



BIO GENETICS CORPORATION®

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RECIPIENT ACKNOWLEDGMENT, REQUEST AND CONSENT FORM FOR ASSISTED REPRODUCTION BY CRYOPRESERVED DONOR SPERM

This ACKNOWLEDGMENT is dated as of _____
(for the purposes of brevity, "Acknowledgment" will refer to the entire contents of this "Recipient Acknowledgement, Request and Consent Form For Assisted Reproduction by Cryopreserved Donor Sperm").

Recipient's Name: _____

and if applicable, the name of

Recipient's spouse or partner: _____

(Collectively referred to as "Recipient," along with others mentioned in paragraph B of the "Miscellaneous" section of this Acknowledgement)

Recipient's Address: _____

WHEREAS:

- A. BioGenetics is a New Jersey Corporation, which operates a human sperm bank, the business of which is to recruit, process, preserve, store and distribute donor sperm for use by individual Recipient(s) under the supervision of the medical entity named below for the purpose of assisted reproduction.
- B. Recipient is under the care of: _____
(Insert Physician's Name / Name of Medical Facility)

Physician's/Medical Facility's Address: _____

For the purpose of having a child conceived through assisted reproduction, in consideration of the procurement of cryopreserved (frozen) donor sperm ("Specimens") to be used by Physician/Medical Facility in the process of assisted reproduction, and as a condition of this procurement

RECIPIENT ACKNOWLEDGES:

REPRESENTATIONS OF RECIPIENT:

- A. Recipient has read the Acknowledgment and understands the content of this document. Recipient has the opportunity to review it and seek the advice of legal counsel to understand the terms and content of this Acknowledgement. Regardless of whether Recipient has taken the opportunity to so review it, Recipient executes the "Acknowledgment" as presented.
Recipient has executed and forwarded to BioGenetics Corporation the Acknowledgement prior to the ordering of Specimen(s).
- B. Recipient acknowledges that assisted reproduction is carried out under the supervision of a licensed physician.
- C. Recipient acknowledges that the Specimen(s) used to carry out the assisted reproduction have been donated by a man other than Recipient's spouse or partner.
- D. Recipient has had the opportunity to seek the advice of legal counsel to so Recipient could be informed of, and understand, the local, State and Federal laws regarding Recipient's and/or other individuals' legal relationship (if any) to any child born as a result of assisted reproduction from Specimen(s) procured by BioGenetics.
- E. Recipient has been advised, acknowledges and understands that BioGenetics is not able to guarantee, nor does BioGenetics guarantees or in any way represent or warrant that the outcome of any treatment related to the use of Specimen(s) for assisted reproduction will result in a pregnancy and/or a child or children.
- F. Recipient has been advised and understands that within the normal human population a certain percentage of children are born with physical or mental defects and the occurrence of such defects are beyond the control of BioGenetics Corporation staff and consultants, paid or unpaid.
- G. Recipient, and not BioGenetics, has selected the Specimen(s) to be used for assisted reproduction.
- H. Recipient has been counseled by, and is under the care of, a Physician/Medical Facility that has advised Recipient that the use of the cryopreserved Specimen(s) may involve several risks including, but not limited to, the following:
1. Infection or other problems caused by viruses, bacteria, organisms, or other known or unknown pathogens, teratogens or other harmful substances;
 2. Development of sperm antibodies;
 3. Psychological disturbances experienced by Recipient, her spouse or partner, if any, any other family member, or any other person, as a result of assisted reproduction being performed on Recipient (see also discussion under "Disclaimers" section below);
 4. Anaphylactic or allergic responses by Recipient to the sperm in the Specimen(s) and/or seminal implantation;
 5. Any abortion, natural or induced, resulting from a pregnancy induced by the Specimen(s);
 6. The occurrence of any congenital abnormality to the offspring, including, but not limited to, genetic, chromosomal, environmental, and/or metabolic abnormalities, whether internal or external;
 7. Abnormalities relating to appearance and/or features of the newborn including, without limitation, ethnic or racial variation, skin color, eye color, hair color and/or abnormalities related to these features or phenotypes, or to any other internal or external feature or phenotype;
 8. Neuropsychological problems or abnormalities, or other aberrations of the offspring;
 9. Physical or mental abuse by Recipient, or sibling(s), or others, with respect to the newborn or any other person(s);
 10. Subsequent diseases, whether foreseeable or unforeseeable;
 11. Potential psychological implications as a result of the production of offspring through assisted reproduction with respect to:
Recipient's relationship with Recipient's spouse or partner, if any; Recipient's relationship with the child or children produced through assisted reproduction; Recipient's relationship with any other child or children, and any other familial or social relationship involving Recipient.

