AND A GESTATIONAL CARRIER'S HUSBAND

This Memorandum of understanding and Agreement (the "Agreement") is made this ____ day of ____ 20__ by and between _____, the genetic mother (hereinafter referred to as the "Genetic Mother"), and _____, the Genetic Father (hereinafter referred to as "the Genetic Father"), (collectively "the Intended Parents"), and _____, the Gestational Carrier (hereinafter referred to as "the Gestational Carrier") and _____, the Gestational Carrier's husband (hereinafter referred to as "the Gestational Carrier's Husband"). The Intended Parents, the Gestational Carrier and the Gestational Carrier's Husband collectively referred to as the parties (the "Parties").

WHEREAS, the Genetic Father is a lawfully married individual over the age of twenty-one (21) years who wishes to be the father of a child who is biologically related to him, and

WHEREAS, the Genetic Mother is a lawfully married individual over the age of twenty-one (21) years who wishes to be the mother of a child who is biologically related to her and

WHEREAS, the Intended Parents are unable to have a child without third party assistance,

WHEREAS, the Gestational Carrier, is a healthy, legally competent, married individual over the age of twenty-one (21) years who has had at least one previous live birth, is capable of bearing a child without any unreasonable risk to her physical or mental health or to that of any resulting child, and who desires to enter into an arrangement by which she will have eggs from the Genetic Mother which have been fertilized with sperm from the Genetic Father artificially implanted in her uterus via in vitro fertilization (an "embryo transfer"), and

WHEREAS, the prospective Gestational Carrier voluntarily enters into this Agreement with the intention and desire that the intended parents of any child born as the result of this embryo implantation have physical and, to the extent permitted by law, legal custody of such child, and to the extent permitted by law, be recognized as the child's parents for all lawful purposes.

THEREFORE, in consideration of the mutual promises contained herein and with the intention of being legally bound by the provisions of this Agreement, the parties mutually agree as follows:

1. The Gestational Carrier represents that she is healthy, that to the best of her knowledge, she is capable of bearing a child without unreasonable risk to herself or to any resulting child, physically or mentally, and that to the best of her knowledge, she has no physical or genetic illnesses, abnormalities or traits that are known to adversely affect her own health or the health of any child born to her.
2. The Gestational Carrier represents that she is married. The Gestational Carrier further represents that she has had at least one pregnancy and has previously experienced at least one live birth. The Gestational Carrier agrees to promptly inform the Intended Parents of any change in her marital status or any other change in circumstances which might affect this Agreement or her ability to comply with the obligations and/or representations contained in this Agreement.
3. The Gestational Carrier, the Gestational Carrier's Husband, the Genetic Father, and the Genetic Mother understand the purposes and effect of this Agreement and the arrangement contemplated by this Agreement, have read the provisions of this Agreement carefully, have had the opportunity to consult with legal counsel, and have voluntarily entered into this Agreement.
4. The Gestational Carrier agrees to have artificially implanted in her uterus for the purposes of becoming pregnant embryos consisting of eggs from the Genetic Mother which have been fertilized with sperm from the Genetic Father (who is not the Gestational Carrier's husband), at a time and at a place to be designated by a physician designated by the Genetic Father and Genetic Mother until either pregnancy occurs or until this Agreement is terminated. This procedure shall be performed by ___(name of RE)___, a fertility specialist, or one or more of her medical colleagues at the ___(name of clinic)___ (hereinafter, the "IVF Clinic"). The Gestational Carrier acknowledges that she has been fully informed by ___(name of RE)___ at the ___(name of clinic)___ of the risks and benefits of the transfer of various numbers of embryos to her uterus.

5. It is the intention of the Gestational Carrier that she is entering into this Agreement to bear a child for the Genetic Father and the Genetic Mother and not for the purpose of having a child who the Gestational Carrier will raise or with whom she will have a legal or parental relationship.

6. The Gestational Carrier agrees that she is entering into this Agreement with the intention that in accordance with the laws of _____(Province)_____ she will take whatever steps are necessary to have the Genetic Father and the Genetic Mother named as the legal father and mother of this child on the child's birth certificate, and to permit the Genetic Father and the Genetic Mother to obtain physical custody of any child born as the result of this Agreement. The Gestational Carrier agrees to cooperate and attend any court appearances required to place the Genetic Mother's and Genetic Father's name on the birth certificate. The Gestational Carrier shall have no parental or custodial rights or obligations of any child conceived pursuant to the terms of this Agreement, and does not desire to have any formal communications with the child or the Intended Parents after delivery, unless all parties agree to the same. Although not legally obligated, the Intended Parents intend to keep the Gestational Carrier updated on the Child yearly. The Intended Parents will also inform the Child's guardians of their desire to keep the Gestational Carrier updated. The parties further agree that _____(Province)_____ law shall govern this Agreement.

