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SECTION 102. DEFINITIONS

1. “ART Storage Facility” means a licensed facility that stores reproductive, biological, or genetic material used in Assisted Reproductive Technology (“ART”), and is in compliance with the Fertility Clinic and Certification and Success Rate Act of 1992 (FCSRCA, or Public Law 102-493).

2. “Assisted Reproduction” means a method of causing pregnancy through means other than by sexual intercourse. In the foregoing context, the term includes, but is not limited to:

   (a) Intrauterine or intracervical insemination;
   (b) Donation of eggs or sperm;
   (c) Donation of embryos;
   (d) In vitro fertilization (“IVF”) and embryo transfer; and
   (e) Intracytoplasmic sperm injection.

6. “Collaborative Reproduction” means any Assisted Reproduction in which an individual other than an Intended Parent provides genetic material or any Assisted Reproduction involving a Gestational or Genetic Surrogate.

14. “Escrow Account” means an independent, insured, bonded escrow depository maintained by a licensed, independent, bonded escrow company; or an insured and bonded trust account maintained by an attorney.

   (a) For purposes of this section, a non-attorney ART agency may not have a financial interest in any escrow company holding client funds. A non-attorney ART agency and any of its officers, managers, owners of more than 5% ownership interest, directors or employees shall not be an agent of any escrow company holding client funds; and
   (b) Client funds may only be disbursed by the attorney or Escrow Agent as set forth in the assisted reproduction agreement and the fund management agreement between the Intended Parent(s) and the Escrow Account holder.

15. “Escrow Agent” means the trustee for an Escrow Account.

16. “Evaluation” means a Consultation with and, where required by this Act, an assessment in accordance with ASRM guidelines as to whether a Participant is cleared to proceed with participation in any ART procedure.

17. “Gamete” means a cell containing a haploid complement of DNA that has the potential to form an Embryo when combined with another Gamete. Sperm and eggs
are Gametes. A Gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

48.17. “Gamete Provider” means an individual who provides sperm or eggs for use in Assisted Reproduction.

49.18. “Genetic Surrogate” means an adult, not an Intended Parent, who enters into a Surrogacy Agreement to bear a Child and who is a Gamete Provider for the Child.

20.19. “Genetic Surrogacy Agreement” is a written contract between Intended Parent(s) and a Genetic Surrogate.

21.20. “Genetic Surrogacy Arrangement” means the process by which a Genetic Surrogate intends to carry and give birth to a Child.

22.21. “Gestational Surrogate” means an adult, not an Intended Parent, who enters into a Surrogacy Agreement to bear a Child and who is not a Gamete Provider for the Child.

23.22. “Gestational Surrogacy Agreement” is a written contract between Intended Parent(s) and a Gestational Surrogate.

24.23. “Gestational Surrogacy Arrangement” means the process by which a Gestational Surrogate intends to carry and give birth to a Child.

25.24. “Independent Legal Representation” (also referred to herein as “Independent Legal Counsel”) means representation of the Participants by separate legal counsel as required by the applicable rules of professional responsibility.

26.25. “Infertility” means the definition of such term as set forth in the most recent International Glossary on Infertility and Fertility Care published by ASRM, or if ASRM shall discontinue such publication and shall not adopt or promulgate a successor definition, the clinical definition of such term set forth in the most recent Revised Glossary of ART Terminology published by the World Health Organization, or the definition set forth by ASRM.

27.26. “Intended Parent” means an individual who intends to be legally bound as a Parent of the Child.

28.27. “Legal Spouse” means an Intended Parent, a Donor, a Gestational or Genetic Surrogate, and the Legal Spouse of any of the foregoing, if applicable, who is involved in Collaborative Reproduction under this Act means an individual married to another.

29.28. “Medical Evaluation” means a consultation with and an evaluation by a physician meeting the requirements of Section 903.
30.29. "Medical Information" means any protected individually identifiable health information obtained by a health care provider in the course of Medical Evaluation, Consultation, diagnosis, or treatment.

31-30. "Mental Health Counseling" means additional Consultation(s) after an initial Consultation for the purpose of advising and supporting the Participant throughout the implementation of any ART procedure.

32-31. "Mental Health Evaluation" means a Consultation with and an evaluation by a mental health professional meeting the requirements of Section 301.

33-32. "Parent" means an individual who has established a Parent-Child Relationship under this Act or other applicable law.


35-34. "Participant" means an Intended Parent, a Donor, a Gestational or Genetic Surrogate, and their Legal Spouse of any of the foregoing, if applicable, who is involved in Collaborative Reproduction under this Act.

36-35. "Patient" means an individual participating in Assisted Reproduction under the direction of a Provider.

37-36. "Physician" means an individual licensed to practice medicine.

38-37. "Provider" means an individual, including all medical, psychological, or counseling professionals: (a) licensed to administer health care; (b) who is qualified under this Act to provide Assisted Reproduction services; and (c) has a Provider-Patient relationship with a Participant. Any professional corporation or corporation licensed by the State to provide health care, of which a Provider is an owner or employee, is also a Provider.

39-38. "Record" means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

40-39. "Retrieval" means the procurement of eggs or sperm from a Gamete Provider.

41-40. "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

42-41. "Surrogacy Agreement" is a written contract between Intended Parent(s) and a Gestational or Genetic Surrogate.
ARTICLE 2. INFORMED CONSENT

The requirements of Article 2 apply only to medical facilities providing ART to Participants/Providers.

SECTION 201. INFORMED CONSENT STANDARDS

1. Informed consent must be obtained by the ART Provider from provided by all Participants to the ART Provider prior to the commencement of any medical or scientific procedures or treatment.

