

## Terms of Use - Physician

*Please list your name exactly as you want the account listed.*

\_\_\_\_\_  
*Medical Practice Name*

\_\_\_\_\_  
*Responsible Physician's Name*

\_\_\_\_\_  
*Primary Contact Name (if different)*

\_\_\_\_\_  
*Primary Contact Email Address*

\_\_\_\_\_  
*Primary Contact Telephone Number*

*Shipping Address:* \_\_\_\_\_

*City:* \_\_\_\_\_ *State:* \_\_\_\_\_

*Zip or Postal Code:* \_\_\_\_\_ *Country (if outside of United States):* \_\_\_\_\_

*Office Phone Number (include country code if international):* \_\_\_\_\_

*Office Fax Number:* \_\_\_\_\_

## Terms of Use - Physician

This Terms of Use Agreement (“*Agreement*”) sets forth the terms associated with the acquisition of donor semen by the undersigned Clinic (“*Clinic*”) from Fairfax Cryobank, Inc. (“*Cryobank*”), as well the terms associated with optional services provided by Cryobank. *By setting up an account with Cryobank, Clinic agrees to be bound by its terms, as well as the terms set forth with respect to the optional services Clinic elects, either now or in the future, to receive.*

### What the Cryobank Agrees To Do:

1.1. Donor Screening. All donors will meet the sperm donor eligibility criteria established by the U.S. Food & Drug Administration, found at 21 CFR 1271. Cryobank will conduct the additional robust screening and testing described on our website. These additional items may change over time in response to regulatory requirements, changes in the availability and quality of diagnostic tests or other reasons.

1.2. Privacy. Cryobank will not disclose Clinic’s identity to the donor, or to anyone else, unless required by law. Cryobank will not disclose a donor’s identity to Clinic or an Intended Parent (defined below), except as required by law or regulations governing Clinic in its state, province or country of domicile. If an Intended Parent selects an ID Option Donor, and registers the birth of the child, Cryobank will share the donor’s identity and contact information with that child upon request when he or she reaches age 18, or sooner if required by law. There is more information about the ID Option Donor program below.

1.3. Quality Control. Cryobank will conduct a semen analysis on every sample a donor provides, both pre- and post-thaw, and will not place into inventory any specimens that do not meet its quality standards, listed below.

1.4. Quality Standard Guarantee. Cryobank’s quality standard guarantee is described on the Cryobank website, and discussed more fully below. If a vial of donor sperm thawed at Clinic’s lab fails to meet this quality standard, as documented by Clinic in accordance with Cryobank’s guidelines, then Cryobank will give Clinic a free replacement vial; if no replacement vial is available, Cryobank will give Clinic a credit so another donor may be chosen. Cryobank provides clear and detailed instructions for specimen handling and complaint reporting with every shipment. The criteria for qualifying for a replacement or credit are objectively verifiable and are not flexible. This is the exclusive remedy for a sub-standard Vial.

1.5. Medical and Genetic Updates. Cryobank enters into agreements with donors in which they promise to report any new or newly-discovered medical or genetic issues that could affect donor-conceived offspring; Cryobank enters into agreements like this one with Clinics and Intended Parents in which they promise to report any medical or genetic issues affecting donor-conceived offspring. Cryobank will make reasonable efforts to follow-up with donors, Clinics and Intended Parents, in order to monitor the health status of donors and their offspring; however, Cryobank cannot compel such reporting, and may not be able to obtain this type of information. Cryobank places reported medical updates on donors’ profiles on the website under “Check Donor Medical Status.” Clinic may also check donor medical status at any time by calling Clinic Services at 1-800-338-8407.

1.6. Donors Relinquish Their Rights. Cryobank enters into agreements with donors in which they give up all of their rights, and are released from any obligations, to children born using their donated sperm.

1.7. Donor Restrictions. If Cryobank receives a report of a serious medical or genetic issue affecting a donor or his offspring that may indicate increased health risks for other offspring, its medical director or medical geneticist will investigate the situation and determine whether the donor should be “restricted” or withdrawn from the donor program. Not all issues reported result in restrictions. For those that do, Cryobank will make reasonable efforts to contact Clinics who have previously ordered Vials from the affected donor, and update the donor’s profile on the website. Cryobank encourages Clinic to check the donor’s medical status prior to using any Vial in a fertility procedure.

