

## Semen Depositor Agreement for Evaluation, Freeze & Storage

This agreement ("*Agreement*") is made and entered into by and between Fairfax Cryobank, Inc. ("*Cryobank*") and \_\_\_\_\_, an individual ("*Depositor*"), effective as of \_\_\_\_\_ ("*Effective Date*"), whereby Depositor engages Cryobank to bank Depositor's semen ("*Specimens*") for future use to attempt pregnancy. Depositor intends to be a legal parent of any child(ren) conceived through use of the Specimens. The parties hereby agree as follows:

1. Cryobank Services. Depositor will provide Specimens to Cryobank, which Cryobank will analyze, process, freeze, store and, at Depositor's request, prepare for release and transfer (collectively, "*Services*"). The intended recipient is referred to as the "*Recipient*." The intended recipient of the Specimens may be the Depositor's current or future sexually intimate partner, or a surrogate, gestational carrier or non-intimate co-intended parent. If the recipient is a non-intimate partner, the Depositor will be considered a Directed Donor – Intended parent and must comply with Cryobank's Directed Donor process.

2. Analysis, Processing and Cryopreservation. Cryobank will perform Specimen analysis, processing and cryopreservation in accordance with its standard operating procedures and in compliance with applicable law. It is possible that any given sample may not contain viable sperm, in which case that sample will not be banked.

3. Screening and Testing.

3.1. All Depositors.

3.1.1. Depositor understands that certain laboratory testing for infectious disease is required in order to bank Specimens with Cryobank. Depositor may elect to have additional, optional infectious disease or genetic carrier testing through the Cryobank.

3.1.2. Depositor agrees to be tested for the Human Immunodeficiency Virus ("*HIV*"), which causes Acquired Immune Deficiency Syndrome (AIDS). HIV tests detect the virus, as well as antibodies to the virus, in the blood. Depositor will be notified of the results. Laboratory tests are not 100% accurate, and could result in a false positive or a false negative result. If there is a positive result, additional testing would be done to confirm it. There are numerous treatment options available for people who test positive for HIV, and those who test negative should continue to be tested on a routine basis. Counseling is available for people with positive results upon request. Depositor authorizes Cryobank staff and anyone authorized by them to perform one or more blood tests for HIV.

3.1.3. Depositor understands that, if required by law, Cryobank will report positive infectious disease test results to the Department of Health in the state where the Cryobank is located. Cryobank is also authorized to disclose the results of Depositor's testing and screening to the Recipient, Cryobank employees who need to know in order to perform sperm banking services and the health care providers at the clinic performing assisted reproductive procedures with the Specimens.

3.1.4. If Depositor has reactive or indeterminate test results or if screening indicates risk for certain infectious or genetic disease, it is possible that either: (a) Cryobank will not release Specimens for use and they will be discarded; or (b) Cryobank will only release Specimens with the approval of the physician treating the Recipient.

3.1.5. Use with a non sexually intimate partner (Directed Donor – Intended Parent). In addition to testing required for all Depositors, use of specimens with a recipient who is a non sexually intimate partner such as a surrogate or gestational carrier must also be screened and tested in accordance with federal, and in some cases, state, regulations. The Cryobank medical director must make an "eligibility" determination before specimens can be released for use in a fertility procedure.

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3.2. Limitations of Testing. Even if testing shows normal results, all tests have limitations and may not always be reliable, even when properly administered. Depositor understands and assumes this risk.

3.3. Cryobank's Disclaimers. Depositor acknowledges that Cryobank will not: (a) screen and test Depositor for all possible infectious diseases or genetic disorders; or (b) independently verify the information that Depositor provides about their medical, social, behavioral and family history, personal characteristics and other pertinent data. Cryobank does not promise that use of Specimens will result in pregnancy or live birth, or that, if pregnancy is achieved, the fetus or baby will be free from genetic disorders or defects, or from infectious disease. In the general population, every pregnancy has a small (approximately 3%-4%) risk of producing a child with a birth defect or mental deficiency. Depositor understands and assumes these risks.

4. Quarantine. In some cases, applicable law or the physician treating the Recipient may require that Specimens be stored in quarantine, and the Depositor re-tested for infectious disease, before Cryobank can release Specimens for use in a fertility procedure. Quarantine and re-testing have additional costs.

