

Legislative Commission on Surrogacy

August 16, 2016

Sen. Johnson and Rep. Scott, Commission Co-Chairs

Prepared Testimony of Professor Teresa Stanton Collett*

Good afternoon Madame Chairs, Members of the Committee, and other distinguished guests. I am pleased to have been given the opportunity to testify on the legal implications of gestational and traditional surrogacy. My testimony represents my professional knowledge and opinion as a law professor, who writes on the subjects of human procreation, constitutional law, and professional responsibility. I am the author of numerous professional articles and book chapters, the co-editor of a casebook on the professional responsibility of lawyers, and an elected member of the American Law Institute. I have testified before committees of the United States Senate, the United States House of Representatives, as well as several state legislatures. My testimony today represents my own views, and is not intended to represent the views of my employer, the University of St. Thomas School of Law, or any other organization or person.

As the charge to this commission clearly acknowledges, surrogacy presents complex moral and legal considerations. The practice of surrogacy impacts the children brought into being through these processes, the women whose bodies carry these children, and the couple or person who initiate the processes in the quest for perfect biologically-related children. Our communal response to this practice will reflect the way our society thinks about childbearing, parentage, and the role of consent and bargaining in creation of human life and the use of women's bodies.

In order for this Commission to arrive at a reasoned recommendation on this complex issue it is important to be as clear as possible about the current practice of surrogacy in Minnesota, the state law governing that practice, as well as the nature, extent and legal status of surrogacy more generally.

Surrogate Births Are Exceedingly Rare in Minnesota

At the outset, I would note that although legislation has been proposed regarding surrogacy since 1988, the total number of Minnesota children born through either gestational or traditional surrogacy is quite small.

During the Commission meeting on July 19 the Minnesota Office of Vital Records provided a report showing that only 75 birth certificates issued from 2011 to July

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19, 2016 where a pre-birth gestational agreement court order was present. The report also provides a general estimate of 100 post-birth replacement of birth certificates annually due to surrogacy-related court orders, but no dates or documentation was provided to support that estimate.¹ Comparing this data with the statewide number of births reported by the Minnesota Center for Health Statistics, it appears that surrogate births are exceedingly rare in the state. Even accepting an annual estimate of 100 replacement birth certificates from 2011 to present, these births plus the surrogate births that can be confirmed through a pre-birth order comprise less than one-fifth of one percent of all births in any given year. Limiting the calculation to the documented cases of pre-birth surrogate orders, the percentage of surrogate births becomes vanishingly small.

	Total live births in MN	Total pre-birth surrogate births	Estimated replacement birth certificates due to surrogacy ⁵
2011 (partial surrogacy data year)	68,416	9	100
2012	68,783	12	100
2013	69,183	17	100
2014	69,916	22	100
2015	69,062 ²	12	100
2016 (through July 19)		3	50

Medical advances in addressing infertility

While there is no official data on the reasons surrogacy is used to give birth to children born in Minnesota, testimony before this Commission has established that a common reason for couples to enter into surrogacy arrangements is the infertility of one or both partners. Researchers at the U.S. Centers for Disease Control estimate that

¹ “The Registration and Amendments supervisor estimates that the Office of Vital Records receives about 100 surrogacy-related court orders per year.” Minnesota Dept. of Health, Vital Record Data on Surrogacies (submitted to the MN Legislative Commission on Surrogacy, July 19, 2016) available at http://www.lcc.leg.mn/lcs/meetings/07192016/Vital_Record_Data_on_Surrogacies.pdf.

² The Minnesota Center for Health Statistics has not yet posted the 2015 data, but has reported it to the National Center for Health Statistics. The national report is available at http://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_03.pdf.

infertility afflicts approximately six percent of married women ages 15 to 45 and between one and two percent of all sexually experienced men younger than age 45.³ While the exact cause of and treatment for infertility varies widely among individuals, surrogacy is seen as one of the few ways of addressing cases involving women who are born without or have had their uterus removed due to cancer. Recent developments suggest this may change. In 2014 nine Swedish women successfully underwent uterus transplants,⁴ and in February of this year a similar procedure was successful in the U.S.⁵ Equally encouraging are reports from the University of Michigan this May announcing successful tests sustaining five premature infants using an artificial placenta.⁶ And, while much more ethically troubling due to the intentional destruction of human embryos during its development, researchers at Cambridge University have announced advances toward the creation of a fully artificial womb capable of gestating children from their earliest development as embryos.⁷

None of this is to suggest that these experimental procedures and devices foreclose the issues before this Commission, but their existence suggests that it may soon be possible to help more infertile couples without entering the moral thicket of condoning the creation of a marketplace for children by conversion of women's bodies into means of commercial production.

Current law regarding creation of parent-child relationship

Toward the conclusion of the Commission's meeting on August 16, 2016 there was some confusion about the current law governing recognition of the parent-child relationship in Minnesota. Unlike paternity, the law on maternity is easily summarized. The legal relationship of mother-child is created by the act of giving birth.⁸ MN Stat.

³ Centers for Disease Control, Infertility FAQs at <http://www.cdc.gov/reproductivehealth/infertility/index.htm>.

⁴ *Nine Swedish Women Undergo Uterus Transplants* at <http://www.cbsnews.com/news/nine-swedish-women-undergo-uterus-transplants/>.

⁵ Dennis Grady, *First Uterus Transplant Bolsters Pregnancy Hopes of Many* (New York Times, Feb. 26, 2016) at http://www.nytimes.com/2016/02/26/health/uterus-transplant-cleveland-clinic.html?_r=1

⁶ *Artificial Placenta Replicates Womb for Extremely Premature Infants* (Medgadget, May 2, 2016) at <http://www.medgadget.com/2016/05/artificial-placenta-replicates-womb-for-extremely-premature-infants.html>.

⁷ Sarah Knapton, *'Artificial womb' breakthrough sparks row over how long human embryos should be kept in lab* (Telegraph May 4, 2016) at <http://www.telegraph.co.uk/science/2016/05/04/artificial-womb-breakthrough-sparks-row-over-how-long-human-embr/>.

⁸ MN Stat. 257.54 provides “[t]he parent and child relationship between a child and: (a)

257.54 provides “[t]he parent and child relationship between a child and: (a) the biological mother may be established **by proof of her having given birth to the child**, or under sections 257.51 to 257.74 [court actions to determine parentage] or 257.75 [written recognition of parentage] . . . ” (emphasis added).

The law regarding paternity is somewhat more complex. For the Commission’s purposes it is probably sufficient to note generally that a man is presumed to be a child’s biological and legal father if he is married to the birth mother or was married to her within 280 days prior to the child’s birth.⁹ This presumption applies even in the case of artificial insemination where the sperm of a donor is used.¹⁰ There are a variety of ways

the biological mother may be established **by proof of her having given birth to the child**, or under sections 257.51 to 257.74 [relating to court actions to determine parentage] or 257.75 [written declaration of recognition of parentage] . . . ” (emphasis added). See also MN Stat. 524.2-120 subd. 2 which provides, “[a] parent-child relationship exists between a child of assisted reproduction and the child's birth mother.” This section relates to the determination of parentage for probate and intestate succession.

⁹ MN Stat. 257.55 subd. 1 provides:

A man is presumed to be the biological father of a child if:

(a) he and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court.

¹⁰ MN Stat. 257.56 provides:

Subdivision 1. Husband treated as biological father. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the biological father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The consent must be retained by the physician for at least four years after the confirmation of a pregnancy that occurs during the process of artificial insemination.

All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

§ Subd. 2. Donor not treated as biological father. The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the biological father of a child thereby conceived.

the presumption can be rebutted, but in the context of surrogacy arrangements the most common method would be for the husband of the birth mother to join in a written recognition of parentage by another man under MN Stat. 257.75 subd. 1.¹¹

American Law Regarding Surrogacy

Senate Counsel Kathy Pontius, provided a helpful overview on legislative activity and court cases on surrogacy in Minnesota at the June 28, 2016 meeting of the commission. Her written submission notes the variety of approaches taken to the issue in Minnesota legislative proposals, ranging from outright prohibition to recognition and limited regulation of the practice.¹² This range of approaches is reflected in the current laws of other states.

Currently four states prohibit surrogacy – three by statute¹³ and one by judicial decision.¹⁴ Fourteen states permit some forms of surrogacy by statute¹⁵ – but their provisions vary widely. Some states permit only altruistic surrogacy¹⁶ while others accept commercial surrogacy.¹⁷ Some allow only gestational surrogacy,¹⁸ while others allow

¹¹ “A man who is a presumed father under section 257.55, subdivision 1, paragraph (a), may join in a recognition of parentage that recognizes that another man is the child's biological father.” MN Stat. 257.75 subd. 1.

¹² Kathy Pontius, Surrogacy Commission June 28, 2016 Presentation Notes: Overview of Court Cases and Legislative Activity in Minnesota; Key Policy Issues, available at http://www.lcc.leg.mn/lcs/meetings/06282016/surrogacy_commission_pontius.pdf.

¹³ Indiana (Ind. Code § 31-20-1-1), Michigan (Surrogate Parenting Act (Act 199 of 1988)), and New York (NY Dom. Rel. Law § 122).

¹⁴ *Matter of Baby M*, 537 A.2d 1227 (NJ 1988) (surrogacy contracts violate public policy).

¹⁵ Ala. Code § 26-17-801 (1984); Cal. Fam. Code §§ 7960-7962 (2013); Colo. Rev. Stat. § 19-4-106 (1987); Del. Code 13 § 8-807 (2013); Fla. Stat. §§ 63.213 (2003), 742.15 (2015); Ill. Comp. Stat. § 750-47 (2005); Me. Rev. Stat. 19-A §1931, 1932 (effective July 2016); Nev. Rev. Stat. §§ 126.500-126.810 (2013); N.H. Rev. Stat. § 168-B (2014); Tex. Code § 160 (2001); Utah Code §§ 78B-15-801, 78B-15-809 (2008); Va. Code §§ 20-156–20-165 (1991); Wash. Rev. Code §§ 26.26.210–26.26.260 (1989).

