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## Semen Evaluation, Freeze & Storage Agreement

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This agreement is made and entered into by and between Fairfax Cryobank, Inc. (hereafter referred to as “Cryobank”) and \_\_\_\_\_, an individual (hereafter referred to as the “Client”), for the purpose of collecting, processing, freezing, and storing the Client’s specimen.

WHEREAS, the Client desires to store his semen for later use with his sexually-intimate partner, or in the manner described in paragraph 5, for the purpose of initiating a pregnancy.

WHEREAS, Cryobank provides the service of collecting, processing, freezing, and storing stated specimen if the requirements of this agreement are met.

WHEREAS, the Client has been fully advised and understands that there are certain inherent risks in the process of freezing, shipping, and thawing of such specimens, including but not limited to: damage to the specimen, mishandling during shipment, loss during shipment, and cryopreservation tank failure during shipment or storage, that could result in reduced capacity for fertilization or survival, and reduced life span of specimen after thawing, rehydration, and removal of cryoprotectant buffers, and culture prior to transfer to the Recipient; all of these risks the Client assumes.

WHEREAS, the parties agree that Cryobank shall collect, evaluate, process, freeze, and store the Client’s specimen according to the terms and conditions as set forth in this Agreement. The foregoing preamble is incorporated herein in its entirety.

NOW, the parties agree as follows;

1. The Client shall provide samples of his semen for collection, processing, identification, cryopreservation (freezing), and storage by Cryobank.
2. Cryobank will store the Client’s specimens in accordance with Cryobank’s procedures in the usual facilities maintained for that purpose until this Agreement is terminated in the manner provided in paragraph 12.
3. The Client acknowledges that he has received from Cryobank oral and/or written information explaining procedures for collection, processing, freezing, storage, release, and use of the specimen for insemination, IVF, or other reproductive procedure. The Client acknowledges that he has been informed of the costs associated with the services to be provided under this Agreement which include but are not limited to: storage, semen cryopreservation, release and distribution.
4. The Client hereby agrees to pay quarantine storage fees if the Client tests positive for any infectious disease or if complete testing is not received within 15 days following the receipt of the first stored specimen. The Client acknowledges that he has been advised that Cryobank requires blood testing for HIV-1 antibody, HIV-2 antibody, Hepatitis C antibody, and Hepatitis B surface antigen for storage. A confirmed positive test will result in the Client being notified and charged *applicable quarantine fees*.

Client’s Initials \_\_\_\_\_ (If minor, legal guardian must also initial)

5. The Client acknowledges and agrees he has been given the opportunity to have additional testing that is routinely performed on individuals donating semen to Cryobank for the anonymous donor program. Specimens are stored for use with a sexually-intimate partner of the Client. Use with a Recipient other than a sexually-intimate partner, known as a Directed Donor, requires additional testing at time of specimen production. If the Client wishes further testing, the form Medical and Genetic Tests for Client Depositor will be used to designate which tests the Client would like to have performed on the semen specimens the Client produced. Additional testing fees are as denoted on the Medical and Genetic Tests for Client Depositor form.

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6. In addition to the laboratory processing and freeze charge, the Client hereby agrees to pay storage fees by a pre-paid billing agreement **or** on a monthly basis, including any collection fees for failure to pay. **It is understood that this agreement shall be continuous unless terminated pursuant to the provisions of paragraph 12.** Compensation for services rendered and expenses incurred by Cryobank under this Agreement shall be set by Cryobank, and may be adjusted from time to time by Cryobank based upon market factors including but not limited to increases in costs. Periodically, the storage charge may be increased to an amount equal to the storage fee that is currently being charged to new clients. The Client also agrees to pay a handling fee, shipping fee, shipping tank fee (outgoing & return), and any outstanding fees each time one or more vials or straws of semen is/are removed from storage. Cryobank shall give written notice to the Client of any storage fee increase for the forthcoming period.
7. **IMPORTANT NOTICE: PATERNITY OF CHILD BORN AFTER CLIENT'S DEATH.** A Client may become a biological parent after his death. However, the law may not recognize the Client as the legal father of the child unless he has taken specific steps to protect a future child. For a Client to be recognized as the legal parent of a future child, there must be a written and notarized statement signed by the Client during his lifetime stating he intends to parent after his death and granting ownership of stored specimen to a designee. Ownership of the specimens, with the authority to control the use of the stored specimen will transfer to the designee, according to the wishes expressed by the Client. Ownership or use of the specimens after the Client's death does not automatically grant legal status to the child that the Client is the father.

