Disposition of Embryos for Couples

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DESCRIPTION

This document records the Intended Parents’ decision regarding disposition of Embryos under various situations.

TARGET

* All Intended Parents planning to freeze Embryos

RELEASE NOTES

* Updates language to reflect current legal understanding
* Consolidated explanation of disposition options

TO DO

* Omit disposition options not available in your practice (for instance, some clinics do not offer donation to research or clinical training, and others don’t have a time or age limit to use frozen Embryos).
* Replace “CLINIC” with your program’s name throughout
* Enter the limits on the number of years in storage, age of Intended Parents, and years of nonpayment that trigger discard.
* Modify this document according to local needs and preferences.
* Get legal review to assure conformance with State and local laws and regulations

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Disposition of Embryos Agreement

and Declaration of Intent

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Intended Parent A:**

Last Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ First Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Birth: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ID#\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Cell phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Intended Parent B:**

Last Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ First Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Birth: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ID #\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Cell phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This “Disposition of Embryos, Agreement and Declaration of Intent,” (“Agreement”) is an agreement entered into between the Intended Parent(s) named above (collectively “I/we” or “you”) and the CLINIC, to document decisions and agreements about what will be done with any frozen pre-implantation IVF Embryos (“Embryos”) that remain after the Intended Parents’ currently planned treatment cycle (“Embryo disposition”).

The Embryos covered by this Agreement will be the result of *(check and complete all that apply)*:

□ an IVF cycle completed on or about: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (month/year).

□ an insemination of eggs performed on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date of insemination)

□ Embryos frozen on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (dates(s) of freeze).

This Agreement addresses several situations in which you will make choices regarding disposing of any frozen Embryos. As reproductive medicine is rapidly evolving legally and medically, The Clinic cannot guarantee what the legally and medically available or acceptable disposal choices will be at any future date. You may wish to consult with a lawyer, together or individually, for each of you to understand your legal rights and any law that may apply to this Agreement and your disposition choices. **If any choice you select is not available in the future for any reason, by signing this Agreement you are authorizing the Clinic to thaw and discard any currently frozen Embryos under this Agreement.**

*This document applies to your embryo(s) while they are stored on-site at the Clinic. If your embryo(s) are transferred off-site, the receiving clinic or storage facility will have its own consents and policies, which supersede this Agreement.*

# Situations Requiring a Disposition Choice

Situations may arise when you cannot or choose not to use the Embryos as you initially intended. These situations include:

1. **Death of Intended Parent A.** If Intended Parent A dies before using all the Embryos.
2. **Death of Intended Parent B**. If Intended B dies before using all the Embryos.
3. **Simultaneous death of both Intended Parents A and B.** If Intended Parents A and B die at the same time and Embryos remain in storage.
4. **Divorce or Dissolution of the Intended Parents’ relationship.** If the Intended Parents are legally divorced or dissolve their non-marital relationship and Embryos remain in storage.

NOTE: If the Clinic determines, in its sole discretion, that dispositional choices in this Agreement are ambiguous (for example it is not initialed correctly) **and** that dispositional authorization under this Agreement is unclear Embryo in the case of a future dispute, the Clinic may require a valid, final, non-appealable court decree by a court of competent jurisdiction and/or settlement agreement (as determined in the Clinic’s sole discretion), which specifically tells the Clinic how to make a final disposition of the Embryos.

1. **IVF Treatment Ends (for the named Intended Parent(s)).** If the Intended Parent(s)’ treatment at the Clinic ends for any reason, including both agree to stop fertility treatment as a couple, age limitation or storage limitation is reached, and Embryos remain in storage.

# Disposition Choices

The following describes the available disposition choices:

1. **Give control of the Embryos to the other Intended Parent.** This choice gives the named Intended Parent has sole control over the Embryos for any purpose, including for procreation), donating the Embryos to someone else for purposes of procreation, donating for medical research or training, or discarding the Embryos. This may mean keeping the Embryos in storage, and requires the named Intended Parent complete a new “Disposition of Embryos Agreement” and be responsible for all related financial obligations regarding the Embryos.
2. **Discard the Embryos**. All Embryos will be permanently disposed of and will not be used or donated for any purpose.
3. **Donate the Embryos for medical research purposes.** This choice includes possible Embryonic stem cell research (where allowed). Embryos are ultimately destroyed and will not result in the birth of a child. See further information in the section below on *Donation of Frozen Embryos for Research Purposes*.
4. **Donate the Embryos for clinical training purposes.** This choice allows for Embryos to be used for clinical training of Embryology and other laboratory staff as allowed by applicable law. Embryos are ultimately destroyed and will not result in the birth of a child.
5. **Donate the Embryos to another person or couple so they can try to have a child.** This choice may be carried out in one of two ways: Directed Donation and Non-Identified Donation, defined below. If you choose a Directed Donation, you are required to have independent legal representation and enter into a legal agreement between you and the recipient(s). If you choose a Non-Identified donation, you should consult with legal counsel and will need to sign additional legal documents giving up all your rights to and all control over the Embryos to the Clinic. This choice may mean you need repeat infectious disease testing and screening due to federal and/or state requirements or undergo psychological counseling. (*Also, see the Note below on donating Embryos created with donor gametes as this may impact your disposition choice.*)
   1. **Directed Donation** (to someone you know) – Donating the Embryos to a person or couple that you choose (someone that is known to you) to try to have a child. This choice requires further legal ~~work~~ steps to transfer control to the Embryo recipients.
   2. **Non-Identified Donation** (to someone unknown to you) - Donating the Embryos to the Clinic or an Embryo donation program who will try to select a Recipient and the Embryos will be used by a person or couple unknown to you to try to have a child. This choice requires further legal steps ~~work~~ to transfer control to the Clinic or Embryo bank to authorize the Embryo donation.

**Dispositional Choices:** COMPLETE THE FOLLOWING INFORMATION BY INDICATING YOUR DISPOSITION CHOICE NEXT TO EACH SITUATION.

By completing the following table with my initials and signing this Agreement (below) I understand and agree that:

1. Both Intended Parents must initial the same box for the choice to be valid;
2. **You specifically authorize the Clinic to discard the Embryos if your selected disposition choice is not available**, if in the Clinic’s sole discretion, the disposition choice is not feasible, you do not pay all storage or administrative fees related to the Embryos, or you fail in any way to preserve the disposition choice you made in this Agreement;
3. Subject to any agreement with any donor, coordinating program, bank, or entity, you are free to jointly revise the choices you made here at any time by each of you completing and signing another Agreement, having it notarized, and delivering it to the Clinic (“SUBSEQUENT AGREEMENT”); and ,
4. Unless you have provided the Clinic **with a more recent Agreement** regarding the Embryos, that has been properly and jointly signed by each of you, and notarized, the Clinic is authorized to act on the choice(s) you select below.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Situation** | **Decision of Intended Parent(s)** | **Initials** | | | | | |
|  | ***Initial*** *only* ***one choice*** *per scenario. For a choice to be valid both Intended Parents (if applicable) must initial the same choice* | | *Intended Parent A* | *Intended Parent B* | | |
| **Death of Intended**  **Parent A** | 1. Give control of the Embryos to Intended Parent B (if applicable) | |  |  | | |
| 1. Discard the Embryos | |  |  | | |
| 1. Donate the Embryos for medical research | |  |  | | |
| 1. Donate the Embryos for clinical training. | |  |  | | |
| 1. Donate to a named individual for procreation. (Directed Donation)\*\* | |  |  | | |
| 1. Permit the Clinic or its designee to arrange for donation to another recipient for procreation. (Non-Identified Donation) | |  |  | | |
| **Death of Intended**  **Parent B** | 1. Give control of the Embryos to Intended Parent B (if applicable) | |  |  | | |
| 1. Discard the Embryos | |  |  | | |
| 1. Donate the Embryos for medical research | |  |  | | |
| 1. Donate the Embryos for clinical training. | |  |  | | |
| 1. Donate to a named individual for procreation. (Directed Donation)\*\* | |  |  | | |
| 1. Permit the Clinic or its designee to arrange for donation to another recipient for procreation. (Non-Identified Donation) | |  |  | | |
| **Death of both Intended Parents (at same time)** | 1. Discard the Embryos | |  |  | | |
| 1. Donate the Embryos for medical research | |  |  | | |
| 1. Donate the Embryos for clinical training. | |  |  | | |
| 1. Donate to a named individual for procreation. (Directed Donation)\*\* | |  |  | | |
| 1. Permit the Clinic or its designee to arrange for donation to another recipient for procreation. (Non-Identified Donation) | |  |  | | |
| **Divorce or Dissolution of Intended Parents’ Relationship** | 1. Give control of the Embryos to Intended Parent [insert name] | |  |  | | |
| 1. Discard the Embryos | |  |  | | |
| 1. Donate the Embryos for medical research | |  |  | | |
| 1. Donate the Embryos for clinical training. | |  |  | | |
| 1. Donate to a named individual for procreation. (Directed Donation)\*\* | |  |  | | |
| 1. Permit the Clinic or its designee to arrange for donation to another recipient for procreation. (Non-Identified Donation) | |  |  | | |
| **Intended Parent(s)’ Treatment ended** | 1. Discard the Embryos | |  |  | | |
| 1. Donate the Embryos for medical research | |  |  | | |
| 1. Donate the Embryos for clinical training | |  |  | | |
| 1. Donate to a named individual for procreation. (Directed Donation)\*\* | |  | |  |
| 1. Permit the Clinic or its designee to arrange for donation to another recipient for procreation. (Non-Identified Donation) | |  | |  |