The Gestational Carrier and the Gestational Carrier's Husband shall execute all reasonable consent forms provided by the IVF Clinic and abide by the terms and conditions in such forms.

7. The Gestational Carrier agrees that the Genetic Father and the Genetic Mother shall name any child born pursuant to this Agreement and that the Gestational Carrier will take whatever steps are necessary to have the name selected by the Genetic Father and the Genetic Mother placed on such child's birth certificate.

8. The Gestational Carrier further agrees that because she is entering into this Agreement with the intention of providing a service to the Genetic Father and Genetic Mother, it is in the best interests of the child for her to permit the Genetic Father and the Genetic Mother to exercise all of their rights and privileges with regard to the child from the moment of birth, including while the child is still in the hospital and to permit the Genetic Father and the Genetic Mother to be designated as the person(s) authorized to care for the child in the hospital. The Gestational Carrier will not nurse the Child.

9. The Gestational Carrier agrees to notify the Genetic Mother and the Genetic Father as soon as the Gestational Carrier begins to go into labor, or, if not physically possible, as soon thereafter as it becomes physically possible. If the Gestational Carrier is scheduled in advance to give birth on or about a designated date, she agrees to notify the Genetic Mother and Genetic Father as soon as possible about this decision and provide them the time at which and the place at which the delivery is scheduled. The purpose of this notice is to permit the Genetic Father and the Genetic Mother to be present at the birth, to be available to care for the child upon birth and to be available to be designated as the Genetic Father and the Genetic Mother of this child.

10. In order to increase the certainty that any child born as a result of this Agreement is genetically related to the Intended Parents, the Gestational Carrier and her husband agree not to engage in sexual intercourse for a period prior and for a period subsequent to any attempt at embryo implantation, such period to be determined by the physician performing the embryo transfer undertaken pursuant to this Agreement. The Gestational Carrier and her husband agree not to take any other action which will result in her pregnancy through means other than the embryo transfer contemplated by this Agreement.

11. The Gestational Carrier agrees to remain in bed for a period of time determined by the physician performing the embryo transfer, rising only to go to the bathroom and to perform other essential and necessary tasks. After each embryo transfer, the Gestational Carrier agrees to stay at a hotel close in proximity to the facility where the embryo transfer takes place, unless the embryo transfer takes place within 30 miles of the home of the Gestational Carrier. In the event a hotel is needed after the embryo transfer, the Intended Parents agree to reimburse the Gestational Carrier for the hotel and any related meals, not to exceed \$150 per night.

12. The Gestational Carrier understands that pregnancy is not a condition to be taken lightly. It entails risks from both medical conditions which can be caused by the pregnancy as well as from pregnancy's effects upon other non-pregnancy related conditions. For a complete recitation of the complications of pregnancy, or the effects of pregnancy on a given disease state, it is the responsibility of the Gestational Carrier to discuss these issues with an obstetrician chosen by her before signing the Agreement. The Genetic Mother and the Genetic Father agree to pay all expenses associated with any such consultation not otherwise covered by the Gestational Carrier's health insurance policy.

13. The Gestational Carrier understands and agrees to assume all medical risks associated with the host arrangement agreed to in this Agreement, both known and unknown, including the risk of death, which are incident to pregnancy, child birth and post partum complications.

14. The Gestational Carrier further agrees to adhere to all medical instructions given to her by the physician performing the embryo transfer, and all other physicians who may become involved in the procedures described herein. The Gestational Carrier agrees not to have intercourse at such times as the physician performing the embryo transfer requests. The Gestational Carrier agrees to follow prenatal medical care as set forth by such physician(s).

15. The Gestational Carrier understands that not all attempts at embryo implantation result in pregnancy, that several attempts may be necessary, that

there is no guarantee that a pregnancy or a pregnancy which goes to full term will result from the attempts which take place as the result of this Agreement, that there is no guarantee that any pregnancy which does result will produce a healthy child, and that there is no guarantee that any pregnancy which does result from embryo implantation will be free from medical complication which may affect the Gestational Carrier's health. In light of all this, the Gestational Carrier agrees to undergo the embryo transfer(s) until she becomes pregnant or until three embryo implantations have been attempted and been unsuccessful. After three unsuccessful attempts at implantation this Agreement shall terminate unless the Intended Parents and the Gestational Carrier all agree in writing to attempt to achieve a pregnancy through an additional embryo transfer(s). The Gestational Carrier and the Intended Parents shall mutually agree on the number of embryos that shall be transferred into Gestational Carrier's uterus.