Without the Client's written declaration of intent to parent, the child would not be afforded legal rights of inheritance or support. **PRIOR TO USING THE SPECIMEN, PLEASE CONSULT WITH AN EXPERIENCED ATTORNEY REGARDING THE LEGAL RIGHTS OF INHERITANCE OR SUPPORT OF A CHILD BORN AFTER THE CLIENT'S DEATH.**

8. Cryobank shall release the vials or straws of the Client's specimen only to him or to his designee at the expressed written authorization of the Client. The Client understands and authorizes that his medical records will be sent to the physician performing an insemination/fertilization and/or to the Recipient of the specimen for their evaluation and use. Accordingly, the Client hereby authorizes Cryobank to release his medical records and all other individually identifiable health information, whether or not contained in the Client's medical records, regarding any past or present medical conditions, including but not limited to: Client account number, specimen quality, order history, and medical information to such a physician and the Recipient the Client has identified to use the specimens. The Client understands that this authorization is voluntary and that if the individual or entity authorized to receive this information is not a covered entity under federal privacy regulations, the release of such information may no longer be protected by federal privacy regulations. The Client also understand that once this information is used or disclosed pursuant to this authorization it may be subject to re-disclosure by the physician and the Recipient may no longer be protected. The conditions and procedures for release shall be those reasonably established by Cryobank, with which the Client hereby agrees to comply. The Client understands and agrees that the procedures established by Cryobank may be modified at the sole discretion of Cryobank to reflect changes in industry practice, laws, or regulations. As of the date of this Agreement, the release procedures are as follows:
- a. *During the Client's lifetime:* The specimens stored by Cryobank for the Client shall remain his property and will be released (1) to a licensed physician or the physician's designee, (2) for use with the Client or the Client's designee with the intent to create a child, (3) upon completion of required testing if applicable, and (4) upon the authorization of the Client.
  - b. *Upon the Client's death:* This Agreement terminates upon the death of the Client. If the Client has a written and notarized statement signed by the Client during his lifetime stating an intention for use of the specimens for procreation after the Client's death and granting ownership of stored tissue samples to a designee, disposition of the stored samples will be in accordance with the instructions following (1) notification of Cryobank in writing within 60 days after the first storage invoice following the date of the Client's death, (2) a certified copy of the Client's death certificate, and (3) if the Client's surviving designee elects to continue storage of the specimens for his or her exclusive use, a written and notarized

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statement signed by the designee electing to take ownership of any remaining specimen then the specimen stored by Cryobank shall become the property of the designee of the Client with all of the Client's rights and obligations transferred to the designee upon payment of applicable storage fees and completion of new agreement.

**CHOOSE ONE:**

*I understand that my specimen(s) can be used for the purpose of procreation by my surviving spouse, identified surviving intimate partner, or parent(s)/legal guardian(s) if a minor, if all of the conditions of 8b are met. I further understand that I must take additional legal steps during my life to establish the paternity of the child. I understand that regulatory agencies may make these samples unable to be used for the purpose of procreation.*

*Upon my death, I elect to have all of my stored specimens destroyed, regardless of the desires of any surviving spouse, identified intimate partner, or parent(s)/legal guardian(s) if a minor.*

Client's Initials \_\_\_\_\_ (If a minor, legal guardian must also initial)