*\*\*Requires a legal agreement and pre-screening and testing as may be required by the FDA or other agencies.*

# Additional Information on Disposition Choices

*Donation of Frozen Embryos to Another Person/Couple*

If you selected the option to “Donate to another person/couple,” you are both giving up any and all rights in and responsibilities for the Embryos and any child that may be born from them. Before and during the donation process, you may need to complete additional laboratory testing and legal documents before this choice can be effective. This may include additional costs to you. Donating Embryos to someone else gives them complete control over the use of the Embryos. In addition, if you choose a “non-identified” donation, you need to know that the Clinic cannot guarantee that the person, couple, or child will not locate you at some future date, despite its best efforts to maintain confidentiality. Current genetic testing capability and social media outreach may lead to a loss of any expected anonymity. You may want to seek legal and mental health counseling to help you better understand your position regarding this choice of donating Embryos.

If you wish to donate Embryo(s) to a specific person or couple, you must complete the information below, and continue to provide the Clinic with updated contact information as changes occur. You must also complete a separate legal Agreement.

I/We wish to donate the Embryos to the person, or couple (“recipient(s)”) named below. I /We understand that this means keeping the gametes/Embryos in storage either at the Clinic or transfer to a long-term storage facility and requires both 1) payment by us or the named recipients of all storage fees and other payments due the Clinic, and 2) the Clinic’s ability to carry out this choice. I/We also understand that any future disposition of any unused Embryos is under the sole control of the recipient(s).

Intended Recipient(s)

Name(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cell Phone(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Donation for Embryos created with donated gametes**: If your Embryos were created with gametes (eggs and/or sperm) from an egg and/or sperm donor, your choice to donate these Embryos to another couple or individual must be consistent with all applicable agreements made with, or written authorizations from, the gamete donor(s) and/or gamete bank.  If donor gametes were used, the gamete donor must give or have given prior written authorization to the Intended Parent(s), or to any gamete program or bank that allows the Intended Parent(s) to donate the Embryos after Intended Parent(s)’s use. Without this prior written authorization, the Embryos will be discarded.

**Donation for Embryos donated for medical research:** If you select this option, note the following:

* Donating Embryo(s) for research may not be possible or may be restricted by law. While efforts will be made to abide by your wishes, no guarantees can be given that Embryo(s) will be used for research or donated to another couple. In these instances, if after \_\_\_\_\_ years no recipient or research project can be found, or your Embryos are not eligible, your Embryo(s) will be destroyed and discarded by the lab in accordance with laboratory procedures and applicable laws.
* The Embryos may be used to derive human pluripotent stem cells for research and the cells may be used, at some future time, for organ donation research.
* All identifiers associated with the Embryos will be removed prior to the derivation of human pluripotent stem cells.
* Donors to research will not receive any information about subsequent testing on the Embryos or the derived human pluripotent cells.
* Derived cells or cell lines, with all identifiers removed, may be kept for many years.
* It is possible the donated reproductive tissue may have commercial potential, but the donor (you) will receive no financial or other benefit from any future commercial development.
* Human pluripotent stem cell research is not intended to provide direct medical benefit to Embryo donors.
* These Embryos will not be transferred to a woman’s uterus, nor will the Embryos survive any human pluripotent stem cell derivation process.
* If the donated Embryos were formed with gametes (eggs or sperm) from someone other than the Intended Parents (those who sign this document), your choice to donate these Embryos for medical research must be consistent with all applicable agreements made with, or written authorizations from, the gamete donor(s) and/or gamete bank.