2. Informed consent requires that all of the following be provided to all Participants orally and in a Record that meets the requirements of Section 202:

(a) A statement that the Patient-Participant retains the right to withhold or withdraw consent at any time prior to Transfer of Gametes or Embryo Transfer without affecting the right to receive and/or make decisions about future care or treatment; or risking the loss or withdrawal of any program benefits to which the Patient-Participant would otherwise be entitled.

(b) A statement that the ART Provider retains the right to withdraw for reasonable justification and with reasonable notice.

(c) A statement that the Donor’s, right to withhold or withdraw consent to fertilization terminates upon Retrieval of his or her Gametes, subject only to the terms of any prior agreement in a Record pursuant to Article 5.

(d) A statement of the known, potential medical and procedural risks and benefits of ART. Such description shall include the inherent risk of Embryo loss due to aneuploidy, thawing, and failure of implantation; the risks associated with the use of hormones and other drugs that may be used; the procedural risks associated with egg Retrieval and/or other ART procedures; the incidence of, and risks regarding, multiple pregnancies and selective reduction; and the incidence and risk of birth defects associated with IVF.

(e) A statement of acknowledgement that alternative therapies and options have been discussed in detail.
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(f) A statement that the PatientParticipant shall be informed that there may be unforeseen, or unforeseen legal consequences and that Independent Legal Representation is advisable and may be required by this Act or by State law.

(g) A statement describing all existing confidentiality protections.

(h) A statement of guarantee that a PatientParticipant, whether a Donor, Intended Parent, Gestational Surrogate or Genetic Surrogate (a Participant), has access to all of his/her Medical Information to the extent allowed by applicable law and not otherwise waived by the Participant. The PatientParticipant may have to pay a fee for copies of the Record.

(i) A statement that the Intended Parent has a right to access a summary of medical and psychological information about Donors and Gestational or Genetic Surrogates as described in this Act.

(j) A statement that the release of any Participant-identifiable information, including images, shall not occur without the consent of the Participant in a Record.

(k) A statement that the Intended Parent(s) or an Embryo Donor, not the ART Provider or ART Storage Facility, has the right to possession and control of their Embryos, subject to any prior agreement in a Record or as provided in Section 504.

(l) A statement of the need for Intended Parents to agree in advance who shall acquire the right to possession and control of the Embryos or Gametes in the event of marriage dissolution or separation of the Intended Parents, death of one or both of them, or subsequent disagreement over disposition in compliance with the provisions of Section 501 of this Act.

(m) The policy of the Provider regarding the number of Embryos Transferred and any limitation on the number of Embryos Transferred, as well as the existence of national guidelines as published by the ASRM.

(n) A statement of the need for Participants to decide whether the Embryos or Gametes can be used for purposes other than Assisted Reproduction.

(o) Signed in presence of member of staff of the Provider or notary.

SECTION 202. RECORD AUTHORIZATION REQUIRED

1. The Provider must document informed consent in a Record for each Participant that must:

(a) Be in plain language;
(b)(b) Be dated and signed by the Provider and by the Participant in the presence of a member of the staff of the Provider or before a notary;

(c)(c) State that disclosures have been made pursuant to this Act;

(d)(d) Specify the length of time the consent remains valid; and

(e)(e) Advise the party signing the informed consent document of the right to receive a copy of the Record.

4. Prior to the start of any medications, the Record must reflect whether the Participants have entered into a written legal agreement, as shown by:

(a) A legal clearance letter provided by an attorney/legal counsel if the Participant(s) were represented by legal counsel; or

(b) A copy of the executed legal agreement if the Participant(s) were not represented by legal counsel.

SECTION 203. DISCLOSURES

1. Disposition of cryopreserved Gametes or Embryos: Prior to each Retrieval, a Provider must disclose to all Intended Parents and Donors, whose identity is known to the Provider, the following possible dispositions of Embryos:

   (c) Donation:

   (ii) To an anonymous individual for Embryo Transfer, either directly or through the provider, or through a third-party Embryo donation program;

2. Right to transport. A Provider is not required to offer all possible dispositions, but the Provider must inform the Participant that other Providers may offer other options and that the Participant has the right to transport Embryos to other Providers.
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3. Embryo Transfer disclosure. Before each Embryo Transfer cycle, the Provider must provide each Intended Parent with the following information in a Record, where applicable:

   (a) Method used to achieve fertilization and the results of semen analysis, including, but not limited to, motility, count, and morphology;

   (b) Number of eggs retrieved;

   ...

6. Disclosure regarding multiple births/Retrievals. Where relevant, a Provider must disclose in a Record, to Participants other than Donors, prior to Retrieval, the known risks of multiple births to the Participant and to the fetuses, including the positive and negative factors involved in selective reduction; and the known potential birth defects related to IVF. A Provider must disclose prior to Retrieval to individuals undergoing egg retrieval the known potential present and future risks of multiple courses of ovarian stimulation drugs. A Provider must disclose prior to Embryo Transfer to a Gestational Surrogate or Genetic Surrogate the number of Embryos to be transferred.

SECTION 301. MENTAL HEALTH EVALUATION

2. All other Participants known to the ART Provider, other than Intended Parents, must undergo a Mental Health Evaluation with a Mental Health Professional in accordance with the most recently published Professional Guidelines of ASRM prior to Collaborative Reproduction ART procedure. The results of this Mental Health Evaluation shall only be used to determine suitability to participate in Collaborative Reproduction.

...

4. For purposes of this Article, Mental Health Professional is an individual who:

   (a) Holds a master’s or doctoral degree in the field of psychiatry, psychology, counseling, social work, psychiatric nursing, marriage and family therapy, or State equivalent; and

   (b) Is licensed, certified, or registered to practice in the mental health field; and

   (c) Has received training in reproductive physiology; the testing, diagnosis, and treatment of Infertility; and the psychological issues in Infertility and Collaborative Reproduction. If there are questions about inherited or genetic
disorders, the Mental Health Professional must refer the Participant to a qualified professional for Consultation.