9. This agreement also represents the authorization for frozen specimen transport, unless other documentation is required per Cryobank procedures. The Client has been fully advised and understands that there are certain inherent risks in the process of shipping and handling of the specimens during shipment, including but not limited to: loss during shipment and liquid nitrogen tank failure that may render the specimens useless. This is a rare event; however, Cryobank offers the option to ship the vials or straws containing the specimen in separate tanks (provided that there are at least two vials or straws containing the specimen to be shipped). The Client is responsible for paying the shipping costs for each tank shipped. If the shipment is to a destination outside of the United States, the Client is responsible for arranging for any requisite customs or other permits and, prior to shipment, the Client must provide Cryobank with copies of these permits or provide Cryobank with a written statement to the effect that no permits are required. The Client acknowledges that international shipments are subject to delay and to an increased risk of damage and, consequently, an increased risk of damage to or loss of the frozen specimen; the Client assumes this increased risk. The Client is willing to assume all of these risks and the Client fully understands and accepts that Cryobank, its affiliates, its laboratory directors, and its laboratory personnel, do not assume responsibility or liability for the transportation, condition, or survival of the frozen specimens.
10. The Client agrees that in the event of loss or destruction of the Client's specimen by any reason whatsoever, damages as a result thereof would be highly conjectural and speculative and would be difficult to determine. Accordingly, pursuant to § 8.7-204(2) of the Virginia uniform commercial code, the Client agrees that in the event that his specimen is lost or destroyed by virtue of negligence by Cryobank, the Client will be entitled to damages in the amount equal to the storage charge for the particular year in which the loss occurs, plus \$100 per specimen sample (such as vial or straw) lost (maximum compensation to the Client is not to exceed \$2,000.00 USD).
11. As part of the consideration by the Client in agreeing to ship the Client's frozen specimen to another clinic or facility, the Client hereby agrees that any dispute arising out of this consent or directly related to the quality of care provided by Cryobank or any of its physicians, nurses, counselors, or other personnel will be decided only through arbitration by JAMS under the JAMS Streamlined Arbitration Rules and Procedures. The Client further agrees that any binding arbitration proceeding shall be conducted in Fairfax County, Virginia, the location of Cryobank, and agrees that any arbitration proceeding shall be conducted in accordance with the laws of the Commonwealth of Virginia, including, but not limited to: standard of care issues, causation issues, damage issues, qualification of experts, and rules of evidence. The Client further agrees that the decision of the arbitrator(s) shall be binding and final and shall be enforced in any court of competent jurisdiction. Any arbitration costs shall be borne equally between Cryobank and the Client. If, notwithstanding the parties' agreement to arbitrate, any dispute becomes subject to a judicial proceeding, the parties agree to waive trial by jury.

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If any action or proceeding is brought to enforce or interpret any of the provisions of this consent, the prevailing party shall be entitled to recover its reasonable attorney's fees and other reasonable costs expended in such an action or proceeding.

