



## Reproductive Materials Cryopreservation & Storage Agreement

(Patient Demographics Sticker)

This agreement is made and entered into by and between FPG Labs, LLC (a Delaware Limited Liability Company; DBA: **Ovation Fertility**), hereafter referred to as "Ovation" and

Client name(s): \_\_\_\_\_,

an individual/couple ("Client"), for the purpose of processing, cryopreserving (i.e., freezing), transporting and storing reproductive materials (eggs, sperm or embryos) belonging to the Client. "Client" refers to each owner of the reproductive materials; if more than one, the singular form in this Agreement shall be read in the plural. Ovation and Client are referred to jointly herein as "the parties".

### **INTRODUCTION**

When a sperm enters an egg, the egg is fertilized and thereafter referred to as an embryo. During the course of clinical human in-vitro fertilization ("IVF"), more embryos may be produced than transferred at one time into the uterus. This may occur because current practice attempts to place a limited number of embryos into the uterus at one time to reduce the chance of multiples at birth. It might occur because a fresh embryo transfer may be delayed to prepare a more receptive implantation environment prior to transfer, or for some other reason. In any event, it is recommended that unused embryos be frozen for future use; therefore, each Client must read and sign the following informed consent and decide amongst the available embryo freezing options prior to follicle aspiration (egg retrieval) for each cycle.

In addition to embryos, human gametes (eggs or sperm) may also be frozen for future use. Embryos and gametes can be stored in liquid nitrogen indefinitely, although American Society for Reproductive Medicine ("ASRM") guidelines recommend embryos be used within a 5-year period. Clients choosing to freeze embryos should do so with the full intent to place (transfer) them to the uterus as soon as possible.

In order for frozen embryos to produce a pregnancy, they must be thawed (warmed) and placed in the uterus at the correct time of the cycle. Eggs and sperm must also be thawed and assessed for survival before attempting fertilization. Typically, sperm motility survival is good, but on occasion, sperm is damaged such that use for fertilization is impaired. Typically, over 90% of frozen eggs and embryos survive a thaw, which means they appear viable and capable of achieving a pregnancy. On occasion, the thawed egg/embryo is damaged and therefore is no longer viable. These eggs/embryos are not used, and are discarded in the discretion of the experienced and skilled Ovation Fertility staff, upon consulting your physician.

Additionally, and as indicated on this form below, Clients must make various disposition decisions for their reproductive materials based upon various conditions that may arise in the future during storage. Upon completion and signing this agreement, the Clients agree and consent to the freezing and disposition of their embryos/eggs/sperm in accordance with Ovation's protocols and procedures as indicated in this form.

### **PURPOSE**

Ovation provides processing, freezing, and storing services for reproductive material, according to the following:

- The Client desires to store the reproductive materials for later use or other disposition, as instructed by the Client in a separate notarized agreement or as set forth herein below;
- The Client agrees that Ovation shall process, freeze, and store Client's reproductive materials according to standard proven procedures, of which the terms and conditions are set forth in this Agreement. **The Client is encouraged to read this Agreement in its entirety and ask questions before completing this agreement.**

- The Client is fully advised and understands that certain inherent risks in the process of freezing, storing, transferring, shipping, and thawing of reproductive materials, including but not limited to: accidental damage to or loss of the reproductive materials or freezer tank failure during shipment or storage, that could result in reduced survival, fertilization and/or development of the reproductive materials. Client agrees to assume all potential risks associated with reduced viability of reproductive materials after thawing, rehydration, and removal of cryoprotectant buffers and culture.
- Ovation disclaims all responsibility for the freezing process used and quality assurance standards of a clinic or any other facility shipping or transferring the reproductive materials to Ovation, including but not limited to: the quality of the reproductive material at the time it was frozen, the efficiency of recovering the reproductive material(s), its likelihood of surviving a thaw, or its likelihood of resulting in a pregnancy or healthy live birth.
- The Client may obtain reproductive materials from a third party donor. In such case, Client accepts responsibility for said reproductive materials “as is”, regardless of their source.