SECTION 302. ADDITIONAL COUNSELING REQUIREMENTS

1. An ART procedure using Collaborative Reproduction shall not be initiated or performed until:

(a) All Participants made known to the ART Provider have been offered Mental Health Counseling following the initial Mental Health Evaluation or Consultation as provided for in Section 301; and

(b) The Mental Health Professional(s) have prepared and delivered to the medical Provider(s) a statement in a Record that he or she has met with the Participant(s) and that they have undergone the requisite Mental Health Evaluation and/or Consultation.

SECTION 402. INFORMATION ABOUT DONORS

2. COLLECTION OF INFORMATION.

For Gametes collected after the effective date of this Act, a Gamete bank or Provider licensed in this State shall collect from a Donor the Donor’s identifying information and medical history at the time of the donation. If the Gametes of a Donor are sent to another Gamete bank or Provider, a sending Gamete bank or Provider also shall forward any identifying information and medical history of the Donor, including the Donor’s signed declaration under Section 402(3) regarding identity disclosure, to a receiving Gamete bank or Provider. A receiving Gamete bank or Provider licensed in this State must collect and retain the information about the Donor and the sending Gamete bank or Provider. A Gamete bank or Provider licensed in this State which receives Gametes of a Donor collected by another Gamete bank or Provider shall collect the name, address, telephone number, and electronic mail address of the Gamete bank or Provider from which it received the gametes. A Gamete bank or Provider licensed in this State shall disclose the information collected under this Section 402(2) as provided under Section 402(4).

4. DISCLOSURE OF IDENTIFYING INFORMATION AND MEDICAL HISTORY.

(a) On request of a Child conceived by Assisted Reproduction who is at least 18 years of age, a Gamete bank or Provider licensed in this State which collected, stored, or released for use the Gametes used in the Assisted Reproduction

...
shall make a good-faith effort to provide the Child with identifying information
of the Donor who provided the Gametes, unless the Donor signed and did not
withdraw a declaration under paragraph 3(b)(ii) of this Section. If the Donor
signed and did not withdraw a declaration under paragraph 3(b)(ii) of this
Section, the Gamete bank or Provider must make a good-faith effort to notify
the Donor, who may elect disclose the Donor’s identity declaration under
paragraph 3(b)(i) of this Section.

(b) Regardless of whether a Donor signed a declaration under paragraph 3 of this
Section, on request by a Child conceived by Assisted Reproduction who is at
least 18 years of age, or, if the Child is a minor, by a Parent or guardian of the
Child, the Gamete bank or Provider licensed in this State which collected the
gametes used in the Assisted Reproduction shall make a good faith effort to
provide the Child or, if the Child is a minor, the Parent or guardian of the Child,
access to non-identifying medical history of the Donor.

(b)(c) On request of a Child conceived by Assisted Reproduction who attains 18
years of age, a Gamete bank or Provider licensed in this State which received
the gametes used in the Assisted Reproduction from another Gamete bank or
Provider shall disclose the name, address, telephone number, and electronic
mail address of the Gamete bank or Provider from which it received the
Gametes.

5. RECORDKEEPING. A Gamete bank or Provider licensed in this State, which collects,
stores, or releases Gametes for use in Assisted Reproduction, shall collect and maintain
identifying information and medical history about each Donor. The Gamete bank or
Provider shall collect and maintain records of Gamete screening and testing and comply
with reporting requirements, in accordance with federal law and applicable law of this
State other than this Act. A Gamete bank or Provider licensed in this state that receives
Gametes from another Gamete bank or Provider shall maintain the name, address,
telephone number, and electronic mail address of the Gamete bank or Provider from
which it received the Gametes.

SECTION 501. DISPOSITION OF GAMETES AND EMBRYOS

5. Any party to an Embryo storage or disposition agreement may withdraw his or her
consent to the terms of the agreement in writing prior to an Embryo Transfer to a uterus
of an Intended Parent, Gestational Surrogate, or Genetic Surrogate.

(a) Notice of said withdrawal of consent to the terms of the agreement must be
given in a Record to the parties to the agreement and to the Providers and ART
Storage Facility, if any.
(b) After receipt of said notice in a Record by the other Intended Parent and/or by the ART Provider or ART Storage Facility of that individual’s intent to avoid Embryo Transfer, an Intended Parent may not Transfer the Embryos into the uterus of any individual with the intent to have a Child. No prior agreement to the contrary will be enforceable.

(c) In the event that an Embryo Transfer occurs after receipt of notice in a Record of that individual’s intent to avoid Embryo Transfer as set forth in paragraph 5(b) of this Section that Intended Parent will not be the Parent of a resulting Child.

SECTION 504. ABANDONMENT OF GAMETES OR EMBRYOS AND DISPOSITION OF ABANDONED GAMETES OR EMBRYOS

1. A Gamete or an Embryo is deemed to be abandoned only if:

(a) At least five years have elapsed since last communication from Intended Parents to Provider and/or ART Storage Facility unless the Participants select another time by agreement as provided in a Record; and

(b) A diligent attempt to notify the interested Participants, as well any Provider(s) who contracted for storage, that the Gamete or Embryo is deemed to be abandoned (such attempt shall include, but not be limited to, notice by certified mail (or equivalent trackable medium) to each interested Participant’s permanent address or last known address, and shall require a period of not less than ninety days to elapse before any action is taken); and

(c) The interested Participants have acknowledged that they have been informed of the provisions of (a) and (b) of this paragraph in an agreement in a Record executed prior to storage with the Provider and/or ART Storage Facility.

