

InVia Fertility Specialists
Legal Agreement: Anonymous Egg Donor Recipients
(“Prospective Parents”)

THIS AGREEMENT is made and entered into on the latest of the dates set forth on the signature Page below between _____ (“Prospective Parent A”) and _____ (“Prospective Parent B”), together referred to as “Prospective Parents”, and InVia Fertility Specialists (IVFS). All of the above will be referred to as the “Parties”.

IN CONSIDERATION of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the intention of being legally bound by this Agreement, the Parties agree to the following:

A. FEES AND EGG DONOR'S COMPENSATION.

1. **Program and Egg Donor Insurance Fees.** Prospective Parents shall pay the following Fees to IVFS on the terms set forth in “**Program, Insurance and Legal Fees**”, Section E.1:

Fee	Amount
IVFS Matching & Administrative Fee	\$3,000.00
Mandatory Insurance for Donor	\$ 615.00
Total	\$3,615.00

2. **Egg Donor's Compensation.** Prospective Parents shall pay the following Egg Donor's Compensation to INVIA FERTILITY SPECIALISTS on the terms set forth in "**Prospective Parents* Payment to IVFS of Egg Donor's Compensation**", Section E.2, and such Egg Donor's Compensation shall be paid to the Egg Donor on the terms set forth in "**Payment of Egg Donor Compensation to Egg Donor**", Section E.4:

Egg Donor's Compensation	\$7,000.00
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Itemized Egg Donor Compensation:	
Non-Injectable Medication	\$ 250.00
1st Injectable Medication (i.e., leuprolide acetate, ganirelex, etc.)	\$ 250.00
2nd Injectable Medication (FSH, LH)	\$ 750.00
Retrieval	\$5,750.00
Total	\$7,000.00

B. PURPOSE OF AGREEMENT.

1. The Parties agree that the sole purpose of this Agreement is to provide a mechanism whereby Prospective Parent(s) will attempt to have a Child or Children resulting from: (i) egg(s) donated by an anonymous Egg Donor, and (ii) sperm provided by the male Prospective Parent or Donor sperm contracted by Prospective Parent (s).
2. Prospective Parents agree to assume full legal and parental responsibility for any Child born of the Egg Donation Arrangement and further agree to release the Egg Donor from all parental or other obligations she may otherwise have towards the Child. IVFS agrees to provide the services described herein to facilitate the Egg Donation Arrangement while using reasonable efforts to maintain the anonymity of the parties involved.

C. REPRESENTATIONS AND AGREEMENTS.

1. **Status.** Prospective Parents represent that they are both over the age of eighteen (18), and desire to enter into this Agreement in connection with an Egg Donation Arrangement.
2. **Professional Advice.** Prospective Parent A represents and warrants that she has sought professional medical advice and has been informed that it is medically advisable for her to use donated eggs to conceive.
3. **Additional Agreements.** Prospective Parents agree:
 - a. to provide IVFS with information necessary or appropriate to assist IVFS in matching Prospective Parents with an Egg Donor,
 - b. that all representations and information Prospective Parents provide in connection with this Agreement to IVFS, any professional physician, physician's assistant, nurse, embryologist, or designee of IVFS, are and shall be true, correct and complete to the best of Prospective Parents' knowledge,
 - c. IVFS may rely on such information and representations to provide services to Prospective Parents, including but not limited to, matching potential egg donors with them, and
 - d. IVFS may disclose any non-identifying information about Prospective Parent to any of the professionals referenced in Section C.3.b above.
4. **Risks.** Prospective Parent(s) acknowledge(s) that reproductive technologies, including egg donation, are relatively new medical technologies and that they involve matters which have not been fully addressed in state or federal legislation or court decisions, and remain an unsettled area of the law. For that reason, IVFS makes no warranties as to the ultimate cost, liability or obligation of the Parties which may be affected by future legislation or any judicial process.

D. INVIA FERTILITY SPECIALISTS's ROLE AND SERVICES. IVFS will perform the following functions in connection with the Egg Donation Arrangement, provided Prospective Parent(s) have timely complied with their obligations, and reasonably and timely cooperated, hereunder:

- 1. Preliminary Egg Donor Recruiting:** IVFS may take any of the following actions to recruit prospective Egg Donors:
 - a. Advertising for prospective Egg Donors, speaking with them on the telephone to answer questions about the egg donation process, and providing written materials to further educate the prospective Egg Donor on the egg donation process.
 - b. Providing and reviewing written Egg Donor questionnaires, in order to obtain background information on the prospective Egg Donor's social and medical history.
 - c. Conducting in person interviews of prospective Egg Donors.
 - d. Compiling prospective Egg Donor information, with identifying information removed, and photograph(s), for Prospective Parents to review.
 - e. Providing Prospective Parents with access to prospective Egg Donor profiles to review and choose from.
 - f. Meeting with Prospective Parents at mutually convenient times to discuss prospective Egg Donor profiles and related issues.