¹⁶ See e.g. Va. Code Ann. §§ 20-156 to 20-165.

¹⁷ Comprehensive regulation for surrogacy contracts, including requirements for both intended parents and gestational mothers, are permitted and registered with the IL Dep't of Public Health under 750 ILCS §§ 47/1 – 47/75.

¹⁸ See e.g. N.Dak. CC § 14-18-08 allows full surrogacy and N.Dak. CC § 14-18-05 bans traditional surrogacy.

both gestational and traditional surrogacy.¹⁹ Some require judicial approval prior to birth of the child,²⁰ while others are silent of pre-birth approval.

The remaining thirty-two states including Minnesota have yet to address surrogacy statutorily, but some, like Minnesota, have limited case law on the issue.

Internationally the law related to surrogacy is even more divided – with a number of developing nations banning the practice to protect their citizens from exploitative gestational tourism.²¹

Language of family or language of commerce

The broad range of legal responses to the practice of surrogacy reflects an inherent dilemma with the practice. Is it most properly characterized as a new method of family formation as many of the witnesses before this Commission have claimed or is it more properly characterized a market transaction with the buyer and seller brought together by a broker or agency? Perhaps the process is even better captured by the language of employment law given the detailed regulation of conduct found in the typical surrogacy contract.²²

In trying to understand how best to frame the legal issues arising from surrogacy it is important to look at the actions involved in the typical surrogacy arrangement. For purposes of neutrality during I want to refrain from using the language of parent, family, child, and examine the transactions using more neutral language. Therefor I will refer to the person or couple who decide to use surrogacy as the “initiating party,” and the woman who agrees to facilitate the transaction through impregnation or implantation will be called “gestational party.” The lawyer or doctor actively involved in structuring the arrangement between the initiating and gestational parties will be call “broker.” What is typically called a “child” in these discussions will be called either “the desired result” if a healthy child is born, “a problematic result” if live birth occurs but the child’s health is compromised in some manner, and “an unsuccessful result” is there is miscarriage or spontaneous abortion.

¹⁹ Va. Code Ann. §§ 20-156 to 20-165.

²⁰ Tex. Fam. Code Ch. 160, from § 160-751 to § 160-763 (Subchapter I – Gestational Agreements). Added by Acts 2003, 78th Leg., ch. 457, Sec. 2, eff. Sept. 1, 2003.

²¹ For a thorough discussion of the international law norms and foreign law on this topic, see David M. Smolin, *Surrogacy as the Sale of Children: Applying Lessons Learned from Adoption to the Regulation of the Surrogacy Industry’s Global Marketing of Children*, 43 Pepp. L. Rev. 265 (2016), available at http://pepperdinelawreview.com/wp-content/uploads/2016/02/Smolin_Final-no-ICR.pdf.

²² See Restatement of Employment Law and Restatement 2nd of Agency.

- First, there is the decision by the initiating couple to enter into an agreement with a gestational party for a desired result, with the expectation that the desired result will be transferred to initiating party upon completion of the agreement.
- Second, there is often (and in fact ACOG recommends) the initiating party seeks out the services of a broker to identify and negotiate a contract with the gestational party for the desired result.
- Third, a contract is entered into between the initiating and gestational parties.
- Fourth, the gestational party submits to the necessary entry into the intimacy of her body for impregnation or implantation.
- Fifth, the gestation party undergoes the pregnancy with the concomitant growth of the result.
- At the conclusion of the pregnancy, if resulting in the desired results, there will be a transfer of the result to the initiating party.
 - If the pregnancy results in a problematic result, the contract may deal with consequences or the parties may have to deal with this outcome through negotiations or ultimately litigation.
 - If the pregnancy is unsuccessful, the contract typically addresses this.

This intimate use of another person's body for the purposes of bringing into being another human person (traditional surrogacy) or for allowing the development of another human person from its embryonic state to birth (gestational surrogacy) is unique and not the stuff of ordinary employment or service agreements.

To best understand the terms of such contracts, I am attaching a copy of a legal form that is available for lawyers to use as a template for such agreements. In it you will find provisions requiring a preimplantation physical and psychological evaluation; describing the initiating party or parties' right to determine and participate in the medical care of the gestating party absent life-threatening circumstances; creating a right in the initiating party to direct the surrogate to undergo abortion in particular circumstances; waiving any objections to consulting professionals possible conflict of interests related to the contract; medical risks and possible death of the surrogate; and so on. Most of these provisions are the direct result of litigation from earlier cases of surrogacy, and drafted in such a way as to favor the initiating party.

I would like to conclude my testimony by briefly reviewing the attached contract and responding to any questions members of the Commission might have.



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Sample TS Contract

PLEASE NOTE: The following contract is for reference only and is simply an example of the way a surrogacy contract might be worded. We are providing this document to assist you in drafting your own agreement. This contract is not intended to replace the advice of your surrogacy attorney. Please consult an attorney who is familiar with the surrogacy laws in your state for assistance in drafting your surrogacy agreement.

(All About Surrogacy accepts no liability for providing this document.)

SURROGATE AGREEMENT (Traditional Surrogate)

This Surrogate Agreement (hereinafter referred to as "Agreement") is entered by and between _____ (hereinafter referred to as "Surrogate") and her husband _____ (hereinafter, "Husband"), on the one hand, and _____ (hereinafter referred to as "Intended Mother") and _____ (hereinafter referred to as "Intended Father"), on the other hand. Surrogate, Husband, Intended Mother, and Intended Father are collectively referred to in this Agreement as the "Parties."

RECITALS

- A. Intended Mother and Intended Father (hereinafter, "Intended Parents") are both over the age of 21, are a married couple living together as husband and wife, and are desirous to enter into this Agreement for the purpose of parenting a child or children through the services of Surrogate (as used herein, the term "Child" shall refer to all children born through the services of Surrogate pursuant to this Agreement).
- B. Surrogate and her Husband are over the age of 21, are currently residents of the State of _____, are a married couple living together as husband and wife, and are desirous to enter into this Agreement.
- C. Intended Mother is incapable of becoming pregnant or carrying a pregnancy to term, and/or has been informed by a physician that becoming pregnant or carrying a pregnancy to term would be medically inadvisable and dangerous to herself and/or to any child she may carry.
- D. The Surrogate warrants, based on her information and belief, that Surrogate is capable of carrying and bearing healthy, normal children, and further warrants that Surrogate has given birth to at least one child, born healthy.
- E. Intended Parents desire that the Surrogate be artificially inseminated with the fresh/and or frozen sperm of the intended father, so that Surrogate may become pregnant, carry a Child and give birth to a Child for Intended Parents.
- F. Intended Parents desire and intend that any Child born pursuant to this Agreement shall be morally, ethically, legally, contractually and otherwise the Child of the Intended Parents for all purposes, and the Intended Parents shall assume all legal and parental rights and responsibilities for the Child.
- G. Surrogate and Husband desire and intend that any Child born pursuant to this Agreement shall be morally, ethically, legally, contractually and otherwise the Child of the Intended Parents for all purposes, that the Intended Parents shall assume all legal and parental rights and responsibilities for the Child, and that Surrogate and Husband do not desire nor intend to assume a parental or any other type of relationship with the Child. Surrogate and Husband specifically relinquish

any and all rights, responsibilities, and claims with respect to a Child born pursuant to this Agreement, and specifically agree that it is in the best interest of the Child that the Child be raised by the Intended Parents and be the Child of the Intended Parents for all purposes, without interference by Surrogate and/or Husband.

H. The Parties to this Agreement represent and warrant that all representations, whether oral or written, made to any professional, person, entity or party, with respect to their medical history and condition, the surrogacy arrangement, and any and all matters contained in this Agreement are true and correct to the best of their knowledge, and that they have not knowingly falsified or omitted any material information concerning these matters.

I. The Parties to this Agreement represent and warrant that the decision to enter into this Agreement is a fully informed decision, made after careful and unemotional reflection, that they have come forward voluntarily to enter into this Agreement free of any economic or emotional duress, that the consent or permission of no other person is necessary for the performance of this Agreement, and that no Party has any reason to believe that any other Party did not freely and voluntarily execute this Agreement.

J. The Parties warrant that they understand that the medical procedures contemplated by this Agreement represent new, unsettled and uncharted areas of the law. Therefore, no warranties have been and/or can be made to the Parties as to the ultimate cost, liability or obligation of the Parties that may result from the judicial processes with respect to the matters set forth in this Agreement.

K. The Surrogate and her Husband understand that the Intended Parents have waited many years and are now expending significant time and financial resources to bring a child into their home, and are now relying greatly on the Surrogate to carry their Child. It is also understood by the Parties that grave, severe and intense emotional distress, humiliation and mental anguish may occur to either of the Parties as a result of an uncured or incurable material breach by the other Party, and the breaching Party may be held liable for such emotional distress, humiliation and mental anguish as well as other legal and equitable remedies, under one or more legal theories.

L. While the Parties are entering into this Agreement with the intention of being fully bound by its terms, they have been informed by their respective attorneys that the legislature or Courts may declare that this Agreement is void as against public policy, in whole or in part, or held unenforceable in whole or in part.

M. The Parties warrant that they understand that if any aspect or provision of this Agreement violates any present or future non-waivable civil or constitutional right of any Party to this Agreement, or any present or future statute, law, ordinance or regulation, that aspect or provision may not be enforced. However, the Parties further warrant and agree that any said aspect or provision shall be curtailed and limited only to the extent necessary to bring it in compliance with the law.

N. It is expressly understood that this Agreement in no way constitutes payment for genetic material, for a child, or for relinquishment of a child.

