

Brain Preservation Agreement, Next of Kin

This agreement is between _____ (the "Next of Kin") and Oregon Brain Preservation (OBP), an Oregon nonprofit corporation.

The Next of Kin represents that he/she is the legal next of kin of _____ (the "Patient") and that he/she possesses all legal authority over the disposition of the Patient's body. The Next of Kin desires to have the brain of the Patient preserved by OBP.

The parties hereby agree that OBP shall preserve the brain of the Patient, and that the Next of Kin will make payment for this service as described in this Agreement. The parties agree to perform other tasks as may be required in connection with the preservation in accordance with the terms and conditions set forth below.

I. Duties of OBP

A. OBP shall use its best efforts to preserve the Patient's brain, to the extent possible with the funding provided by the Next of Kin, using such methods as OBP determines in its good faith judgement are most likely to result in the highest quality of preservation.

B. The only tissue that shall be preserved shall be the brain and possibly supporting tissues, such as the skull and soft tissues of the head. The remaining portion of the body shall not be preserved, but shall be cremated and returned to the Next of Kin at the expense of OBP.

C. At such time that OBP determines in its good faith judgement that the Patient can be satisfactorily revived and rehabilitated in an economically practical manner, OBP shall use its best efforts to revive and rehabilitate the Patient.

D. OBP shall not be responsible for performing procedures on the Patient except at the facility of OBP in Salem, Oregon (or such other location at which OBP possesses facilities and equipment suitable for its procedures). The responsibility for transporting the Patient's body to Salem, Oregon or such other location, as indicated by OBP, shall rest with the Next of Kin and not with OBP. OBP may, at its sole discretion, aid in such transportation, upon payment of a reasonable fee requested by OBP for this assistance.

E. The effectiveness of the Patient's preservation may depend upon the speed with which preparatory procedures are begun after the Patient's death, and upon the feasibility of perfusing the Patient with fixative and/or a cryoprotectant (antifreeze) solution after suitable preparation. OBP shall not be responsible for any problems relating to the Patient's preparation or resulting in whole or in part from

- a. The unavailability of personnel, chemicals, and equipment;
- b. The lack of timely notice to OBP of the Patient's death, impending death or serious illness or injury; or
- c. The Patient's distance from Salem, Oregon (or other such location at which OBP possesses facilities and equipment suitable for its procedures) and the legal, technical, and practical difficulties in transporting the Patient.

F. OBP shall not be responsible for any problems arising by reason of any federal, state, or local statutes, regulations, ordinances, or governmental or judicial directives.

G. OBP shall not be responsible for any failure to preserve the Patient resulting in whole or in part from the Next of Kin's breach of any of his/her duties under this Agreement, or from the failure of cooperation of the Patient's family, physician(s), attorney, heirs or executors, or any medical care facility, where such failure makes impractical the timely and adequate preservation of the Patient.

H. Any failure by OBP to perform its obligations hereunder, which failure results in whole or in part from the occurrence of a contingency beyond the reasonable control of OBP, and which contingency makes performance hereunder by OBP impractical (such contingencies to include, without limitation, fire, strike, terrorist action, act of nature, unanticipated disaster, or shortage of materials) is excused, and OBP shall be without liability therefor.

I. OBP will not publicly release the names of relatives of the Patient unless those relatives have given their permission in a signed Relative's Affidavit. Case reports are written after each preservation and are released publicly.

1) (default) Reports regarding the preservation may include all biographical and medical details.

If more limited disclosure is requested, check one of these:

2) _____ Reports regarding the preservation may be published in anonymized format, with specific identifiable information such as name, exact age, and city removed, but with all procedures and medical details included.

3) _____ Other instructions _____

In all cases, the Next of Kin understands that brain preservation generates extreme public scrutiny and that information about the Patient may leak to the public from a number of sources. In no case shall OBP be liable for any public disclosure of information.