PURCHASE OF SPECIMENS:

- A. **Recipient must submit to BioGenetics, by mail or fax, a completed "Order Request and Confirmation Form" for a given "Specimen" (or "Specimens").** That Order Request and Confirmation Form (available from BioGenetics upon request) is to be completed and submitted by Recipient every time Recipient places an order for Specimen(s).
The provisions of this Acknowledgement supersede the terms of any form or purchase order supplied by any Recipient.
- B. BioGenetics shall have the right, during the period between the date on which the actual order was placed and the actual receipt date of a completed Order Request and Confirmation Form, to exhaust its inventory for any of the Specimen(s), without liability to Recipient.
- C. If BioGenetics does not have Specimen(s) in its released inventory to fill Recipient's order, BioGenetics shall notify Recipient, orally or in writing, within a reasonable period. Recipient shall have the option of changing the Specimen(s) Recipient is requesting or canceling the order. If the order is cancelled, neither party shall have any obligation of any kind to the other with respect to the order or with respect to any cost incurred by Recipient related to any assisted reproduction procedure.
- D. The fees to be paid to BioGenetics with respect to each purchase of Specimen(s) shall be those set forth on BioGenetics' current fee schedule in effect at the time of the order. BioGenetics shall furnish copies of its fee schedule to Recipient on request. Fees paid to BioGenetics shall include: the cost of each Specimen(s) and the shipping and delivery costs of each Specimen. BioGenetics may require Recipient to pay additional fees in the event that a shipment requires special handling. In addition, Recipient may be required to pay any custom charges and taxes that may be levied with respect to a shipment and/or Specimen(s). Such custom charges and taxes are commonplace when Specimen(s) are shipped to various international destinations. (The address to which Specimen(s) are shipped are to be provided by the Recipient to BioGenetics in writing).

WARRANTIES:

- A. Except as otherwise specifically set forth in this Acknowledgement, BioGenetics hereby disclaims all express and implied warranties INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE. In no event shall BioGenetics be liable for incidental or consequential damages of any kind to Recipient, Physician/Medical Facility, or to any child born as a result of assisted reproduction with Specimen(s) supplied by BioGenetics.
- B. Recipient acknowledges that Specimen(s) are subject to spoilage and other risks inherent to organic and inorganic matter.
- C. BioGenetics represents that **ALL SPECIMENS ARE QUARANTINED for 180 days** minimum and are released starting on the 210th day.
- D. The sole warranty of BioGenetics with respect to the Specimen(s) is that, within thirty (30) minutes after thawing according to BioGenetics' specifications the Specimen(s) will have the following indices:
- 1. Motility of not fewer than 10 million motile sperm cells per vial(s).**
 - 2. Index of motility 2.0 (0=non motile, 3=excellent forward progressive motility)**

Specimens that are found by a Physician/Medical Facility not to meet the above indices set forth by BioGenetics may qualify for credit. The Physician/Medical Facility must notify BioGenetics, on behalf of the Recipient, using a "Product Complaint Report Form" (available from BioGenetics), within twenty-four (24) hours or the first day of business following the post-thaw evaluation of the Specimens. The possibility of such a credit applies only when the Specimen(s) are kept in the biological shippers supplied by BioGenetics for the transport and transfer from BioGenetics to the Physician/Medical Facility of record as consignee, or when the Specimen(s) have been appropriately transferred to a liquid nitrogen storage container at the Physician/Medical Facility of record, thereby allowing for the Specimen(s) to remain in a "vapor phase" or Liquid nitrogen environment for long term storage.