- 2. Facilitating the Egg Donation Arrangement:** After Prospective Parents have made an initial Egg Donor selection, and subject to the agreement of such Egg Donor, IVFS agrees to use reasonable efforts to facilitate the Egg Donation Arrangement, provided Prospective Parents have timely complied with their obligations, and reasonably and timely cooperated, hereunder. Such efforts by IVFS include the following:
 - a. Arrange for Egg Donor to have a Genetic Consultation, and a Psycho-Social Evaluation, if not previously performed and already in IVFS's files.
 - b. Provide Prospective Parents per their request with: (i) copies of written evaluations resulting from the Genetic Consultation and Psycho-Social Evaluation, with the Egg Donor's identifying information removed, and (ii) reasonable opportunities for Prospective Parents to discuss such consultation and evaluation with the administering professionals.
 - c. Arrange for the Egg Donor's Medical Evaluation.
 - d. Maintain close contact with Egg Donor during the entire process.
 - e. Coordinate services such as timing of medical procedures to verify response to medications.
 - f. Provide a list of attorneys, and facilitate separate legal consultations, for Prospective Parents and Egg Donor at their request.
 - g. Disburse amounts for payment of the Egg Donor's Compensation, Legal Fee and Insurance Fee, as described herein.
 - h. Be reasonably available to both Prospective Parents and Egg Donor by having an on call nurse and physician available 24 hours a day, 7 days a week to handle emergencies and urgent situations.
 - i. Provide Prospective Parents immediate notice of noncompliance by Egg Donor under this Agreement.

- 3. Insurance Policy.** IVFS will purchase the Insurance Policy after receipt from Prospective Parents of the Insurance Fee, but before Egg Donor begins the first injectable medication, provided Egg Donor has given IVFS reasonable prior notice before beginning the first injectable medication. The Insurance Policy covers customary medical

complications resulting from egg donation cycles made pursuant to this Agreement. IVFS agrees to provide Prospective Parents with directions on how Prospective Parents may obtain a specimen copy of the Insurance Policy from the insurance agency selling the Insurance Policy.

E. PROGRAM FEES, COMPENSATION AND EXPENSES.

- 1. Program, Insurance and Legal Fees.** In order to accept an Egg Donor, and as a condition to IVFS's obligations to perform any of the services set forth in "**Facilitating the Egg Donation Arrangement**", Section D.2, Prospective Parents agree to: (i) complete and return to IVFS the Exhibit A attached hereto, entitled "Prospective Parents' Acceptance of Donor and Time Frame for Egg Donation Procedure", subject to countersignature by IVFS, and (ii) pay the Fees to IVFS. Delivery of an executed Exhibit A and payment of the Fees will temporarily reserve the Egg Donor. IVFS agrees to provide Prospective Parents, at their request, with the written evaluations of the Genetic Consultation and Psycho-Social Evaluation after Egg Donor has completed the Genetic Consultation and Psycho-Social Evaluation and Prospective Parents have paid the Fees to IVFS.
- 2. Prospective Parents' Payment to IVFS of Egg Donor's Compensation.** Prospective Parents may proceed with the Egg Donor and Egg Donation Arrangement after Prospective Parents pay to IVFS the Egg Donor's Compensation (due at the same time as the Fees are due). After Egg Donor's Compensation is paid to IVFS, and this Agreement and the Egg Donor Agreement are fully executed and delivered to IVFS, the Egg Donor will undergo medical screening.
- 3. Program Fee.**
 - a. **Program Fee Earned.** As IVFS will have provided a substantial part of IVFS's services prior to Egg Donor beginning her evaluation process, the Program Fee is deemed earned upon receipt pursuant to this Agreement.
 - b. **Terminating Events.** Section F sets forth the Terminating Events and the remedies applicable to each Terminating Event.
 - c. **Refunds.** Upon Termination of the Agreement, IVFS shall refund to Prospective Parents the Uncommitted Insurance Fee, if any, within thirty (30) days of the date such refund obligation arises.
 - d. **Remedies.** The remedies set forth in "TERMINATING EVENTS", Section F, shall be the sole and exclusive remedies available to Prospective Parents, and IVFS's sole obligations, in connection with such events. Prospective Parents agree that any portion of the Program Fee not refundable to Prospective Parents upon termination of this Agreement, as set forth in such Section F, constitutes reasonable compensation to IVFS for IVFS's time, effort and risk devoted prior to the date of termination, and shall not be deemed a forfeiture or penalty.
 - e. **Rematch; Reinstatement of Agreement.** Notwithstanding anything to the contrary contained herein, in the event of a not defined termination based on a Terminating Event caused by Egg Donor, IVFS and Prospective Parents may jointly elect to reinstate this Agreement if, within one (1) year of the Agreement Date, Prospective Parents and IVFS agree to a Rematch with a new Egg Donor pursuant the following :

(i) Prospective Parents:

- (a) and IVFS each, at their option, execute and deliver to the other a substitute Exhibit A "Prospective Parents' Acceptance of Donor and Time Frame for Egg Donation Procedure", referencing a new Egg Donor, and

(A) pay to IVFS the Rematch Fee.

(ii) Then:

- (a) The Agreement shall be deemed to have been reinstated, and

- (b) All references to the Egg Donor and Egg Donation Arrangement contained in the Agreement shall thereafter be deemed to refer to the new Egg Donor referenced in the substitute Exhibit A, provided that all confidentiality obligations of the parties relating to the original Egg Donor, and all obligations of the parties relating to the original Egg Donor arising prior to the Terminating Event for that Egg Donor, shall continue.

4. Payment of Egg Donor Compensation to Egg Donor:

- a. Amount and Disbursement Schedule.** Prospective Parents agree to pay IVFS the Egg Donor's Compensation in accordance with the terms and notice provisions set forth in "**Prospective Parents' Payment to IVFS of Egg Donor's Compensation**", Section E.2 above. IVFS will disburse the egg donor fee to the egg donor at her follow-up visit approximately 2 weeks following her donation. Should the egg donor have not completed the process of egg donation, including egg retrieval, her reimbursement will be based on the schedule as stated in Section A.2, and explained in detail below.

(i) Non-Injectable Medications Stage. Donor will earn the Non-Injectable Medication Payment for her time, inconvenience, costs and effort if she has taken the first dose of her non-injectable medication.