NOW THEREFORE, in consideration of the mutual promises contained herein and with the intentions being fully bound hereby, the Parties agree as set forth herein:

1. PURPOSE AND INTENT OF PARTIES

The purpose and intent of this Agreement is to provide a means for the Intended Parents to become the parents of a Child, which is carried and birthed by the Surrogate, after the Surrogate is artificially inseminated with the sperm of the intended father (the "artificial insemination procedure"). It is expressly understood and intended that the Surrogate and her Husband will not be the lawful parents of and/or raise any Child conceived through the artificial insemination procedure, and they each expressly state that they intend to and shall relinquish any parental rights, custody and/or control they may have with respect to any Child conceived and born pursuant to the artificial procedure and/or this Agreement, and to cooperate in any legal proceeding to declare a parental relationship between the Child and the Intended Parents. It is the Intended Parents' specific and express intention to be the lawful parents of and raise any Child conceived through the artificial insemination procedure contemplated herein.

2. REPRESENTATIONS AND WARRANTIES

a. The Intended Parents warrant that all information provided to any professional, person, entity or party, either written or oral, with respect to their medical and mental conditions, all social and genetic information and family histories, the surrogacy arrangement, and/or any and all matters contained in this Agreement are true and correct to the best of their knowledge, and that they have not knowingly falsified or omitted any material information concerning these matters.

The Parties further agree that any knowing falsification or omission will constitute a material breach of this Agreement, to which all legal remedies, whether in contract or personal injury, apply.

b. Surrogate and her Husband warrant that all information provided to any professional, person, entity or party, either written or oral, with respect to their medical and mental conditions, all social and genetic information and family histories, the surrogacy arrangement, and/or any and all matters contained in this Agreement are true and correct to the best of their knowledge, and that they have not knowingly falsified or omitted any material information concerning these matters.

The Parties further agree that any knowing falsification or omission will constitute a material breach of this Agreement, to which all legal remedies, whether in contract or personal injury, apply.

c. The Parties warrant that they are comfortable with and knowledgeable about the implications and issues of conceiving a child through surrogacy.

d. The Parties each warrant that the decision to enter into this Agreement is a fully informed decision, made after careful and unemotional reflection, that each Party has come forward voluntarily to enter into this Agreement free of any economic or emotional duress, and that the consent or permission of no other person is necessary for the performance of this Agreement.

3. NO WARRANTIES OR GUARANTIES BY PROFESSIONALS

The Parties understand and agree that neither the attorneys representing any of the Parties hereto, nor any other professionals whose services have been utilized or are contemplated with respect to this Agreement, including but not limited to medical and psychological personnel, guarantee or warrant any of the following:

a. that any of the representations made by any of the Parties is true and correct;

b. that any of the Parties will comply with the terms and conditions of this Agreement;

c. that the Surrogate will in fact become pregnant and carry the Child to term;

d. that the Surrogate has and/or obtains medical insurance that will cover any or all of the procedures contemplated by this Agreement, the pregnancy, and/or any complications arising from the conduct contemplated by this Agreement;

e. that adequate insurance is in place and/or is obtained to cover the Child; or

f. that the Child, if conceived, will be physically and mentally healthy and free of congenital defects.

4. CUSTODY AND PARENTAL RIGHTS

a. The Intended Parents are entering into this Agreement with the Surrogate and her Husband whereby Surrogate will undergo an artificial insemination procedure, using the sperm of the intended father, so that a Child may be taken into the home of the Intended Parents as their own lawful Child. The artificial insemination procedure shall be performed by a licensed and qualified physician selected by the Surrogate and approved by the Intended Parents (hereinafter, "Treating Physician").

b. Except as otherwise specifically stated herein in this Agreement, the Intended Parents shall take immediate, full and absolute custody of the Child upon birth, notwithstanding any congenital, physical or mental abnormality of the Child, and all decisions concerning the Child's health, in utero and after delivery, shall be made by Intended Parents. In the absence of a material breach on the part of the Surrogate, the Surrogate shall not be held liable for support, custody, or any other liability relating to the Child born pursuant to this Agreement.

c. The Surrogate and her Husband shall immediately relinquish full custody of the Child to the Intended Parents upon the birth of the Child. In addition, it is the specific intent of each and every Party to this Agreement that the Surrogate and her Husband shall not have any legal rights toward the Child and that neither is the legal parent of any Child conceived and born pursuant to the conduct contemplated by this Agreement. Any Child born pursuant to the conduct contemplated by this Agreement shall be morally, ethically, legally, contractually and otherwise the Child of the Intended Parents for all purposes. The Surrogate and her Husband agree to sign all necessary affidavits, consents and/or waivers, and to attend all necessary court hearings, to establish the Intended Parents' parentage, either prior to or after the Child's birth.

d. Any Child conceived and born as a result of the conduct contemplated by this Agreement shall have all testamentary and inheritance rights from the Intended Parents, and each of them, as the Intended Parents' natural Child, and the Child

shall have no testamentary or inheritance rights from the Surrogate and/or her Husband. The Intended Parents, and each of them, shall have testamentary and inheritance rights from the Child as parents. Neither the Surrogate nor her Husband shall have any testamentary or inheritance rights from the Child.

e. The Parties independently take full legal responsibility for the completion and adequacy (except in the event of professional malpractice by any healthcare provider) of any and all physical and/or psychological exams, screenings and/or testing.

5. MEDICAL AND PSYCHOLOGICAL EVALUATIONS AND SCREENINGS

a. Surrogate and her Husband agree to undergo and/or have undergone psychological evaluation and/or testing by a psychologist and/or psychotherapist designated by the Treating Physician, which evaluation and testing shall be paid for by Intended Parents. Said evaluation and/or testing shall be conducted prior to any insemination procedure contemplated herein. In addition, the Surrogate and her Husband shall sign an Authorization for Release of Information, authorizing the Intended Parents, and the Treating Physician, to review any records or information concerning the evaluation and the results of any testing, to speak with the psychologist and/or psychotherapist concerning the evaluation and testing, and to obtain the psychologist's and/or psychotherapist's professional opinion concerning the suitability of any party for participation in the surrogacy process. Intended Parents agree to pay, for visits of up to six visits for psychological counseling of Surrogate, as requested by Surrogate, the Treating Physician and/or the psychologist/psychotherapist designated by the Treating Physician, through two months after the birth of the Child. Surrogate further agrees to undergo said reasonable continuing psychological counseling, if requested by the Treating Physician and/or the psychologist/psychotherapist designated by the Treating Physician, until two months after the birth of the Child. Said counseling shall be paid by the Intended Parents.

b. Intended Parents agree if requested to undergo and/or have previously undergone psychological evaluation and/or testing by a psychologist and/or psychotherapist designated by the Treating Physician. Said evaluation and/or testing shall be conducted prior to any insemination procedure contemplated herein. The Intended Parents further agree to undergo reasonable continuing psychological counseling, if requested by the Treating Physician, and/or the psychologist/psychotherapist designated by the Treating Physician, during the term of this Agreement, and Intended Parents shall be responsible for said costs.

c. Surrogate, her Husband and Intended Parents have undergone, or agree to undergo, physical examinations under the direction of, and/or to the extent determined by, the Treating Physician, to determine whether the physical health and well-being of the Parties are satisfactory. The examinations shall take place prior to any insemination procedure contemplated herein, and shall be paid for by Intended Parents. Said physical examinations may include testing for venereal disease (including HIV and AIDS) in order to protect the health of the Surrogate and Child. The Surrogate, her Husband and the Intended Parents agree to undergo any further medical testing that the Treating Physician deems necessary, while this Agreement is in effect and continuing until two months after the birth of the Child. All costs of Surrogate and Husband's physical examinations shall be paid by the Intended Parents.

d. The Treating Physician, in his or her sole discretion, may refer the Parties to another healthcare practitioner, hospital or laboratory for a specific procedure or test. The Parties' signature on this Agreement constitutes each Party's authorization to permit each other Party to have access to medical information and records which are related to the procedures contemplated herein. The Parties agree to execute separate releases of such information if requested by any other Party to this Agreement.

6. ARTIFICIAL INSEMINATION PROCEDURE

The Surrogate agrees to undergo an artificial insemination procedure wherein the Surrogate shall be artificially inseminated with the sperm of the intended father. The procedure shall take place according to the times and procedures determined by the Treating Physician. Notwithstanding and subject to the termination provision in Paragraph 26 herein, the Parties agree that it is their present intention that the Surrogate will undergo two (2) artificial insemination procedures per month, for six (6) months in an effort to achieve a positive pregnancy result. However, either party shall have the absolute right not to undergo any artificial insemination attempts after 3 insemination cycles have been completed or attempted for a serious and compelling personal or family reason, and to terminate this agreement without payment or penalty of any kind, other than what has already been received or is due, subject to the terms of this agreement as long as the surrogate is not pregnant. The terminating party shall notify the other party by letter postmarked one week prior to the scheduled date for the shipment of semen for any such subsequent cycle.

7. ASSUMPTION OF MEDICAL RISKS AND RELEASE

a. Surrogate and her Husband acknowledge that the medical procedures have been thoroughly explained to them by a physician, and that they have been advised of the psychological and medical risks, including death, which may result from the conduct contemplated by this Agreement. Surrogate further acknowledges that she has signed an informed consent regarding the possible medical risks associated with the medical procedures and the accompanying medications to be administered to Surrogate. Surrogate and Husband understand and agree that it is their responsibility to ask the Physician to explain the medical and psychological risks of the various medical and psychological procedures.

b. Except as otherwise specifically provided in this Agreement, the Surrogate and her Husband agree to assume all medical, financial, and psychological risks and to release, the Intended Parents, their attorney(s), the Treating Physician, other professionals contemplated herein and/or involved in any aspect of the surrogacy arrangement, and each said person's agents and employees, from any legal liability except professional malpractice (malfeasance or negligence).

