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# FROZEN DONOR SEMEN PURCHASE / STORAGE AGREEMENT

Welcome to California Cryobank. California Cryobank, Inc. ("we" or "Cryobank") provides frozen donor sperm specimens ("Specimens") and the storage of these Specimens subject to the following conditions. Please read this agreement carefully.

# 1) SCOPE

This Purchase / Storage Agreement ("Agreement") applies to your purchase, on the Cryobank website or otherwise, of Specimens and related Cryobank products and services.

## 2) PURCHASE OF SPECIMENS

Cryobank accepts orders to purchase Specimens on its website and by phone through its [client services representatives]. Orders cannot be placed by email or facsimile. In order to purchase Specimens, you must (a) select a Specimen donor from Cryobank's donor description catalog and (b) pay, as set forth in Section 7 (Payment) below, at Cryobank's then current Specimen fees. All purchases are final and there are no refunds or exchanges, except pursuant to Cryobank's Order Change Policy, Vial Exchange Program or Vial Buy Back Program. Specimen fees and the terms of the Order Change Policy, Vial Exchange Program and Vial Buy Back Program are subject to change without notice.

## **3) SPECIMEN QUALITY**

Cryobank is committed to providing quality Specimens (see Specimen Quality Standards). Cryobank evaluates Specimens to ensure that they meet our current quality standards. A post-thaw analysis of sperm count, motility, and grade value is included with every Specimen shipment. IUI specimens are processed and ready for intrauterine insemination. ICI specimens are processed and ready for intracervical insemination.

## 4) SPECIMEN STORAGE

You may request that Cryobank store your Specimens for a specified period of time (the "Initial Storage Period"). You shall pay in advance, as set forth in Section 7 (Payment) below, for the Initial Storage Term and all related laboratory and other services at Cryobank's then current rates. The Initial Storage Period shall be extended automatically for successive [three] month periods (each a "Renewal Period," and together with the Initial Storage Period, the "Storage Period"), unless (a) more than thirty days prior to the end of the current Storage Period you provide written notice to Cryobank that you do not wish to extend the current Storage Period. Each Renewal Period shall be at Cryobank's then current rates. You and Cryobank may mutually agree to a different Renewal Period. You acknowledge and agree that your sole remedy for any loss, damage or destruction of Specimens during storage shall be the liquidated damages described below in Section 13 (Limitation of Liability).

## 5) RELEASE OF SPECIMENS

Subject to the limitations set forth in Section 6 (Changes Restricting or Preventing Specimen Release) below, Cryobank will, as requested by you, release Specimens to you, your doctor, or any other person who you designate in writing as an authorized recipient. Upon your request, Cryobank will ship Specimens on your behalf via a commercial shipping service. Specimens will be deemed to be retrieved by you when accepted by the shipper. You accept full responsibility for the Specimens during shipping.

Prior to any retrieval of Specimens by you or your authorized recipient, a doctor must complete and submit to Cryobank an Authorization for Release of Semen form ("Authorization"). Each Authorization is valid for one year.



Print Client's Name

Date

Cryobank will hold newly-ordered Specimens as an "open order" for up to thirty (30) days. Specimens that are not retrieved or enrolled in long-term storage within this thirty (30) day period will be automatically enrolled in a three (3) month Initial Storage Term at Cryobank's then current storage rates and will automatically renew for successive three (3) month Renewal Periods if the Specimens are not earlier released or destroyed pursuant to your written instructions.

#### 6) CHANGES RESTRICTING OR PREVENTING SPECIMEN RELEASE

Changes to donor screening requirements or the discovery of new medical or genetic information about a donor may restrict or prohibit the release of Specimens. If the release of a Specimen is restricted, a signed consent may be required from you and your physician prior to the release of the Specimens. In some cases, Cryobank may be prohibited from releasing the Specimens. You acknowledge and accept the risk that the Specimens may be restricted or prohibited from release due to changes in donor screening requirements or the discovery of new medical or genetic information about a donor.