(ii) Injectable Medication Stage. Donor will earn the Injectable Medication Payment for her time, inconvenience, costs and effort if she has administered the first prescribed injectable medication.

(iii) Retrieval Stage. Donor will earn the Retrieval Payment for her time, inconvenience, costs and effort if she has completed the egg retrieval procedure.

- b. Egg Donor Paid for Stage Commenced, But Not Completed, if Terminating Event Not Within the Control of Egg Donor.** Notwithstanding anything to the contrary contained herein, Egg Donor shall earn the Payment listed in "**Amount and Disbursement Schedule**", Section E.4.a, for the stage Egg Donor commenced, but did not complete, if Egg Donor's failure to complete such stage was not reasonably within the control of Egg Donor (e.g., Termination of Agreement caused by Prospective Parents' breach; abnormal Medical Evaluation results without fault of Egg Donor; or complications to Egg Donor caused by medication(s)).

c. Payment Date.

- (a)(i)** IVFS shall disburse the egg donor fee to the egg donor at her follow-up visit with an IVFS physician approximately 2 weeks following her donation, or within 5

days of her cancellation, according to the fee schedule as stated in sections A.2 .and E.4.

(ii) These payments are subject, in each case, to IVFS's:

- (a) right to reasonably verify Egg Donor has earned a Payment, and
- (b) obligation to use commercially reasonable efforts to verify Egg Donor has earned a Payment if IVFS has been provided information which reasonably suggests the Egg Donor has not earned a Payment which Egg Donor claims she has earned, provided, however, IVFS have no obligation to undertake any investigation unless and until such information has been provided to IVFS.

- d. **Compensation for Time, etc.** All Parties agree Egg Donor: (i) is being compensated for her time, inconvenience, costs and effort that she is expending at each stage of the cycle, and (ii) is not being paid for the number or quality of her eggs, and once Egg Donor's retrieval is completed, Egg Donor may be entitled to the full Retrieval Payment according to the terms hereof regardless of whether any viable embryos are formed or any pregnancy is achieved.
- e. **Refund of Unearned Egg Donor Compensation.** In the event this Agreement is terminated based on a Terminating Event prior to Egg Donor earning all of the Egg Donor Compensation, then IVFS shall refund to Prospective Parents, from the Egg Donor Compensation account, the unearned portion of the Egg Donor Compensation, within thirty (30) days of the date of termination of this Agreement.
- f. **Egg Donor.** All of the Fees and Egg Donor's Compensation are payable for one Egg Donor and, in the event Prospective Parents select more than one Egg Donor hereunder pursuant to an agreed upon Rematch, separate Fees and Egg Donor's Compensation shall be payable for each Egg Donor selected, except as specifically set forth herein in certain circumstances with respect to the Insurance Fee.

F. TERMINATING EVENTS. This Section sets forth the Terminating Events following the Agreement Date and, for each Terminating Event, the remedies applicable to each Terminating Event. If unforeseen circumstances arise which are not covered in the TERMINATING EVENTS Section F, but which may reasonably justify termination of this Agreement by a Party, then IVFS may in its reasonable discretion determine whether this Agreement may be terminated and the amount of any Fees, if any, which may be refunded or credited toward a Rematch.

1. Egg Donor Terminates or Breaches Before Medical Evaluation.

- a. If, before beginning the Medical Evaluation, Egg Donor:
 - (i) notifies IVFS that she elects not to proceed with the Egg Donation Arrangement, then this Agreement shall be terminated upon delivery to Prospective Parents of a Termination Notice, or
 - (ii) breaches any of her obligations under the Egg Donor Agreement, then IVFS or Prospective Parents may Terminate this Agreement upon delivery to the other Party of a Termination Notice.
- b. If this Agreement is terminated pursuant to this Section F. 1, then:
 - (i) IVFS shall refund to Prospective Parents 100% of the Program Fee or Rematch

Fee, as the case may be, less: (a) IVFS's Out-of Pocket Costs and, (b) \$500, as compensation for IVFS's time and effort expended in connection with such Egg Donation Arrangement, and

(ii) In the event Prospective Parents and IVFS agree (per Section E.3.e) to a Rematch, Prospective Parents shall be entitled to a Rematch Fee of: (a) \$500 for the new Egg Donor's Genetic Consultation and Psycho-Social Evaluation, plus (b) an Insurance Fee and (unless unused from the original Egg Donor), plus (c) if the Refund above has already been paid to Prospective Parents, the amount of such Refund; provided, however, any Rematch must be agreed upon by the Parties within one (1) year of the Agreement Date.

2. Prospective Parents Terminate or Breach Before Medical Evaluation.

- a. If, before Egg Donor begins the Medical Evaluation, either or both of Prospective Parents:
 - (i) notify IVFS that either or both of Prospective Parents elect not to proceed with the Egg Donation Arrangement, then this Agreement shall be deemed Terminated, or
 - (ii) breach any of Prospective Parents' obligations under this Agreement, or are not reasonably and timely cooperative with the Egg Donation Arrangement, then IVFS may Terminate upon delivery to Prospective Parents of a Termination Notice.
- b. If the Agreement is terminated pursuant to this Section F.2, then IVFS shall refund to Prospective Parents \$2,000 of the Program Fee less IVFS's Out-of- Pocket Costs.

