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**Sample Donor Agreement**

RE: DONOR/RECIPIENT AGREEMENT

If you are using a known donor, it is a good idea to discuss some of the issues above with your donor. Do you (recipient) expect the donor to help make important decisions about the rearing child? What type of relationship do you expect the donor to have with the child? What will the child call the donor? What do you want the donor to disclose to his relatives? What do you want of or from your donor? What does he want? What are you going to tell your/his parents, relatives, friends, co-workers? What kind of relationship do you have with your donor now, and what would you like it to be in the future? What information about the donor will be disclosed to the child, when and how? If you do want future contact between the child and donor, what are you thinking about? What if one of you move away, who is going to pay for the transportation expenses for future contact with the donor? Who is going to decide what school, religion, travel and other relationships the child is going to have? Who picks a guardian in case the legal parent is incapacitate? Will the donor cooperate if any legal proceedings are needed with regard to establishing parental rights? What if other people ask your donor for sperm, how would you feel about that? How are you going to deal with the sperm donation in relationship to the donor's own children which he may have now or in the future? There will probably be many more questions. This is just the start of the very frank and explicit conversation you need to have with your donor to see if an agreement will work for you.

A donor contract is a very good idea, but probably is *not sufficient to terminate your donor's rights*. Under current California law, you can't terminate your donor's rights by contract. For example, you can't contract away the rights of a third party, such as the child's right to support. The donor's rights must be terminated by having the sperm donation medically supervised, or by court order. For example, if the sperm donation is not medically supervised, a donor's rights can be terminated when a partner adopts the child. Often, a person who uses a known donor will have the donor's rights terminated in the process of adoption or those rights are extinguished by having the sperm donation medically supervised, which terminates donor's rights.

If you do not want your donor to have any rights at all the most conservative (legally safest) route is to go through a physician or sperm bank.

If you have a known donor, a donor agreement or contract is a good idea even if the sperm donation is medically supervised. However, be aware that you may change your legal position by how you act. For example, I could imagine a situation in the future where a family who used a

known donor, even with a medically supervised sperm donation, where the child calls the donor dad, spends time with dad, dad helps pay for things, relates to your donor as a dad, that donor may possibly have his foot in the door to make a claim for visitation rights.

The National Center for Lesbian Rights is a good place to go for general information, although the last time I checked their sample donor agreement hasn't been updated in a while, but should be soon. Their website is: [nclrights.org](http://nclrights.org). Here is a very basic boilerplate contract that should not at all be construed as what you want or need, but maybe will give you some things to consider.

Your situation may be different than the one contemplated here and I'd expect significant changes to be made for this agreement to work. There are some alternative options here for your consideration. THIS IS DOES NOT REPLACE THE ROLE OF AN ATTORNEY, AND SHOULD ONLY BE CONSIDERED AS A POINT OF DEPARTURE MANY OF THE PROVISIONS HERE MAY NOT APPLY TO YOU, OR MAY NOT BE WHAT YOU WANT, AND MAY BE REVISED IN THE FUTURE.

Sincerely,

Alexsis C. Beach.

#### SPERM DONOR AGREEMENT

This agreement is made this \* day of \*, 2001 by and between \*, and \*, and \* who may be collectively referred to herein as the Parties. \*

\*[If there the recipient is a couple, include both names of the couple there, and have both members of the couple sign at the end, especially if there is any hope that the other woman hopes to use the same donor in the future. In this case change recipient to recipients throughout.]

NOW, THEREFORE, in consideration of the promises of each other, DONOR, RECIPIENT, AND CO-PARENT agree as follows:

DONOR AGREEMENT (\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ \*PARTIES LAST NAMES)

\_\_\_\_\_  
Party initial    Dated

\_\_\_\_\_  
Party initial    Dated

\_\_\_\_\_  
Party initial    Dated

1. Each clause of this AGREEMENT is separate and divisible from the others, and, should a court refuse to enforce one or more clauses of this AGREEMENT, the others are still valid and in full force.
  
2. Each Party acknowledges and agrees that, through the procedure of artificial insemination with the use of DONOR's semen, RECIPIENT \* intends to become pregnant. DONOR has \*agreed to provide\*d his semen to RECIPIENT \* for the purpose of artificial insemination, as follows. DONOR intends as far as is reasonably practical for him, to provide his semen to RECIPIENT until such time as RECIPIENT conceives, or at least for twelve (12) months from the date of first insemination, whichever occurs first, on a monthly basis, as may be requested of him by RECIPIENT according to her ovulation cycle.