5. Specimen Storage.

5.1. Agreement to Store Specimens. Cryobank will store Depositor's Specimens in accordance with applicable law, its standard policies and procedures and the terms of this Agreement. Depositor will complete a billing agreement to sign up for monthly billing or pre-paid one- or multi-year storage services. Storage pricing may be adjusted from time to time by Cryobank, following notice to Depositor.

5.2. Termination of Storage Services. This Agreement will terminate and Cryobank's responsibility for storage will cease upon the occurrence of any one or more of the following events:

5.2.1. No More Specimens. All stored Specimens have been released in accordance with Section 6.

5.2.2. Past-Due Account. Depositor fails to pay storage or other fees within 180 days after the due date. Cryobank will send written notice, via U.S. Mail, of non-payment to Depositor's latest address on file. If a notice is returned for insufficient or wrong address or similar reason, or if no written response is received from Depositor or their authorized representative, Cryobank's storage obligations will terminate automatically. Depositor must notify Cryobank of any change of address. Cryobank is not obligated to track down Depositor.

5.2.3. Facility Closure. If Cryobank plans to close its storage facility, Cryobank will notify Depositor and give Depositor at least thirty (30) days to transfer or otherwise dispose of the Specimens. If Depositor does not respond, Cryobank will have the right to transfer the Specimens and associated documentation, and assign its storage obligations, to another suitable storage facility. In that case, Cryobank will notify Depositor about the transfer in the manner provided in this Agreement.

5.3. Notice. Either Cryobank or Depositor may notify the other party that it will terminate storage for any reason or for no reason. The notice must be given in writing at least thirty (30) days prior to the termination date.

5.4. Notice of Termination. Upon termination of this Agreement for any reason:

5.4.1. Settlement of Account. All past due or current storage and other fees that have accrued through the date of termination will be payable by the Depositor. If Depositor has a pre-paid contract, the storage fee will 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, will be refunded to the Depositor.

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5.4.2. Transfer or Disposition. If any Specimens are then in storage, Depositor will make arrangements to transfer the Specimens and associated records to Depositor's clinic or another permissible storage facility, or to dispose of the Specimens in another permissible way, within thirty (30) days of the notice by either party that this Agreement will terminate. Storage fees will continue to accrue until the Specimens are actually shipped or otherwise disposed of.

5.4.3. Abandoned Specimens. If Specimens are then in storage and Depositor does not make arrangements for transfer or other disposition of the Specimens within the specified period, or make payment of any outstanding balance when due, then the Specimens will be deemed "abandoned," and automatically 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. Abandonment of the Specimens shall be immediate, permanent and irrevocable.

5.5. Collections. Notwithstanding the parties' agreement to arbitrate disputes, Cryobank may pursue collection of overdue storage charges in court, including referral of claims to a collection agency. In that event, Depositor will be responsible 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.

## 6. Specimen Release and Transfer.

6.1. Safeguards. The conditions and procedures for the transfer of the Specimens to another person or facility will be those established by Cryobank, and are designed to comply with legal requirements, protect Depositor's rights to and interests in the Specimens, and assure a reliable chain of custody. They may be modified over time in response to changes in business practices, regulations or otherwise. Depositor will comply with all release conditions and procedures, and understands that Cryobank charges additional fees for handling, shipping and shipping tank rental each time Specimens are removed from storage. Cryobank will not ship Specimens if Depositor's account balance is in arrears.

6.2. Release from Storage. By default, only Depositor will have access to Depositor's account information, and only Depositor or the physician/clinic Depositor has registered with Cryobank may authorize Cryobank to ship Specimens to that physician/clinic. By default, only Depositor may make any other disposition of the Specimens, such as shipment to a different clinic or storage facility, donation for research or destruction.