3. Egg Donor Does Not Timely Complete Medical Evaluation.

- a. If:
 - (i) Either:
 - (a) Egg Donor does not use reasonable efforts to arrange the Medical Evaluation within fourteen (14) days of the Agreement Date, or
 - (b) the Medical Evaluation have not been completed within forty-five (45) days of the Agreement Date (absent material delay or fault by the physician), or such longer period IVFS shall have approved in advance, based on reasonable circumstances (e.g., a pre-planned vacation), then IVFS shall notify Prospective Parents thereof, then
 - (ii) IVFS or Prospective Parents may terminate this Agreement upon delivery to the other Party of a Termination Notice.
- b. If this Agreement is terminated pursuant to this Section F.3, then:
 - (i) IVFS shall refund to Prospective Parents \$2,600 of the Program Fee less IVFS's Out-of-Pocket Costs, and
 - (ii) In the event Prospective Parents and IVFS agree (per Section E.3.e) to a Rematch, Prospective Parents shall be entitled to a Rematch Fee of: (a) \$500 for the new Egg Donor's Genetic Consultation and Psycho-Social Evaluation, plus (b) an Insurance Fee (unless unused from the original Egg Donor), plus (c) if the Refund above has already been paid to Prospective Parents, the amount of such Refund; provided, however, any Rematch must agreed upon by the Parties within one (1) year of the Agreement Date.

4. Medical Evaluation Results Abnormal; Egg Donor Does Not Timely Begin First

Injectable Medication; or Egg Donor Terminates or Breaches Following Medical Evaluation.

- a. If:
 - (i) Either:
 - (a) the physician performing the Medical Evaluation determines that the Medical Evaluation results are abnormal, or that Egg Donor should not proceed with the Egg Donation Arrangement, or
 - (b) Egg Donor completes the Medical Evaluation successfully, but does not begin her first prescribed injectable medication on the date prescribed by the physician,
 - (ii) IVFS or Prospective Parents may Terminate this Agreement upon delivery to the other Party of a Termination Notice; provided, however, in the case of Section F.4.a(i)(b), only if IVFS has first used reasonable efforts to attempt to discuss with Egg Donor her reasons for not timely beginning her first prescribed injectable medication.
- b. If, following successful completion of the Medical Evaluation, Egg Donor:
 - (i) notifies IVFS that she elects not to proceed with the Egg Donation Arrangement, then this Agreement shall be Terminated upon delivery to Prospective Parents of a Termination Notice; or
 - (ii) breaches any of her obligations under the Egg Donor Agreement, then IVFS shall notify Prospective Parents thereof, and IVFS or Prospective Parents may Terminate this Agreement upon delivery to the other Party of a Termination Notice.
- c. If this Agreement is terminated pursuant to this Section F.4, a rematch will be offered to the Prospective Parents at no additional cost.

5. Prospective Parents Terminate or Breach Following Medical Evaluation.

- a. If, following successful completion of the Medical Evaluation, either or both of Prospective Parents:
 - (i) notify IVFS that either or both of Prospective Parents elect to not proceed with the Egg Donation Arrangement, then this Agreement shall be Terminated, or
 - (ii) breach any of Prospective Parents' obligations under this Agreement, or are not reasonably and timely cooperative with the Egg Donation Arrangement, then IVFS may Terminate upon delivery to Prospective Parents of a Termination Notice.
- b. If the Agreement is Terminated pursuant to this Section F.5, a rematch will be offered to the Prospective Parents at no additional cost.

6. Death or Incapacity of Prospective Parent(s).

- a. If, prior to Retrieval;
 - (i) Prospective Parents are the decedents or become Incapacitated, then this Agreement shall automatically be Terminated, or
 - (ii) either Prospective Parent is the decedent or becomes Incapacitated, then IVFS or the surviving Prospective Parent may Terminate this Agreement upon delivery to the other Party of a Termination Notice and
- b. In either case, any potential refund of part of the Program Fee or any Rematch Fee

discount shall be negotiated in good faith by the parties, with such amounts to be based on the extent to which IVFS have expended time and effort in connection with such Egg Donation Arrangement.

G. PROSPECTIVE PARENT(S)' RESPONSIBILITIES.

1. Parental Responsibilities:

- a. In accepting donated human eggs, Prospective Parents agree to the following:
 - (i) If legal proceedings are required to establish legal parentage, Prospective Parent(s) will initiate such legal proceedings at their sole cost and expense.
 - (ii) Although any Child born of this Agreement will be genetically related to Egg Donor and Prospective Male Parent (or sperm donor), Prospective Parent(s) agree that Prospective Parent(s) will be the legal Parents of any such Child. Prospective Parents' obligation to assume parental rights and responsibilities is irrevocable once a Child is conceived through this Egg Donation Arrangement. This obligation is irrevocable regardless of any congenital or genetic abnormality of said Child, any change of circumstance, including change in financial circumstance or death or divorce of Prospective Parents, and this obligation extends to any cryopreserved, pre-embryos or embryos created as a result of this Egg Donation Arrangement. The ownership and disposition of any cryopreserved embryos is not addressed in this Agreement and Prospective Parents are advised it should be addressed in the agreement between Prospective Parents *and the* medical facility performing the in vitro fertilization and implantation procedures and/or in an agreement between Prospective Parents and Egg Donor.
 - (iii) Egg Donor _____, shall have no legal or other rights towards any Child that is born as a result of the Egg Donation Arrangement. Prospective Parents agree to indemnify, defend, hold harmless and release IVFS and the Egg Donor from any claims, obligations, costs and expenses relating to the Child. As a result of Prospective Parents' breach hereunder or failure to fulfill the obligations set forth in G.a.(i) and (ii) above Prospective Parents understand that the law surrounding Egg Donation is unsettled and intend to be bound by the obligations contained in this Agreement.