1.8. Family Unit Limits. Cryobank’s policy on limiting the total number of births for any donor is set forth on its website. Cryobank recognizes that family unit limits may vary from country to country, and is willing to work with Clinic directly, upon Clinic’s request, to observe such limits.

1.9. Shipping. Cryobank will ship Clinic’s order within the U.S. via Federal Express in a specially designed

liquid nitrogen tank that will keep Specimens frozen for seven (7) days, with Day 1 being the date of shipment. Clinic may request an upgrade to a 14-day tank, with Day 1 being the date of shipment, or that specimens be shipped in more than one tank, for an additional fee. Shipped Vials may not be returned for refund or credit. Cryobank will ship to a destination outside of the United States, provided Clinic arranges for any requisite customs or other permits and, prior to shipment, provides Cryobank with copies of these permits or a written statement to the effect that no permits are required. *International shipments are subject to increased risk of delay and damage and, consequently, an increased risk of damage to or loss of the frozen Specimen; Clinic assumes this increased risk.*

1.10. Storage. If Clinic does not want to ship Vials right away, Cryobank will store them at its facility, and the “Storage Terms and Conditions” set forth below will apply. Storage fees are listed on the website.

#### **What the Cryobank Does Not Agree To Do:**

2.1. Medical or Genetic Issues. Cryobank does not promise that a pregnancy will occur. Cryobank does not promise 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. Cryobank uses robust screening and testing criteria to reduce risk as much as possible, *but Cryobank cannot eliminate the risk*. Even if donor testing shows normal results, the tests have limitations and may not always be reliable, even when properly administered. Clinic and Intended Parents assume this risk.

2.2. All Possible Testing. Cryobank does not test for all genetic disorders and infectious diseases. Not all genetic disorders or infectious diseases have tests, or it is impractical or otherwise not feasible to do such tests. Cryobank’s current screening and testing criteria are described on the website, and are subject to change at any time for purposes of legal compliance, quality improvement or other reasons.

2.3. Donor Profiles. Donors self-report the family medical history, health and behavioral history information in their profiles. Cryobank does not independently verify their answers.

2.4. Cover Clinic’s or Recipients’ Other Costs. The remedy described in Cryobank’s quality standard guarantee is the exclusive remedy available to Clinic or an Intended Parent from Cryobank. Cryobank will not reimburse, compensate or otherwise provide Clinic or an Intended Parent with any other remedies, even if an Intended Parent’s fertility procedure cannot be completed. In no event will Cryobank or its Affiliates be liable for special, consequential or incidental damages, including, without limitation, any costs or expenses associated with fertility treatment or travel expenses related to treatment.

#### **What Clinic Agrees To Do:**

3.1. Donor Anonymity. Clinic agrees to use the information Cryobank provides about donors, including photographs, exclusively for the purpose of selecting a donor, and not to share, distribute or otherwise make any such information or images available in any manner, or through any medium (including without limitation email, social media or internet feeds), to any third party. Clinic will not seek a donor’s identity, except within the confines of the laws/regulations governing the Clinic in the state/province or country of domicile. If Cryobank discovers that Clinic has made attempts to discover a donor’s identity, outside of the legal requirements, Cryobank will pursue any and all appropriate action to protect itself, its donors and their other offspring.

3.2. Exclusive Use. Vial(s) are for the exclusive use of Clinic’s patients (each, an “*Intended Parent*”) on-site at Clinic. Cryobank is required by federal law to track the distribution of Vials; accordingly, Clinic may not transfer donor sperm or embryos created with donor sperm without Cryobank’s express, prior written permission, which may be given or withheld in its sole discretion. In addition, transferring or sharing of donor sperm beyond the originally intended recipient interferes with the proper accounting for pregnancies and dissemination of health information about donors and offspring.

3.3. Pregnancy and Delivery Reporting. Clinic will report all pregnancies and, separately, all pregnancy outcomes to Cryobank within 90 days of each occurrence. A pregnancy report is sent with every donor semen order, and pregnancy reporting is available on the Cryobank website. Clinic will also report any unexpected medical or genetic issues affecting donor-conceived offspring. The ability to track pregnancies is imperative so Cryobank can monitor the number of pregnancies and abide by Cryobank as well as state/province and country donor pregnancy limitations.