\*or [As soon as is practical RECIPIENT will attempt to become pregnant through artificial insemination, and that such inseminations will continue until conception occurs, unless either party notifies the other in writing of their unwillingness or impossibility of continuing with the donations and inseminations. At such time, inseminations using the DONOR's semen will cease.

\*The parties have further agreed that DONOR's semen may be frozen at the time of donation and may be used solely by RECIPIENT \*at a subsequent time.

\* or: during this 12 month period or until conception.

3. \*In exchange for the donation of sperm RECIPIENT and CO-PARENT have agreed to indemnify DONOR as described below, and to pay the sum of \* dollars (\$\*) to DONOR \* [ or: the parties agree that a payment of one dollar (\$30.00) will be made to DONOR each and every time he makes a semen donation.] [INCLUDE SOME PAYMENT OF MONEY]

\* RECIPIENT and CO-PARENT agree to pay for DONOR's physical exam, blood screening, semen analysis, office visits for the purpose of making semen donations, less amounts covered by DONOR's medical insurance, as well as any transportation costs and other expenses associated with this AGREEMENT.

- \*4. DONOR represents that he has been tested for HIV and other STDs, and tested negative, and that he has engaged in "safer sex" activities and refrained from sharing needles for six

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(6) months prior to and subsequent to the test and will continue to do so for the entire period he is making sperm donations to RECIPIENT.

\* DONOR has agreed to submit to such medical testing, if any, as may be requested of him by RECIPIENT and CO-PARENT, including tests that relate to conception, fertility and sexually transmitted diseases, at RECIPIENT and CO-PARENT'S expense.

5. Each Party is a single person who has never married.\*\* RECIPIENT is an a registered domestic partner relationship with CO-PARENT. RECIPIENT and CO-PARENT consider themselves to be each other's spouses and intend to both be the legal parents of any child(ren) born of this procedure.

6. \*[If sperm is to be frozen/stored describe what is to be done with any sperm left over after pregnancy is achieved. For example:

\* Any frozen sperm that exists after a successful pregnancy is achieved will be the property of DONOR.

\* RECIPIENT and CO-PARENT will bay for any costs associated with sperm storage or disposal of unused sperm.

Any use of DONOR sperm after a successful pregnancy has been achieved will be the subject of a second agreement, or a written addendum to this agreement.

Or \* RECIPIENT and CO-PARENT may hold onto it for future attempts of one of the recipient/not used by anyone else, etc.]

7. Each Party acknowledges and agrees that DONOR provided his semen for the purpose of said artificial insemination, and RECIPIENT and CO-PARENT accept it for said purpose with the clear understanding that DONOR agrees that he would not demand, request, or compel any guardianship, custody, or visitation rights with any child(ren) born from the artificial insemination procedure. Further, DONOR acknowledges that he fully understands that he will have no paternal rights whatsoever with said child(ren) and that he will not have the legal rights that are traditionally vested in the biological father of a child(ren).

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6. [THIS IS AN IMPORTANT CLAUSE THAT YOU REALLY HAVE TO UNDERSTAND] \*\* RECIPIENT AND CO-PARENT further agree to indemnify DONOR and hold him harmless for any child support payments demanded of him by any other person or entity, public or private, including any district attorney's office or other state or county agency, regardless of the circumstances of said demand.
7. Each Party acknowledges and agrees that RECIPIENT and CO-PARENT, through this AGREEMENT, each have separately relinquished and released any and all rights that they might otherwise have to hold DONOR legally, financially, or emotionally responsible for any child(ren) that results from the artificial insemination procedure. DONOR acknowledges that RECIPIENT and CO-PARENT shall share full parenting responsibility of any child(ren) so conceived.
8. Each Party acknowledges and agrees that the sole authority to name any child(ren) resulting from the artificial insemination procedure shall rest with RECIPIENT and CO-PARENT.
9. Each Party acknowledges and agrees that there shall be no father named on the birth certificate of any child(ren) born from the artificial insemination procedure. RECIPIENT intends to name CO-PARENT as a parent on the birth certificate upon receiving legal authority to do so through an adoption or other means.
10. \*\*\*\*Each Party acknowledges and agrees that the use of a licensed physician or health care facility to receive the semen donations, as well as the execution of this AGREEMENT, were specifically chosen, pursuant to California Family Code section 7613 (b), to avoid any finding that the DONOR is a legal father of the child (ren). Consistent with that purpose, each Party has executed this AGREEMENT with the purpose of clarifying her or his intent to release and relinquish any and all rights she or he may have to bring a suit to establish the paternity of any child(ren) conceived through the procedure of artificial insemination.
11. Each Party covenants and agrees that, in light of the expectations of each Party, as stated above, RECIPIENT and CO-PARENT shall have absolute authority and power to appoint a guardian for her child(ren), and that the mother and guardian may act with sole discretion as to all legal, financial, medical, emotional needs of said child(ren) without any involvement with or demands of authority from DONOR. The parties further