16. If fewer than three unsuccessful attempts have been made, this Agreement shall terminate if in the opinion of a physician designated by the Intended Parents, the Gestational Carrier, is determined not to be, for any reason, an appropriate candidate for the procedures outlined herein. Written notice of this decision shall be sent to _____(name of IPs legal counsel)_____, in the event of any termination or cancellation pursuant to this numbered Paragraph, the Genetic Father and the Genetic Mother shall have no further duties or responsibilities pursuant to this Agreement. The Intended Parents shall remain responsible for all expenses incurred by the Gestational Carrier pursuant to this Agreement until the date upon which she receives notice of the termination of the Agreement.

17. The Gestational Carrier agrees to disclose all necessary medical and obstetrical records to the embryo transfer physician and their office, and to the Gestational Carrier's Obstetrician.

18. The Gestational Carrier warrants that she is covered by a medical program providing maternity coverage, and that the description of this program provided to the Intended Parents is correct. Gestational Carrier agrees to furnish the Intended Parents evidence of said coverage. Gestational Carrier agrees to remain in the program during the term of this Agreement. In the event that Gestational Carrier's insurance will be terminated for any reason whatsoever during the term of this Agreement, the Gestational Carrier agrees to notify Intended Parents as soon as possible so that the coverage can be extended. If necessary, the Gestational Carrier agrees to cooperate and assist the Intended Parents in extending her medical coverage or purchasing new medical insurance if necessary.

19. The Gestational Carrier represents that she has undergone a complete physical and genetic evaluation by a physician licensed to perform such services and approved by the Intended Parents and further represents that she has been found to have the capacity to enter into and fulfill the terms of this Agreement. The physical examination shall include testing for sexually transmitted diseases, including AIDS and testing for Rh-factor compatibility. The testing for sexually transmitted diseases, including AIDS shall be prior to the first attempt at embryo implantation.

21. During the pregnancy, at the option of the Genetic Mother, the Genetic Father, the Gestational Carrier, or the Gestational Carrier's Husband; the Intended Parents, the Gestational Carrier, and the Gestational Carrier's Husband agree to submit to a joint counseling session with a mutually agreeable counselor. The Intended Parents shall be financially responsible for such counseling sessions. In order to exercise this right, notice of the intent to exercise this right shall be sent to ___(name of IP's legal counsel)_____.

22. The Gestational Carrier agrees to permit all records from the medical, genetic and mental health evaluations described herein to be made available to the Intended Parents, their physicians, and to any court who reviews this matter, provided that the disclosure to these parties does not result in a disclosure of the identity of the Gestational Carrier to unauthorized third parties or the public. The Genetic Father and the Genetic Mother shall pay the cost of all medical, genetic and mental health evaluations required of the Gestational Carrier by this Agreement.

23. The Gestational Carrier agrees to adhere to all medical instructions given to her by any physician involved in the embryo transfer from the period this Agreement takes effect until six weeks after any child conceived pursuant to this Agreement is born. She also agrees to adhere to all medical instructions given to her by her own independent obstetrician for the same period of time. She further agrees to follow a pre-natal medical examination schedule set out by the physician designated by the Intended Parents to consist of no fewer than one visit per month during the first seven (7) months of pregnancy, two visits per month during the eight (8) month of pregnancy (at approximately two week intervals), and four visits per month (each to occur at a weekly interval) during the ninth (9) month of pregnancy.

24. The Gestational Carrier agrees to provide to the Intended Parents all information obtained from these and other medical examinations and tests which take place during the period this Agreement is in effect.