3.4. Legal Status of Donor-Conceived Children. The Intended Parent (and not the donor or the Cryobank) will be the legal parent of the child(ren) born through the use of donated sperm, and will be responsible for their support and custody.

3.5. Update Contact Information. Clinic agrees to update Cryobank if Clinic’s mailing address, email address or telephone number changes. Cryobank may receive important medical or genetic updates about donors selected by Clinic, or their other offspring, and need to contact Clinic. Cryobank is not obligated to track down Clinic.

3.6. Indian Child Welfare Act. Note that the Indian Child Welfare Act applies to certain child custody proceedings, such as adoptions, involving children with Native American ancestry, and gives federally-recognized Indian tribes legal rights that are distinct from those of the biological parents. Recipients should be advised to consult an attorney prior to selecting a donor with Native American heritage, particularly if any legal proceeding involving the child is anticipated.

3.7. Intended Parent Terms of Use. Clinic understands that it is critical for Intended Parents to understand the terms and conditions of utilizing donor sperm; accordingly, prior to utilizing Cryobank’s donor sperm in an assisted reproduction procedure, Clinic will provide Cryobank’s Terms of Use (available on the website or by contacting Cryobank Client Services) to the Intended Parent, and obtain his/her signature thereon. Clinic will provide copies of signed Terms of Use to Cryobank upon request. **Clinic agrees to indemnify Cryobank and its affiliates for any losses, damages, claims or causes of action arising from Clinic’s failure to obtain a signed Terms of Use from an Intended Parent.**

**Terms and Conditions of Cryobank’s Quality Standard Guarantee:**

4.1. Claim Submission Deadline. If a Specimen fails to meet the applicable quality standard set forth in the table below, Clinic should complete the Specimen Complaint Form, available on the Cryobank website or by calling Clinic Services at 1-800-338-8407. Cryobank must receive the completed Specimen Complaint Form within thirty (30) days after the Specimen was thawed.

Specimen Type	Total Motile Cells/ milliliter (TMC)	Clinical Use
IUI	10 million/vial	Pre-washed vials, ready for intrauterine insemination (IUI)
ICI	10 million/vial	Ready for intracervical insemination (ICI) or can be washed for IUI specimen
IVF	5 million/vial	Ready for ICI or can be washed for use as an IUI or IVF with/without ICSI
IUI ART	> 6 million/vial	Ready for IUI individually or combined, or can be washed post thaw and used for IVF with/without ICSI
ICI ART	> 6 million/vial	Ready for ICI individually or combined, or can be washed post thaw and used for IUI or IVF with/without ICSI

4.2. Lab Procedures. To qualify for the guarantee, the Clinic must have followed all of Cryobank’s printed thaw procedures enclosed in each shipment and other written handling instructions. The clinic must have performed the required semen analysis after thawing and prior to any processing, and the total motile cell (“TMC”) count must be below the standard. *Note that TMC counts will vary by about 10%-30%, depending on the lab personnel and counting method. By way of example, if Cryobank’s laboratory determined a Specimen contained ten million TMC, Cryobank would expect Clinic’s lab to find between seven million and thirteen million TMC. Clinic may still qualify for a replacement if Clinic’s count is below the stated standard, but a TMC in this range is normal.*

4.3. Off-Site < 120 Days. To qualify for the guarantee, the Specimen may not have been out of Cryobank’s storage facility for more than 120 days, nor transferred from the original receiving Clinic to another site.

4.4. Cycle Results. If pregnancy is achieved in an IUI or ICI cycle, or if fertilization is achieved in an IVF cycle, then the quality standard will be deemed satisfied, regardless of the TMC.

4.5. Other Costs Not Included. The replacement or credit is for the Specimen only; additional costs, such as shipping, handling or any other associated charges, are not refunded or credited.

**Mutual Promises:**

5.1. Binding Arbitration. Cryobank and Clinic acknowledge that the identity of sperm donors and the nature of sperm donation are sensitive and often very private matters. Accordingly, Cryobank and Clinic 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 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.

5.2. Notices. Cryobank will provide any notices to Clinic by mail sent to the address set forth on the first page of this Agreement or such other address as Clinic may request in writing be used for that purpose. Clinic will provide any notices to Cryobank by mail sent to the Fairfax, Virginia address listed on the Cryobank website.