J. Standby refers to a team deployed and standing by prior to legal death, which is able to provide immediate stabilization, cooling, and transportation services. OBP shall provide Standby to the extent possible with the funding provided by the Patient. Decisions on when to provide Standby, how many personnel to deploy, and what equipment to use shall be made by OBP in its sole good faith judgement.

K. The obligations of OBP shall otherwise be limited as indicated in other sections of this Agreement.

K. All decisions to be made by OBP under this Agreement shall be made by OBP in its sole judgement, and OBP shall not be liable for the consequences of any such decisions made in good faith, whether or not negligent.

II. Payment

A. The Next of Kin shall pay to OBP a Preservation Fee in consideration of the efforts of OBP to preserve the Patient's brain. The fees are posted on the website and may change from time to time.

B. The Next of Kin may provide funding in excess of the minimum required Preservation Fee (the "Surplus"). The Surplus may be sufficient to pay for Standby or for alternate transportation of the body to OBP. In that case, OBP shall assume responsibility for paying for those services, within the limits of the available personnel and financial resources, as determined in OBP's sole good faith judgment. If the Surplus is not sufficient to pay the described expenses, OBP shall have no duty to make payment for those expenses.

C. OBP may increase the Preservation Fee and any figures for liquidated damages referred to herein, to reflect any actual or probable increases in the cost of preservation, whenever OBP in its sole good faith judgement determines that such an increase is necessary. Such increase will be posted on the company website.

D. This Agreement is not, and shall bear none of the incidents of, a trust. Neither the Patient nor any of his/her heirs, successors, assigns, estate, or agents shall possess any equitable interest in the Preservation Fee after the payment thereof to OBP, or in any of the proceeds of OBP's investment thereof, and OBP shall owe no fiduciary duty to the Patient, or to his/her heirs, successors, assigns, estate, or agents, in respect of this Agreement.

E. The parties agree that the Next of Kin may make payments to OBP, to be applied to the Patient's Preservation Fee, in advance of the Patient's legal death. Prepayments do not generate interest for the Next of Kin. To the extent that part of the Preservation Fee has been paid in advance, the Next of Kin shall be deemed to have complied with the requirements of payment. If the Next of Kin terminates this Agreement, the payments made by the Next of Kin in respect of the Preservation Fee shall be refunded to the Next of Kin, less an amount equal to the sums expended by OBP in reliance on this Agreement. If the Patient has not yet required any services or procedures, then a full refund can be provided. No paperwork administration fees are charged. Refunds can take up to 30 days to process.

F. The Next of Kin's full and complete performance of his/her duties under this section shall be a condition precedent to OBP's performance of its duties under this Agreement. The Next of Kin's obligation to make payment hereunder shall be independent of the payment or failure to make payment by any insurer or other third party.

III. Duties of the Next of Kin

"Related Individuals" refer collectively to relatives, heirs, next of kin, executor, legal representative, physician, attorney, and other person's with authority over disposition of the Patient's body or over the Patient's estate.

A. The Next of Kin and Related Individuals shall execute any further documents as may assist preservation.

B. The Next of Kin and Related Individuals shall persuade medical authorities to release the body immediately to OBP.

C. The Next of Kin and Related Individuals shall not interfere in any way with the preservation procedures.

D. Once the Patient is in storage at OBP, the Next of Kin cannot remove the patient except as specifically described in the Termination section.

Any failure by the Next of Kin and Related Individuals to perform these duties shall relieve OBP of its duty to preserve the Patient.

IV. Contingencies

A. If at any time the funds possessed by OBP do not permit continued preservation, OBP shall pursue alternative methods of preservation using its best judgement. Alternative methods may include, but are not limited to, removal of tissue, storage at higher temperatures, chemical preservation, or transfer to an alternate organization. At such time that OBP determines in its best

good faith judgement that the Patient's continued preservation is certainly futile, by reason of lack of funds or otherwise, the Patient's preservation shall cease, and the Patient's remains shall be disposed of by burial or cremation. OBP shall not be liable for such termination of the Patient's preservation, provided that OBP shall have performed its obligations under this Agreement.