...
(a) A Gamete Donor and an Intended Parent(s) may enter into an agreement in a Record providing:

(i) That the Donor agrees to donate Gametes in order for the Intended Parent(s) to conceive a Child through Assisted Reproduction; and

(ii) That the Donor, and spouse if married, has no property, parental, or other rights, responsibilities and claims with respect to any resulting Gametes, Embryos, and any Child born as a result of the Gamete donation; and

(iii) That any donated Gametes, and any Embryos formed from the donated Gametes, shall be the sole property and responsibility of the Intended Parent(s), subject to the terms of the Donor agreement; and

(iv) That the Donor is not a Parent of any Child conceived through Assisted Reproduction using the Donor’s gamete(s), and the Intended Parent(s) shall be the Child’s Parent(s) with all the rights and responsibilities resulting therefrom.

(b) Any Donor limitations as noted in Section 204 should be specified in the Donor agreement.

SECTION 604. CONSENT TO ASSISTED REPRODUCTION

2. Failure of an Intended Parent to sign a consent in a Record as required by paragraph (1) of this Section, before or after birth of the Child, does not preclude a finding of parentage if:

(a) The individual seeking to establish that the Intended Parent is a Parent of the Child proves by clear-and-convincing evidence the existence of an express agreement entered into before conception that the Intended Parent and the individual who gave birth intended they both would be Parents of the Child; or

(b) The individual giving birth and the individual alleged to be an Intended Parent resided together with the Child during the first two years of the Child’s life and openly held out the Child as their own, unless the individual dies or becomes incapacitated before the Child becomes two years of age or the Child dies before the Child becomes two years of age, in which case a court may find consent to parentage under this paragraph if a party proves by clear-and-convincing evidence that the individual giving birth and the individual intended to reside together in the same household with the Child and both intended that
the individual would openly hold out the Child as the individual's Child, but that 
the individual was prevented from carrying out that intent by death or 
incapacity.

SECTION 605. LIMITATION ON LEGAL SPOUSE'S DISPUTE OF PARENTAGE

1. Except as otherwise provided in Section 605(2), an individual, who at the time of a 
Child's birth, is the Legal Spouse of the woman who gave birth to the Child by Assisted 
Reproduction, may not challenge the individual's parentage of the Child unless:

   (a) Not later than two years after the birth of the Child, the individual 
       commences a proceeding to adjudicate the individual's parentage of the Child; and

   (b) A Court finds the individual did not consent to the Assisted Reproduction,
       before, on, or after birth of the Child, or withdrew consent under Section 606.

2. A proceeding to adjudicate a Legal Spouse's parentage of a Child born by Assisted 
Reproduction may be commenced at any time if the court determines the:

   (a) Legal Spouse neither provided a gamete for, nor consented to, the 
       Assisted Reproduction;

   (b) Legal Spouse and the woman who gave birth to the Child have not 
       cohabited since the probable time of Assisted Reproduction; and

   (c) Legal Spouse never openly held out the Child as the Legal Spouse's Child.

ARTICLE 7. SURROGACY

SECTION 701. SURROGACY AGREEMENTS AUTHORIZED

A. 1. A Gestational or Genetic Surrogate and, if married, the Gestational or Genetic 
   Surrogate’s Legal Spouse and the Intended Parent(s) may enter into an agreement in 
   a Record providing that:

   (a) The Gestational or Genetic Surrogate agrees to attempt pregnancy by means of Assisted Reproduction;

   (b) The Gestational or Genetic Surrogate and, if married, the Gestational or Genetic Surrogate's Legal Spouse have no claims to parentage with respect to any Child resulting from the Assisted Reproduction procedure(s); and
3. The Intended Parent(s) shall be recognized as the sole Parent(s) of the Child.

A. A Surrogacy Agreement may provide for payment of consideration under Article 8 of this Act.

B. A Surrogacy Agreement may not limit the right of the Gestational or Genetic Surrogate to make any health and welfare decisions regarding the Surrogate and the Surrogate’s pregnancy. This Act does not enlarge or diminish the surrogate’s right to terminate or to continue the pregnancy.

C. A Genetic Surrogacy Agreement shall be subject to the following additional requirements and is enforceable only if:

1. Judicially validated as provided in Section 706; and

2. The Assisted Reproduction procedure(s) utilized to attempt a pregnancy are performed under the supervision of a licensed Physician.

SECTION 702. ELIGIBILITY

A. A Gestational or Genetic Surrogate shall be deemed to have satisfied the requirements of this Act if the Gestational or Genetic Surrogate has met the following requirements at the time the Surrogacy Agreement is executed and prior to the anticipated pregnancy. The Gestational or Genetic Surrogate:

4. Is at least twenty-one (21) years of age; and

2. Has given birth to at least one (1) Child; and

3. Has completed a Medical Evaluation relating to the anticipated pregnancy; and

4. Has completed a Mental Health Evaluation relating to the anticipated Surrogacy Arrangement; and

5. Is represented by Independent Legal Counsel and has undergone legal consultation regarding the terms of the Surrogacy Agreement and the potential legal consequences of the Surrogacy Arrangement; and

6. Has or will obtain a health insurance policy or other coverage for major medical treatments and hospitalization and the health insurance policy has a term that extends throughout the duration of the expected pregnancy and for eight (8) weeks after the birth of the Child.
2. The Intended Parent(s) shall be deemed to have satisfied the requirements of this Act if the Intended Parent(s) have met the following requirements at the time the Surrogacy Agreement is executed and prior to the anticipated pregnancy:

1. (a) Intended Parent(s) have completed a Consultation relating to the anticipated Surrogacy Arrangement; and

2. (b) Intended Parent(s) are represented by Independent Legal Counsel and have undergone legal Consultation regarding the same and the potential legal consequences of the Surrogacy Arrangement.