- E. The effective holding time of the biological shipper used by BioGenetics for transport/transfer is based on BioGenetics' quality assurance protocol and data for assessing the performance of a biological shipper.
BioGenetics therefore limits the holding capacity of cryopreserved Specimen(s) in its biological shipper to a period not to exceed four (4) days from date of shipping of the Specimen(s).
BioGenetics recommends that Physician/Medical Facility maintain Specimen(s) in BioGenetics' biological shipper for a period not greater than four (4) days from date of shipping of the Specimen(s).
Approval for EXTENDED STORAGE OF CRYOPRESERVED SPECIMEN(S), in a manner other than BioGenetics' usual recommended method, must be obtained by Recipient by directing an inquiry to the Director of the Sperm Bank at BioGenetics.
- F. **Specimen(s) not used by Recipient (due to over-stock, cancelled or missed treatment cycle(s), or for other reasons) may not be returned to BioGenetics for refund or credit.**

DIAGNOSTIC TESTS:

BioGenetics represents that the following diagnostics tests **AND NO OTHERS** will have been performed on Specimen(s) or on the donor as per testing protocols in place at BioGenetics in order to qualify Specimen(s) for use in assisted reproduction procedures. FDA/CLIA licensed medical laboratories are sub-contracted to perform laboratory tests (FDA-cleared where applicable) on the donor's semen, blood and urine samples. Those tests will have been conducted in accordance with parameters recommended by various scientific and government agencies, and those tests will have been conducted with FDA-cleared procedures and/or testing kits (where applicable).

THE INITIAL EVALUATION TO CONSIST OF THE FOLLOWING TESTS:

Blood Group and Rh	Chemistry Profile	Complete Blood Count
Hepatitis C Virus Antibody	Hepatitis B Surface Antigen	Hepatitis B Core Antibody
HIV-1/2 (AB) screening	HTLV-I&II	Syphilis serology screen
Cytomegalovirus screen Total AB (CMV)	Chlamydia (NAT)	Urinalysis
G.C.(NAT)	West Nile Virus (NAT)	
SEMA 4 (genetic testing 502 gene panel)	Urine Drug screen (unscheduled randomized testing)	

AND THE FOLLOWING TESTING is repeated based on the frequency of sample collection as as at the end of every 180 days quarantine period:

Hepatitis C Virus Antibody	Hepatitis B Surface Antigen	HTLV-I&II
Syphilis serology screen	HIV-1/2 screening	Cytomegalovirus screen (CMV)
Chlamydia (NAT)	West Nile Virus (NAT)	
G.C. (NAT)	Chemistry Profile (Bi-annually)	
Hepatitis B Core Antibody (Bi-annually)		
Urine Drug screen (unscheduled randomized testing)		

NO TESTS ARE PERFORMED FOR cancer markers or multiple sclerosis.

Prior to the release of Specimen(s), the results of all the above-referenced laboratory tests must be found to be within acceptable limits.

Warning: Even if the results of tests described above under this section of the Acknowledgement were found to be within acceptable limits, and even when properly administered, laboratory tests have their own limitations and may not produce accurate and reliable results. Consequentially, Physician/Medical Facility must further inform Recipient of the risks that certain Specimen(s) will not be disease free even though the above-referenced test results may indicate otherwise.