NOTICE: THIS AGREEMENT LIMITS THE INTENDED PARENTS' RESPONSIBILITY TO THE SURROGATE AND HER FAMILY SHOULD THE SURROGATE DIE OR BECOME DISABLED OR BEDRIDDEN OR SUFFER ANY PHYSICAL OR MENTAL AILMENT AS A RESULT OF ANY OF THE CONDUCT, INCLUDING THE PREGNANCY AND DELIVERY, CONTEMPLATED BY THIS AGREEMENT. THE INTENDED PARENTS' RESPONSIBILITY IS SPECIFICALLY LIMITED TO THOSE AMOUNTS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND IN EXHIBIT "A" OF THIS AGREEMENT.

8. SURROGATE'S CONDUCT

a. The Surrogate agrees to comply with all medical instructions given to her by the Treating Physician and/or her obstetrician and/or any treating perinatologist, including any abstinence from sexual intercourse for certain periods and further testing which either the Treating Physician or her obstetrician may deem necessary. The Surrogate further agrees that she will not engage, and has not engaged, in any activity in which there is a possibility of semen being introduced into her body such that the possibility of a pregnancy other than that contemplated by this Agreement may occur. All Parties agree that from the time of the first medical examination pursuant to Paragraph 5c, above, through to the time of delivery of the Child, or such further time as directed by the Treating Physician, they have abstained and will continue to abstain from sexual activity, including intercourse with any person that has not been tested by or at the direction of the Treating Physician, that would allow the transmission of sexually transmitted diseases (including AIDS), and shall remain monogamous. In the event Surrogate becomes pregnant by any means other than that contemplated by this Agreement through any fault or negligence of her own, said pregnancy shall constitute an incurable breach of this Agreement, to which all legal remedies apply.

b. The Surrogate agrees to adhere to all medical instructions given to her by the Treating Physician, as well as her obstetrician and any treating perinatologist. The Surrogate also agrees to follow a prenatal medical examination schedule as prescribed by her obstetrician, as well as to adhere to all requirements regarding the taking of medicine and vitamins prescribed by the Treating Physician and/or her obstetrician and to attend on time all scheduled doctors' appointments. The Surrogate further agrees to submit to any medical test or procedure deemed necessary or advisable by her obstetrician and/or the Treating Physician including, but not limited to, saline ultrasound, cerclage placement, or high resolution ultrasound, after pregnancy is confirmed to detect any potential genetic or congenital defects in the fetus(es). The Surrogate also agrees to undergo one or more amniocentesis, chorionic villus sampling, or other genetic testing procedures upon the request of the Intended Parents, if deemed medically necessary by her obstetrician or treating physician. Surrogate further agrees that Intended Parents, may select the physician to perform said procedure(s), even if the physician is other than her treating obstetrician and/or perinatologist. The Physician's instructions may also include, but are not limited to, frequent vaginal ultrasound procedures, two to three days of bed rest following the artificial insemination procedure, other more extensive bed rest, abstinence from sexual intercourse, and self administration of medication orally and/or by injection for prolonged periods. The Surrogate further agrees to use all best efforts to carry the pregnancy of the Child to full term. Except as otherwise stated herein, failure or refusal of the Surrogate to comply with all or any of the provisions of this paragraph shall constitute a material breach of this Agreement by Surrogate.

c. In the event a medical opinion is determinant of any action or requirement set forth herein, it is agreed that any party may seek a second medical opinion by a physician selected by the Party who disagrees with the first medical opinion. Each party agrees to fully cooperate with the facilitation of the second medical opinion, including the completion of any requested examinations or testing. In the event the second opinion fails to resolve the presenting medical issue, the Parties agree that the decision shall be made by a third physician, mutually selected by the said first two physicians, and the Parties agree to abide by that third opinion (in the event a third physician is not mutually selected, the Parties agree that the selection of a third physician shall be made by a mediator).

d. The Surrogate agrees not to smoke cigarettes, marijuana or other substances, or drink alcoholic beverages from the time of the commencement of cycle medications through the end of the pregnancy or negative pregnancy test results, or such further time as instructed by the Treating Physician and/or the Surrogate's obstetrician or perinatologist. The Surrogate also agrees to limit her consumption of caffeinated beverages and products containing caffeine in accordance

with the Treating Physician's instructions. The Surrogate further agrees that, from the time of her first medical examination pursuant to Paragraph 5c, above, she has not and will not receive body piercing, acupuncture or tattooing, or use or consume any illegal drugs, continuing through the end of her pregnancy and while providing breast milk, if at all. During the term of this Agreement, the Surrogate agrees to submit to drug, alcohol, nicotine testing, and/or testing for sexually transmitted and/or infectious diseases including HIV and AIDS, as may be reasonably requested by the Intended Parents and paid for by the Intended Parents, and further agrees to immediately upon request execute and deliver a written consent form to administer such testing as may be requested by the testing clinic or lab. The Surrogate further agrees that, from the time of her first medical examination pursuant to Paragraph 5c, above, through the end of her pregnancy, she will not engage in any activity or procedure which requires the breaking of skin or drawing of blood, including elective and/or cosmetic surgery, without the express consent of the Treating Physician or her obstetrician and/or unless by a medical professional in the event of a medical emergency. The Surrogate agrees not to receive any electro stimulation during and through the end of her pregnancy. She may receive chiropractic treatment or massage therapy by a provider licensed to treat pregnant women, as long as her OB or treating physician have given written consent. The Surrogate also agrees not to use any prescription, nonprescription, homeopathic or herbal medication, undergo any medical procedure, during and through the end of her pregnancy (or such other time as instructed by the Treating Physician and/or obstetrician), without the express consent of the Treating Physician, or the Surrogate's obstetrician or perinatologist. The Surrogate further agrees to comply with the instructions of the Treating Physician and the obstetrician with respect to the use of hair sprays, hair dyes, and permanent solutions, and agrees that she shall not remain in close proximity to cat litter, cleansers, oven cleaners, pesticides, second hand smoke, or other aerosol sprays during and through the end of her pregnancy.

e. The Surrogate agrees to take prenatal vitamins and to maintain a healthy diet as generally recommended by obstetricians for pregnant women (which can include the avoidance of certain foods and beverages), and not to participate in dangerous sports or hazardous activities, strenuous physical activity, nor to knowingly allow herself to be exposed to radiation, toxic chemicals or communicable diseases, during the term of this Agreement, and agrees to follow all advisements by the Treating Physician and/or her obstetrician concerning said matters.

f. Except as stated herein, Surrogate may select her obstetrician for her prenatal care and delivery, and the hospital where the delivery shall take place, provided that the obstetrician and hospital are approved by the Intended Parents. Said selections shall be made and designated as soon as reasonably possible after the execution of this Agreement. In the event of a multiple gestation and/or should Surrogate's obstetrician or the Treating Physician determine that the pregnancy is "high risk," Surrogate agrees to change obstetricians to an obstetrician selected by Intended Parents, agrees to be treated by a perinatologist as selected by Intended Parents, and to change hospitals where the delivery shall take place to a hospital selected by Intended Parents and within a reasonable distance from Surrogate's residence. Intended Parents will pay the extra costs, if any, associated with such changes.

g. Surrogate further agrees that Intended Parents shall have the right to attend all doctor visits including ultrasound examinations of any kind, with due respect for the Surrogate's privacy and with the approval of the Surrogate's obstetrician or the Treating Physician. Surrogate agrees to inform Intended Parents at least every other week of the progress of the pregnancy. The Surrogate hereby waives her doctor-patient privilege, and agrees to sign any release form required to allow Intended Parents to communicate with all treating or attending medical personnel, and review medical records pertaining to Surrogate's pregnancy or health.

h. Surrogate agrees that she will notify Intended Parents upon the onset of labor and that Intended Parents may be present in the delivery room during delivery of the Child, with due respect for the Surrogate's privacy and with the approval of the Surrogate's obstetrician. Surrogate shall sign any consent forms necessary to facilitate this result. Surrogate agrees to use all reasonable efforts to deliver the Child in the selected and designated hospital as set forth herein, under medical supervision. Surrogate agrees to deliver the Child by caesarean section, if her obstetrician, Treating Physician, or attending physician so advises.

9. ABORTION, MISCARRIAGE, AND SELECTIVE TERMINATION

a. The Surrogate agrees that she will not abort the Child once conceived, or selectively reduce the number of fetuses, except as stated herein. If in the opinion of the Treating Physician or her obstetrician there is a risk of serious harm to the physical health to the Surrogate (meaning that continuation of the pregnancy presents particular medical complications beyond those generally presented in the course of a normal non-complicated pregnancy), the decision to abort or not to abort is to be made by the Surrogate. In the event there is a risk that the Child will be physically or physiologically abnormal, in a manner that could seriously affect the child's quality of life, the decision to abort or not to abort is to be made by the Intended Parents, and the Surrogate hereby agrees to abort or not to abort in accordance with the Intended Parents' decision subject to applicable laws (so long as it is done before 22 weeks gestation). Prior to making any decision whether or not to submit to have an abortion, the Surrogate shall consult with the Intended Parents, fully informing them of any and all known medical information related to the issue, and shall allow them to participate in the

decision and have the opportunity to consult with the Surrogate's obstetrician. If requested by the Intended Parents, the Surrogate further agrees to submit to a second opinion by a physician selected by the Intended Parents. In the event of a medical emergency, whereby the Intended Parents cannot reasonably be contacted or located to make said abortion decision, the decision on whether or not to abort shall be made by the attending physician, and the Surrogate again hereby agrees to abort or not to abort in accordance with that decision.

b. In the event the Surrogate chooses to exercise her right to abort, or not abort, in a manner inconsistent with the provisions of Paragraph 9a, above, it is understood that such action shall be considered to be a material breach of contract by the Surrogate, resulting in serious legal repercussions including but not limited to all remedies available to the Intended Parents in law and in equity, including the Surrogate's liability for any added cost associated with the care of the Child, and also including but not limited to the cost of medical and other care of a Child with special needs.

NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY, ALL PARTIES UNDERSTAND THAT A PREGNANT WOMAN MAY HAVE THE ABSOLUTE RIGHT TO ABORT OR NOT ABORT ANY FETUS SHE IS CARRYING. ANY PROMISE TO THE CONTRARY MAY BE UNENFORCEABLE.

c. In the event of a miscarriage/spontaneous abortion, or abortion at the insistence of the Intended Parents as described herein (or by the attending physician as described herein), no funds paid by the Intended Parents to the Surrogate shall be returned. Intended Parents shall still remain liable for such costs incurred to date by the Surrogate pursuant to the terms of this Agreement and such fees owing to the Surrogate up to such time, and such medical costs arising from or reasonably relating to any such miscarriage or abortion as described in this Paragraph and pursuant to this Agreement which are not covered by the medical insurance purchased by Intended Parents pursuant to Paragraph 11 herein. Notwithstanding any other provision contained herein, should the Parties desire another transfer procedure after any abortion or miscarriage, this Agreement shall remain in full force and effect and financial considerations between the Intended Parents and the Surrogate shall begin anew pursuant to Exhibit "A" hereto.

d. In the event the artificial insemination procedure results in more than two (2) fetuses, the Parties agree to selective termination for the purpose of reducing the number of fetuses to two (2) or less fetuses, as determined by the Intended Parents in consultation with the Treating Physician and/or Surrogate's obstetrician, provided that said reduction will not seriously endanger the health of the Surrogate (meaning likely to result in a significant permanent injury or life threatening) or the remaining fetuses, and/or unless otherwise agreed among the Parties in writing. It is expressly agreed that there shall not be any reduction in the event the Surrogate is carrying twins, unless necessary due to a serious danger to the health of the Surrogate or, as determined by Intended Parents in consultation with a physician selected by Intended Parents, to the remaining fetus, or unless mutually agreed in writing by all Parties herein. Should the Surrogate refuse a selective reduction, after an opinion has been provided by the Surrogate's obstetrician or a second physician selected by the Intended Parents, that the reduction will not seriously endanger the health of the Surrogate or the remaining fetuses, said refusal shall constitute a breach of this Agreement, and Surrogate shall be liable for any added cost associated with the care of the Child, and including but not limited to medical care or any special needs the Child might develop. Prior to making any decision whether or not to submit to have a selective reduction, the Surrogate shall consult with the Intended Parents, fully informing them of any and all known medical information related to the issue, and shall allow them to participate in the decision and have the opportunity to consult with the Surrogate's obstetrician. If requested by the Intended Parents, the Surrogate further agrees to submit to a second opinion by a physician selected by the Intended Parents.

10. COMPENSATION AND PAYMENT OF EXPENSES

a. The Intended Parents agree to pay such sums as are indicated as indicated herein and incorporated by this reference. Except as provided herein the Surrogate shall be entitled to her final payment pursuant to this Agreement notwithstanding if any Child is born with a deleterious medical condition through no fault of the Surrogate.

b. The Surrogate agrees to present to Intended Parents, proper evidence, documentation, or verifiable information that the Surrogate has incurred or will incur the following kinds of expenses directly relating to the pregnancy and the birth of the Child, as described herein, which the Intended Parents shall pay forthwith: obstetrical, nursing, hospital and maternity care, pharmaceuticals, and pediatric care, or other medical costs payable under this Agreement by the Intended Parents, which are not covered by the medical insurance as set forth in Paragraph 11 herein. Payments for medical expenses not yet incurred by the Surrogate shall only be made when advance payment is necessary or appropriate. The Surrogate agrees to submit all bills as above described to applicable insurance carriers prior to submission for payment to the Intended Parents.

c. Except as expressly provided herein, the Intended Parents shall not be responsible for lost wages of the Surrogate, child care expenses of the Surrogate, transportation expenses incurred by the Surrogate, or any other expenses resulting

from the performance of this Agreement, except as specifically provided in this Agreement. The consideration paid to the Surrogate pursuant to this Agreement is intended to compensate the Surrogate for the foregoing and any discomfort, pain, suffering and inconvenience experienced by the Surrogate and her family, and as part of the Intended Parents' duty to support the unborn Child.

d. PAYMENT SCHEDULE PURSUANT TO SECTION 10:

The Surrogate shall be paid the sum of \$X as support for the unborn child and consideration to compensate her for her pain and suffering and the inconvenience incurred to her and her family, which shall be paid from the fund account in accordance with the following schedule:

\$X (X Dollars) due within five (5) days of full execution of this Agreement;
\$X (X Dollars) upon the start of the artificial insemination procedures.

The remaining \$X shall be paid as follows:

\$X (X Dollars) for each month in which the Surrogate is pregnant with the Child, beginning one month after confirmation of pregnancy by blood test until delivery of the Child, with the balance disbursed one (1) week after delivery of the Child (except as otherwise provided in this Agreement). Said monthly sum shall be payable on the first or fifteenth of each applicable month. The Surrogate's fee shall not be construed as consideration for a child or to constitute payment for cooperation in legal proceedings to establish the Intended Parents' parentage.

1. INSURANCE SCHEDULE AND PAYMENTS

The Intended Parents payments for medical expenses and insurance shall be as specifically set forth and limited in Paragraphs 11 and 12 of the Agreement.

2. ADDITIONAL TERMS:

a. In the event the Surrogate is carrying more than one fetus during the term of the pregnancy, the Surrogate shall be paid an additional X dollars (\$X) for each additional Child carried and delivered, to be paid one week after the delivery. However, in the event the Surrogate gives birth to the additional fetus(es) prior to the completion of the 24th week of gestation, and the additional fetus(es) is/are not born alive or does/do not survive prior to being discharged from the hospital, she shall be paid a pro rata portion of the X dollars (\$X) multiple birth fee computed by multiplying the total said fee by a fraction, the numerator of which is the number of days of pregnancy completed and the denominator of which is the normal term of pregnancy of 259 days, payable no later than seven (7) days after termination of pregnancy. Payment of the lump sum after the delivery or being discharged from the hospital, is intended to insure that the Surrogate is not penalized for agreeing to a procedure which is in the best interests of the additional Child, such as inducing labor before the pregnancy has gone full term, or agreeing to a cesarean section.

b. In the event the Surrogate gives birth to a Child during or after the completion of the 28th week of gestation, the Surrogate shall be entitled to all payments under this section even if such Child is not born alive or does not survive prior to being discharged from the hospital. In the event the Surrogate gives birth to a Child prior to 28 weeks of gestation, and such Child is not born alive or does not survive prior to being discharged from the hospital, she shall be paid a pro rata portion of the remaining X dollars (\$X) fee, computed by multiplying the total said fee by a fraction, the numerator of which is the number of days of pregnancy completed and the denominator of which is the normal term of pregnancy of 259 days, payable no later than seven (7) days after termination of pregnancy. Payment of the lump sum after the delivery or being discharged from the hospital, is intended to insure that the Surrogate is not penalized for agreeing to a procedure which is in the best interests of the Child, such as inducing labor before the pregnancy has gone full term, or agreeing to a cesarean section. In the event the Parties choose to resume an embryo transfer procedure after an abortion or miscarriage, this Agreement shall remain in full force and effect and the termination is deemed waived, and financial considerations between the Intended Parent and the Surrogate shall begin anew.

c. In the event the Surrogate undergoes an amniocentesis, miscarriage with a D&C, cerclage, ectopic pregnancy, saline ultrasound or CVS pursuant to the terms set forth in the Agreement, the Surrogate shall receive the additional sum of \$X for each said procedure, paid within two (2) days following the procedure.

d. In the event the Surrogate undergoes a selective reduction or therapeutic abortion procedure, she shall receive the sum of \$X for each said procedure, paid within two (2) days following the procedure.

e. In the event the Surrogate loses her reproductive capacity as a direct result of the conduct contemplated by this Agreement, the Surrogate shall receive the additional sum of \$X, paid within two (2) days following such loss.

f. In the event the Surrogate delivers the Child by cesarean section, the Surrogate shall be paid an additional fee of \$2,000, paid from the fund account within two (2) days following the birth of the Child.

g. The Intended Parents agree to pay mileage at .X cents per mile, as well as all parking and bridge tolls, for all regularly scheduled and emergency doctor's appointments as they relate to the conduct contemplated by this Agreement. In the event a rental car is provided, with Intended Parents covering the cost of the rental and gas, mileage will not be paid. The Intended Parents further agree to arrange (i.e., book and/or reserve) and pay the reasonable travel costs (airfare, lodging, rental car or shuttle/taxi costs) of Surrogate and a companion for the period surrounding the artificial insemination procedure and the delivery. The Intended Parents shall also be required to provide a \$X per day, per person, meal allowance to Surrogate and her companion, for all days that Surrogate is required to travel for the artificial insemination procedure and the delivery.

h. In the event Surrogate's obstetrician or treating physician prescribes/orders additional bed rest or restricted activity during the pregnancy, or Surrogate becomes permanently or temporarily disabled as a result of the conduct contemplated by this Agreement, (in a manner necessitating additional childcare and/or housekeeping), Intended Parents agree to pay the reasonable cost of said additional cost (i.e., that which is additional to the child care and housekeeping otherwise paid by the Surrogate) of baby sitting or child care and housekeeping, which shall in no event exceed the sum of \$X per day for child care and not to exceed \$X per week for housekeeping, unless otherwise agreed upon in writing by the Parties, and which shall in no event extend beyond two (2) weeks following the birth of the Child or termination of the pregnancy. The Intended Parents shall further pay for the Surrogate's childcare, at the above rates, for the artificial insemination procedure and any doctor's appointments as they relate to this surrogacy. Surrogate shall endeavor to provide advance notice of the sums set forth in this Paragraph prior to incurring said expenses, and agrees to provide Intended Parents with receipts for said expenses prior to payment and/or reimbursement by the Intended Parents. Reimbursement shall be made on the 15th of the month. However, Intended Parents shall further have the discretion to directly pay any said childcare and/or housekeeping providers.