5.3. Severability. Cryobank and Clinic agree that the invalidity or unenforceability of any part of this Agreement shall not impair or affect in any manner the validity or enforceability of the balance of this Agreement.

5.4. Entire Agreement. This represents the entire agreement between Cryobank and Clinic concerning the subject matter; and there are no understandings, agreements or representations other than as herein set forth. This Agreement may be modified only by a writing signed by both parties.

5.5. Assignment; Binding Effect. This Agreement may not be assigned, except by Cryobank to an Affiliate. This Agreement will be binding upon the parties and their respective assignees, heirs, executors and administrators.

**No Warranties / Limitation of Cryobank’s Liability**

Reproductive medicine and working with human reproductive tissues involve risks, uncertainties and costs. Cryobank takes responsibility for addressing some of those risks, but not all of them. One purpose of this document is to define clearly what Cryobank is offering and, perhaps more importantly, what Cryobank is not offering.

Except for the Quality Standard Guarantee, Vials are provided “as is,” with no warranties of any kind, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose.

Except for the specific remedies described in this Agreement, Cryobank will not provide any compensation, refund or reimbursement for a sub-standard Vial, a shipment delay or failure, a cancelled or unsuccessful cycle, or for any other reason or in any other circumstance.

Cryobank has designed the donor program with the expectation that its costs are limited to those necessary to provide the specific services and remedies set forth in this Agreement. Cryobank would not make donor sperm available without these limitations. If Clinic has expectations that Cryobank is or should be responsible for any other type of risk, cost or expense, then we’re sorry, but Cryobank is not the right sperm bank for Clinic.

**Accepted and Agreed:**

Clinic Signature:

Cryobank Signature:

\_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_  
Name:  
Title:

### ID Option Donor Program

If Clinic selects an ID Option Donor, the Intended Parent (but not the Clinic) may participate in the ID Donor Program, whereby the resulting child may learn the donor's identity and contact information when the child reaches the age of 18. An Intended Parent does not have to participate, and may choose to maintain donor anonymity for the child.

**To register for the ID Donor Program, the Intended Parent (not the Clinic) must complete the ID Option Birth Registration form, located at [www.fairfaxcryobank.com](http://www.fairfaxcryobank.com), any time after the birth of the child. Merely using an ID Option Donor's specimen or reporting the pregnancy/birth online does not allow the child access to the contact information.**

If an Intended Parent registers a child ("*Registered Child*"), here is what to expect:

- When a Registered Child reaches the age of 18, Cryobank will, at his or her written request, give that child their donor's full name, date of birth, last known telephone numbers, email address, physical address and other contact information that the donor has agreed to release and provided to Cryobank for that purpose. Only a Registered Child, and not his or her parent(s) or the Clinic, has the authority to request and be provided with an ID Option Donor's contact information.
- If a Registered Child makes a request for donor information, Cryobank will take reasonable measures to authenticate the request, and the Registered Child will be required to sign a contract agreeing to use the information only for himself or herself, and not to share it with any third party.
- Cryobank makes reasonable efforts to stay in contact with all donors, and especially ID Option Donors, so that Cryobank can maintain updated information. Cryobank will release the best information Cryobank has at the time of a Registered Child's request; however, Cryobank cannot force donors to update their contact information and it is possible that the information Cryobank has may be outdated.
- Cryobank does not guarantee any contact between the Registered Child and his or her donor, nor does Cryobank have any responsibility for the quality, frequency or other results of such contact.
- If an Intended Parent transfers sperm from an ID Option Donor to another intended parent (which requires Cryobank's prior consent), or if an Intended Parent creates embryos with sperm from an ID Option Donor and then donates the embryos to another intended parent, then the original Intended Parent and the new recipient will both have to submit forms to Cryobank, documenting the transfer, in order for the new recipient to participate in the ID Option Donor Program. The required forms are available from the Cryobank.

## Storage Terms and Conditions

1. Storage Services. At Clinic's request, Cryobank will store Clinic's Vials at its facility in accordance with applicable law and our standard policies and procedures.

2. Storage Fees. Storage, handling, removal and other fees and payment options are listed on the Cryobank website and are subject to change. Clinic is responsible for prompt payment of all applicable fees. At the time Clinic chooses to store Vials at Cryobank, Clinic will choose a payment option, including method of payment, which will be acknowledged at that time.