3. The relevant State regulatory agency may adopt rules pertaining to the required Medical Evaluations, Consultations and Mental Health Evaluations for a Surrogacy Agreement. Until the relevant State regulatory agency adopts such rules, Medical Evaluations, Consultations and Mental Health Evaluations and procedures shall be conducted in accordance with the recommended guidelines published by ASRM. The rules may adopt these guidelines or others by reference.

SECTION 703. REQUIREMENTS FOR A SURROGACY AGREEMENT

A. 1. A Surrogacy Agreement is enforceable only if:

   1. (a) It meets the contractual requirements set forth in Section 703(2B); and

   2. (b) It contains at a minimum each of the terms set forth in Section 703(3C); and

3. If the Surrogacy Agreement is a Genetic Surrogacy Agreement, it must be judicially validated, as required by Section 706, prior to attempting pregnancy by means of Assisted Reproduction.

B. 2. A Surrogacy Agreement shall meet the following requirements:

   1. (a) It shall be in writing; and

   2. (b) It shall be executed prior to the commencement of any medical procedures in furtherance of the Surrogacy Arrangement (other than Medical Evaluations, Consultations or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act), by:

      (i) (a) A Gestational or Genetic Surrogate meeting the eligibility requirements of Section 702(1A) of this Act and, if married, the Gestational or Genetic Surrogate’s Legal Spouse; and

      (ii) (b) The Intended Parent(s) meeting the eligibility requirements of Section 702(2B) of this Act; and
3.(c) The Gestational or Genetic Surrogate, and, if married, the Gestational or Genetic Surrogate’s Legal Spouse, and the Intended Parent(s) shall be represented by Independent Legal Counsel in all matters concerning the Surrogacy Arrangement and the Surrogacy Agreement; and

4.(d) Each of the parties acknowledge in writing that they received information about the legal, financial, and contractual rights, expectations, penalties, and obligations of the Surrogacy Agreement; and

5.(e) If the Surrogacy Agreement provides for the payment of Compensation to the Gestational or Genetic Surrogate, the Compensation shall be placed in an Escrow Account with an independent Escrow Agent prior to the Gestational or Genetic Surrogate’s commencement of any medical procedure (other than Medical Evaluations, Consultation or Mental Health Evaluations necessary to determine the Gestational or Genetic Surrogate’s eligibility pursuant to Section 702(1A) of this Act); and

6.(f) Each party’s signature shall be notarized or witnessed by two (2) competent adults who are not parties to the Surrogacy Agreement.

3. A Surrogacy Agreement shall provide for:

1.(a) The express written agreement of the Gestational or Genetic Surrogate to:

(i) (a) Undergo Assisted Reproduction procedure(s) to achieve a pregnancy and attempt to carry and give birth to a Child; and

(ii) (b) Surrender custody of any Child resulting from such Assisted Reproduction procedure(s) to the Intended Parent(s) immediately upon birth; and

2.(b) If the Gestational or Genetic Surrogate is married, the express agreement of the Gestational or Genetic Surrogate’s Legal Spouse to:

(i) (a) Undertake the obligations imposed on the Gestational or Genetic Surrogate pursuant to the terms of the Surrogacy Agreement; and

(ii) (b) Surrender custody of any Child resulting from such Assisted Reproduction procedure(s) to the Intended Parent(s) immediately upon birth; and

3.(c) The right of the Gestational or Genetic Surrogate to utilize the services of a Physician chosen by the Gestational or Genetic Surrogate to provide care to the Gestational or Genetic Surrogate during the pregnancy; and
4.(d) The right of the Gestational or Genetic Surrogate to make any health and welfare decisions regarding the Surrogate and the Surrogate’s pregnancy, including continuation or termination of the pregnancy; and.

5.(e) The express written agreement of the Intended Parent(s) to:

(i) (a) Accept custody of any Child resulting from such Assisted Reproduction procedure(s) immediately upon birth regardless of number, gender, or mental or physical condition; and

(ii) (b) Assume sole responsibility for the support of the Child immediately upon birth; and.

6.(f) Intended Parent(s) payment of reasonable legal, medical and/or ancillary expenses, including:

(i) (a) The premiums for a health insurance policy that covers medical treatment and hospitalization for the Gestational or Genetic Surrogate unless otherwise mutually agreed upon by the parties, pursuant to the terms of the Surrogacy Agreement; and

(ii) (b) The payment of all uncovered medical expenses; and

(iii) (c) The payment of reasonable legal fees for the Gestational or Genetic Surrogate’s legal representation; and

(iv) (d) The payment of life insurance premiums; and

(v) (e) Other reasonable financial arrangements mutually agreed upon by the parties, including any applicable reimbursement and compensation schedule, pursuant to the terms of the Surrogacy Agreement.

D. A court has jurisdiction to determine the Parent-Child Relationship pursuant to a Surrogacy Agreement where:

1.(a) At least one of the parties to the Surrogacy Agreement is a resident; or

2.(b) At least one of the medical procedures pursuant to the Surrogacy Agreement occurs; or

3.(c) The birth occurs or is anticipated to occur.
4-(d) If none of the above applies, the appropriate jurisdiction for determining the Parent-Child Relationship may be determined under the Uniform Child Custody Jurisdiction and Enforcement Act.

5. A Surrogacy Agreement is enforceable even if it contains one or more of the following provisions:

1.(a) The Gestational or Genetic Surrogate’s agreement to undergo all medical exams and/or treatments, and to follow activity restrictions, as instructed by the Physician for the success of the pregnancy (although there shall be no specific performance remedy for a breach of such provisions); and/or

2.(b) The agreement of the Intended Parent(s) to pay the Gestational or Genetic Surrogate reasonable Compensation; and/or

3.(c) The agreement of the Intended Parent(s) to pay for or reimburse the Gestational or Genetic Surrogate for reasonable expenses (including, without limitation, medical, legal, or other professional or necessary expenses) related to the Surrogacy Arrangement and to the Surrogacy Agreement.