i. As the Surrogate is not currently employed, there are no anticipated lost wages for the Surrogate in this matter.

j. In the event the Surrogate's Husband suffers any lost wages as the result of accompanying the Surrogate for her artificial insemination procedure(s) and/or for the birth of the Child, the Intended Parents agree to pay the Surrogate's Husband his net lost wages. Based on an averaging of wages for the past 12 months, (supported by documents satisfactory to Intended Parents), the Parties have agreed that Surrogate's husband's net wages are \$X per week, or \$X per day. For artificial insemination procedures the Intended Parents will reimburse his lost wages at his net daily rate for each week day of lost work time.

k. In the event psychological counseling and/or therapy is provided to the Surrogate pursuant to the terms of the Agreement, Intended Parents shall pay for said counseling and/or therapy, until two months subsequent to the birth of the Child or until termination of this Agreement, whichever occurs first, the total for which shall not exceed the sum of \$X, unless otherwise agreed in writing among the Parties.

l. The Intended Parents shall contribute the sum of X Dollars (\$X) toward the cost of independent legal counsel for the Surrogate and her Husband, in connection with the negotiation, consultation and review of this Agreement. The Intended Parents also agree to pay the Surrogate's and the Surrogate's Husband's legal expenses in connection with establishing the Intended Parents' parentage, up to a maximum of Five Hundred Dollars (\$X), plus all court filing fees. Said representation and Intended Parents' obligation for payment for said representation specifically does not include any matters relating to any breach or enforcement of this Agreement, or any dispute arising under this Agreement.

11. MEDICAL INSURANCE

a. The Surrogate shall maintain her existing medical insurance covering the Surrogate during the entire term of this Agreement, if any. The Surrogate shall be responsible to pay the premiums on her own existing medical insurance policy. In the event the Surrogate's said insurance is canceled and/or fails to cover the Surrogate through any fault of her own, including but not limited to the failure to notify Intended Parents of a payment due and/or failure to provide the Intended Parents with any notices concerning said payment, and/or any non-disclosure or false statement on said insurance application, the Surrogate shall be responsible for the payment of all non-covered medical expenses. In the event the Parties choose to resume a transfer procedure after an abortion or miscarriage, the medical insurance policy shall continue to remain in effect for such period as set forth in Paragraph 11b herein. The Surrogate shall further cooperate with any application and related procedures in the event the Intended Parents purchase any supplemental insurance with respect to Surrogate's prenatal medical expenses.

b. In the event the Surrogate does not have appropriate medical insurance, such insurance coverage shall be obtained by Surrogate and the premiums shall be paid by Intended Parents in accordance with Section 10 of this Agreement. Surrogate shall use her best efforts to use such medical insurance in connection with the medical services contemplated hereunder. Surrogate shall immediately inform Intended Parents of any and all notices received by, or that come to the attention of, Surrogate regarding said insurance coverage. These notices include, without limitation, cancellation notices, past payments due notices, and changes in coverage. The parties shall make their own investigation of the existence and extent of coverage of said health insurance policy.

c. The Surrogate agrees to submit to Intended Parents all bills for all medical treatment and care relating to the surrogacy arrangement to the applicable insurance carrier(s) prior to submission for payment to Intended Parents. Provided that said bills relating to the surrogacy arrangement are timely submitted by the Surrogate, and except as otherwise provided herein, the Intended Parents shall be responsible to pay for all non-covered medical payments, co-payments and deductibles, not paid by any insurance company, which directly relate to the conduct contemplated by this Agreement (except for those medical expenses which are incurred for matters which are not reasonably necessary or appropriate, and not approved by the Intended Parents). Intended Parents' obligation to pay for Surrogate's said unreimbursed medical expenses and Surrogate's health insurance premiums (on the new policy if purchased for the Surrogate pursuant to the terms set forth herein) shall terminate three (3) months after the birth of the Child pursuant to this Agreement, three (3) months after a miscarriage or abortion, or when this Agreement is deemed terminated, whichever occurs first. However, in the event Surrogate suffers from pregnancy related complications, Intended Parents' above stated financial obligation shall continue until Surrogate's recovery is complete, in the opinion of the Surrogate's obstetrician, but in no event longer than six months after the birth of the Child or other termination of the pregnancy. The provisions of this subsection shall not apply to an abortion in violation of this Agreement. The Intended Parents are responsible for all of the above costs incurred within the applicable time periods, even if the bills arrive after the time periods have expired. The Surrogate further agrees to immediately inform Intended Parents of any and all notices received by or that come to the attention of the Surrogate regarding said medical insurance. These notices include but are not limited to cancellation notices, past payment due notices, and changes in coverage or amendments.

d. If Surrogate has a choice with respect to any medical service or health care provider in connection with this Agreement, she will choose such health care provider that is covered by the medical insurance discussed in this Paragraph 11.

e. It is expressly understood and agreed that no attorney representing any Party herein shall be responsible for evaluating or investigating the existence or extent of any insurance coverage with respect to the conduct contemplated by the surrogacy.

f. The Intended Parents are responsible for all medical expenses of the Child, and are responsible for obtaining adequate medical insurance covering the Child.

g. In no event are the Intended Parents to be considered third party payers.

12. LIFE INSURANCE

a. The Intended Parents shall pay the costs of a term life insurance policy on the Surrogate's life, having a face value of \$X. The named beneficiary(ies) of said life insurance policy shall be designated by Surrogate, and the beneficiaries shall include the Surrogate's child(ren) and Husband, whether in trust or otherwise. Application for said policy shall be made as soon as practicable following execution of this Agreement, and coverage shall continue while this Agreement is in effect and for two months subsequent to the birth of the Child or termination of the pregnancy, or longer as is deemed reasonable by the Treating Physician if medical complications develop as a result of the surrogacy procedure and if available. However, in the event the Parties choose to resume a transfer procedure after an abortion or miscarriage (in which case this Agreement shall remain in full force and effect and the termination is deemed waived, as stated herein above), the life insurance policy shall again remain in effect until two months subsequent to the birth of the Child or termination of the pregnancy or until termination of this Agreement.

b. The Surrogate shall fully comply and cooperate with any and all requests of any prospective life insurance policy carrier in obtaining a life insurance policy. The Surrogate's failure to so cooperate and comply, and/or failure to qualify, shall constitute a legal excuse for the Intended Parents' failure to obtain a life insurance policy, as stated above.

13. ESCROW ACCOUNT

a. Intended Parents agree that, upon execution of this Agreement, they will place into a escrow account held and managed by X, the sum of money equal to the costs and expenses estimated by X to be necessary to effectuate the intentions of the parties hereto. If at any time the anticipated expenses exceed the sum deposited in the escrow account,

or it becomes apparent that the expenses shall exceed the sum deposited, X, shall give notice of such deficiency or anticipated deficiency, and the Intended Parents shall forthwith place an amount sufficient to cover such deficiency or anticipated deficiency into the escrow account in accordance with the terms of this Agreement.

14. FACILITATION OF LEGAL PROCESSES

- a. Each Party to this Agreement agrees to facilitate and cooperate in a timely manner with the legal proceedings to establish the parental rights of the Intended Parents and to terminate any parental rights of the Surrogate and her Husband to the Child. For instance, and by way of examples only, the Parties agree to sign any documents required for the hospital's discharge of the Child to Intended Parents and/or as may be necessary in connection with any legal proceeding necessary to effectuate the status of the Intended Parents as the legal parents of the Child, including adoption if necessary or requested, and further agree to attend any court hearings as necessary to effectuate said status.
- b. The Intended Parents agree in a timely manner to confirm in writing their parentage after the pregnancy has been verified by, without limitation, signing a verified complaint and/or petition for judgment to establish Intended Parents' parentage, signing declarations in support of said complaint and/or petition for judgment to establish their parentage, signing a stipulation to establish Intended Parents as the legal parents of the Child, and/or by signing any and all other pleadings or documents reasonably necessary or convenient to establish Intended Parents' rights as the sole and exclusive legal parents to the Child.
- c. The Surrogate and her Husband agree in a timely manner to confirm in writing the Intended Parents' parentage, and the lack of the Surrogate's maternity and the lack of paternity of anyone other than Intended Father, after the pregnancy has been verified by, without limitation, signing a verified answer to Intended Parents' complaint and/or petition for judgment to establish parentage, signing declarations in support of Intended Parents' complaint and/or petition for judgment to establish their parentage, signing a stipulation to establish Intended Parents as the legal parents of the Child, and/or by signing any and all other pleadings or documents reasonably necessary or convenient to establish Intended Parents' rights as the sole and exclusive legal parents to the Child.
- d. It is the responsibility of each Party to this Agreement to timely further facilitate the procedural aspects of establishing the parental rights of Intended Parents and terminating any parental rights of the Surrogate and her Husband by, among other things, obtaining birth certificates, citizenship documents, marriage and divorce certificates, and/or any other documentation which may be requested by any medical provider, governmental agency, or any of the Parties' attorneys. Intended Parents shall pay the cost of obtaining any of said documentation.

15. NAME OF CHILD

The Surrogate and her Husband agree that it is the exclusive right of the Intended Parents to name the Child and (to the extent permissible) to insert on the Child's birth certificate the Intended Parents' names as the parents of the Child. Furthermore, the Surrogate and her Husband agree that the name of the Child selected by the Intended Parents shall be placed on the birth certificate issued in this case.

16. FUTURE CONTACT

The Parties agree that future contact between the Parties after the birth of the Child shall include the Intended Parents sending of a minimum of two letters and photographs per year for a period of five years following the birth of the Child, unless the Parties agree otherwise. The Parties further agree that they will not intervene in each other's lives, and that the Surrogate and her Husband will not seek to contact the Child or obtain any information concerning the Child, unless otherwise agreed by any of the Parties in writing.