25. The Gestational Carrier agrees to make the necessary changes to her lifestyle to minimize risks of harm to the unborn child, including requesting any temporary changes in her present employment situation necessary to remove her from the presence of chemicals and conditions considered by any federal or state occupational safety agency to be harmful to pregnant women; to avoid extended travel unless authorized by the IVF Clinic and all Parties mutually consent, to specifically avoid extended travel 14 days after the embryo transfer, to avoid excessively strenuous exercise or activity that would provide otherwise avoidable exposure to disease, to abstain from any high risk sexual conduct which may result in contraction of a sexually transmitted disease by the Gestational Carrier or any unborn child, and to abstain from the legal but potentially harmful use of chemicals including, but not limited to, alcohol, nicotine, excessive caffeine, prescription medication, over the counter drugs, potentially dangerous household cleaning products and health and beauty

products. The Gestational Carrier acknowledges receipt of informational literature from the IVF Clinic that provides such information and agrees to abide by said recommendations. When in doubt about a particular substance or conduct, the Gestational Carrier agrees to discuss with her physician the conduct and will abide by the physician's decision.

26. _____, Gestational Carrier's Husband is over the age of eighteen (18) years of age and is in support of his wife, Gestational Carrier, of performing the duties enumerated herein. Gestational Carrier's Husband hereby agrees to submit to the blood testing and psychological counseling as provided for in this Agreement. Gestational Carrier's Husband also agrees to follow duties as they pertain to him within this Agreement. Gestational Carrier, Gestational Carrier's Husband, Genetic Mother, and Genetic Father warrant that they will undergo medical testing for syphilis, gonorrhea and acquired immune deficiency syndrome (AIDS) and all tests required by Dr. _____(name of RE)_____ and _____(name of clinic)_____ and that the results of those tests shall be communicated to the other and their respective lawyers.

27. Except as provided in Paragraph 28, the Gestational Carrier agrees that she will not abort or attempt to abort any child she carries pursuant to this Agreement once the embryo is implanted except, if in the professional medical opinion of the physician approved by the Intended Parents or her own independent obstetrician, such action is necessary to protect her own physical health. If the Gestational Carrier's health is at risk, all Parties agree that, after consulting with the Intended Parents, she and her husband shall make the decision on whether or not to proceed with the pregnancy. At the option of the Intended Parents, a second physician may conduct similar tests and his/her opinion will become part of the evaluations process by the Gestational Carrier. If the Gestational Carrier violates the terms of this Paragraph, the Intended Parents' financial responsibility to the Gestational Carrier shall cease and the Intended Parents may terminate this Agreement effective immediately.

In the event of a multiple pregnancy where, in the opinion of the Gestational Carrier's obstetrician and/or infertility specialist(s) at the IVF Clinic, the number of fetuses threatens the successful outcome of the pregnancy or the health of the Gestational Carrier, all Parties agree that, after consultation among the Gestational Carrier, the Gestational Carrier's Husband, and the Intended Parents, a selective reduction procedure, as recommended by the Gestational Carrier's obstetrician and/or the infertility specialist(s) at the IVF Clinic, shall be performed by an experienced medical practitioner in an appropriate setting to maximize the chances of a successful outcome and minimize the risk of complications for the Gestational Carrier. All Parties agree that they would not seek a selective reduction unless advised to do so by the Gestational Carrier's obstetrician or an infertility specialist or a physician selected by the Intended Parents.

28. While pregnant, the Gestational Carrier agrees to undergo amniocentesis or other tests, if medically necessary, as selected and conducted by a physician approved by the Intended Parents. The Gestational Carrier understands that it is her responsibility to speak with her physician about the risks of amniocentesis or other tests prior to the performance of those tests.

29. Prior to and during the pregnancy, the Gestational Carrier agrees to follow a prenatal care regimen, consisting of sensible diet, prenatal vitamins, regular visits to her obstetrician, and hormonal support as prescribed by the Gestational Carrier's obstetrician or the medical providers at the IVF Clinic. The Gestational Carrier also agrees that during the pregnancy she will endeavor to follow the advice and take any prescriptions of her physician(s) to protect both her health and the health of the fetus or Child, including, but not limited to, the avoidance of cat litter, toxic substances or infectious waste, and toxic household products.

In addition, the Gestational Carrier agrees to refrain from any activity or the ingestion of any substance that would jeopardize or compromise the success of the pregnancy and the health of the fetus or Child, including, but not limited to smoking tobacco, drinking alcoholic beverages, using illegal drugs, taking non-prescription medication or prescription medications without the consent of her physician, or engaging in excessively strenuous exercise or activity that would provide otherwise avoidable exposure to disease. The Gestational Carrier acknowledges receipt of informational literature from the IVF Clinic that provides such information and agrees to abide by said recommendations.

30. The Gestational Carrier agrees to take all reasonable steps to give birth to any child carried pursuant to this Agreement at a Hospital in _____(Province)_____ to be agreed upon by the parties.