SECTION 704. TERMINATION OF SURROGACY AGREEMENT

A. 1. Prior to Pregnancy

1.(a) Before a Gestational or Genetic Surrogate undergoes the Assisted Reproduction procedure(s) to attempt pregnancy, and subject to the terms of the Surrogacy Agreement, any party may terminate the Surrogacy Agreement by giving written notice of termination to all other parties.

2.(b) No party may terminate the Surrogacy Agreement after an Embryo Transfer procedure and prior to a pregnancy test at a time to be determined by a qualified Physician.

3.(c) Any party who terminates a Genetic Surrogacy Agreement after the appropriate Court issues an order validating a Genetic Surrogacy Agreement under Section 706 but before the Genetic Surrogate becomes pregnant by means of Assisted Reproduction shall also file notice of the termination with the appropriate Court. On receipt of the notice, the appropriate Court shall order a stay on all medical procedures contemplated under the terms of the Genetic Surrogacy Agreement.

4.(d) Except as otherwise agreed to among the parties in the Surrogacy Agreement, no party shall be liable to any other party for terminating the Surrogacy Agreement before the Gestational or Genetic Surrogate becomes pregnant by means of Assisted Reproduction.
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B. 2. After Pregnancy is confirmed:

1-(a) Subject to the provisions of Section 714(3C), no party may terminate a Surrogacy Agreement once a successful pregnancy is confirmed.

SECTION 705. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP IN GESTATIONAL SURROGACY

A. 1. RIGHTS OF PARENTAGE

1-(a) Except as provided in this Act, a woman who gives birth to a Child is a Parent of that Child for purposes of State law.

2-(b) The parties to a Gestational Surrogacy Agreement shall assume the rights and obligations of this Article if:

(i) (a) The Gestational Surrogate satisfies the eligibility requirements set forth in Section 702(1A); and

(ii) (b) The Intended Parent(s) satisfy the eligibility requirements set forth in Section 702(2B); and

(iii) (c) The Gestational Surrogacy Agreement complies with the requirements of Section 703.

3-(c) In the case of a Gestational Surrogacy Agreement satisfying the requirements set forth in this Article:

(i) (a) The Intended Parent(s) shall be the Parents of the Child for purposes of State law immediately upon the birth of the Child; and

(ii) (b) The Child shall be considered the Child of the Intended Parent(s) for purposes of State law immediately upon the birth of the Child; and

(iii) (c) Parental rights shall vest in the Intended Parent(s) immediately upon the birth of the Child; and

(iv) (d) Sole custody of the Child shall rest with the Intended Parent(s) immediately upon the birth of the Child; and

(v) (e) Neither the Gestational Surrogate nor the Gestational Surrogate’s Legal Spouse, if any, shall be the Parent of the Child for purposes of State law immediately upon the birth of the Child.
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4.(d) If the parentage of a Child born to a Gestational Surrogate is alleged not to be the result of the Assisted Reproduction procedure(s), the appropriate Court shall order genetic testing to determine the parentage of the Child. If the Child was not conceived as result of the Assisted Reproduction procedure(s), the Parent-Child Relationship shall be determined as provided under other applicable State law.

5.(e) In the case of a Gestational Surrogacy Arrangement meeting the requirements set forth in this Section 705, in the event of a laboratory error in which the laboratory transfers Embryo(s) not legally belonging to the Intended Parent(s), the Intended Parents will be the Parents of the Child for purposes of State law unless otherwise determined by a Court in an action which can only be brought by one or more of the parties to the Surrogacy Agreement or the genetic contributors within two (2) years of the date of the Child’s birth.

2. ADMINISTRATIVE ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP.

B. If an applicable State law provides for the administrative establishment of the Parent-Child Relationship, that process may be utilized by the parties for purposes of establishing a Parent-Child Relationship.

If an applicable State law provides for the administrative establishment of the Parent-Child Relationship, that process may be utilized by the parties for purposes of establishing a Parent-Child Relationship.

SECTION 706. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP IN GENETIC SURROGACY

A. RIGHTS OF PARENTAGE

1.(a) The parties to a Genetic Surrogacy Agreement shall assume the rights and obligations of paragraphs 2 and 3 of this Sections 706(1A)(a) and 706(1)(b) if:

(i)(a) The Genetic Surrogate satisfies the eligibility requirements set forth in Section 702(1A); and

(ii)(b) The Intended Parent(s) satisfy the eligibility requirements set forth in Section 702(2B); and

(iii)(c) The Genetic Surrogacy Agreement complies with the requirements of Section 703 and has been judicially pre-approved prior to the commencement of any medical procedures in furtherance of the Surrogacy Arrangement (other than Medical Evaluations, Consultation or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act) as set forth in this Section 706.
2.(b) In the case of a Genetic Surrogacy Agreement satisfying the requirements set forth in paragraph 1 of this Section 706(1A)(a):

(i) (a) The Intended Parent(s) shall be the Parents of the Child for purposes of State law immediately upon the birth of the Child; and

(ii) (b) The Child shall be considered the Child of the Intended Parent(s) for purposes of State law immediately upon the birth of the Child; and

(iii) (c) Parental rights shall vest in the Intended Parent(s) immediately upon the birth of the Child; and

(iv) (d) Sole custody of the Child shall rest with the Intended Parent(s) immediately upon the birth of the Child; and

(v) (e) Neither the Genetic Surrogate nor the Genetic Surrogate’s Legal Spouse, if any, shall be the Parent of the Child for purposes of State law immediately upon the birth of the Child.