## 7) PAYMENT

Payment for Specimens, Specimen storage and other services must be made at the time of order. Cryobank accepts payment by cash or with certain credit cards. Cryobank also accepts payment by check; however, the check must be received at least one (1) week before the order is placed. You acknowledge that credit cards are not transferable according to the rules of the issuing financial institutions. All payments by credit card must be authorized by the credit card holder at the time that the order is placed.

You hereby authorize Cryobank to charge your credit card for service and storage fees due hereunder, including for Renewal Periods. Cryobank will use reasonable efforts to notify you of an approaching automatic renewal prior to the thirty (30) day period before it becomes effective.

## 8) ADDITIONAL REPRESENTATIONS AND AGREEMENTS

You represent to Cryobank that you are over the age of eighteen (18) and that you are purchasing Cryobank's products and services for your personal use and not for resale or other commercial purposes.

You acknowledge and agree that you are the sole owner of any Specimens purchased from Cryobank.

You represent that your Authorization (defined in Section 5 above) is accurate and that you have consulted with the doctor who signed the Authorization regarding your use of Specimens.

I understand that Cryobank requires information on pregnancies and pregnancy outcomes and I agree to notify Cryobank within sixty (60) days of each and every pregnancy, birth, miscarriage or other outcome from my use of Cryobank Specimens. I also authorize Cryobank to inquire with me and my physician if I do not provide this notification and will authorize my physician to respond to Cryobank's inquiry.





INITIALS REQUIRED

You acknowledge that you or your designated authorized recipient will be the legal parent of any children that are born with the use of Specimens. You or your designated authorized recipient are solely responsible for their support and custody. Neither Cryobank nor the donor has any obligations with respect to children born using Specimens.

Cryobank relies on information provided by its donors during the screening process and in preparing the donor description catalog and other donor information. Accordingly, Cryobank does not make any representations or warranties regarding the qualifications, characteristics or descriptions of any donor.

Print Client's Name

Date

You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You are also responsible for notifying Cryobank of any changes to your account profile, including, without limitation, your address, phone and email address.

Cryobank and its affiliates reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion.

#### 9) DEATH OF CLIENT

In the event of your death, you hereby instruct Cryobank to release your Specimens to a beneficiary who you have designated in writing. Cryobank will use reasonable efforts to contact the authorized recipient and arrange for the release of the Specimens. If either (a) you have not designated an authorized recipient or (b) Cryobank's reasonable efforts do not, within thirty (30) days of Cryobank learning of your death, result in the release, use or other disposition of the Specimens, this Agreement shall be terminated pursuant to Section 10(c) (Termination).

## **10) TERMINATION**

Notwithstanding any other provisions herein, this Agreement shall terminate immediately without further notice if (a) either party delivers thirty (30) days prior written notice of termination to the other party, (b) either party breaches (including, without limitation, for nonpayment of fees) this Agreement and fails to cure the breach within [ten (10)] days of notification of the breach or (c) as set forth in Section 9 (Death of Client) above.

Upon the termination of this Agreement for any reason, all obligations of Cryobank for storage of your Specimens shall cease, and you shall, within thirty (30) days from the date of termination, make arrangements for the release, use or other disposition of any remaining stored Specimens. If you fail to make arrangements for the release, use or other disposition of Specimens, Cryobank may at its sole discretion (d) continue to store the Specimens and seek payment, directly or through a collection agency, from you for all then outstanding fees plus any additional fees that accrue during the additional storage period, (e) dispose of the Specimens remaining in storage, or (f) repossess the Specimens remaining in storage (in which case, both parties agree that Cryobank's repossession will be considered to be payment in full for all outstanding fees). There shall be no refund of any fees upon termination of this Agreement; provided, however, that Cryobank will provide to you a pro-rata refund of storage fees (in the event a multiyear storage contract is purchased) if this Agreement is terminated pursuant to clause (b) above for an uncured breach by Cryobank. Sections 1 and 5-16 of this Agreement shall survive its termination for any reason.