B. If, in the best good faith judgement of OBP, the preservation of the Patient is impractical because of legal problems, interference by Related Individuals, medical, judicial or administrative authorities, or otherwise, OBP may pursue any alternative method of preservation, may fail to commence preservation, or may cease preservation. The Patient's body may be disposed of by burial or cremation, and OBP shall not be liable therefor.

C. If OBP does not preserve the Patient, OBP shall be entitled only to compensation for costs incurred. The remaining portion to which OBP is not entitled shall be returned to the Next of Kin.

V. Warranties

OBP does not expressly warrant the quality of its efforts under this Agreement, and disclaims and excludes all warranties, express or implied, including all warranties of merchantability or fitness, except that OBP promises to use its best efforts to perform its obligations under this Agreement, as limited by the terms hereof. The warranties excluded and disclaimed hereunder include, by way of example and not limitation, the following:

A. OBP does not warrant that the Patient's preservation shall be successful; in particular, OBP does not warrant or represent that the Patient can or shall ever be revived or rehabilitated, that the cause of the Patient's death can be reversed, or that the methods used to preserve the Patient will or can be successful. All of these prospects are completely uncertain, and OBP and the Next of Kin have entered into this Agreement with full knowledge of this uncertainty.

B. Because of the difficulty in evaluating methods of preservation and storage, OBP does not warrant that the method of preservation used with regard to the Patient shall be the most advanced or the most effective method available. OBP shall not be obligated to use any particular method of preservation, notwithstanding the judgements of any practitioners or commentators as to the superiority of any particular method.

C. OBP does not warrant that it shall treat the Patient with the aid of the most advanced equipment or the most highly trained personnel, but OBP shall use the best personnel and equipment whose use is economically practical and which are reasonably available to OBP under the circumstances, as determined in OBP's best good faith judgement.

D. OBP does not warrant that the Patient's preservation is legally valid or will be unimpeded by legal process.

E. OBP does not warrant or represent that the amount of the Preservation Fee shall be adequate to pay for the Patient's ongoing storage. The Next of Kin acknowledges that the cost of ongoing storage remains unknown, and the calculation of the Preservation Fee represents only the best estimate by OBP of the probable cost of storage.

F. OBP does not warrant that its investment of the Preservation Fee will be sufficient to permit a return on investment equal to the amount of the Patient's maintenance expenses, or that the investment shall otherwise be adequate. The personnel of OBP are not financial experts, and OBP shall not be liable for any good faith errors in business judgment in making such investments, whether negligent or otherwise.

VI. Representations of the Next of Kin

The Next of Kin represents that he/she:

- A. Understands that preservation is an unknown, untested process, and that no adult human being or other vertebrate has ever been successfully preserved and revived. The success of preservation depends on future advances in science and technology and the probability of success is completely unknown.
- B. Understands the following scientific issues:
 - 1. Preservation of neural tissue has been performed in a lab setting which shows excellent preservation, but this does not always translate to good preservation in clinical settings.
 - 2. Current law does not allow procedures to begin until after death is pronounced. The dying process itself can be very damaging.
 - 3. There are damaging delays immediately after death due to hospital rules, paperwork, coroner interference, relative interference, and many other factors.
 - 4. There is damage during any transportation, during surgical prep, and during the procedure itself.
 - 5. Protective chemicals are frequently prevented from reaching the tissue in a timely manner. So, instead of the intended preservation, the result can be necrosis or ice crystal formation, and obliteration of structural information.
 - 6. Preservation must be completed quickly. This rarely happens except in the very best local cases in Salem with full equipment and many skilled personnel. In most cases, there will be areas of poor preservation.
 - 7. In any remote case, due to the long transport times involved, preservation will be very low quality and will probably not preserve many memories. The chance of successful revival in these situations, however far in the future, may be very low.
 - 8. OBP will still accept cases with poor prognosis as long as the Next of Kin understands the above issues.
- C. Understands that OBP is a nonprofit corporation with limited resources.
- D. Has carefully read and understands the disclaimers of warranty contained in this Agreement.
- E. Has carefully read and understands this Agreement, and has had an opportunity to consult with an attorney regarding the same.
- F. Notwithstanding the foregoing, consents to the performance by OBP of the Patient's preservation pursuant to this Agreement, and the performance by OBP of its obligations under this Agreement, including its obligation to store the Patient according to OBP's sole judgement and in accordance with the terms of this Agreement.