6.3. Transfer Process. The process for transfer of Specimens is as follows:

6.3.1. Cryobank will pack Specimens in a liquid nitrogen vapor shipping tank that is designed to maintain the proper temperature for at least seven (7) days, with the date of shipment being Day 1; Depositor has the option to request use of a 14-day tank, for an additional charge;

6.3.2. Depositor may request the use of more than one tank (if Specimens are stored in separate containers), for an additional charge;

6.3.3. The tank(s) will be shipped by FedEx, unless Depositor makes arrangements to ship with a different carrier or to pick up and transport the tank(s) personally (the person who picks up the tank(s) is referred to as the "Transfer Agent"); the Transfer Agent will acknowledge receipt of the tank(s) by signing Cryobank's transfer log;

6.3.4. Only trained personnel at the receiving site should open the tank(s) or handle the Specimens; and

6.3.5. The tank(s) must be returned to Cryobank within seven (7) days following delivery to the receiving facility.

6.4. International Shipment. If Depositor requests shipment to a destination outside of the

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United States, Depositor understands that: (a) they are responsible for arranging for any requisite customs or other permits and, prior to shipment, providing Cryobank with copies of the permits or a written statement to the effect that no permits are required; and (b) international shipments are subject to increased risk of delay, damage or loss and, consequently, an increased risk of damage to or loss of Specimens. Depositor assumes this increased risk.

7. Parentage. It is Depositor's responsibility to determine what (if any) steps are necessary to establish parentage of any child(ren) born through use of the Specimens. Depositor acknowledges that Cryobank cannot and does not provide legal advice, and that Depositor is strongly encouraged to consult with an experienced attorney about parentage issues prior to using Specimens.

8. Advance Directive in the Event of Incapacity or Death. Depositor may, but is not required to, indicate their wishes for use or disposition of Specimens in the event of their incapacity or death. Please see *Appendix A*.

9. Confidentiality. Cryobank may keep Depositor's name, address and health information on file indefinitely. Cryobank will only use this information for purposes of this Agreement or internal Cryobank operations, and will not disclose it to a third party except as provided in this Agreement or required by law or legal process. Depositor acknowledges that Cryobank is a regulated entity, and that government agencies with legal authority to inspect Cryobank's records may have access to Depositor's information.

10. Risks. Depositor acknowledges that there are risks associated with handling and shipping cryopreserved human semen, including without limitation the following: (a) breakage of or damage to the specimen container(s) or shipping tank(s); (b) shipping delays; (c) loss during shipment; (d) tank failure; and (e) specimen thawing; any of which may result in damage to or complete loss of the Specimens. Having been advised of these risks, Depositor hereby agrees to assume them, and understands that neither Cryobank nor any of its owners, directors, officers, employees, agents, affiliates or successors-in-interest, collectively, "*Affiliates*") will be responsible or liable for the transportation, condition or survival of the Specimens. Cryobank cannot and does not guarantee that Specimens will survive freezing and thaw or achieve fertilization or pregnancy. Cryobank is not responsible for the physical, mental, genetic or other characteristics of any child(ren) born as a result of the use of the Specimens.

11. Limitation of Liability. Depositor agrees that in the event of loss or destruction of the Specimens 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, Depositor agrees that in the event that one or more of the Specimens is lost or destroyed by virtue of negligence by Cryobank, Depositor 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 (each vial or straw counts as one) lost up to an aggregate total of \$2,000.

12. Indemnification. If Cryobank or an Affiliate is named as a party to any litigation arising from a disagreement between or among Depositor, their spouse, partner or other family member(s), a gestational carrier or anyone else, as to any such party's rights or obligations with respect to the Specimens, any resulting embryos or children, Depositor or their estate shall be liable for the reasonable attorney's fees and other costs of Cryobank and its Affiliates in such litigation.

13. Binding Arbitration. Depositor and Cryobank acknowledge that sperm banking is often a sensitive and private matter. Accordingly, Depositor and Cryobank agree that any disputes between them arising under this Agreement or otherwise, except for disputes over payment for storage services, will be resolved exclusively through confidential, binding arbitration by JAMS under the JAMS Streamlined Arbitration Rules and Procedures, and not through a court or other public forum. Arbitration proceedings will be conducted in Washington, D.C., and the substantive laws of the Commonwealth of Virginia will apply exclusively. The decision of the arbitrator will be

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binding and final, and will be enforceable by any court of competent jurisdiction. Each party will pay one-half of JAMS' and the arbitrator's fees. The substantially prevailing party in any dispute will be entitled to receive from the other its reasonable attorney's fees and other costs and expenses associated with the dispute.