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Party initial    Dated                      \_\_\_\_\_    \_\_\_\_\_  
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acknowledge that it is the intent of RECIPIENT and CO-PARENT that they will file legal proceedings to name CO-PARENT as a parent of any child(ren) born from the artificial insemination, to have equal parental rights as RECIPIENT, as soon as they reasonably can. DONOR agreed to provide his semen for purposes of this insemination, with the intent that any child(ren) conceived thereby be jointly raised by RECIPIENT and CO-PARENT. DONOR and RECIPIENT both specifically consent to such a proceeding, and DONOR and RECIPIENT both agree to execute any documents necessary to facilitate any such legal proceeding.

12. RECIPIENT has specifically informed DONOR that she intends to name CO-PARENT, as the legal guardian of the child(ren) in her Will and Nomination of Guardian. RECIPIENT has also informed DONOR of her intent to name alternate guardians should both she and CO-PARENT be unable to parent. When CO-PARENT'S parental rights are established, by operation of law or otherwise, CO-PARENT will also have the independent right to name a guardian of her own choosing should she and RECIPIENT be unable to parent. DONOR specifically waives any right to object to the appointment of individuals chosen as guardian by RECIPIENT and or CO-PARENT.
  
13. Each party covenants and agrees that none of them will identify the DONOR as the parent of the child(ren) as DONOR has relinquished all paternity rights. However, no party shall be restricted from disclosing the DONOR was the donor for the insemination procedure which resulted in the birth of said child(ren.)
  
14. \* Despite the relinquishment of all legal rights by DONOR and RECIPIENT, \* the Parties have agreed that it is in the best interests of the child(ren) that the DONOR'S identity be disclosed to the child(ren) and that any future contact DONOR may have with any child(ren) that result from the artificial insemination procedure in no way alters the effect of this agreement. Any such contact will be at the sole discretion of the RECIPIENT and will be consistent with the intent of all parties as detailed in this agreement.

\* The parties agree and acknowledge that if the child(ren) express a desire to meet the DONOR, and the RECIPIENT and CO-PARENT agree that to do so would be in the best interests of the child(ren,) DONOR will be receptive to such contact. The parties agree that any contact or friendship with DONOR by any such child(ren) shall not constitute a parental or familial relationship for any purpose. DONOR agrees to keep

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RECIPIENT and CO-PARENT updated with his current address and other contact information.

\*While the parties entering into this agreement are receptive to the idea that an child conceived with DONOR's sperm will have contact with DONOR, all terms of that contact will be at the sole discretion of DONOR and RECIPIENT. \*\*\*[I LIKE THIS ONE BECAUSE IT IS GENERAL.]

\* the DONOR and child(ren) will have contact with each other. If the RECIPIENT and DONOR reside within 100 miles of one another, they agree to visits on at least two occasions per year, to be scheduled upon the mutual agreement of the Parties. If the RECIPIENT and DONOR reside more than 100 miles apart, they agree to a visit at least one time per year, altering the responsibility of travel every-other year, to be scheduled upon the mutual agreement of the parties. The expenses of such travel within the continental United States will be the sole responsibility of RECIPIENT (\*\*\*) More frequent visits than these, if any, will be only at the mutual agreement of the Parties, and will not imply any change to this agreement. It is expressly agreed that such contact and disclosure of identity shall not be deemed a waiver of any provisions of this AGREEMENT, and will be consistent with the intent of both parties to sever any and all parental rights and responsibilities of DONOR.

14a. The Parties intend to continue this visitation in the event of the dissolution of the domestic partnership of RECIPIENT and CO- PARENT.

14b. Both Parties intend that this visitation between DONOR and any child(ren) be continued in the event of death or disability of RECIPIENT.

15. Each Party acknowledges and agrees that the relinquishment of all rights, as stated above, is final and irrevocable. DONOR further understands that this waiver shall prohibit any action on his part for custody, guardianship, or visitation in future situations, including the event of RECIPIENT's disability or death.