12. This agreement shall terminate and Cryobank responsibility for storage shall cease upon the happening of any one or more of the following events:
- a. In the event the Client's fresh specimen contains no viable sperm. Cryobank reserves the absolute right to terminate this agreement by written notice to the Client if it is determined that specimens are inappropriate for storage.
  - b. The Client fails to complete and return signed original Agreement and necessary paperwork for storage.
  - c. Release of the specimen by written authorization of the Client.
  - d. Written notarized direction of the Client to Cryobank authorizing destruction of all specimens then presently stored.
  - e. Failure to pay the storage charges due will result in the termination of this Agreement and the abandonment of the specimens.
    - i. If at any time Cryobank has not received full payment of all amounts due under this Agreement by 180 (one hundred eighty) days from the due date, the nonpayment of the full amount shall result in the termination of this Agreement and abandonment of the specimen. If at any time storage charges are due and owing but remain unpaid, Cryobank will pursue collection of the storage charges, including referral of claim to a collection agency. In that event, the Client agrees to pay all costs of such collection including any reasonable fees charged by the collection agency, other costs of collection, and reasonable attorney's fees.
    - ii. **It is imperative that the Client notify Cryobank of any change in address, extended absence, or sabbaticals.** Cryobank will send written notice, via U.S. Mail, of non-payment from Cryobank to the Client at his latest address on file at Cryobank. If a notice is returned for insufficient address or similar reason, or if no written response is received from either the Client, or the Client's representative, it is agreed that this Agreement is terminated.
  - f. Death of the Client. Disposition of the stored specimens will be in accordance with the Client's instructions following receipt of a copy of the formal death certificate issued by the appropriate authority of the state in which the Client resided at the time of his death and a notarized copy of the statement described in paragraph 8b.
13. Upon termination of this Agreement, any remaining specimen held in storage by Cryobank shall become the sole and exclusive property of Cryobank; all right, title, claim and interest therein being transferred, conveyed, and delivered to Cryobank by the execution of this Agreement. The specimen so acquired by Cryobank shall be either (1) destroyed by Cryobank, or (2) if Cryobank in its sole discretion so elects, used by Cryobank for scientific and research purposes but not for insemination, IVF, ICSI, or procreation, or other reproductive procedure. Abandonment of the Client's specimens shall be immediate, permanent, and irrevocable.
14. Either party may terminate this agreement upon 30 days written notice to the other. Upon termination, any past due or current storage fees are still required to be paid in full before the Client's account is closed. Failure to pay unpaid fees will be handled as described in paragraph 13. In the event such notice is given by the Client and the Client has an annual or multi-year contract, the storage fee shall be prorated over the storage period used based on the current monthly storage rate then in effect, an administrative fee applied, and the remainder, if any, refunded to the Client upon receipt of a signed release for the Client's vials or straws of semen stored by Cryobank. In the event such notice is given by Cryobank, the storage fee shall be prorated over the storage period used and the remaining prepaid storage fee refunded upon receipt of a signed release for the Client's vials or straws of semen stored by Cryobank. It shall be the Client's obligation to make arrangements for transfer, use, or disposition of the vials or straws of semen in the event of a termination of this contract for any reason other than the Client's death or failure to pay storage charges. Cryobank shall exercise its reasonable best efforts to

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cooperate with the Client in the transfer and release of the specimens.

15. It is specifically acknowledged and agreed by and between the parties hereto that there is an inherent risk in the process of collection, freezing, storage, and thawing of specimen that may render it ineffective for insemination, IVF, ICSI purposes, or other reproductive procedure and that the Client has expressly agreed to assume this risk. The Client also understands and agrees that the viability of the semen specimen and the results from any insemination, IVF, ICSI, or other reproductive procedure depends almost entirely upon the health and age of the Client and the Recipient, and understands that the specimen will not be stored if it contains no viable sperm unless the Client specifically requests storage regardless of viability. The Client understands this information and has been given the opportunity to ask questions and receive adequate additional information to make an informed decision.
16. The Client understands that Cryobank may keep the Client's name, address, and required health information on file indefinitely. However, the Client's information will be kept confidential and used only to comply with the terms of this agreement. Any information obtained during these procedures that may identify the Client will remain confidential and will be disclosed to individuals not connected with this agreement only with the Client's written permission. The Client understands that photographs or videotapes may be taken of him or the specimen as a permanent record and for identification. The Client understands that he has the right to review this information at any reasonable time, and the client acknowledges and agrees that any government agency with legal authority to do so may also review such records.
17. In the event Cryobank terminates the operation of its storage facility, it may, 30 days after providing written notice to the Client (or to the surviving spouse or properly-identified intimate partner, or in case of a minor, parent(s)/legal guardian(s), if applicable) at his or her last known address, assign and transfer its obligations and the specimen held on behalf of the Client to a similar storage facility.
18. It shall be the Client's obligation to make arrangements for transfer or disposition of the stored specimen. Cryobank shall exercise its reasonable best efforts to cooperate with the Client in the transfer of the Client's stored specimen.
19. The Client understands and accepts that Cryobank, its physicians, laboratory directors, and laboratory personnel do not assume responsibility or liability for the transportation, condition, or survival of the specimen or the physical, mental, or other characteristics of any child or children born as a result of the use of the stored specimen.
20. The Client further agrees to indemnify, defend, and hold harmless Cryobank and its past, present, or future officers, directors, employees, agents, assignees, contractors, and affiliates, from any and all claims, demands, causes, charges, costs, expenses, obligations, or action for damages or otherwise asserted against Cryobank arising out of the collection, evaluation, freezing, storage, shipping, handling, thawing, disposition and any other action involving the receipt, handling, transfer, disposition, or release of the Client's specimen.
21. If the Client names Cryobank or any of its employees or agents party to any litigation arising from any disagreement between the Client and their spouse or sexually-intimate partner as to the rights of either or both of them, as to each other or as to Cryobank, the Client or his estate shall be liable for the reasonable attorney's fees and other cost of Cryobank in such litigation. Also, if any action or proceeding is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and other reasonable costs expended in such an action or proceeding.
22. Any notices to be provided to a party hereunder shall be sent to the address set forth beneath the Client's signature or such other address as the Client may request in writing be used for that purpose. The Client (or the surviving spouse or properly-identified intimate partner, or in case of a minor, parent(s)/legal guardian(s), if applicable) shall keep Cryobank informed in writing at all times during the term of the agreement of any change in address,