31. The Gestational Carrier and the Gestational Carrier's Husband agree to undergo parentage testing according to a methodology approved by the Intended Parents. In the event that the intended father and/or the intended mother is excluded as the genetic parent of such child by such testing, the intended father and the intended mother shall be relieved of all duties and obligations pursuant to this Agreement and all monies and expenses paid to and/or on behalf of the Gestational Carrier as part of this Agreement by the Intended Parents shall be immediately returned by the Gestational Carrier provided said child is genetically related to the Gestational Carrier or her husband.

32. The Genetic Father represents that prior to signing this Agreement he has undergone a physical and genetic evaluation by a physician licensed to perform such services and further represents that he has been found to have the capacity to enter into and fulfill the terms of this Agreement. The physical examination shall include testing for sexually transmitted diseases, including AIDS.

33. The Genetic Mother and the Genetic Father understand that not all attempts at embryo implantation result in pregnancy, that several attempts may be necessary, that there is no guarantee that a pregnancy or a pregnancy which goes to full term will result from the attempts which take place as the result

of this Agreement, that there is no guarantee that any pregnancy which does result will produce a healthy child, and that there is no guarantee that any pregnancy which does result from embryo implantation will be free from medical complications which may affect the Gestational Carrier's health.

34. Recognizing that it is possible that a child born pursuant to this Agreement may not be healthy or free from birth defects or physiological abnormalities, the Genetic Father and the Genetic Mother agree to assume legal responsibility for any child born pursuant to this Agreement as long as the parties otherwise comply with the terms of this Agreement and the genetic relationship of the Genetic Father and Genetic Mother is established through the procedures designated in this Agreement.

35. If a child is born pursuant to this Agreement with permanent birth damage so serious that it would cause the child's death if not placed on life sustaining treatment equipment and the child's treating physician either recommends that the child not be placed on such equipment or that the child not be resuscitated if he/she should stop breathing, then if the Genetic Father and the Genetic Mother both accept the physician's recommendation this decision shall be binding. The Gestational Carrier shall have no input in this decision. If the Gestational Carrier is given the right to interfere by the treating physician and authorizes the provision of treatment necessary to prolong the life of the child when the child otherwise would have died, the Genetic Father and the Genetic Mother shall remain obligated to comply with Paragraph 36 of this Agreement, but only for those financial expenses incurred prior to the date the Gestational Carrier rejects this recommendation.

36. The Genetic Father and Intended Mother agree to pay the specified expenses incurred by the Gestational Carrier in connection with this Agreement. The expenses for which the Genetic Father and Genetic Mother will be responsible for are limited to the following listed expenses. In no event will the Intended Parents be liable for any other expenses incurred in connection with this Agreement unless specifically noted in this Agreement.

A. All medical, hospital, pharmaceutical, and laboratory expenses related to the Gestational Carrier's pregnancy or efforts to become pregnant which are not covered or allowed by her present health and major medical insurance, provided that these expenses are incurred within six (6) weeks after the birth or miscarriage of any child conceived pursuant to this Agreement, provided that the Gestational Carrier maintains her current level of medical insurance, and further provided that the Gestational Carrier first makes a reasonable, good faith effort to have these expenses paid by her insurance company. In no event will the Gestational Carrier be reimbursed for any expenses incurred more than 6 weeks after the birth or miscarriage of any child conceived pursuant to this Agreement except the Gestational Carrier shall be entitled to be reimbursed for medical complications which are not covered or allowed by her present health and major medical insurance incurred within 6 months after the birth which directly result from the pregnancy as certified by her physician. If such medical expenses exceed \$500 in total the Intended Parents reserve the right to request the Gestational Carrier to obtain a second opinion. In the event that the Gestational Carrier is unable to obtain reimbursement for certain medical expenses from insurance the Gestational Carrier agrees to allow the Intended Parents to help procure reimbursement from the insurance company for the Gestational Carrier's medical expenses.

B. The cost of all preliminary medical, genetic and mental health examinations and all parentage testing required by this Agreement.

C. Reasonable expenses for:

1. Maternity clothing (\$_____ if single pregnancy \$_____ if pregnant with multiples)and
2. travel at ___ cents per mile, and the cost of any parking and tolls.

D. Child care, to be reimbursed at the rate of \$__ per hour, for Gestational Carrier's children during times when the Gestational Carrier must travel in order to perform her duties as described herein.