2. Financial and Other Obligations:

- a. Until completion of the Retrieval under this Agreement, Prospective Parents agree to promptly notify IVFS of any change in Prospective Parents' circumstances which would reasonably be expected to have an adverse affect on the Egg Donation Arrangement or Prospective Parents' ability to perform Prospective Parents' material duties or obligations under this Agreement.
- b. Prior to undergoing any medical procedure contemplated hereunder, the Prospective Mother shall undergo a medical examination under the direction of and in the sole discretion of the physician to determine whether her physical health and well being are satisfactory for purposes of the Egg Donation Arrangement.
- c. Usual and customary medical, medication and other costs and expenses of the Egg Donor relating to the Egg Donation Arrangement are Prospective Parents' sole responsibility
 - (i) including, without limitation, medication, ultrasound monitoring, surgical procedures, laboratory fees, nursing service fees, pharmaceutical costs, complications

which are not unusual (e.g., the cost of medications for a second stimulation, if required, are not unusual), but:

(ii) excluding, however:

- (a) the Genetic Consultation and Psycho-Social Evaluation cost, except as otherwise provided herein,
- (b) costs and expenses paid under the Insurance Policy, and
- (c) costs and expenses of the Egg Donor which are unusual, or arise from unusual complications.

(iii) Prospective Parents shall pay such costs and expenses when due.

H. ACKNOWLEDGEMENT OF RISKS.

1. Legal Risks:

- a. Prospective Parents represent and warrant that they have been advised that the legal status of egg donation in Illinois is unsettled. Upon request, IVFS will provide an attorney referral list to all recipients. IVFS provides this referral list because of the limited number of lawyers who have dealt with the legal issues of assisted reproductive technology, but IVFS does not warrant the quality of the services provided by those lawyers. Prospective Parents are not obligated to choose Prospective Parents' independent counsel from IVFS's attorney referral list. Prospective Parents each acknowledge and agree that Prospective Parents: have reviewed this Agreement; have had the opportunity to ask questions of IVFS concerning the meaning of its terms, have had all such questions adequately answered; and are signing this Agreement freely and voluntarily.

2. Medical, Psychological and other Potential Risks.

- a. Prospective Parents acknowledge egg donation is a relatively new medical technology which brings both known and unknown medical, legal and psychological risks to all participants including, without limitation, any Child born as a result of the Egg Donation Arrangement,
- b. Prospective Parents therefore acknowledge that such risks include, but are not limited to the following, each of which risks Prospective Parents voluntarily assume:
 - (i) A genetic counselor will interview the prospective Egg Donor regarding her family history and make recommendations to Prospective Parents' Physician regarding further genetic testing.

The Egg Donor may test negative for an infectious or genetic disease when she does in fact have the ability to pass this infectious or genetic disease through her eggs to the Prospective Mother and/or a Child. The passage of an infectious disease could cause a Child or Children to be born with severe handicaps or, could result, potentially, in the death of the Child, and/or the Prospective Mother.

(ii) Genetic counseling has inherent limitations. It is impossible to guarantee a normal, healthy Child and all children have a 2 - 3% chance of being born with a birth defect.

(iii) Neither IVFS, the physicians, genetic counselors, nor any psychologist or psychiatrist, nor any other professional whose services are contemplated under this Agreement, or any agents or employees of any of the above, have provided any assurance, guarantee or warranty regarding any of the following, or, if previously provided, are hereby disclaimed, and Prospective Parents agree to assume all risks related thereto:

- (a) That Egg Donor will in fact produce healthy, viable egg(s);
- (b) That Egg Donor's representations regarding her health and medical condition are accurate;
- (c) That any Child, if conceived, will be a physically and/or mentally healthy Child free of birth, infectious and/or congenital defects;
- (d) The quality or sufficiency of the Egg Donor's prior cycles, if any;
- (e) That Prospective Parents' doctor will accept the Egg Donor; and
- (f) That the Egg Donor will comply with the terms and provisions of her Egg Donor Agreement.

c. Professionals and Insurance Policy. Prospective Parents specifically agree that although IVFS can recommend professionals in this area, IVFS does not have any personnel acting in any legal capacity, nor can IVFS assure the adequacy of such professionals. Prospective Parents acknowledge the Insurance Policy is provided by an independent entity, and IVFS cannot guarantee the adequacy of such Insurance Policy. Such Insurance Policy may be subject to various limitations and exclusions including, without limitation, deductibles, coverage limits, co-insurance and time limitations, and IVFS has no responsibility therefor, and Prospective Parents hereby release IVFS from any liability in connection with the scope, limitations or existence of the Insurance Policy.

3. Assumption of Risks. Prospective Parents represent that they have investigated the risks involved in this arrangement, and further represent that by signing this agreement, Prospective Parents knowingly and willingly assume all risks, both known and unknown, associated with the Egg Donation Arrangement.

I. ANONYMITY AND CONFIDENTIALITY.

- 1. Non-disclosure.** Neither Party shall, without the prior written approval of the other parties, disclose any Confidential Information to third Parties nor use Confidential Information, except for the benefit of the other party or in furtherance of the Egg Donation Arrangement or the relationship between the parties contemplated by this Agreement. The Parties agree that the egg donation contemplated herein is to be anonymous, and Prospective Parents therefore agree they will not, absent the prior written agreement of all Parties and the Egg Donor, attempt to locate or identify the Egg Donor, nor attempt to obtain information from IVFS, or any person involved in this Egg Donation Arrangement, to enable Prospective Parents to locate or identify the Egg Donor. The Parties acknowledge that, notwithstanding anything to the contrary contained herein, it is possible that a court may require disclosure of the identities of Prospective Parents and/or Egg Donor, generally if such court believes such disclosure is in the best interests of any Child.
- 2. Exceptions.** Notwithstanding anything contained in Section I.1 to the contrary, either party may disclose Confidential Information in accordance with judicial or other governmental order or as may be required by statute, provided, however, that the party ordered or required to disclose such Confidential Information (the "Disclosing Party") shall give the other party (the "Non-Disclosing Party") as much advance notice as reasonably possible of any such disclosure so that the Non-Disclosing Party may seek a protective order or other remedy.