# **11) PRIVACY AND NOTICES**

Please review our Privacy Policy to understand our practices.

It is important for Cryobank and our clients that the privacy of donors is protected. Cryobank may offer select Specimens from donors that have agreed to participate in its Open Donor Program. Please contact Cryobank for the terms of this program, which Cryobank can revise or terminate without notice. Pursuant to its [Openness Policy], Cryobank also may, at its sole discretion, inquire, on behalf of an adult who was conceived from a Specimen, with the donor whether he wishes to be contacted by the person who was conceived. Except as set forth above in this paragraph, you acknowledge that you have no right to learn the identity of a donor and that Cryobank will not disclose any identifying information regarding a donor nor will it assist you in any way to contact a donor. You agree that you will not, directly or indirectly through a third party, make any attempt to contact a donor.

Notices sent to you via email or U.S. mail addressed to the most recent email or street address, respectively, provided by you to Cryobank shall be deemed to meet any notice requirement hereunder. [You may notify Cryobank in writing if you do not wish to receive notices by email.] Notices sent to Cryobank must be sent by U.S. mail to 11915 La Grange Ave, Los Angeles, CA, 90025 or transmitted via facsimile to Fax: (866) 625-7336 US and Canada / (310) 826-1605 International.



Print Client's Name

#### **12) NO WARRANTIES**

EXCEPT AS SET FORTH IN SECTION 3 (SPECIMEN QUALITY), ALL CRYOBANK PRODUCTS AND SERVICES (INCLUDING, WITHOUT LIMITATION SPECIMENS AND THE COLLECTION, TESTING, STORING, FREEZING AND SHIPPING OF SPECIMENS) ARE PROVIDED "AS IS" WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IN PARTICULAR (BUT WITHOUT LIMITATION), CRYOBANK DOES NOT WARRANT THAT SPECIMENS ARE FREE OF GENETIC DEFECTS OR DISEASES, THAT A PREGNANCY WILL RESULT FROM THE USE OF A SPECIMEN, OR THAT A CHILD BORN USING A SPECIMEN WILL BE FREE OF DISEASE OR MENTAL DEFECTS. INFECTIOUS DISEASE SCREENING REDUCES THE RISK OF INFECTIOUS DISEASE TRANSMISSION, BUT DOES NOT ELIMINATE THE POSSIBILITY. DONOR INFORMATION IS OBTAINED DIRECTLY FROM DONORS, THEREFORE CRYOBANK DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, TIMELINESS, SUITABILITY OR OTHERWISE. You agree to be bound by the above disclaimer of warranties by placing your initials below.



**INITIALS REQUIRED** 

# **13) LIMITATION OF LIABILITY**

<u>Acknowledgement of Risks and Release of Liability</u>. You have been advised and understand that there are inherent risks in the analysis, processing and freezing (collectively, "Freezing") and thawing of semen, including but not limited to damage to the sperm, reduced capacity for fertilization and reduced life span of the sperm after thawing. Except as set forth in Section 3 (Specimen Guaranty), you agree that you shall not be entitled to any form of damages, compensation, recovery or reimbursement and hereby release Cryobank from all liability in connection with any loss damage or destruction of a Specimen due to the risks described in this paragraph.

Liquidated Damages. The parties acknowledge and agree that in the event of loss, damage or destruction of Specimens during their storage by Cryobank, your actual damages as a result thereof would be impracticable or extremely difficult to determine. Accordingly, the parties hereto agree that in the event Specimens or any part thereof, are lost, damaged or destroyed during storage, including, without limitation, as a result of Cryobank's negligence, you shall be entitled to liquidated damages in the amount equal to the storage fee paid by you for the storage period in which such loss, damage or destruction occurred and, in cases where you are storing frozen donor specimens purchased from Cryobank, you shall also be reimbursed in the amount of fees paid to Cryobank for such semen purchased. You agree to be bound by the terms of this liquidated damages provision by placing your initials below.