E. In the event the Gestational Carrier is placed on bed rest by her obstetrician the Gestational Carrier shall be reimbursed up to \$_____ per week for housekeeping and for childcare. The Gestational Carrier shall only be reimbursed for childcare that would not otherwise have been incurred if the Gestational Carrier had not been placed on bed rest. The Gestational Carrier shall only be reimbursed if written confirmation that bed rest is necessary is provided by her obstetrician and receipts are provided.

F. Any legal expenses incurred by the Gestational Carrier in connection with entering into this Agreement and the negotiation thereof.

G. Any and all expenses incurred under this Agreement that are reimbursable must be submitted to _____(IP's/Legal Counsel)_____, by mailing a copy of the receipt with a short explanation of the expense to: _____
_____ (Address)

_____ (IPs)_____ shall then mail the Gestational Carrier a check for such expenses provided they are reimbursable expenses as enumerated in this Agreement. Expenses, with the exception of mileage payments, tolls, babysitting and parking under \$10, will not be reimbursed without a receipt. Expenses will be mailed to Gestational Carrier on a monthly basis.

37. The reimbursements shall be paid according to a schedule, which indicates a maximum amount that is reimbursable each time period as follows:

- A. \$_____ upon positive medical confirmation from a physician that the Gestational Carrier is pregnant;
- B. End of First Month: \$_____
- C. End of Second Month: \$_____
- D. End of Third Month: \$_____
- E. End of Fourth Month: \$_____
- F. End of Fifth Month: \$_____
- G. End of Sixth Month: \$_____
- H. End of Seventh Month: \$_____
- I. End of Eighth Month: \$_____
- J. At time of birth and when delivery of child occurs: \$_____
- K. Post Birth: \$_____

38. In the event that it is confirmed via a visible heartbeat that the Gestational Carrier is carrying more than one fetus, the Gestational Carrier will receive an additional \$_____ for expenses, starting the 1st day of the 7th month, provided the multiple pregnancy is viable as of the 1st day of 7th month.

39. Notwithstanding anything herein to the contrary, Gestational Carrier shall not be entitled to receive any reimbursements for expenses:

- A. If one or both parties terminate the medical process prior to the conception of a pregnancy;
- B. If Gestational Carrier does not reasonably attempt to follow the medical instructions or the pre-natal examination schedule contemplated by this Agreement;
- C. If the Gestational Carrier willfully aborts the pregnancy or undergoes a selective reduction at any time under circumstances other than those contemplated by this Agreement; or
- D. If the Gestational Carrier does not permit the Intended Parents to take the child home with them upon the child's discharge from the hospital.

41. Recognizing that after any embryo transfer the Gestational Carrier may be required to spend two to three days in bed resting the Gestational Carrier will be given \$_____ for expenses for any completed embryo transfer, or (\$_____) for a cancelled embryo transfer, if Gestational Carrier has begun taking medications for such transfer.

42. If Gestational Carrier becomes pregnant but does not deliver a living child before 34 weeks of pregnancy (32 when carrying multiple fetuses), the payments in Paragraphs 37 and 38 will cease and any expense payments the Gestational Carrier has become entitled to, to date, will belong to the Gestational Carrier. Any outstanding uninsured or un-reimbursed medical expenses directly associated with the pregnancy will be the responsibility of the Intended Parents.

44. The Genetic Father and the Genetic Mother shall not be responsible for: (1) any expenses relating to emotional or mental conditions or problems of the Gestational Carrier, whether or not causally connected to the Gestational Carrier's pregnancy; (2) incidental or consequential damages; or (3) any other expenses not specifically included and designated in this Agreement.

45. Prior to any effort at embryo implantation carried out pursuant to this Agreement, the Gestational Carrier agrees to provide the Genetic Father and the Genetic Mother a copy of all her medical insurance and to cooperate with any effort on their part to obtain new and/or additional medical insurance on her behalf. She also agrees not to take any actions which would result in the cancellation of any health or major medical insurance policy in effect which would cover any of the expenses covered by this Agreement.