14. Notices. Cryobank will provide any notices to Depositor by mail sent to the address set forth in this Agreement or such other address as Depositor may request in writing be used for that purpose. Depositor will provide any notices to Cryobank by mail sent to the Fairfax, Virginia address listed on the Cryobank website. **It is Depositor's responsibility to notify Cryobank of any change of address; Cryobank has no obligation to "track down" a Depositor who has moved, even if a notice to Depositor is returned as undeliverable.**

15. Notice About Zika Virus. Depositor acknowledges receipt of the Notice about Zika Virus below;

Fairfax Cryobank is working hard to prevent the transmission of the Zika virus via semen. We are advising all of our Depositors 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 had Zika virus syndrome, or are at risk of having Zika virus; we just want to ensure that Depositors 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.

For more information refer to <http://www.cdc.gov/zika/>

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**Records Release:** I hereby authorize Fairfax Cryobank, Inc. to release any information related to the test results, specimen analysis, medical history or billing account to the designated representative(s) below, and I authorize that designated representative(s) to make changes to the billing information on my account below;

Designated Representative(s): \_\_\_\_\_

Relationship to Semen Depositor: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

I choose not to designate a representative at this time.

**Specimen Release:** Authority to Release the specimens to a Physician/Clinic for use with a recipient can only be submitted by the depositor and must be in writing.

Client requires specimen release form be witnessed by a notary public or co-signed by Physician/Clinic Staff?  
(if neither box is checked, Cryobank will require notarization)

Yes

No

**DEPOSITOR**

Print Name: \_\_\_\_\_

Sign: \_\_\_\_\_

Date: \_\_\_\_\_

**IF DEPOSITOR IS A MINOR:**

Parent/Guardian Name: \_\_\_\_\_

Parent/Guardian Sign: \_\_\_\_\_

*Until Depositor turns 18, the above-named Parent/Guardian will have the authority to act for the Depositor.*

**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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**Appendix A –Advance Directive**

In the event of my incapacity or death, and to the extent permitted by applicable law, I prefer the following disposition of my semen Specimen(s) stored at Fairfax Cryobank (*if no box is checked, Specimens will be thawed and discarded by Cryobank*):

If I am married at the time of my incapacity or death, I want ownership to pass to my surviving spouse.  
*I consent to my surviving spouse’s use of my Specimen(s) after my death to have children, or for my surviving spouse to make such other disposition as they see fit.*

Whether or not I am married at the time of my incapacity or death, I want ownership to pass to the following individual.  
*I consent to their use of my Specimen(s) after my death to have children or for them to make such other disposition as they see fit.*

Full name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Email: \_\_\_\_\_

I want Fairfax Cryobank to thaw and discard my Specimen(s).

Responsibility to Notify Cryobank. I understand it will be the responsibility of my designated recipient to notify Cryobank about my incapacity or death, and provide legal evidence of my incapacity or a copy of the death certificate, verification of their identity and the basis of their claim to the Specimens. The recipient must enter into a new storage agreement or arrange for the Specimens to be discarded or transferred to another facility, or the Specimens will be considered “abandoned” and may be discarded by Cryobank.

Child(ren) Conceived After Death. I understand that, in some cases, state or federal law may limit or prohibit use of my Specimens for procreation after my death. I also understand that my completion of this document does not guarantee that my designated recipient will be legally permitted to use my Specimens for procreation after my death. Cryobank has advised me that the laws concerning parentage and rights to inheritance and other survivor’s benefits of posthumously-conceived children may vary from state to state, and that it may be necessary for me to take additional, affirmative steps during my lifetime in this regard. Cryobank has further advised me that it cannot and does not give legal advice, and I am strongly encouraged to consult an experienced attorney about the laws governing posthumous conception in the jurisdiction(s) relevant to my situation.

Changes. I understand that I can change or revoke this Advance Directive in the future by providing Cryobank with written instructions bearing my notarized signature.

DEPOSITOR	WITNESS	WITNESS
Sign:	Sign:	Sign:
Print:	Print:	Print:
Date:	Date:	Date:

*Note: Signatures of the Depositor and two adult witnesses make this directive valid under Virginia law; other states may have different requirements.*

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