The Disclosing Party shall comply with any protective order or equivalent relating to the Confidential Information. In the event such a protective order is not obtained, the Disclosing Party agrees to use reasonable efforts to ensure that only the minimum portion of the Confidential Information necessary to comply with the law is disclosed. In addition, in order to maintain the confidentiality contemplated herein, in the event litigation arises out of or relating to this Agreement or the Egg Donation Arrangement, the Parties, then- heirs and representatives agree to make all efforts to maintain such confidentiality as is intended by this Agreement as to the general public and as to each other including, but not limited to, requesting the court to invoke gag orders, requesting the court in its procedures and in the conducting of hearings to maintain confidentiality regarding the identity of the parties.

3. Avoidance of Consanguinity. Notwithstanding anything to the contrary contained herein, Prospective Parents hereby authorize IVFS to provide the Egg Donor, on her request, with the birth date of the Prospective Father, or the birth year of sperm donor, if available, as the case may be, *in* an attempt to prevent inadvertent consanguinity.

4. Future Contact:

a. Prospective Parents agree that IVFS may contact them at Egg Donor's request in the event of a life threatening illness to the Egg Donor, but Prospective Parents reserve the right to decide at that time whether Prospective Parents wish to reveal their identities to the Egg Donor or provide other information. Similarly, IVFS represents that Egg Donor has agreed that IVFS may contact her in the event that the Child experiences a life threatening illness, but Prospective Parents agree that Egg Donor reserves the right to decide at that time whether she wishes to reveal her identity to Prospective Parents or provide other information,

b. In the event that IVFS should cease to operate, move, or change IVFS's name or business identity, IVFS will provide notice of such, as well as contact information for any successor entity or other party maintaining Prospective Parents' records, to prospective Parents in writing at the address last provided by Prospective Parents, and all Parties agree to cooperate to attempt to arrange an alternative means of record keeping including placement with an alternative party. IVFS reserves the right to charge a fee for transferring records to such fiduciary and all reasonable costs will be borne by Prospective Parents.

5. Third Party Beneficiaries. Prospective Parents agree that Egg Donor shall be deemed a third party beneficiary of this Section I, and the Egg Donor may therefore bring an action to enforce the provisions of this Section I.

6. Nondisparagement.

a. Prospective Parents. Each of Prospective Parents agree to not disparage IVFS or IVFS's members, managers, employees, shareholders or agents, in any manner likely to be harmful to any of IVFS or IVFS's business, business reputation or personal reputation; provided that Prospective Parents may respond accurately and fully to any question, inquiry or request for information when required by legal process.

b. IVFS. IVFS agrees to not disparage Prospective Parents in any manner likely to be harmful to either of them or their personal reputations; provided that IVFS may respond accurately and fully to any question, inquiry or request for information when required by legal process.

J. LIMITATIONS.

1. Limitation of Liability.

a. Waiver of Certain Damages. In no event shall either Party be liable to the other for any special, incidental, indirect, exemplary, punitive, or consequential damages related to or arising out of or in connection with this Agreement or the Egg Donation Arrangement, except in the event of willful breach or gross negligence.

b. Liability Limit. In no event shall either Party's aggregate liability related to or arising out of or in connection with this Agreement or the Egg Donation Arrangement exceed \$20,000, except in the event of willful breach or gross negligence. The existence of one or more claims shall not enlarge such limit.

2. Form of Action. The limitations of liability set forth in this Agreement shall apply: (i) regardless of the form of action, whether in contract, tort, strict liability or otherwise; and (ii) whether or not damages were foreseeable. These limitations of liability shall survive failure of any exclusive remedies provided in this Agreement and failure of the essential purpose of this Agreement.

3. Claims Period. Neither party may bring any action arising out of this Agreement, regardless of form, more than two years after the cause of such action arose and was known, or reasonably should have been known, by the Party seeking to bring such action.

K. MISCELLANEOUS.

1. Counterparts. The undersigned Parties agree that this Agreement shall be signed in multiple counterparts in order to preserve the confidentiality of the identities of the Parties hereto but that such counterparts shall collectively constitute one and the same Agreement.

2. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the Egg Donation Arrangement. All agreements, covenants, representations and warranties, expressed or implied, oral or written, made by any party to any other party with respect to the subject matter of this Agreement are embodied herein, **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IVFS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO INVIA FERTILITY SPECIALISTS'S SERVICES, AND INVIA FERTILITY SPECIALISTS DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO IVFS'S SERVICES.** All prior and contemporaneous conversations, negotiations, possible and alleged agreements, covenants, representations and warranties, of every nature whatsoever, which relate to this Agreement are waived, merged and superseded. This is a fully integrated Agreement. This document and all its attachments and exhibits, hereto, constitute the complete Agreement.

3. Drafting. 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 any provisions.

4. Assignment, Transfer, etc. Neither IVFS nor Prospective Parents shall assign any of their respective rights or obligations under this Agreement without the prior written consent of the other Party; except that IVFS may assign IVFS's rights and obligations hereunder to any purchaser substantially all of IVFS's assets or other successor or affiliated entity .