46. Prior to the Gestational Carrier becoming pregnant, this Agreement may be terminated and canceled under any of the following conditions:

- A. If, in the opinion of the physician designated by the Genetic Mother and the Genetic Father, the Gestational Carrier cannot be successfully impregnated within a period of time deemed by this physician to be medically reasonable, then this Agreement may be terminated by either the Genetic Father or the Genetic Mother, through written notice to _____(IP's Lawyer)_____, Esq. and the reasons therefore; or
- B. If the physician designated by the Genetic Mother and the Genetic Father, or the mental health professional who evaluates the Gestational Carrier, recommend or determine at any time before the Gestational Carrier becomes pregnant that she is not a good candidate to carry out the purposes of this Agreement, then this Agreement may be terminated by either the Genetic Father or the Genetic Mother, through written notice to _____(IP's Lawyer)_____, of this decision and the reason therefore; or

In the event of any termination or cancellation pursuant to this numbered Paragraph, the Genetic Father and the Genetic Mother shall have no further duties or responsibilities pursuant to this Agreement. The Intended Parents shall remain responsible for all expenses incurred by the Gestational Carrier pursuant to this Agreement until the date upon which she receives notice of the termination of the Agreement.

47. Prior to the Gestational Carrier becoming pregnant, the Intended Parents may terminate this Agreement at their discretion without giving notice of the reason for this decision by: (a) providing written notice of this decision to _____(IP's Lawyer)_____, and (b) paying all of the expenses incurred to date by the Gestational Carrier pursuant to this Agreement.

48. In the event that the child is miscarried, stillborn, or an abortion is performed in accordance with the terms of this Agreement, the Gestational Carrier shall be entitled to and shall receive reimbursement for the expenses she has already incurred pursuant to this Agreement, provided that the miscarriage or stillbirth is not the result of negligence or willful misconduct on the part of the Gestational Carrier.

In the event of the occurrence of any of the events described in this Paragraph, this Agreement may be terminated at the option of any party and if so terminated, no party shall be under any further obligation pursuant to this Agreement. In addition, the Gestational Carrier, providing she has complied with the terms of this Agreement, is entitled to keep, or obtain, all payments she has received, or become entitled to, to date.

49. In the event the Genetic Father predeceases the birth of any child born as a result of this Agreement, the Genetic Mother shall be designated as said child's sole guardian and shall take immediate physical custody of said child. The Gestational Carrier agrees to take whatever steps are necessary to permit the Genetic Mother to be named the lawful guardian and to obtain legal custody of such child.

50. In the event the Genetic Mother predeceases the birth of any child born as a result of this Agreement, the Genetic Father shall be designated as said child's sole guardian and shall take immediate physical custody of said child. The Gestational Carrier agrees to take whatever steps are necessary to permit the Genetic Father to be named the lawful guardian and to obtain legal custody of such child.

51. In the event the Genetic Mother and Genetic Father both predecease the birth of any child born as a result of this Agreement, the guardians listed in the Intended Parents last will and testament shall be designated as said child's guardians (hereinafter referred to as the "Guardians") and shall take immediate physical custody of said child. The Gestational Carrier agrees to take whatever steps are necessary to permit the guardians listed in the Intended Parents last will and testament to be named the lawful Guardians and to obtain legal custody of such child.

In the event of the Genetic Father's death, all references in this Agreement to Genetic Father shall be read to refer to Genetic Mother. In the event of the Genetic Mother's death, all references in this Agreement to Genetic Mother shall be read to refer to Genetic Father. In the event of the deaths of Genetic Father and Genetic Mother, all references to Genetic Father and Genetic Mother shall be read to refer to the Guardians.

52. In the event that the Gestational Carrier asserts or attempts to assert custody or other parental rights to the child referred to herein, she agrees to reimburse the Intended Parents for all monies expended on her behalf or otherwise paid to her pursuant to this Agreement, and all legal costs the Intended Parents pay to counter the Gestational Carrier's attempts in this regard. This indemnity covenant and Agreement shall survive the execution of this Agreement for a period of twenty-one (21) years.

53. The parties to this Agreement understand the Procedures agreed to by this Agreement are relatively new and that the newness means that it cannot be guaranteed what the Court system will do in response to any questions or requests brought to it as a result of the arrangement which results from this Agreement.

Therefore, it is understood by the parties to this Agreement that no one can guarantee whether, or to what extent, the appropriate legal authorities will sanction or enforce this Agreement or any of its provisions or any aspect of the procedures contemplated herein. Further, no one can guarantee to what extent, the appropriate legal authorities will recognize or enforce the parental rights of the Genetic Father or the Genetic Mother; nor can anyone guarantee whether, or to what extent, the appropriate legal authorities will hold the Gestational Carrier, the Gestational Carrier's Husband or the Genetic Father or Genetic Mother responsible for the support of any child born as the result of the procedures contemplated herein or grant to such child the right to inherit from said Gestational Carrier's estate or said Genetic Father's estate or Genetic Mother's estate or said Gestational Carrier's Husbands estate upon the death of any of them if they die without leaving a will.