(a) All storage, removal and handling fees must be paid in full before extending or renewing the chosen storage period. If Clinic has chosen to pay by credit card, Clinic will be charged at the monthly storage rate on the credit card provided each month until Clinic requests otherwise.

(b) To cancel a pre-paid billing arrangement, Clinic must notify Cryobank in writing. Cryobank will retain an amount equal to its then-current monthly storage fee for each month of storage actually used, and a \$50.00 administrative fee, and refund the balance (if any) to Clinic, without interest.

(c) Cryobank may pursue collection of overdue storage charges, including referral of claims to a collection agency. In that event, Clinic will pay all costs of collection including any reasonable fees charged by the collection agency, other costs of collection, and reasonable attorney's fees.

3. Release From Storage. The conditions and procedures for the release of Clinic's stored Vials, either for shipment to Clinic's lab or for any other reason, are designed to comply with legal requirements, protect Clinic's rights to and interests in the Specimens and assure a reliable chain of custody. Clinic acknowledges that Cryobank may modify the release requirements in its sole discretion to reflect changes in industry practice, laws or regulations. Clinic will comply with all release conditions and procedures, which may be obtained by contacting Cryobank. Cryobank will not ship Vials until Clinic's outstanding storage balance, if any, has been paid in full.

(a) Ship to Clinic. In general, only an authorized representative of Clinic may have access to Clinic's account information, or authorize Cryobank to ship Clinic's Vials for the purpose of fertility treatment.

(b) Other Disposition. Only Clinic may authorize any other disposition of Clinic's Specimens, such as shipment to a different physician or storage facility, donation for research or destruction, and Cryobank may require a written, signed and notarized instruction to verify and authenticate Clinic's request. Cryobank has forms available for this purpose. Clinic may also be able to return Specimens that have been stored exclusively at the Cryobank for a partial refund. Additional information is set forth on the Cryobank website, and is subject to change.

4. Limitation of Damages. While very unlikely, there is the possibility that stored Specimens may be lost or destroyed. In that case, Clinic acknowledges that any resulting damage to Clinic would be highly conjectural, speculative and difficult to determine. Accordingly, pursuant to Section 204(2) of Title 8.7 of the Code of Virginia, Cryobank's liability for damages caused by its failure to satisfy the standard of care applicable to its provision of storage services will be limited to an amount equal to the storage charge for the year in which the loss occurs plus the fees Clinic paid to acquire the lost or destroyed Vials.

5. Termination of Storage Services. Cryobank's responsibility for storage will cease upon the occurrence of any one or more of the following events:

(a) No More Vials. All stored Specimens have been released in accordance with Section 3.

(b) Past-Due Account. Clinic 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 Clinic'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 either Clinic or Clinic's authorized representative, Cryobank's storage obligations will terminate automatically. Clinic must notify Cryobank of any change of address. Cryobank is not obligated to track down Clinic.

(c) Facility Closure. If Cryobank plans to close its storage facility, Cryobank will notify Clinic and give Clinic at least thirty (30) days to transfer or otherwise dispose of Clinic's Specimens. If Clinic does not respond, Cryobank will have the right to transfer Clinic's Specimens and associated documentation, and assign its storage obligations, to another suitable storage facility. In that case, Cryobank will notify Clinic about the transfer and provide contact information for the new facility.

(d) Notice. Either Cryobank or Clinic 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.

6. Effect of Termination. Upon termination of storage services for any reason:

(a) Account Settlement. Pre-paid but unused storage fees will be refunded in accordance with Section 2(b) above. Storage fees then due and owing must be paid.

(b) Transfer or other Disposition. If any Vials are then in storage, Clinic will make arrangements to transfer them and the associated documents to Clinic or another permissible storage facility, or to dispose of them in another permissible way, within thirty (30) days of the notice of termination. Storage fees will continue to accrue until all Vials are actually shipped or otherwise disposed of.

(c) Abandonment. If any Vials are then in storage and Clinic does not make arrangements for their transfer or other disposition within the specified period, then the Vials will be deemed "abandoned" by Clinic, 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.

**To utilize storage services, please contact a client service representative for applicable fees and methods of payment.**