3.(c) In the case of a Genetic Surrogacy Arrangement meeting the requirements set forth in this Section 706, in the event of a laboratory error in which the laboratory transfers Embryo(s) not legally belonging to the Intended Parent(s), the Intended Parents will be the Parents of the Child for purposes of State law unless otherwise determined by a Court in an action which can only be brought by one or more of the parties to the Surrogacy Agreement or the genetic contributors within two (2) years of the date of the Child’s birth.

2 JUDICIAL PRE-APPROVAL OF GENETIC SURROGACY AGREEMENT

1.(a) Prior to the commencement of any medical procedures in furtherance of the Genetic Surrogacy Arrangement (other than Medical Evaluations, Consultation or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act), the Intended Parent(s), the Genetic Surrogate, and Genetic Surrogate’s Legal Spouse, if any, shall commence a proceeding to obtain judicial pre-approval of a Genetic Surrogacy Agreement by filing a petition in the appropriate Court. A proceeding to obtain judicial pre-approval of a Genetic Surrogacy Agreement may not be maintained unless all parties to the Genetic Surrogacy Agreement join in the petition. A copy of the fully-executed Genetic Surrogacy Agreement must be filed with the petition.

2.(b) If the requirements of paragraph 1 of this Section 706(2B)(a) are satisfied, the appropriate Court shall issue an order validating the Genetic Surrogacy Agreement and declaring that the Intended Parent(s) will, subject to the
issuance of a final post birth order, be the sole Parent(s) of a Child born during
the term of the Genetic Surrogacy Agreement.

2-(c) The Court shall issue an order under this Section 706(2B) only on finding
that:

(i) (a) The requirements of Section 702 have been satisfied; and
(ii) (b) The requirements of Section 706(2B) have been satisfied; and
(iii) (c) All parties have voluntarily entered into the Genetic Surrogacy
   Agreement meeting the requirements of Section 703 and understand its terms; and
(iv) (d) Adequate provision has been made for all reasonable health-
   care expenses associated with the Genetic Surrogacy Agreement,
   including responsibility for those expenses if the Genetic Surrogacy
   Agreement is terminated, as set forth in Section703(3C)(b); and
(v) (e) The consideration, if any, to be paid to the Genetic Surrogate
   is reasonable.

C. 3. PARENTAGE UNDER A JUDICIALLY PRE-APPROVED GENETIC-
SURROGACY AGREEMENT

1.(a) Upon birth of a Child pursuant to a judicially pre-approved Genetic
Surrogacy Agreement, all parties shall jointly file a notice with the appropriate
Court that a Child has been born as a result of the Assisted Reproduction
procedure(s). Thereupon, the appropriate Court shall issue an order:

(i) (a) Confirming that the Intended Parent(s) are the Parent(s) of the
   Child; and
(ii) (b) If necessary, ordering that the Child be surrendered to the
   Intended Parent(s); and
(iii) (c) Directing the agency maintaining birth records to issue a birth
certificate naming the Intended Parent(s) as Parent(s) of the Child
on an expedited basis.

2.(b) If the parentage of a Child born to a Genetic Surrogate is alleged not to be
the result of the Assisted Reproduction procedure(s), the appropriate Court
shall order genetic testing to determine the parentage of the Child. If the Child
was not conceived as result of the Assisted Reproduction procedure(s), the
Parent-Child Relationship shall be determined as provided under other
applicable State law.
3(c) If the parties fail to comply with paragraph 1 of this Section 706(3C)(a), the appropriate State agency may, upon request of any party, file notice with the appropriate Court that a Child has been born to the Genetic Surrogate as a result of Assisted Reproduction. Upon proof of a Court order issued pursuant to Section 706(2B) validating the Genetic Surrogacy Agreement, the appropriate Court shall order that the Intended Parent(s) are the sole legal Parent(s) of the Child and are financially responsible for the Child.

4(d) If a birth results under a Genetic Surrogacy Agreement that is not judicially pre-approved as provided in this Section 706, the Parent-Child Relationship shall be determined as provided under other applicable State law specifically taking into consideration the intent of the parties at the time of the execution of the Genetic Surrogacy Agreement and the best interests of the Child. An Intended Parent has standing to request and be awarded legal parentage of the Child for the purposes of this provisions and any parentage proceeding hereunder.

SECTION 708. DUTY TO SUPPORT

A. 1. Any individual who is considered to be the Parent of the Child pursuant to Section 705 or Section 706 of this Act shall be obligated to support the Child.

B. 2. Intended Parents who are parties to a non-compliant Gestational Surrogacy Arrangement or an unapproved Genetic Surrogacy Agreement may be held liable for support of the resulting Child under other law.

C. 3. Breach of the Surrogacy Agreement by the Intended Parent(s) shall not relieve such Intended Parent(s) of the support obligations imposed by this Act.

SECTION 709. EFFECT OF SURROGATE’S SUBSEQUENT MARRIAGE

A. 1. GESTATIONAL SURROGACY

Subsequent marriage of the Gestational Surrogate after execution of a Surrogacy Agreement under this article does not affect the validity of the Surrogacy Agreement, consent to the Surrogacy Agreement from the Gestational Surrogate’s Legal Spouse is not required, and the Gestational Surrogate’s Legal Spouse is not a presumed Parent of the resulting Child.

B. 2. GENETIC SURROGACY

After the issuance of an order validating a Surrogacy Agreement between Intended Parents and a Genetic Surrogate under this article, subsequent marriage of the Genetic
Surrogate does not affect the validity of a Surrogacy Agreement, consent to the Surrogacy Agreement from the Genetic Surrogate’s Legal Spouse is not required, and the Genetic Surrogate’s Legal Spouse is not a presumed Parent of the resulting Child.