VII. Release

The Next of Kin agrees to release OBP and its officers, directors, employees, servants, delegees, and assignees from all liability, loss, claims, expenses, or damage (collectively referred to herein as "losses") resulting from, alleged to result from, or related to the execution or performance of this Agreement or any failures by OBP to perform any of its duties hereunder for any reason whatsoever (except that the provisions of the Remedies section below govern the liability of OBP for damages to the Next of Kin for breach of this Agreement), provided that OBP shall use its best efforts to perform its obligations hereunder.

VIII. Remedies

A. Upon OBP's breach of this Agreement, since any damages resulting therefrom are uncertain and speculative (because of the uncertainty of preservation), and subject to the limitations of liability contained in this agreement, the Next of Kin agrees that his/her recovery from OBP shall not exceed the Preservation Fee already paid to OBP, less the sum expended by OBP in the performance of the Agreement. Notwithstanding the foregoing OBP shall not be liable to pay any damages under any circumstances whatsoever where such payment will or may endanger the adequacy of the continuing preservation of other patients of OBP.

IX. Termination

A. Prior to the preservation of the Patient, the Next of Kin may terminate this Agreement without cause, subject only to payment to OBP of the sums expended by OBP in reliance on this Agreement.

B. If the Patient has already been preserved, then removal from storage at OBP can only take place if the following conditions are met. The patient may be moved to permanent storage at either Alcor or the Cryonics Institute. OBP will work directly with the receiving organization and will require assurance ahead of time from that organization that funding will be adequate. OBP will refund the original fee that was paid minus reasonable fees for services already incurred. This amount cannot be paid to the Next of Kin, but can only be paid directly to the receiving organization.

X. Assignment

OBP may assign and/or delegate part or all of its rights and duties under the Agreement, but only if, after such assignment and/or delegation, OBP has substantial assurance that any delegee shall fully perform its obligations under this Agreement. OBP shall not be liable for the delegee's failures to perform its obligations to the Patient.

XI. Miscellaneous

A. Invalidity of any section of this Agreement shall void only that section, not the entire Agreement.

B. This agreement states the entire agreement of the parties hereto and is intended to be the final, complete, and exclusive statement of the terms thereof.

C. This Agreement is reasonably related to the state of Oregon, and the rights and obligations of the parties hereunder, and all performance hereunder, shall be governed by and construed in accordance with the laws of the State of Oregon. Any action brought relating to this Agreement shall be brought in a state court in Marion County or a federal court of appropriate jurisdiction located in the State of Oregon.

D. Any modification or waiver of this agreement must be made in writing and signed by both parties.

E. This Agreement shall bind the parties hereto and their agents, successors, and assigns, including the Next of Kin's estate and the executor thereof.

F. The headings in this Agreement are for purposes of reference only, and shall not limit or otherwise affect the meaning of this Agreement.

G. Whenever the singular number shall appear here, the same shall include the plural, and the neuter, masculine, and feminine forms shall include each other.

H. This Agreement is executed in counterparts, each of which shall be deemed an original, and all of such counterparts, taken together, shall be deemed an agreement.

I. Any notices required by the terms of this Agreement shall be made to the parties hereto at the following addresses (or such other address as a party shall later indicate):

To OBP:
Oregon Brain Preservation
3265 Marietta St SE
Salem, OR 97317

To the Next of Kin:

XI. Signatures

Signature of Next of Kin: _____

Date: _____

Signature of Jordan Sparks,
Executive Director of OBP: _____

Date _____