DISCLAIMERS:

BioGenetics shall not be responsible for, and Recipient hereby releases BioGenetics and its donors, agents, officers, directors, employees, advisors and consultants from, all liability of any kind or nature with respect to:

- A. A failure of Specimen(s) to induce pregnancy.
- B. The handling or supervision of Specimen(s) after they have left BioGenetics' premises.
- C. Any birth defects or abnormalities of any kind, including genetic, chromosomal, environmental, metabolic, whether internal or external, resulting from a pregnancy induced by Specimen(s).
- D. Any failure of Specimen(s) to produce the characteristics set forth in the "Donor Quarterly" in any child born as a result of assisted reproduction with Specimen(s).
- E. Any missed cycle scheduled for assisted reproductive procedure whereby Specimen(s) were obtained from BioGenetics.
- F. Survival (or failure to survive) of embryo(s) created from cryopreserved Specimen(s) obtained from BioGenetics
- G. Successful implantation of embryo(s), which may have been created from cryopreserved Specimen(s) obtained from BioGenetics.
- H. Any abortion, natural or induced, resulting from a pregnancy induced by Specimen(s).
- I. Any claim by Physician/Medical Facility that arises from, is connected with, or is in anyway related to, the Specimen(s) and any assisted reproduction in which they are used; including, without limitation, any claim by or related to the parent or parents of any child born as a result of assisted reproduction with the Specimen(s), any such child, or the sibling or other relatives of any such child which arises from, is connected with, or is any way related to the assisted reproduction procedure.
- J. Performance or non-performance of any act to be performed (or not to be performed) by Physician/Medical Facility.
- K. The failure of Physician/Medical Facility, or Recipient, to conform to applicable laws with respect to the Specimen(s), or utilization of Specimen(s), for any assisted reproduction procedure.
- L. In addition, Recipient has been counseled and understands that the use of Specimen(s) may involve several risks, including, but not limited to, the following:
 - 1. Infection caused by viruses, bacteria, organisms, or other known or unknown pathogens, teratogens or other harmful substances;
 - 2. Development of sperm antibodies;
 - 3. Psychological disturbances as a result of assisted reproduction being performed upon Recipient, her spouse or partner, if any, any other family member, or any other person;
 - 4. Anaphylactic or allergic responses by Recipient to the sperm in the Specimen(s) and/or seminal implantation;
 - 5. Any abortion, natural or induced, resulting from a pregnancy induced by the Specimen(s);
 - 6. The occurrence of any congenital abnormality to the off-spring, including, but not limited to, genetic, chromosomal, environmental, and/or metabolic, whether internal or external;
 - 7. Abnormalities relating to the appearance and/or features of the newborn including, without limitation, ethnic or racial variation, skin color, eye color, hair color, and/or abnormalities related to these features or phenotypes, or to any other internal or external feature or phenotype;
 - 8. Neuropsychological problems or abnormalities, or other aberrations of the offspring;
 - 9. Physical or mental abuse by the Recipient, or sibling(s) or others with respect to the newborn or any other person(s);
 - 10. Subsequent diseases, whether foreseeable or unforeseeable;
 - 11. Potential psychological implications as a result of the production of offspring through assisted reproduction with respect to: Recipient's relationship with Recipient's spouse or partner, if any, Recipient's relationship with the child or children produced through assisted reproduction, Recipient's relationship with any other child or children, and any other familial or social relationship involving Recipient.

LIMITATION OF LIABILITY:

In the event of any breach of any warranty, representation or covenant on the part of BioGenetics, Recipient's recovery shall be limited to the return of any monies paid by Recipient for the "Specimen(s)" with respect to which the breach occurred.

The sole liability, if any, of BioGenetics for breach of the warranty set forth in the section entitled "Warranties" under paragraph D, (specifically, lines 1 thru 4 thereof, which includes subparagraphs D.1. and D.2) or any other breach of any other provision in this Acknowledgement shall be the return of monies paid by Recipient for the Specimen(s) to which the warranty or other provision of this Acknowledgement relates.

In the event the recipient wishes to make a claim for breach of warranty under this Acknowledgement, recipient must complete in its entirety, and submit to BioGenetics, a Product Complaint Report Form (available from BioGenetics). The Product Complaint Report Form is to be completed by the Physician/Medical Facility, on behalf of the Recipient. The Product Complaint Report Form must be submitted and received by BioGenetics within 48 hours of the incident giving rise to the claim.