17. PRIVACY AND CONFIDENTIALITY

- a. The Parties acknowledge that it is in the best interest of the Child that the details surrounding the Child's conception and birth shall remain private, and that any disclosure of the surrogate parenting arrangement to the Child, including the Surrogate's identity, shall be left to the sole discretion of the Intended Parents.
- b. The Parties agree that they will not provide, nor allow to be provided, any information to the public, news media, or to any other individual (except the professionals directly involved with the contemplated surrogacy arrangement) regarding their involvement in the surrogacy arrangement or the identity of any Party herein without the express written consent of all Parties hereto. The Parties understand that the confidentiality as described herein does not contemplate speaking with their own close friends or relatives about their own involvement in the surrogacy process, which conversations are permitted provided that the identity and/or any identifying information of the other Parties is in no way disclosed.

c. In order to maintain the confidentiality contemplated herein, in the event litigation arises out of this Agreement, the Parties and their legal counsel, heirs, representatives and assigns agree to make all reasonable efforts to maintain such confidentiality as to the general public. Said reasonable efforts shall include, but shall not be limited to, requesting that court records be sealed, requesting that the court invoke gag orders, and requesting that the court maintain said confidentiality in its procedures and in the conducting of hearings and refrain from releasing the identity of the Parties to the public or to the news media.

18. CHANGES IN CIRCUMSTANCE

Prior to and during the time this Agreement is in effect, the Parties agree to immediately notify The Surrogacy Program, of any material change in their circumstance which may directly or indirectly affect this Agreement. Such material changes include, but are not limited to, exposure to communicable illness or toxic chemicals, change in insurance coverage, loss of employment, change in marital status, illness, use or ingestion of drugs or alcohol, change of address or ability to perform under this Agreement.

19. DEATH OR DIVORCE OF INTENDED PARENTS

a. In the event of the death of the Intended Mother prior to the birth of the Child, all of the obligations of the Surrogate and her Husband shall be of equal force and effect notwithstanding such event. Said death shall not alter any terms of this Agreement, nor shall it in any way affect the responsibilities of the Parties to effectuate the terms of this Agreement. The Child shall be placed in the custody of Intended Father pursuant to this Agreement, and Surrogate and her Husband shall relinquish all parental rights of the Child in favor of Intended Father.

b. In the event of the death of Intended Father prior to the birth of the Child, all of the obligations of the Surrogate and her Husband shall be of equal force and effect notwithstanding such event. Said death shall not alter any terms of this Agreement, nor shall it in any way effect the responsibilities of the Parties to effectuate the terms of this Agreement. The Child shall be placed in the custody of Intended Mother pursuant to this Agreement, and Surrogate and her Husband shall relinquish all parental rights of the Child in favor of Intended Mother.

c. In the event of the death of both Intended Parents prior to the birth of the Child, the Surrogate and her Husband shall be entitled to the performance of all terms and conditions contained in this Agreement, notwithstanding such event. The Child shall in such event be placed in the custody of _____, the guardian hereby appointed by Intended Parents, and the Intended Parents shall have arranged for the support, care and custody of the Child by said guardian. Intended Parents designate _____, as alternate guardians to serve in the event that _____ cannot serve as guardians of the Child.

d. In the event of the separation or divorce (dissolution of marriage) of the Intended Parents, the Surrogate and her Husband shall not be entitled to any parental rights to the Child. The custodial rights to the Child, in the event of the divorce of the Intended Parents, shall be determined by the Intended Parents or by a court of competent jurisdiction, vis a vis Intended Father and Intended Mother; however, the Surrogate and her Husband shall not have any custodial or visitation rights to the Child.

20. INDEPENDENT LEGAL COUNSEL

a. The Intended Parents on the one hand, and the Surrogate and her Husband on the other hand, shall be represented by separate counsel. The Intended Parents warrant that they have consulted independent legal counsel, and have been advised regarding the terms, conditions, rights, duties and liabilities arising under the conduct contemplated by this Agreement. The Surrogate and her Husband warrant that they have consulted independent legal counsel, and have been advised regarding the terms, conditions, rights, duties and liabilities arising under the conduct contemplated by this Agreement.

b. The Intended Parents shall pay the fees of independent legal counsel for the Surrogate and her Husband, as provided for in Section 10 hereto. Said representation and Intended Parents' obligation for payment for said representation specifically does not include any matters relating to any breach or enforcement of this Agreement, or any dispute arising under this Agreement. The amount of reimbursement is not intended to indicate that adequate legal representation has been obtained for the sum paid. Obtaining qualified independent legal counsel is the sole responsibility of the Surrogate and her Husband. The Surrogate and her Husband further acknowledge that they have the right to and have selected counsel of their choosing. Said representation and Intended Parents' obligation for payment for said representation specifically does not include any matters relating to any breach or enforcement of this Agreement, or any dispute arising under this Agreement.

c. All Parties understand that when one Party's attorney is paid by the other Party, this creates a potential conflict of interest because the payment could induce the Surrogate's and her Husband's attorney to favor the person paying rather than vigorously representing the Surrogate and her Husband. The Surrogate and her Husband have been advised of this potential conflict of interest and informed that they have the right to consult with and pay for any attorney of her own choosing, without reimbursement by the Intended Parents in order to avoid the potential conflict. All Parties waive the potential conflict of interest in order that the Surrogate's and her Husband's legal expenses, as set forth herein, may be paid for or reimbursed by Intended Parents, subject to the limitations set forth herein and in Section 10

21. CONFIRMATION OF GENETIC PARENTAGE

Prior and/or subsequent to the birth of Child, the Surrogate shall submit, if requested by Intended Parents and as soon as reasonably possible, to a DNA or any other legally recognized scientific test to confirm the genetic parentage of the Child, at the expense of Intended Parents, under the direction of a physician designated by Intended Parents. The inclusion of the Surrogate and/or any partner of the Surrogate, as genetic parents of the Child by the DNA or other legally recognized scientific test shall constitute an incurable breach on the part of the Surrogate, for which all legal remedies, whether in contract or personal injury apply, and in which event Intended Parents shall have no responsibility whatsoever to the Child. However, it shall not be an incurable breach in the event said exclusion or inclusion was a result of improper handling of ova, sperm or embryos by a third party. The Intended Parents assume the risk that non-designated embryos could be transferred to the Surrogate's uterus due to physician or laboratory error; however, said assumption shall in no way constitute a release of the physician, laboratory or other medical professional of any claim of legal liability as against them. . The Parties also agree to any DNA testing or other legally recognized scientific testing, if required by a court of competent jurisdiction.

22. BREACH

a. In the event that any Party materially violates any of the provisions contained herein without legal excuse, such violation shall constitute a material breach, and in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party without further liability on the part of the aggrieved non-breaching Party. However, no breach or material breach of this Agreement by the Intended Parents shall affect the rights or obligations of the Intended Parents with respect to any Child and the Surrogate's and her Husband's waiver and relinquishment of all parental or other rights with respect to any Child. In the event that the Intended Parents terminate this Agreement pursuant to this paragraph, the Intended Parents shall be under no obligation to pay any monies to the Surrogate or reimburse any of her expenses incurred. In addition, the Surrogate must reimburse the Intended Parents for all sums expended pursuant to this Agreement, plus interest at the maximum allowable rate at the time the breach was discovered, and the Intended Parents shall have all other available remedies, both in law and in equity. In no event shall any party be deemed to have materially breached this Agreement where the inability to perform timely is due to a cause which is beyond the control of the party (e.g. hyperstimulation, understimulation, a prohibitive medical problem of the Intended Mother or Surrogate, a serious injury to any party, a natural disaster or any other act of God.

b. As a precondition to any violation constituting a breach, the Party committing the violation shall be given written notice of such alleged violation within ten (10) days of discovery of the violation, and shall have forty eight (48) hours from the time of said notice to cure the alleged violation, if possible, or such earlier time as is warranted by the exigency of the circumstances of the alleged violation.

c. Any violation of an express warranty herein shall constitute a material breach. The continued performance of an aggrieved Party following a material breach shall not constitute a waiver, and all rights accruing or retained by the aggrieved Party shall remain in full force and effect. In the event a material breach is subject to cure, and said cure is effectuated, the continued performance of an aggrieved Party shall then constitute a waiver.

23. ASSUMPTION OF RISKS OF ABNORMAL CHILD/GENDER OF CHILD

Intended Parents are aware of the risks that the Child may possess physical, mental, genetic and/or congenital abnormalities or defects, and that gender selection procedures may not produce the results desired. Intended Parents understand these risks and agree to accept the legal and parental responsibilities for any Child born as a result of this Agreement, regardless of whether the Child possesses any genetic or congenital abnormalities or any physical or mental defects or regardless of the gender of the Child.

NOTWITHSTANDING ANY MATERIAL INCURABLE BREACH OF THIS AGREEMENT ON THE PART OF SURROGATE, INTENDED PARENTS SHALL TAKE IMMEDIATE CUSTODY OF THE CHILD UPON BIRTH AND SHALL ASSUME FULL AND ABSOLUTE PARENTAL RESPONSIBILITY FOR THE CHILD, REGARDLESS OF THE CHILD'S HEALTH, GENDER, OR PHYSICAL OR MENTAL CONDITION, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT.

24. LIFE SUPPORT

The Surrogate and the Surrogate's Husband agree that in the event the Surrogate is seriously injured or suffers a life-threatening instance during her third trimester of pregnancy, if medically necessitated and advisable, and if requested by the Intended Parents, the Surrogate will be sustained with life support equipment to protect the fetus' viability and insure a healthy birth on the Intended Parents' behalf. The Surrogate's obstetrician or perinatologist is to determine when the optimal time for birth will be. The Intended Parents shall be responsible to pay the cost of any non-covered expenses for said life support, in the event the life support is provided at the Intended Parents' request for the sole reason of protecting the fetus' viability.