16. RECIPIENT agrees that DONOR may disclose to his parents and family the existence of nature of his biological relationship to any child(ren) born to RECIPIENT under this AGREEMENT, with the full understanding that this parents and family will not be the legal relatives of the child(ren), as well understanding that the DONOR is not the father of

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the child(ren). DONOR expressly agrees that he will not assist or support his parents or family in any proceeding, whether legal or otherwise, to obtain rights of custody or visitation with regard to such child(ren). DONOR expressly agrees that he will make clear to his parents and family that they cannot demand or compel any guardianship, custody, or visitation rights with any child(ren) resulting from the artificial insemination procedure. Any contact between such child(ren) and the DONOR's parents or family will be the sole discretion of the RECIPIENT.

17. Each Party agrees to attempt to resolve any disagreements or disputes that might arise under this AGREEMENT amicably, in the spirit of the intent expressed in this AGREEMENT, and in a way that best serves the interest of the child(ren). If the Parties cannot resolve such disagreements or disputes among themselves, each party agrees to seek counseling and/or mediation and participate in a good faith effort to resolve their differences.

\*? All parties agree to participate in a minimum of \_\_\_\_\_ (\*at least four) mediation sessions, with an agreed upon mediator. \* With the cost to be shared equally by the participants. The parties will select the mediator together, and if they can't agree, they will ask a neutral third party, such as a family mediation service, or \_\_\_\_\_ (if you have a friend or specific individual in mind ) to choose a mediator.

IF YOU WANT A MORE DETAILED ALTERNATIVE DISPUTE PLAN:

- \*or If the Parties are unable to resolve a dispute pertaining to this AGREEMENT, each party covenants and agrees that the dispute shall be submitted to mediation/binding arbitration according to the following procedures:
- a. The request for dispute resolution may be made by either party and shall be in writing and delivered to the other party;
  - b. Pending the outcome of mediation/arbitration, there shall be no change made in the language of this AGREEMENT;
  - c. The mediator who shall work to facilitate resolution of any disputes regarding this agreement shall be chosen as follows: DONOR and RECIPIENT shall each

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select one person, and the two people thereby selected shall together choose the mediator;

- d. The parties agree to participate in a minimum of four mediation sessions in an attempt to resolve any dispute. Should mediation prove unsuccessful at resolving the problem, then the dispute shall be submitted to binding arbitration;
- e. The arbitration panel that will resolve any disputes regarding this AGREEMENT shall consist of three persons: one person chosen by DONOR; one person chosen by RECIPIENT; and one person chosen by the other two panel members;
- f. Within fourteen days following the written request for dispute resolution, the mediator shall be chosen. Mediation sessions shall commence on the first available date following selection of the mediator, considering the schedules of all involved parties;
- g. Within fourteen days following the break-down of mediation, the arbitration panel will be selected;
- h. Within fourteen days following the selection of all members of the arbitration panel, the panel will hear the dispute between the parties;
- i. Within seven days subsequent to the hearing, the arbitration panel will make a decision and communicate it in writing to each Party.

\*The Parties agree that costs and reasonable attorney's fees shall be awarded to the prevailing Party in the action.

18. Each Party acknowledges and understands that there are legal questions raised by the issues involved in this AGREEMENT which have not been settled by statute or by prior court decisions. Notwithstanding the knowledge that certain of the clauses stated herein may not be enforced in a court of law, the Parties choose to enter into this AGREEMENT and clarify their intent that existed at the time the artificial insemination procedure was implemented by them.

19. Each Party acknowledges and agrees that she or he signed this AGREEMENT voluntarily and freely, of his or her own choice, without any duress of any kind whatsoever. It is further

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acknowledged that each Party has been advised to secure the advice and consent of an attorney of his or her own choosing, and that each Party understands the meaning and significance of each provision of this AGREEMENT.

20. Each Party acknowledges and agrees that all questions as to the performance, interpretation, validity and legal effect of this AGREEMENT shall be determined by the laws of the State of California.

21. Each Party acknowledges and agrees that any changes in the terms and conditions of this AGREEMENT shall be made in writing and signed by both Parties.

22. This AGREEMENT contains the entire understanding of the Parties. There are no promises, understandings, agreements or representations between the Parties other than those expressly stated in this AGREEMENT.

23. This agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereunto have executed this AGREEMENT, consisting of six\* (6) typewritten pages, in the City and County of San Francisco, California, on the day and year first above written.

\_\_\_\_\_  
\*  
DONOR

\_\_\_\_\_  
\*  
RECIPIENT

\_\_\_\_\_  
\*  
RECIPIENT

DONOR AGREEMENT (\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ \*PARTIES LAST NAMES)

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