

(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:

Eggs: _____ Embryos: _____ Sperm: _____

(Client to initial each type of reproductive materials covered by this agreement)

(herein referred to as "reproductive materials") 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. "Client" also refers to a legal parent or guardian of a minor child whose reproductive materials are the subject of this Agreement; it is expected that ownership of the reproductive materials will transfer to said child upon his or her reaching the age of majority by a separate written notarized instruction. 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 result than are expected to be 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, or because of a delay in embryo transfer to provide for a more receptive implantation environment prior to transfer, or for some other reason. In any event, it is recommended to freeze in liquid nitrogen unused embryos for future use. Embryos can be stored indefinitely, although the American Society for Reproductive Medicine ("ASRM") recommends the use of frozen embryos within 5 years. Therefore, Clients choosing to freeze embryos should do so with the intent to transfer them to the uterus as soon as possible.

In addition to embryos, human gametes (eggs or sperm) may also be frozen separately for future use. Gametes can be stored in liquid nitrogen indefinitely.

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 at the discretion of the experienced and skilled Ovation Fertility staff, upon consulting your physician.

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;

- The Client agrees that Ovation shall process, freeze, and store Client's reproductive materials according to standard 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 signing this agreement.**
- The Client is fully advised and understands the 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, which could result in reduced survival, fertilization and/or development of the reproductive materials. Client agrees to assume all potential risks associated with reduced viability, damage or loss of reproductive materials from shipping, 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.
- If the Client obtains reproductive materials from a third party donor, Client accepts responsibility for said reproductive materials "as is", regardless of their source. _____

(Client to initial)

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 and storage of the reproductive materials. Client acknowledges having been informed about the costs and risks associated with the freezing services provided under this Agreement, which include but are not limited to: processing, storage and freeze-preservation.
3. It is understood by the Client that requisite infectious disease screening, such as STD blood tests, 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, will be required to qualify reproductive materials 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, and storage 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 agrees to the general 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.** Ovation shall set all storage fees covered by this Agreement, and Ovation may adjust its fees from time to time based upon market factors or other factors including, but not limited to, increase in cost. 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 or 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, following the completion of the Ovation protocol for a noncompliant Client, determine Client released ownership and custody of the reproductive materials to Ovation. The release of custody may include additional administrative/collection fees up to \$2,000.00. Client will remain responsible for all delinquent storage fees regardless of release of ownership and custody.

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 as and when they become due. 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 understands 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 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 or reduced viability of Client's reproductive materials by any reason whatsoever including but not limited to negligence, 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 \$25,000 regardless of how many or type of material.

Client acknowledges and agrees to be bound by these limitations on damages:

Client’s Initials: _____

IV. DISPOSITION AND TRANSPORTATION OF REPRODUCTIVE MATERIALS

1. During Client's lifetime, unless Ovation is otherwise informed by Court Order or notarized transfer of ownership or the materials are released to Ovation due to Client's noncompliance, 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, as may be directed by Client.

2. Ovation shall release Client's reproductive materials only with Client's written notarized authorization except in the case of Client noncompliance. 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 Protected Health Information ("PHI"), 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.

3. Client acknowledges and agrees that Ovation will transport reproductive materials to another Ovation Fertility facility as quickly as operationally possible at Ovation's cost and 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 except as set forth in part III above.

Client understands and agrees to the disposition and transportation terms and conditions stated above, as applicable:

Client's Initials: _____

V. TERMINATION

1. Client must promptly notify Ovation of any change in contact information (residence address, phone number, email or other address), extended absence, or change in health or 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 separate written, signed and notarized Ovation Fertility release directive;
- b. Client's directive to transport to another facility not owned or operated by Ovation;
- c. Court order or other legal documents from a US court with jurisdiction; or
- d. Ovation termination of ownership determination due to Client's failure to maintain contact.

2. Client understands that it is particularly important to immediately report any suspected or confirmed sexually-transmitted or other 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.

Client understands and agrees to the termination terms and conditions stated above, as applicable:

Client's Initials: _____

VI. ADDITIONAL CONSIDERATIONS

1. Client understands that Ovation may keep Client's name, address, and required information, including PHI, 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 without notice.
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, 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 and beneficiary of 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 required hereunder shall be sent to the address indicated beneath Client's signature or such other address provided by Client. Client acknowledges that the mailing address provided 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 having the opportunity to consult with an attorney to discuss the provisions of this Agreement, and, regardless of whether or not Client chooses to consult with an attorney, Client acknowledges that he or she fully understands the contents of this Agreement and willingly and voluntarily signed it.

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. 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. 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.

VII. SIGNATURE VERIFICATION

By signing below, Client acknowledges he or she 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 he or she is signing it 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)

SUPPLEMENTAL INFORMATION

Finally, we are requesting that you provide the name, address and phone numbers of two family members or friends

who will be likely to have your new address if you have not informed Ovation of a change. Volunteering this information is optional but strongly recommended. Should Ovation 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: _____

Client's Name (printed)

Client's Name (printed)

Signature

Signature

Date

Date