# Nonpayment of Embryo Storage Fees

Intended Parents who have frozen Embryo(s) must pay fees associated with the storage of their Embryos in accordance with the Clinic’s storage and payment protocol as well as remain in contact with the Clinic on at least basis to inform the Clinic of their wishes. **This section applies to Embryos that are stored on-site at the Clinic.**

If you fail to pay fees for Embryo storage for a period of \_\_\_\_ years or fail to follow other clinic requirements and the Clinic has made reasonable efforts to contact you in accordance with its established protocols **you expressly understand, agree, and authorize the Clinic to discard your Embryo(s) in accordance with its normal laboratory procedures and applicable law without further notice to, or consent required by you.** In such circumstances, you also acknowledge that you relinquish (give up) any and all claims to the Embryos or to any additional notice from the Clinic as to its ultimate disposition of the Embryos.

# Time-Limited Storage of Embryos

The Clinic will store frozen Embryos on-site for a period of \_\_\_\_\_ years, *or until the younger of us reaches the age of [X], whichever comes first.* After that time, you must elect one of the options, below (check one box only):

❑   Transfer the Embryos to a storage facility at your expense and risk.  You understand you will be required to execute documents as provided by or approved by the Clinic and any storage facility.

❑  Donate the Embryos for medical research purposes. This option includes possible Embryonic stem cell research (where allowed). Embryos are ultimately destroyed and will not result in the birth of a child. See further information in the section above on *Donation of Frozen Embryos for Research Purposes*.

❑   Donate the Embryos for clinical training purposes. This option allows the use of Embryos for clinical training of Embryology and other laboratory staff as allowed by applicable law. Embryos are ultimately destroyed and will not result in the birth of a child.

❑   Discard the frozen Embryos.

* Should you wish to make any other dispositional choice acceptable to the Clinic, you will be required to jointly execute a new dispositional Agreement and be current in all storage and related fees.

# Age-Limited Storage of Embryos

The Clinic will not transfer Embryos to any woman to produce a pregnancy after age \_\_\_\_\_ years. After this age, you elect the following option **(check one box only):**

❑   Transfer Embryos into one of us that has not reached that age, or into a gestational carrier who has not reached that age.

❑  Donate the Embryos for medical research purposes. This option includes possible Embryonic stem cell research (where allowed). Embryos are ultimately destroyed and will not result in the birth of a child. See further information in the section above on *Donation of Frozen Embryos for Research Purposes*.

❑   Donate the Embryos for clinical training purposes. This option allows the use of Embryos for clinical training of Embryology and other laboratory staff as allowed by applicable law. Embryos are ultimately destroyed and will not result in the birth of a child.

❑   Discard the Embryos.

❑   Transfer the Embryos to a storage facility at my/our expense and risks. I/we understand I/we will be required to execute documents as provided by, or approved by, the Clinic and any storage facility.

# Legal Considerations and Legal Counsel

The law regarding Embryo freezing, subsequent thaw and use, and the parent-child status of any resulting child(ren), including but not limited to children born following the death, divorce, or separation of Intended Parents is, or may be, unsettled in the state in which either Intended Parent, or any donor or ultimate recipient(s) currently or in the future lives, or the state in which the Clinic is located.

You acknowledge that the Clinic has not given you legal advice, and that you are not relying on the Clinic to give you any legal advice. You have been informed that you may wish to, individually and/or jointly, consult a lawyer(s) experienced in the areas of family, reproductive, and estate planning law and Embryo freezing and disposition if you have any questions or concerns about the present or future status of your Embryos, your individual or joint access to them, your individual or joint parental status as to any resulting child, or about any other aspect of this Agreement.

Your wills and any other estate planning documents should also include your wishes on disposing of any Embryos and be consistent with this Agreement or any subsequent Agreement. Unless the Clinic is advised of any changes to the disposition selections you made in this Agreement, the Clinic may act upon this Agreement. Any inconsistencies may need to be resolved by a court of competent jurisdiction.

**Your signature below certifies the disposition choices you have made above. You understand that you can change your choices in the future, but must do so by mutual and written agreement, properly signed, notarized, and provided to the clinic in accordance with the Clinic’s policies. You also understand, acknowledge, and agree that in the event none of your elected choices is available, the Clinic is authorized by each of you, without further notice from or consent by you, to and discard your frozen Embryos.**

X

**Intended Parent A Signature** Date

Intended Parent A Name Date of Birth

Notary Public (if signed out of office)

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

Notary Signature Date

------------------------------------------------------------------------------------------------------------------

X

**Intended Parent B Signature**  Date

Intended Parent B Name Date of Birth

Notary Public (if signed out of office)

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

Notary Signature Date

===================================================================

If signed in the office:

Statement by Witness (must be employee of Clinic and at least 18 years of age)

I declare that the person(s) who signed this document is personally known to me and appears to be of sound mind and acting of their own free will. They signed (or asked another to sign for him or her) this document in my presence.

Witness Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_