Recipient's failure to assert a claim for breach of warranty strictly within the time limit and in the manner described above under this Limitation of Liability section of this Acknowledgement shall constitute a waiver of claim by Recipient with respect to the Specimen(s) to which the claim would have related. The mere making of a claim by Recipient, however, shall not establish that BioGenetics is liable in any way to Recipient.

Neither Biogenetics, nor Donor, shall have any liability to any person or entity with respect to any claim for child support, financial support of any kind, and/or money damages of any kind (whether based upon tort, contract, quasi contract, restitution or any other common law or statutory theory of liability) from (or pertaining to) any child or children conceived through assisted reproduction with Specimen(s) provided by BioGenetics.

CONFIDENTIAL INFORMATION:

Confidential Information means any information (including without limitation documents, computer data, and/or or written or oral communications of any kind) which is disclosed by BioGenetics to Recipient (either directly or indirectly) and which is: (a) in writing and is marked as confidential or with similar designation at the time of its disclosure; or (b) in any other form or media and which is identified or marked as confidential upon disclosure; or (c) is treated as confidential upon disclosure and is designated as confidential in a writing delivered to the Recipient within thirty (30) days after disclosure of the information to Recipient.

Biogenetics will release certain confidential information about Donors specific to the program selected by Recipient with respect to Specimen(s).

Recipient further agrees that at all times (and notwithstanding any termination or expiration of any other provisions of this "Acknowledgment"), Recipient will hold in strict confidence and not disclose to any third party Confidential Information of or about the Donor selected, except as approved in writing by BioGenetics, and Recipient will use the Confidential Information approved in writing by BioGenetics for no purpose other than to share that Confidential Information orally with any other co-signer and the child/children born from the purchase of "Specimen(s) obtained from Biogenetics having a need to know such information.

The Recipient's obligations under this "Acknowledgment" regarding Confidential Information shall survive termination or expiration of any other sections or provisions of this Acknowledgment and shall be binding upon the Recipient's, child or children, heirs, successors and assigns.

Recipient further agrees not to make, have made, use or sell, reprint, and/or distribute in any way, or for any purpose, any item or document that uses, or incorporates Confidential Information (or that is derived in any way from an item or document containing Confidential Information) to any child born as a result of assisted reproduction with the provided "Specimen(s)" or the siblings or other relatives or any such child which arises from, is connected with, or is in any way related to, the Recipient.

Recipient acknowledges that Recipient's breach of any provision of this Acknowledgment pertaining to Confidential Information (and its handling) would cause irreparable harm to BioGenetics and/or Donor, and Recipient further acknowledges that BioGenetics and/or the Donor individually and/or collectively would be entitled to seek injunctive or other equitable relief as well as monetary damages and indemnity from Recipient, Recipient's, child or children, and/or Recipient's heirs, successors and/or assigns for any breach of the provisions of this Acknowledgment pertaining to Confidential Information.

RELEASE AND INDEMNITY:

Recipient hereby agrees to release, hold harmless, and indemnify BioGenetics (and its agents, officers, directors, employees, advisors and consultants) and Donor from and against all losses, liabilities, damages and expenses (including reasonable attorneys fees) of any kind or nature which any of them may suffer or incur by reason of any claims of any kind by any person or entity including, but not limited to: claims for child support, or financial support of any kind, claims for money damages of any kind (whether based upon tort, contract, quasi contract, restitution or any other common law or statutory theory of liability) made by and/or for any child or children conceived through, or born as a result of, assisted reproduction with Specimen(s) provided by Biogenetics; any claims made by or for the siblings or other relatives of the Recipient, or any child born as a result of assisted reproduction with the provided Specimen(s); any claims made by or for any executor, trustee, guardian, advocate or agent of any child which arises from, or is connected with, or is in any way directly or indirectly related to, the Recipient and/or assisted reproduction with Specimen(s) provided by Biogenetics.