54. In the event that guidelines are promulgated by relevant legislation or judicial decision(s) which regulate or purport to regulate gestational parenting or which would govern some or all of the provisions of this Agreement, the parties hereto shall forthwith adopt amendments to this Agreement, which will result, in the opinion of counsel for the Intended Parent's and the Gestational Carrier, in this Agreement complying with such guidelines.

55. In the event of separation or divorce between the Genetic Mother and the Genetic Father, it is agreed that any child born to the Gestational Carrier under this Agreement shall be surrendered to the custody of the Genetic Father or the Genetic Mother as determined by any legal agreement between the Genetic Father and the Genetic Mother or as determined by proceedings in a court of law.

56. The Parties acknowledge to properly effectuating the terms of this Agreement, the Parties must disclose information of a personal and confidential nature to each other. The Parties mutually promise that this information will be held in the utmost confidence and privacy. It is agreed between the Parties that the best interests of the Child born pursuant to this Agreement is best served by strict protection of each other's right to privacy.

The Parties agree that they will not provide, nor allow to be provided, any information to the public, news media, or any other individual regarding the names, whereabouts, age, race, vocation or any other identifying factors of the Intended Parents and/or the Child born from this Agreement without express, written permission and consent of all other Parties. The Parties understand that confidentiality described herein does not contemplate speaking with friends, relatives or other such persons about their own involvement in the gestational surrogacy arrangement. Such conversation are permitted, and do not constitute a breach of confidentiality, provided that the identity of, or other specific information about, the other Party is not disclosed.

57. The Intended Parents acknowledge that they have consulted with their legal counsel _____(IP's Lawyer)_____, _____(Address)_____ and fully understand this Agreement and its legal impact, and are fully satisfied with this Agreement. Gestational Carrier acknowledges that she fully understands this Agreement and its legal impact, and that, Esq. has advised her of the meaning of the same. Gestational Carrier has retained ___(GC's Lawyer)_____, independent legal counsel to represent her in the execution of this Agreement.

58. Each party acknowledges signing and delivering this Agreement freely and voluntarily without any reason to believe that the other party is not also. The Gestational Carrier and the Gestational Carrier's Husband acknowledge that _____(IP's Lawyer)_____, exclusively represents the Intended Parents, and in no way represents or promotes the interests of the Gestational Carrier or the Gestational Carrier's Husband.

59. The Gestational Carrier agrees to waive her privilege of Physician-Patient confidentiality for the benefit of the Intended Parents and to sign the consent to the Release of Medical Information provided herewith as Exhibit "A".

60. The Intended Parents agree to waive their privilege of Physician-Patient confidentiality for the benefit of the Gestational Carrier with respect to any medical information in possession of the Physicians' performing the Embryo Transfer.

61. It is the Gestational Carrier's responsibility to consult her tax advisor regarding the appropriate tax treatment, if any, of any payments received in connection with this Agreement. It is the responsibility of the Gestational Carrier to report the receipt of any payments made pursuant to this Agreement to the proper taxing authorities, state, federal or otherwise.

62. In the event that any provisions of this Agreement are deemed legally invalid or unenforceable, these provisions shall be deemed severable from the remainder of this Agreement and shall not cause the remainder of this Agreement to be considered invalid or unenforceable. If any of these provisions shall be deemed legally invalid because of their scope or breadth, then these provisions shall be deemed legally valid to the extent permitted by law.

63. "Child" as referred to in this Agreement shall include all embryos successfully implanted and all children born pursuant to and as part of this Agreement.

64. This Agreement sets forth the entire legally binding agreement between the parties with regard to the subject matter of this Agreement. All legally binding agreements, covenants, representations and warranties, express and implied, oral and written, of the parties are contained herein. No other legally binding agreements, covenants, representation or warranties, express or implied, oral or written, have been made by any party to the other(s) with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and superseded by this Agreement. This is an integrated agreement. This Agreement can be amended only by a written agreement signed by all parties hereto.

65. This Agreement may be executed in two (2) or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

66. All payments towards expenses due to Gestational Carrier under this Agreement shall be made to the Gestational Carrier by the Intended Parents.

67. We have read the foregoing pages of this Agreement, and it is our collective intention, by affixing our signatures below, to enter into a binding legal obligation.

(Name)
Genetic Father

(Name)

Intended Mother

(Name)

Gestational Carrier

(Name)

Gestational Carrier's Husband

SAMPLE