**INITIALS REQUIRED** 

<u>Waiver of Claim</u>. Except as expressly provided above under "Liquidated Damages," you expressly release Cryobank, its agents, employees, officers, directors, shareholders, and affiliates to the fullest extent permitted by law from any claims, loss, damage, expenses, liabilities, demands, offsets, causes of action and attorneys' fees which you may have arising out of or in any way relating to this Agreement, including but not limited to the collection, freezing, sale, purchase, storage, release, loss, damage or destruction of the Specimens, and hereby expressly waive and forever give up provisions of California Civil Code Section 1542 which section provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

## 14) BINDING ARBITRATION

Any dispute relating in any way to products or services that you purchase from us shall be submitted to confidential arbitration in Los Angeles, California. Arbitration under this agreement shall be conducted under the rules then prevailing of the American Arbitration Association, which will appoint a neutral arbitrator to conduct the arbitration. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. The prevailing party in the arbitration shall be entitled to recover all costs of the arbitration including, without limitation, attorneys' and experts' fees.

#### **15) INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Cryobank and its affiliates, and each of their directors, officers, employees, agents, representatives, independent contractors, customers, successors and assigns from and against any claim, loss, damage, liabilities, demands, offsets, causes of action and expenses, including attorneys' and experts' fees, arising out of or related to any third party action, proceeding, or dispute involving Cryobank products (including, without limitation, Specimens) or services. For the avoidance of doubt, your designated authorized recipient or any other person who uses Specimens that you purchase hereunder shall be considered a third party pursuant to this Section 15. Cryobank shall promptly notify you in writing of any such third party action and you agree to immediately assume full control and responsibility for such matter including the payment of all expenses and liabilities, including attorneys' and experts' fees in connection therewith; provided, however, that you shall not settle any such action without the prior written consent of Cryobank, which consent shall not be unreasonably withheld. Furthermore, with respect to claims whereby Cryobank is ordered by a court with judicial authority to hold Specimens, Cryobank's indemnification right shall include the payment of all fees resulting from the court hold.

#### **16) GENERAL PROVISIONS**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, as it applies to agreements entered into and to be performed entirely within such state, and without regard to its principles of conflicts of law. Any action you, any third party, or Cryobank brings to enforce this Agreement, or in connection with any matters related to this Site, shall be brought only in the state or Federal courts located in Los Angeles County, California. You expressly consent to the jurisdiction of said courts.

Cryobank makes no representation that its products or services are appropriate for use outside of the United States. Those who choose to purchase or use its products or services in other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable.

If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement, and shall not affect the validity and enforceability of any remaining provisions. This is the entire Agreement between the parties relating to the matters set forth herein, and shall not be modified except in a subsequent agreement between you and Cryobank. In the event of a conflict between this Agreement and the User Agreement or the Health Care Provider Agreement, the terms of this Agreement shall prevail. This Agreement will insure to the benefit of Cryobank and its successors and assigns.

Cryobank is not liable for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including acts or omissions of government or military authority, acts of God, shortages of materials, telecommunications failures, transportation delays, earthquakes, fires, floods, labor disturbances, riots or wars.

Cryobank reserves the right to change or update this Agreement at any time. Any changes or updates are effective immediately upon posting to our website. You agree to review this Agreement periodically so that you are aware of any modifications. Your continued use of our site and the services available through the site after the posting of any such modifications shall be deemed your acceptance of this Agreement.

Print Client's Name

Client's Signature

Date

Please keep a copy for your records

Document must be mailed or faxed to: CALIFORNIA CRYOBANK Attn: New Accounts 11915 La Grange Avenue Los Angeles, CA 90025 Fax: (866) 625-7336 US and Canada / (310) 826-1605 International

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