25. RESPONSIBILITIES IN THE EVENT OF STILLBIRTH OR MISCARRIAGE

In the event the Surrogate miscarries the pregnancy or delivers a stillborn Child, the Intended Parents are responsible for any resulting medical and/or hospitalization expenses, for the period of time as set forth in this Agreement, if not covered by the Surrogate's insurance, and the cost of any funeral or cremation requested or desired by the Intended Parents. The Intended Parents also agree that their names will be placed on the Child's birth certificate under such circumstances, to the extent legally possible, and on any death certificate for the Child, if such certificate is prepared.

26. TERMINATION OF AGREEMENT

Subject to the terms of this Agreement, as long as Surrogate is not carrying the embryo(s) or fetus(es) of Intended Parents as a result of an artificial insemination procedure pursuant to the terms of this Agreement, either the Surrogate or the Intended Parents may terminate this Agreement by two (2) days written notice to the other Party(ies). If any Party terminates this Agreement pursuant to this Paragraph, no Party shall have further obligation or liability to the other Party(ies) except Intended Parents shall reimburse Surrogate for any authorized expenses or fees incurred in the performance of her obligations under this Agreement.

27. DISPUTE RESOLUTION/ARBITRATION

The Parties agree to mediate any dispute or claim arising between them out of this Agreement or any resulting transaction before resorting to arbitration or court action. Mediation is a process by which parties attempt to resolve a dispute or claim by meeting with an impartial, neutral mediator, who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the Parties. Any said mediation shall be of reasonable length and the fees shall be divided equally among the Parties involved. If any Party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then in addition to any other remedies available at law or at equity, in the discretion of the arbitrators or judge, that Party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such arbitration or court action. In the event mediation does not resolve the dispute between the Parties, the Parties agree that all claims, disputes, or controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Agreement, EXCEPT ISSUES PERTAINING TO LEGAL CUSTODY OF THE CHILD, PARENTAL RIGHTS AND/OR PARENTAGE shall be settled in binding arbitration in Los Angeles, California, in accordance with the then-current rules of the American Arbitration Association, and judgment upon the award entered by the arbitrator(s) may be entered in any Court having jurisdiction thereto. Costs of arbitration, including reasonable attorney's fees incurred by the prevailing party in Court enforcement of the arbitration award after it is rendered by the arbitrator(s), must be paid to the prevailing party by the party designated by the Arbitrator(s) or Court. Said arbitration shall be conducted in the English language and the award rendered in United States dollars. California substantive law and the California Arbitration Act shall apply. Service of the Petition to Confirm the Award of the Arbitrator shall be made in the manner provided under California Code of Civil Procedure for notice. Such service shall be complete on personal delivery or the deposit of the Petition and notice in the United States mail. Should one party either dismiss or abandon the claim or counterclaim before hearing thereon, the other party shall be deemed the "prevailing party" pursuant to this Agreement. Should both Parties receive judgment or award on their prospective claims, the party in whose favor the larger judgment or award is rendered shall be deemed the "prevailing party" pursuant to this Agreement.

28. INTENTION OF THE PARTIES

In the event of any claim or dispute between the Parties concerning the performance of the Parties contemplated by this Agreement, it is the desire of the Parties that their mutual intentions, as reflected in this Agreement, control the disposition of such dispute. The Parties' primary intentions, as mutually expressed in the Agreement, are:

- a. Surrogate intends to provide valuable assistance to the Intended Parents by carrying the Intended Parents' Child to term and thereafter delivering to the Intended Parents a healthy Child to the fullest extent that she is capable.

b. The Intended Parents intend to utilize Surrogate's assistance to enable them to have a Child that is the genetic product of the Intended Parents (or designated and approved sperm and/or egg donors) since they are unable to achieve this goal without the assistance of the Surrogate.

c. The Parties intend for the Intended Parents to have the authority to make all decisions affecting the health of the Child, both in utero and after the Child's Birth.

d. The Parties do not intend for Surrogate to be exposed to any medical risks over and above those normally associated with pregnancy and childbirth. The Parties intend that, in the event there is a substantial risk of physical harm to Surrogate, she will have the authority to make the decisions affecting her own health.

e. The Parties intend to be fully bound by the terms of this Agreement notwithstanding any changes that may occur in the law relating to surrogacy that may otherwise affect their rights under this Agreement.

29. AGENCY, PARTNERSHIP, EMPLOYMENT OR JOINT VENTURE

No agency, partnership, employment or joint venture is created or intended to be created by the Parties.

30. TAXATION AND IMMIGRATION

None of the attorneys is giving any of the Parties legal advice on taxation and immigration. The Parties should consult independent counsel regarding tax matters or immigration matters that may arise. It is the responsibility of any Party receiving payment or other benefits pursuant to this Agreement to report receipt of said payments or benefits to the proper taxing authorities, state, federal or otherwise.

31. WRITTEN AGREEMENT

This Agreement shall be amended only by a written agreement signed by all Parties.

32. EXECUTION OF AGREEMENT

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument (although each may be differently formatted or with different pagination due to transmission of the document by e-mail or fax). Any fax or copy of the executed Agreement shall have the same effect as if an original. Original Agreement counterparts shall be provided to the Intended Parents, with copies provided to Surrogate and her counsel.

33. ENTIRE AGREEMENT, INTEGRATION AND ENUREMENT

This Agreement sets forth the entire agreement between the Parties. All agreements, covenants, representations and warranties, express and implied, written and oral, of the Parties are contained herein. No other agreements, covenants, representations nor warranties, express or implied, oral or written, have been made by any Party to the other(s) with respect to 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. This Agreement applies to, inures to the benefit of, and binds all Parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

34. INTERPRETATION

No provision of this Agreement is to be interpreted for or against any Party because that Party or that Party's legal representative or agent drafted the provisions.

35. ENFORCEABILITY OF AGREEMENT

In the event any of the provisions, whether sentences or entire paragraphs, of this Agreement are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of this Agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

36. EXECUTION OF AGREEMENT

Each Party acknowledges that he/she fully understands this Agreement and its legal effect, and that he/she is signing the same freely and voluntarily, and that no Party has any reason to believe that the other Party did not freely and voluntarily execute this Agreement.

37. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

38. JURISDICTION

The Parties agree that this Agreement shall be deemed to have been entered in the State of California, and it is the express intent of the Parties and a material term of this Contact that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. The Parties agree that the jurisdiction and venue for any matter under this Agreement, including any parentage action, and/or for the resolution of any dispute arising under this Agreement shall vest exclusively in a court of competent jurisdiction in the State of California, or in an arbitration tribunal in the State of California, regardless of the state of citizenship of the Parties or Child at the relevant time period.

39. SURVIVAL

Any provisions of this Agreement concerning the establishment or confirmation of parental rights of the Intended Parents, the relinquishment/abandonment of any parental rights of the Surrogate, confidentiality, contact with the Child, any representations or warranties made pursuant to this Agreement by any Party hereto, or any risks assumed by any Party hereunder and any jurisdictional and enforceability provisions shall survive termination of this Agreement.

40. WAIVER OF INCREASED RISK IN THE USE OF UNQUARANTINED SEMEN/OVUM/EMBRYOS

According to the guidelines for the use of semen donor insemination by the American Society for Reproductive Medicine (ASRM) all semen for insemination should be frozen and quarantined for 180 days. The donor should be tested at the time that the specimen is produced and then retested again before the specimen is released. These guidelines also extend to the transfer of human embryos and ova.

The ASRM makes its recommendation based on an increased risk for sexually transmitted diseases, including human immunodeficiency virus (HIV), in the use of fresh semen/ovum/embryos. The extent of this risk is unknown at this time, however, it is considered to be significant. See Fertility and Sterility, Volume 53, No. 3, March 1990 the official journal of the ASRM for reference to these recommendations.

The Parties Represent that they understand the above guidelines and recommendations; they understand the increased risk for the transmission of sexually transmitted diseases, including human immunodeficiency virus (HIV); they understand the risk of transmission is unknown, however is believed to be significant; they accept such increased risk, and agree to be inseminated and/or have transferred an embryo/ovum/sperm, notwithstanding such increased risk; they waive

any quarantine period of eggs/sperm/embryos for insemination or transfer for the detection of HIV/HTLV-III; they understand that this waiver is against the recommendations of the Center for Disease Control and the ASRM and that there is an increased risk for contracting AIDS by using fresh eggs/sperm/embryos; they have not engaged in high risk sexual intercourse or other high risk activities, as defined by the Center for Disease Control, including intravenous drug use, promiscuous homosexual activity, or prostitution since I/we have been tested for sexually transmitted diseases, including HIV; they agree to remain monogamous with the spouse/partner named herein from the date of testing throughout the period of fertilization and/or pregnancy.

41. CONFLICTING MEDICAL FORMS

The Parties may be asked to sign separate medical consent forms or other documents by the Treating Physician which may conflict with the provisions of this Agreement. **THEREFORE, IT IS THE PARTIES' OBLIGATION TO CHANGE ANY MEDICAL CONSENT FORM OR OTHER DOCUMENT THEY SIGN SO IT WILL NOT CONFLICT WITH THE TERMS OF THIS AGREEMENT WITH REGARD TO ALL MATTERS.**

FURTHER, THE PARTIES SPECIFICALLY AGREE THAT IF A CONFLICT SHOULD ARISE BETWEEN ANY CONSENT FORM SIGNED BY THE PARTIES AND THE TERMS OF THIS AGREEMENT, THE TERMS OF THIS AGREEMENT SHALL PREVAIL.

42. ACKNOWLEDGMENTS

All Parties, by signing below, acknowledge that they have carefully read and understand the provisions of this Agreement. All of the Parties agree to all terms herein and have executed this Agreement freely and without undue influence. Additionally, all Parties separately declare under penalty of perjury under the laws of the State of _____ that the foregoing is complete, true and correct.

Surrogate DATED: _____

Surrogate's Husband DATED: _____

Intended Mother DATED: _____

Intended Father DATED: _____



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