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including current mailing address, email addresses, and telephone number. The Client shall advise Cryobank promptly in writing on each change of address or prolonged absence from the last address on file. The Client acknowledges that his current mailing address is set forth on the client information form provided with this Agreement, and acknowledges that it is his obligation to provide in writing to Cryobank any change in address.

- 23. If any provision of this Agreement is found to be invalid or unenforceable by any court, that provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions hereof, unless such invalidity and unenforceability would defeat an essential purpose of this Agreement.
- 24. This represents the entire agreement between the parties concerning the subject matter; and there are no understanding, agreements, or representations other than as herein set forth. This Agreement shall be modified only by a writing signed by all parties.
- 25. The agreement shall be binding upon the parties and their respective assignees, heirs, executors, and administrators. This agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, USA.
- 26. Client acknowledges receipt of the Notice about Zika Virus attached hereto and incorporated herein.

By providing a signature below, the Client expressly agrees that his failure to comply with the terms of this Agreement will constitute termination of this Agreement, and shall result in the abandonment of said specimen(s) to Cryobank.

This agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by

\_\_\_\_\_  
(Client's signature)

\_\_\_\_\_ (Print Client name)

\_\_\_\_\_  
If Client is a minor, Legal Guardian signature

\_\_\_\_\_  
Legal Guardian printed name

**Cryobank will complete:**

The Cryobank Representative signs below agreeing to provide all services referred to in the agreement.

Cryobank Representative printed name	Signature	Date

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## Notice about Zika Virus

Fairfax Cryobank is working hard to prevent the transmission of the Zika virus via semen. We are advising all of our clients who are banking semen for future reproductive use to assess the risk that Zika virus could be transmitted when the semen is used to attempt pregnancy. Zika virus in pregnancy can cause miscarriage, stillbirth, visual and hearing abnormalities and microcephaly, a birth defect that causes babies to be born with small heads and severe brain damage.

Zika virus is transmitted by infected mosquitoes and through contact with infected bodily fluids, including blood and semen. Most people who have been infected with the virus do not have any symptoms, and do not know they have it. There is evidence that the virus remains in semen for much longer than it remains in blood, so a blood test alone is not a reliable way to determine if someone is at risk for transmitting Zika through semen.

We will bank semen for you whether or not you (or your directed donor) had Zika virus syndrome, or are at risk of having Zika virus; we just want to ensure that clients know about the risks, and how to get more information, so you can make an informed decision about the best time to bank. We recommend that you consult the website of the U.S. Centers for Disease Control and Prevention for the most up-to-date information about the virus, risk factors for infection and transmission and recommendations for people who are trying to conceive. Your doctor may have additional information, as well.

<http://www.cdc.gov/zika/>