

### WHAT NEEDS TO BE IN A SURROGACY AGREEMENT

A surrogacy motherhood agreement is a contract between a surrogate mother and commissioning parents where the surrogate agrees to undergo artificial fertilisation for the purpose of bearing a child for the commissioning parents. **The surrogate mother agrees to hand the child over once it has been born with the intention that the child becomes the child of the commissioning parents.**

*Without a valid surrogate motherhood agreement, the surrogate mother would be considered the legal mother of the child.*

Agreement must include adequate provision for the *contact, care, upbringing, and general welfare of the child that is to be born in a stable home environment.* Must include child's position in the event of the **death of the commissioning parents, a divorce/separation before the birth of the child AND in general have regard for the personal circumstances and family situations of all the parties involved.**

**ABOVE ALL the interests of the child that is to be born, the agreement should be confirmed.**

### WILL A VERBAL AGREEMENT BE VALID?

**NO!**

The surrogate motherhood agreement must be in **writing** and confirmed by the **HIGH COURT** whose jurisdiction is the area where the commissioning parents are domiciled or habitually resident.

### CONSEQUENCES OF NO VALID AGREEMENT?

When a woman gives birth as a result of artificial insemination, they are regarded as the child's mother.

A **VALID SURROGATE MOTHERHOOD AGREEMENT** is necessary in order for the birth mother to not be regarded as the **LEGAL MOTHER** of the child.

Without it, the surrogate mother would be considered the legal mother of the child.

No artificial insemination of the surrogate mother may take place until the court has **confirmed** the surrogate motherhood agreement. Without one, this cannot take place.

The agreement also ensures that the commissioning parents are regarded as the parents of the child from the moment the child is born.

The surrogate motherhood agreement must comply with the provisions set out in **CHILDREN'S ACT** or else the agreement would be invalid and as a result of that, the child would be deemed the child of the surrogate mother.

### WHOSE CONSENT IS REQUIRED?

#### COMMISSIONING PARENT

If the commissioning parent is married or involved in a permanent relationship, the **written consent** of the *husband/wife/spouse/life partner* of the commissioning parent is required and they become party to the agreement.

#### SURROGATE MOTHER

If the surrogate mother is married or involved in a permanent relationship, the **written consent** of the *husband/wife/spouse/life partner* of the surrogate mother is required and they become party to the agreement.

**If the husband/partner of the surrogate mother unreasonably withholds consent, the court may still confirm the agreement.**