5. Any notice, waiver, consent or other communication required or permitted hereunder shall be in writing and shall be delivered personally (including delivery by a nationally recognized courier service), by facsimile transmission, by pre-paid telegram, by email or by pre-paid certified or registered mail, return receipt requested, addressed as follows:

InVia Fertility Specialists
1585 North Barrington Road, Suite #406
Hoffman Estates, IL 60194
Tel: (847) 884-8884
Facsimile: (847) 884-8093

If to the Prospective Parents:

Notice hereunder shall be deemed to have been received and be effective for all purposes hereunder (a) if given by facsimile transmission or email, when transmitted to the facsimile number or email address, as the case may be, specified in this Section and confirmation of such transmittal is received, if requested, (b) if given by prepaid certified or registered mail, return receipt requested, on the third business day after mailing or (c) if given by any other means, when delivered at the address specified in this Section. The address and facsimile number of any party hereto may be changed by notice given in accordance with the provisions hereof.

6. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed and enforced to the extent possible or modified in such a way as to make it enforceable, and the invalidity, illegality or unenforceability thereof shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
7. **Successors.** This Agreement and all the terms and provision hereof shall be binding upon and shall inure to the benefit of all of the parties hereto, and their legal representatives, heirs, successors and permitted assigns, except as expressly herein otherwise provided,
8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
9. **Jurisdiction and Venue.** Each of the Parties hereto expressly submits and consents in advance to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois or the Circuit Court of Cook County, Illinois, for the purposes of any and all suits or other proceedings arising out of or based upon this Agreement. Each of the Parties hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit or proceeding is brought in an inconvenient forum, that the venue of the suit or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.
10. **Pronouns and Headings.** As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof whenever the context and facts require such construction. The headings, titles and subtitles herein are inserted for convenience of

reference only and are to be ignored in any construction of the provisions hereof.

- 11. Amendment and Waiver.** Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective unless such modification, amendment or waiver is approved in writing by the Parties. The failure of any Party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.
- 12. No Third Party Beneficiaries.** Each party's warranty, indemnification and other obligations shall be solely for the benefit of the other party, and not for the benefit of third parties or successors or assigns, other than as otherwise specifically provided herein and for permitted successors and assigns in accordance with Section K.4
- 13. Survival of Obligations.** The Parties obligations under Sections H, I, J and K shall survive the termination of this agreement.
- 14. Attorneys' Fees.** In any lawsuit or action between the parties arising out of this Agreement, the non-prevailing party shall promptly reimburse the prevailing party for the reasonable attorneys' fees and court costs incurred by the prevailing party.
- 15. Joint and Several Obligations.** Each of Prospective Parents shall be jointly and severally liable for all of the obligations of the other.
- 16. Term.** Unless Terminated earlier as provided herein, this Agreement shall remain in effect until sixty (60) days after Retrieval, in order to allow the parties to fulfill their obligations hereunder, subject to "**Survival of Obligations**", Section K. 13.
- 17. Termination.** Prospective Parents or IVFS may terminate this Agreement at any time, effective ten calendar days after receipt of a Termination Notice by the other Party, provided, however, the rights and obligations of the Parties upon termination shall be subject to the terms of this Agreement including, without limitation, Section F.

L. DEFINITIONS.

- 1. "Agreement Date"** means the date IVFS has advised Prospective Parents that this Agreement has been fully executed and delivered by the Parties and IVFS has a fully executed Egg Donor Agreement.
- 2. "Child" or "Children"** means a child or children resulting from the Egg Donation Arrangement described herein.
- 3. "Confidential Information"** means all non-public profiles, identifying and other information regarding the Egg Donor, prospective Egg Donors, Prospective Parents and the Egg Donation Arrangement including, without limitation, any such information which may be public information in other contexts, but is commonly deemed "Confidential Information" since related to egg donation or potential egg donation,
- 4. "Damages"** means any adverse consequences, damages, losses, claims, actions, liabilities, costs, expenses or detriments including, without limitation, attorneys fees and court costs.
- 5. "Egg Donation Arrangement"** means the arrangement whereby Prospective Parent(s) will attempt to have a Child or Children, based, in part, on egg(s) donated by Egg Donor and as further described in Section **B**. #1.
- 6. "Egg Donor"** means the anonymous egg donor, recruited by IVFS, selected by

Prospective Parent(s), to donate egg(s) under the Egg Donation Arrangement subject to a written agreement with IVFS.