## I. GENERAL AGREEMENT

The parties agree to the following conditions:

1. Ovation will store Client's reproductive materials in accordance with Ovation's procedures in the usual facilities maintained for that purpose until this Agreement is terminated in the manner provided in Section V below.
2. Client acknowledges receiving verbal and/or written information from Ovation explaining the need for freezing, storage, and disposition of the reproductive materials. Client acknowledges having been informed about the costs associated with the freezing services provided under this Agreement, which include but are not limited to: processing, storage, freeze-preservation, and disposition.
3. It is understood by the Client that requisite infectious disease screening, STD blood tests, will be required to store reproductive materials, including but not limited to HIV-1 antibody, HIV-2 antibody, HTLV I/II (for use in CA), Hepatitis C antibody, and Hepatitis B surface antigen to qualify for storage. If donor gametes or a prospective gestational carrier are involved in the cycle plan, then additional tests are required to determine donor/gestational carrier eligibility and additional costs are involved. Other tests or screens may also be performed for the Client at an additional cost, as determined by the Client and your physician.
4. Client shall provide reproductive materials, to which Client has lawful possession and legal authority, for processing, freezing, storage, and disposition by Ovation. Client understands that any reproductive materials received from an outside clinic or facility must be appropriately identified and that the actual genetic source, content or viability of those reproductive materials cannot be guaranteed or verified by Ovation, or its employees, until they are thawed.
5. In the event the reproductive materials are transported from another facility (i.e., not Ovation Fertility), an additional Receipt of Outside Frozen Embryos, Eggs or Sperm Consent must be completed by Client and Ovation Staff,

*Client understands and acknowledges agreement to the terms and conditions stated above, as applicable:*

**Client's Initials:** \_\_\_\_\_ / \_\_\_\_\_

## II. FINANCIAL - Continuation of Storage

1. Client hereby agrees to pay storage fees by a pre-paid billing agreement **or** on a monthly basis, including any collection fees incurred due to failure to pay. **It is understood that this provision shall continue unless terminated pursuant to Section V below.** Storage fees charged by Ovation under this Agreement shall be set by Ovation, and Ovation may adjust its fees from time to time based upon market factors or other factors including, but not limited to, increases in costs. Client acknowledges responsibility for any possible handling fee, shipping fee, and/or shipping tank rental fee (outgoing & return), as well as any outstanding fees, each time one or more vials or straws of reproductive material is removed from Ovation storage. Ovation shall give advance written notice to Client of any storage fee increase.

- a. Termination of Ownership Determination – It is Client's responsibility to pay for storage on time and provide Ovation with current contact details. In the event Client ceases to pay any storage fees due and Client fails to otherwise communicate with Ovation, Ovation will initiate reasonable efforts to contact Client. If Ovation is unable to contact client, Ovation may deem Client noncompliant and with lab director approval, determine Client

has released custody of the reproductive materials to Ovation Fertility. The release of custody determination may include the application of additional administrative/collection fee of \$2,000.00. Client will remain responsible for all delinquent storage fees regardless of disposition of reproductive materials. For all non-compliant determined Clients, Ovation Fertility reserves the right to terminate Client's ownership and dispose of reproductive materials according to current laboratory procedures.

2. If Client provides Ovation with credit card information, Client hereby authorizes Ovation to charge said credit card for storage fees and any other applicable charges. Ovation will use reasonable efforts to notify Client of any pending credit card charge at least ten (10) days in advance, but Client hereby authorizes Ovation to charge any applicable fees absent written termination notification and removal of the reproductive material. Client agrees that written notice sent by Ovation to the most recent address provided by Client is sufficient to meet all notice requirements hereunder and that it is Client's responsibility to notify Ovation of Client's current contact information.

3. If at any time storage charges are unpaid and past due, Ovation may pursue collection action for any amounts due and may refer the Client to a collection agency even if Ovation determines the Client is noncompliant and thereby released from ownership of the reproductive materials. In that event, Client agrees to pay all costs of such collection action including any reasonable fees charged by the collection agency, other costs of collection, interest at the maximum legal rate, and reasonable attorney's fees.