SECTION 714. DAMAGES

A. Except as expressly provided in the Surrogacy Agreement, the Intended Parent(s) shall be entitled to all remedies available at law or equity in the event of a breach of the Surrogacy Agreement.

B. Except as expressly provided in the Surrogacy Agreement, a Gestational or Genetic Surrogate shall be entitled to all remedies available at law or equity in the event of a breach of the Surrogacy Agreement.

C. There shall be no specific performance remedy available for a breach by a Gestational or Genetic Surrogate of a Surrogacy Agreement that:

1. (a) Limits the right of the Gestational or Genetic Surrogate to make decisions regarding the Gestational or Genetic Surrogate’s own health or pregnancy;

2. (b) Forces the Gestational or Genetic Surrogate to undergo Assisted Reproduction for the purposes of becoming pregnant; and/or

3. (c) Requires or prevents a Gestational or Genetic Surrogate from terminating the pregnancy.

ARTICLE 9. HEALTH INSURANCE

SECTION 901. INFERTILITY AND EXPERIMENTAL PROCEDURES

1. The ASRM or other appropriate governmental regulatory authority may designate, from time to time, a list of ART procedures and treatments considered to be experimental.

SECTION 902. REQUIRED NOTICE

1. Each group health benefit plan that offers assisted reproductive health services shall provide notice in a Record to each enrollee in the plan of the specific coverage provided for those services.
2. The notice required under this Section must be prominently positioned in any literature, insurance application, or insurance policy plan description made available or distributed by the group health benefit plan to enrollees.

SECTION 903. QUALIFICATION OF PROVIDERS

A health insurer may require that any licensed Physician participating in the treatment of infertility must be:

(a) Board certified in Obstetrics and Gynecology by the American Board of Obstetrics and Gynecology and have a practice comprised substantially of Infertility cases; or

(b) Board certified in both Obstetrics and Gynecology and in Reproductive Endocrinology by the American Board of Obstetrics and Gynecology, with a practice comprised substantially of Infertility cases; or

(c) Board certified in both Andrology and Urology by the American Board of Urology.

ARTICLE 109. QUALITY ASSURANCE

SECTION 1001901. QUALIFICATIONS OF PROVIDERS

1. ART Providers and ART Storage Facilities (hereafter “Program”) shall assure the quality of their services by developing and complying with at least the following quality assurance measures:

(a) Personnel. The Program shall document that senior and supervisory staff are adequately trained, including formal training in genetics. Documentation shall also include staff participation in laboratory training programs and regular updating of staff skills and knowledge.

(b) Equipment. The Program shall develop, implement, and test regularly backup and contingency plans for cryopreservation systems, computer systems, and records.

(c) Testing. The Program shall use a laboratory that participates in proficiency testing and on-site inspection, in compliance with the requirements for certification promulgated by the State Department of Health, if any. If genetic diagnostic services are provided, the Program or the laboratory shall comply with the applicable guidelines of organizations otherwise recognized by ASRM, such as the College of American Pathologists and the American College of Medical Genetics.

SECTION 1002902. COLLABORATIVE REPRODUCTION REGISTRIES
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1. Collaborative Reproduction registries (or equivalent) created for the purpose of maintaining contact, medical, and psychosocial information about Donors, Gestational or Genetic Surrogates, and Children born as a result of ART, or to benefit the public health, operating within this jurisdiction shall incorporate, at a minimum, the following elements:

(a) Establish procedures to allow the disclosure of non-identifying information, while protecting the anonymity of Donors; and

(b) Establish procedures to allow the disclosure of identifying information about Participants only if mutual consent of all parties affected is obtained prior to the release of such information; and

(c) Maintain medical and genetic information and updated current health information, including change in health status, about the Donor; Donors or Providers are not required to update such information unless required by written agreement; and

(d) Establish procedures to allow disclosure of non-identifying medical and psychosocial information to the resulting Child; and

(e) Establish whether a resulting Child is authorized to contact a program; and

(f) Retain all records involving third party reproduction until the resulting Child has reached the age of 40.

SECTION 1003903. HEALTH INFORMATION MANAGEMENT

2. The Provider:

(a) Shall attempt to maintain, contact information, including an address, of the Participants for contact by Patients, resulting Children, and Participants; and

(b) Shall participate in a national Donor and Collaborative Reproduction registry, if established as described in Section 1003902 of this Act, so that Intended Parents and Donors can provide the program with address information; and

(c) Shall participate in a national Donor and Collaborative Reproduction registry, if established as described in Section 1003902 of this Act, by collecting medical and genetic information and updated current health information, including change in health status of the Donor; and
4. Disclosure of Medical Information.

(a) Medical Information may be disclosed to an interested party or resulting Child only if an authorization is provided in accordance with applicable law; and

(b) The Program may disclose aggregate, non-identifiable data for quality assurance and reporting requirements, for the limited purpose of:

(i) Ensuring a standard for the maintenance of records on laboratory tests and procedures performed, including safe sample disposal; and

(ii) Maintaining records on personnel and facilities, schedules of preventive maintenance; and

(iii) Ensuring minimum qualification standards for personnel.

SECTION 4004904. PATIENT SAFETY

The program shall:

1. Conduct medical testing for sexually transmitted diseases in Gamete Providers, whether Donors or Intended Parents, and Gestational and Genetic Surrogates in compliance with the laws and regulations of or applying to appropriate governmental regulatory authorities; and

ARTICLE 1410. ENFORCEMENT

SECTION 41041001. DAMAGES

ARTICLE 4211. MISCELLANEOUS PROVISIONS

SECTION 4201101. LIMITATION OF MEDICAL PROFESSIONAL LIABILITY

SECTION 42021102. SEVERABILITY