7. **"Egg Donor Agreement"** means the agreement entered into between IVFS and Egg Donor with respect to the Egg Donation Arrangement involving Prospective Parents. **"Egg Donor's Compensation"** means the amount set forth therefor in the **"Egg Donor's Compensation"** chart in Section A.2.
8. **"Fees"** means the Program Fee, and Insurance Fee.
9. **"Injectable Medication Payment"** means the amount set forth therefor in the **"Egg Donor's Compensation"** chart in Section A.2.
10. **"Genetic Consultation and Psycho-Social Evaluation"** means Egg Donor's genetic consultation with a genetic counselor, and clinical psycho-social evaluation by an independent mental health professional.
11. **"Insurance Fee"** means the Insurance Policy cost, in the amount set forth therefor in the **"Program and Insurance Fees"** chart in Section A. 1.
12. **"Insurance Policy"** means the supplemental insurance policy for the benefit of Egg Donor in connection -with the Egg Donation Arrangement to be purchased by IVFS using the Insurance Fee, which policy is intended to cover certain medical complications resulting from egg retrieval cycles made pursuant to this Agreement.
13. **"Medical Evaluation"** means Egg Donor's initial appointment with IVFS physician for initial medical screening, evaluation and testing.
14. **"Non-Injectable Medication Payment"** means the amount set forth therefor in the **"Egg Donor's Compensation"** chart in Section A.2.
15. **"Out-of-Pocket Costs"** means the portion, if any, of the Insurance Fee, Legal Fee and \$500 fee for the Genetic Consultation and Psycho-Social Evaluation previously paid, or then payable, by IVFS to a third party.
16. **"Program Fee"** means IVFS's fee for performing IVFS's services, in the amount set forth in the **"Program and Insurance Fees"** chart in Section A. 1.
17. **"Payment"** means any or all of the Non-Injectable Medication Payment, Injectable Medication Payment and Retrieval Payment, as the context indicates.
18. **"Prospective Parent(s)"** shall mean the person/people identified as Prospective Parent A and if applicable Prospective Parent B on the signature page to this Agreement.
19. **"Refund"** means a refund of all or part of the Program and Insurance Fees, to the extent indicated in Section F for certain Terminating Events.
20. **"Rematch"** means that following; a Termination based on a Terminating Event caused by Egg Donor, IVFS and Prospective Parents, each at our option, have agreed to proceed with a subsequent Egg Donation Arrangement with a new Egg Donor, and thereby reinstate this Agreement, pursuant to the additional terms set forth in **"Rematch; Reinstatement of Agreement"**, Section E.3.e.
21. **"Rematch Fee"** means the amount set forth herein for a Rematch.
22. **"Retrieval Payment"** means the amount set forth therefor in the **"Egg Donor's Compensation"** chart in Section A.2.
23. **"Terminate"** or **"Terminated"** means the termination of this Agreement upon the delivery of a Termination Notice from one party to the other, subject to reinstatement as provided in **"Rematch; Reinstatement of Agreement"**, Section E.3.e. and section F.1.a
24. **"Terminating Event"** shall mean those events set forth in Section F, which provides one or both parties the right to Terminate this Agreement, to the extent set forth in such Section.
25. **"Termination Notice"** shall mean written notice in accordance with the **"Notices"**

provision in Section **K.5**, delivered by one Party to the other Party terminating this Agreement following the occurrence of a Terminating Event, provided that a Termination Notice from Prospective Parents shall be effective only if signed by both of Prospective Parents.

26. "Uncommitted Insurance Fee" means that portion, if any, of the Insurance Fee not previously paid, or then payable, to a third party.

The parties acknowledge that each has fully reviewed and understand, and agree to the contents of this document.

Date: _____

PROSPECTIVE PARENT "A" (Print Name)

PROSPECTIVE PARENT "A" SIGNATURE

Date: _____

PROSPECTIVE PARENT "B" (Print Name)

PROSPECTIVE PARENT "B" SIGNATURE

InVia Fertility Specialists

Date: _____

By: _____
WITNESS SIGNATURE

PRINTED NAME OF WITNESS

Exhibit A

Prospective Parents' Acceptance of Anonymous Egg Donor and Time Frame for Egg Donation Procedure

- 1. Parties and Receipt of Agreement.** The undersigned Prospective Parents ("Prospective Parents", and "Prospective Parents" for the possessive case) acknowledge receipt of the form of AGREEMENT: PROSPECTIVE PARENTS ("Agreement") to be entered into between such Prospective Parents and InVia Fertility Specialists ("IVFS"). Capitalized terms used in this Exhibit A shall have the meanings ascribed to such terms in such form of Agreement.
- 2. Selection of Egg Donor.** Prospective Parents desire to select a particular Egg Donor and pay the Fees contemplated by the Agreement, in order to expedite the Egg Donation Arrangement described in the Agreement during the period Prospective Parents and Prospective Parents' attorney review the form of Agreement Prospective Parents represent that Prospective Parents have asked IVFS all questions that Prospective Parents have about Prospective Parents' proposed Egg Donor, and have received all of the information that Prospective Parents deem necessary to make a decision regarding whether to proceed with said Egg Donor. Prospective Parents therefore agree to formally accept the Egg Donor identified as:

Donor #: _____

- 3. Timetable.**

- a.** The Egg Donor and Prospective Mother shall begin the donation process within sixty (60) days after the Egg Donor has completed the Medical Evaluation. Beginning the donation process requires, at a minimum, both parties must be started on their medications. Notwithstanding the foregoing, in the event IVFS request the parties to establish a different or more detailed timetable for beginning and/or continuing the donation process, the parties shall cooperate in good faith to establish, and comply with, such a written timetable for the timing of the Egg Donation Arrangement procedures.
- b.** The Prospective Mother and the Egg Donor are each permitted a single extension of up to thirty (30) days due to good cause reasonably acceptable to IVFS, such as a physician documented illness or family emergency. The above-referenced sixty (60) day period shall begin upon expiration of such extension of up to thirty (30) days.

- 4. Termination and Fees.** In the event Prospective Parent(s) do not comply with one or both of such dates, then IVFS may terminate this Exhibit A and retain: (i) \$500 of the Program Fee as compensation for IVFS's time and effort, plus (ii) such additional portion of the Program Fee equal to the amount then paid or payable to third parties for the Genetic Consultation and Psycho-Social Evaluation, in the event that an Egg Donor was not prescreened prior to being chosen by Prospective Parents, plus (iii) such portion of the Insurance Fee then paid or payable to third parties therefore, and IVFS shall have *no* obligation *to enter into* an Agreement with Prospective parents. IVFS shall refund the balance of the Program Fee, and the Uncommitted Insurance Fee, if any, within twenty (20) days after such termination.

The parties acknowledge that each has fully reviewed and understand, and agrees to the contents of this document.

Date: _____

PROSPECTIVE PARENT "A" (Print Name)

PROSPECTIVE PARENT "A" SIGNATURE

Date: _____

PROSPECTIVE PARENT "B" (Print Name)

PROSPECTIVE PARENT "B" SIGNATURE

I acknowledge that this document was signed in my presence and notarized by my signature and seal:

Date : _____

By : _____