*Client acknowledges their understanding of the financial agreement:*

**Client's Initials:** \_\_\_\_\_ / \_\_\_\_\_

### III. LIABILITY AND LIMITATION OF DAMAGES

Ovation's obligation to Client is to exercise reasonable care in providing freezing and storage services as set forth in this Agreement. Ovation cannot guarantee that, and is not liable if, the reproductive materials it processes or accepts for storage: are not recovered, do not survive any of the contemplated processes, are not of suitable quality for transfer, are damaged, degenerate, lost, or do not result in a pregnancy, birth, or child who is free of birth defects. Under no circumstances and legal theory, whether in tort, contract or otherwise, shall Ovation, its suppliers, successors or assignees, be liable to Client or Child born of the reproductive materials or any other person for any indirect, incidental, consequential or special damages whatsoever, arising out of the freezing, shipment, storage, or related services rendered by Ovation. Client also agrees that in the event of loss or destruction of Client's reproductive materials by any reason whatsoever, damages as a result thereof would be highly conjectural and speculative and would be difficult to determine. Accordingly, Client agrees that in no event shall Ovation's total liability for all damages in any one or more causes of action, whether in contract, tort or otherwise, exceed the storage fee paid by Client for the particular year in which the loss occurs.

*Client acknowledges and agrees to be bound by the terms of these limitations on damages:*

**Client's Initials:** \_\_\_\_\_ / \_\_\_\_\_

### IV. DISPOSITION OF REPRODUCTIVE MATERIALS

1. During Client's lifetime, unless Ovation is otherwise informed by Court Order or notarized transfer of ownership the Client's reproductive materials stored by Ovation shall remain Client's property at all times, including after release to a licensed physician or the physician's designee for use for reproductive purposes or for such other disposition, as may be directed by Client.

2. Ovation shall release Client's reproductive materials only with Client's written notarized authorization. Client understands and authorizes Ovation to release any medical records relating to the reproductive materials to the physician performing an assisted reproduction procedure for evaluation and use. Accordingly, Client hereby authorizes Ovation to release all medical records and all other individually identifiable health information, whether or not contained in Client's medical records, regarding any past or present medical conditions, including but not limited to: Client account number, reproductive materials quality, IVF cycle history, and medical information to such physician. Client understands that this authorization is voluntary and that if the individual or entity authorized to receive this information is not a covered entity under state or federal privacy regulations, the release of such information may no longer be protected by said privacy regulations. Client also understands that once this information is used or disclosed pursuant to this authorization, it may be subject to re-disclosure by the physician and the Client's privacy may no longer be protected. The conditions and procedures for release shall be those reasonably established by Ovation that are in effect at the

time of the requested release, with which Client hereby agrees to comply. Client understands and agrees that Ovation may modify Ovation's disposition procedures at the sole discretion of Ovation to reflect changes in industry practice, laws, or regulations. As of the date of this Agreement, the release procedures are as follows:

- a. During Client's lifetime, Client may change his or her instructions as to disposition in a signed notarized writing at any time. Unless and until such writing is received by Ovation, this agreement will govern the disposition of the reproductive materials.
- b. Upon Client's possible divorce, legal separation or death, this Agreement will continue in effect until Ovation receives legal paperwork issued by a US court and a judge's decree specifying the ownership of the reproductive materials in question. All sperm and eggs shall remain the property of the Client who produced them, unless otherwise stated in the latter decree. This consent does not supersede any formal legal decisions issued by a U.S. court and judge decree completed prior to the execution of this agreement. If legal documents regarding disposition of reproductive materials are issued by a US court, Ovation will abide by such documents unless Client obtains an alternative ruling from a US court having jurisdiction over Ovation. If Client's testamentary documents conflict with this Agreement, a court order instructing Ovation as to which documents are to be followed must be obtained. Client or Client's estate shall be responsible for all costs incurred in obtaining any relief under this provision.
- c. Client acknowledges and agrees that Ovation may transport reproductive materials to another Ovation Fertility facility at Ovation's cost. Ovation will attempt to contact Client prior to initiating transportation; however, if Ovation is unable to reach Client, Client agrees that Ovation may transport reproductive materials to another Ovation facility without further authorization or consent. Client acknowledges having been informed of the risks involved to transport reproductive materials, including but not limited to, premature thawing due to accidents, delayed transportation due to Acts of God, loss, spillage, misidentification and/or other possible adverse circumstances that could result in tissue destruction and/or reduced viability for reproductive purposes. Client acknowledges and agrees Ovation, its owners, directors, employees and/or agents are not liable for and have no responsibility for any loss related to the transportation or handling of their reproductive materials during transportation. Client further agrees, in the event of any destruction or loss of viability of the reproductive materials, that the maximum value to any reproductive materials transported will not exceed \$100,000 per shipment, regardless of how many or type of materials transported.

**3. In the event of Client's death, Client selects the following disposition of all frozen reproductive materials in storage at that point and time (Please check ONE only):**

(all Clients must initial below as individuals. Note, Clients will likely need a legal document (e.g., Living Will), or obtain a court order, instructing Ovation as to final disposition.)

- \_\_\_\_\_ / \_\_\_\_\_ **Discard all reproductive materials.**
- \_\_\_\_\_ / \_\_\_\_\_ **Donate\* all reproductive materials to another for reproductive purposes. The recipients of these reproductive materials may be chosen by a physician.  
\*Additional blood screening may be required.**
- \_\_\_\_\_ / \_\_\_\_\_ **Donate all reproductive materials to medical research or training.**
- \_\_\_\_\_ / \_\_\_\_\_ **I selected disposition for my reproductive materials in my will and/or testamentary documents.**
- \_\_\_\_\_ / \_\_\_\_\_ **Transfer to Designee, \_\_\_\_\_  
(provide name and contact information)**

Note: If the reproductive materials are obtained from a minor for whom Client has parental or quasi-parental rights and obligations, Client's signatures and instructions herein shall be deemed to be made for the benefit of said minor. Client agrees that those materials may be released to said minor when he or she reaches the age of majority. Additional documents will be required before the reproductive materials can be released.

- 4. In the event of Client's separation, divorce, or death of spouse, Client must supply written notification for the event and provide legal documents pertaining to the disposition of frozen reproductive materials. At no time will any

Client be released of ownership without written legal documentation except in cases of nonpayment or lost contact as set forth above. Failure to comply will subject patient to termination of ownership.

*Client understands the options and choices delineated above and had the opportunity to ask questions and discuss the options presented.*

**Client's Initials:** \_\_\_\_\_ / \_\_\_\_\_

## **V. TERMINATION**

1. Client must promptly notify Ovation of any change in personal contact information (residence address, phone number, email or other address), extended absence, or change in health and social status.

This agreement shall terminate and Ovation's responsibility for storage shall cease upon any one or more of the following events:

- a. Receipt of a written, signed and notarized Ovation Fertility disposition directive
- b. Client's directive to transport to another facility
- c. Court order or other legal documents from a US court with appropriate jurisdiction
- d. Ovation termination of ownership determination

2. Client understands that it is particularly important to immediately report any suspected or confirmed sexually-transmitted disease infections. Notwithstanding any other provision of this Agreement, Ovation reserves the right to terminate this Agreement upon three (3) business days written notice to Client in the event Ovation determines, in its sole and absolute discretion, that the reproductive materials are inappropriate for storage for any reason, including, without limitation, due to the risk of transmitting disease. Upon termination of this Agreement pursuant to this Section, Ovation shall refund all storage fees paid by Client less any fees for services performed by, or on behalf of, Ovation. Client may choose to thaw and discard the reproductive materials or have Ovation transport the reproductive materials to another storage facility which will accept them. It is Client's responsibility to provide written, signed and notarized instructions and to locate such other storage facility and to make all arrangements for said transfer.