Unless Biogenetics enters into a separate written agreement to the contrary, Recipient shall not have the right to any additional information except as set forth in this Acknowledgment.

A child or children conceived by means of assisted reproduction with the provided Specimen(s) will have no claim or right to, the Donor's money, property (real, personal or mixed), personal assets, personal estate, rents or other source of income or wealth. Furthermore, a child or children, conceived by means of assisted reproduction with the provided Specimen(s) will not be considered an heir of the Donor. Furthermore, with the exception of any release of Confidential Information expressly authorized under this Acknowledgment, no child or children conceived by means of assisted reproduction with the provided Specimen(s) will have no claim or right to the Donor's intellectual property.

MISCELLANEOUS:

- A. The provisions of this Acknowledgement shall be applicable in perpetuity unless a shorter or more specific time period is indicated with respect to a particular provision or multiple provisions.
- B. For all the purposes of this Acknowledgement, except where a distinction is specifically made between Recipient and Recipient's spouse or partner, if any, or other relatives, the term "Recipient" shall include (a) Recipient, (b) Recipient's spouse, (c) partner, if any, (d) all relatives of Recipient, whether by blood, marriage or adoption.
- C. This Acknowledgement shall govern all purchases of "Specimen(s)" from BioGenetics directly by Recipient during the term of this Acknowledgement without the requirement of any subsequent notice or incorporation by reference. The terms included by Biogenetics on any Order Request and Confirmation Form describing the Specimen(s) being provided (and/or the terms included by Biogenetics on any other form or forms supplied by BioGenetics to Recipient in connection with Recipient's purchase of Specimen(s) describing the Specimen(s) being provided) shall govern the terms and conditions of any sale of Specimen(s) to Recipient, even if those terms conflict with the terms of this Acknowledgement or any of Biogenetics' other forms or literature.
- D. With the exception of the notice provision set forth in paragraph C of the "Purchase of Specimens" section of this Acknowledgement, all notices permitted or required by this Acknowledgement shall be in writing and sent to the party entitled to receive the notice, at the address set forth within this document or at such other address as the parties may advise each other from time to time by similar notice.
- E. This Acknowledgement (along with the printed material prepared by BioGenetics appearing on the accompanying two page "Order Request and Confirmation Form") contains the entire understanding between BioGenetics and Recipient with respect to its subject matter hereof and may not be altered, amended or changed other than by a writing signed by both BioGenetics and the recipient. BioGenetics reserves the right to change the terms of its Acknowledgement form without prior notice to Recipient or any other person or entity. In the event that BioGenetics changes its Acknowledgement form, it will require individuals who would like to become Recipients after the date of that change to sign the new version of the Acknowledgement form (i.e., the then-current version of BioGenetics' Acknowledgment form).
- F. This "Acknowledgment" is to be construed in accordance with the laws of the State of New Jersey without any reference to the State of New Jersey's conflicts of laws or choice of laws principles. The parties hereto consent to the exclusive jurisdiction and venue of the state and/or federal courts located in the State of New Jersey. This "Acknowledgment" shall be binding upon, inure to the benefit of, and be enforceable by (a) BioGenetics, its successors, and assigns; (b) Donor and his successors and assigns, and (c) This Acknowledgement shall be binding upon and inure to the benefit of Recipient, Recipient's, child or children, heirs, successors and assigns. This Acknowledgement shall not inure to the benefit of, nor be enforceable by, any other person or entity.
- G. If any provision of this Acknowledgement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this entire Acknowledgement unenforceable and any such unenforceable or invalid provision shall be interpreted in a manner that best achieves the objectives of this Acknowledgement.

IN WITNESS WHEREOF, the Recipient (or Recipients) have signed this Acknowledgement as of the date first set forth below.

Print Name

Recipient Signature

Date: _____

Print Name

Signature of Recipient's Spouse or Partner

Date: _____