## **VI. ADDITIONAL CONSIDERATIONS**

1. Client understands that Ovation may keep Client's name, address, and required health information on file indefinitely. Ovation shall use its best efforts to ensure that Client's information will be kept confidential and used only to comply with the terms of this agreement. Any information obtained by Ovation that may identify Client will be disclosed to individuals not connected with this agreement only with Client's written permission or pursuant to court order. Client understands that photographs or videotapes may be used to create a permanent record and for identification. Client understands that Client has the right to review this information at any reasonable time, and Client acknowledges and agrees that any government agency or insurer with legal authority to do so may also review such records.

2. In the event Ovation terminates the operation of its storage facility, it may, 30 days after providing written notice to Client (or to the surviving spouse or properly-identified intimate partner or designee, or in case of a minor, parent(s)/legal guardian(s), if applicable) at his or her last known address, assign and transfer its obligations and the reproductive materials held on behalf of Client to a similar storage facility.

3. Client agrees to indemnify, defend, and hold harmless Ovation and its past, present, or future owners, officers, directors, employees, agents, assignees, contractors, and affiliates, from any and all claims, demands, causes, charges, costs, expenses, obligations, or action for damages or otherwise asserted against Ovation arising out of the collection, analysis, freezing, storage, shipping, handling, thawing, disposition, or release of Client's reproductive materials consistent with the provisions of this agreement. For the avoidance of doubt, any other person who uses or ships reproductive materials that were stored hereunder shall be considered a third party to this Agreement. Ovation shall promptly notify Client in writing of any such third party action and Client agrees to immediately assume all financial responsibility for such matter, including the payment of all expenses and liabilities, including attorneys' and experts' fees in connection therewith, and, if and as requested or agreed to by Ovation and/or its insurer, control over the matter; provided, however, that Client shall not settle any such action without the prior written consent of Ovation and/or its insurer, which consent shall not be unreasonably withheld. Furthermore, with respect to claims whereby Ovation is ordered by a court to hold the reproductive materials, Ovation's indemnification right shall include the payment of all fees resulting therefrom.

4. If Client names Ovation or any of its employees or agents in any litigation arising from any disagreement between Clients or between Client and a third party as to the rights of any of them, as to each other or as to Ovation, Client or Client's estate shall be liable for the reasonable attorney's fees and other cost incurred by Ovation in such litigation.
5. Any notices provided hereunder shall be sent to the address set forth beneath Client's signature or such other address as Client may request in writing. Client acknowledges that the mailing address is set forth in this Agreement is current.
6. ALL OVATION SERVICES (INCLUDING, WITHOUT LIMITATION, THE STORING AND SHIPPING OF REPRODUCTIVE MATERIALS) ARE PROVIDED "AS IS" WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. In particular, but without limitation, Ovation does not warrant that the reproductive materials are free of genetic defects or diseases, that a pregnancy will result from the use of the reproductive materials, or that a child born using the reproductive materials will be free of disease or mental defects. Ovation is in no way responsible for the quality and characteristics of the reproductive materials.

*Client acknowledges and agrees to be bound by the above disclaimer of warranties by initialing below:*

**Client's Initials:** \_\_\_\_\_ / \_\_\_\_\_

7. If any provision of this Agreement is found to be invalid or unenforceable by any court, that provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions hereof, unless such invalidity and unenforceability would defeat an essential purpose of this Agreement.
8. Client represents to Ovation that Client is over the age of eighteen (18) and that the use of Ovation's services is solely for personal use and not for redistribution, resale or other commercial purposes. Ovation reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders in its sole discretion. Client acknowledges they have had the opportunity to consult with an attorney to discuss and be advised about the provisions of this Agreement, and Client acknowledges that they fully understand the contents of this Agreement and willingly and voluntarily signed this Agreement, regardless of whether or not Client chooses to consult with an attorney prior to the execution of this Agreement.
9. This represents the entire agreement between the parties concerning the subject matter; and there is no understanding, agreements, or representations other than as herein set forth. This Agreement shall be modified only by a writing signed by all parties.
10. The agreement shall be binding upon the parties and their respective assignees, heirs, executors, and administrators. This agreement shall be construed in accordance with the laws of the State of California, USA.
11. This Agreement sets forth the entire agreement between the Parties. All agreements, covenants, representations and warranties, expressed and implied, oral and written, of the Parties are contained herein. No other agreements, covenants, representations, nor warranties, expressed or implied, oral or written, have been made by any Party to the other(s) with respect of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to this Agreement are waived, merged and superseded. This is an integrated Agreement.

## **VII. LONG TERM STORAGE TRANSFER AGREEMENT**

1. I/We may elect to utilize Ovation Fertility's Long Term Storage and courier service for transport. Upon my written consent to continue storage with Ovation Fertility Long Term Storage, I/We authorize the release of all our specimens to Ovation Fertility Long Term Storage and are fully aware of all fees and requirements for continued storage with Ovation Fertility Long Term Storage. I understand the importance to maintain communication of my disposition intentions for specimens and I am fully informed of the current termination of ownership procedure if I fail to maintain communication.
2. I/We understand there are alternate courier services and long term storage companies available for my/our continued storage. I/We consent to using Ovation Fertility courier service for transport of my/our specimens unless otherwise specified in writing. I/We have been fully informed to all risks associated with transport of specimens. These risks include, but are not limited to, damage to the embryos/sperm/eggs during the freezing process, handling during

shipment, loss during shipment, liquid nitrogen tank failure during shipment and storage, method of thawing and preparation prior to using the embryos/sperm/eggs and that I/We are willing to assume these risks. It is understood each shipment value shall not exceed \$100,000 in liability regardless of the number of specimens I/We elect to ship. I/We fully understand and accept that Ovation Fertility, its physician(s), laboratory director(s) and laboratory personnel, does not assume responsibility or liability for the transportation, condition or survival of the embryos/sperm/eggs or the physical or mental characteristics of any child or children born as a result of the use of the embryos/sperm/eggs.

Client acknowledges and agrees to be bound by the above disclaimer of warranties by initialing below:

**Client's Initials:** \_\_\_\_\_ / \_\_\_\_\_

**VIII. SIGNATURE VERIFICATION**

By signing below, Client acknowledges they received the opportunity to ask questions and those questions were answered to Client's satisfaction, or Client waived that opportunity. Client acknowledges that he or she fully understands this Agreement, its legal effect and that they are signing freely, voluntarily and without duress or undue influence.

This agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by

\_\_\_\_\_  
(Client Signature)

\_\_\_\_\_  
(Print Client Name)

\_\_\_\_\_  
(Client Signature)

\_\_\_\_\_  
(Print Client Name)

\_\_\_\_\_ If Client is a minor, Legal Guardian signature \_\_\_\_\_ Legal Guardian printed name

Account #: \_\_\_\_\_ (Ovation will complete)

\_\_\_\_\_ Ovation/Fertility Center Representative Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_  
OR

**Notary Public**

Sworn and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOTARY STAMP HERE, IF APPLICABLE

X \_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

**VIII. SUPPLEMENTAL INFORMATION**

Finally, we are requesting that you provide the name, address and phone numbers of two family members or friends that will be likely to have your new address. Volunteering this information is completely optional but strongly recommended. Should we need to contact anyone on your contact list, we would simply identify ourselves as your doctor's office, and would not identify ourselves as a fertility center, in order to maintain your confidentiality and our anonymity.

**Contact #1:**

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Contact #2:**

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

I authorize Ovation Fertility to contact the above listed person(s) in an attempt to locate us, if Ovation Fertility is unable to contact me directly despite reasonable efforts.

\_\_\_\_\_  
Client's Name (printed)

\_\_\_\_\_  
Client's Name (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date