

Terms of Use - Physician

This Terms of Use Agreement (this “Agreement”) sets forth the terms associated with the purchase of semen by the Clinic identified as “Clinic” Clinic as well the terms associated with optional services provided by Fairfax Cryobank (“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.*

- A. **Certain Clinic Agreements and Acknowledgements.** In order to ensure compliance with applicable legal requirements, adhere to the highest ethical standards and protect donor anonymity, Clinic and Cryobank make the following agreements and acknowledgements relative to the purchase of one or multiple lots of semen (“Specimen”) by Clinic
- Clinic will not redistribute Specimen outside of the in house use by Clinic without the written approval of Cryobank.** Donor sperm purchased by Clinic is to be used solely by Clinic for the use by Clinic’s patients (“Recipient”). Distribution or sharing of the donor sperm beyond the originally intended Recipient interferes with the proper tracking of pregnancies and dissemination of relevant medical history as needed.
 - Information provided by Cryobank regarding donors, *including photographs*, will be used by Clinic exclusively for purposes of making a selection of a donor, and will not be distributed or otherwise made public in any manner by the Clinic.** Such information and images are offered for purposes of donor selection, and the further distribution of this information could jeopardize donor anonymity and have an adverse impact on the ability of Cryobank to continue to offer its services. *Please note that the posting of photos or information on social media websites and feeds is a distribution of information and prohibited by this section.*
 - Clinic will not seek a donor’s identity by any means except within the confines of the laws/regulations governing the Clinic in the state/province or country of residence. Cryobank will not disclose Clinic’s identifying information to the donor.** If Cryobank discovers that Clinic has made attempts to discover donor’s identity, outside of the legal requirements, it will pursue any and all appropriate action to protect the donor’s interests.
 - The donor has given up all of his rights and privileges, and is released from any obligations to children born using his sperm.** Clinic may wish to consult legal counsel regarding paternity rights and may contact the Cryobank for documentation of consent for use of gametes and storage of embryos and or use of samples for research purposes
 - Clinic acknowledges that Cryobank makes no guarantee or promise that a pregnancy will occur, or that the pregnancy or offspring will be free from genetic disorder or defect or from infectious disease.** In the general population, every pregnancy has about a 3%-4% risk of producing a child with a birth defect or mental deficiency. Cryobank uses a robust screening and testing criteria to reduce risk as much as possible, *but it cannot eliminate the risk.* Cryobank’s current screening and testing criteria are described on its website, and are subject to change at any time for purposes of legal compliance, quality improvement or other reasons. With respect to Cryobank’s screening and testing criteria, it is important for Clinic to note the following:
 - Cryobank does not test for *all* genetic disorders or infectious diseases because not all genetic disorders or infectious diseases have tests, or it is impractical or otherwise not feasible to do such tests.
 - Even if donor testing shows normal test results, the tests have limitations and may not always be reliable, even when properly administered.
 - Cryobank relies on the representations of the donor that (a) specimens produced by the donor are the donor’s own (all donor donations are made on site at our laboratories); and (b) donor has the genetic and hereditary characteristics and health profile claimed in the donor profile completed by the donor.
 - Cryobank offers “Check Donor Medical Status”, which is a donor classification system that indicates if a donor has been restricted due to the report of a significant medical issue in an offspring. Not all medical issues reported result in a restriction: only those determined to increase the risk to other offspring will result in the donor being restricted. Please refer to our website to learn more about how we inform Clients and Clinics about these medical issues on the Check Donor Medical Status page. **If Clinic purchases units and stores them with**

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another vendor, Cryobank encourages Clinic to check donor medical status online or by calling Client Services at 1-800-338-8407 prior to use in a fertility procedure.

7. **Clinic acknowledges that donor availability may be limited based on availability of specimen and donor limitations.** Cryobank distributes sperm units on a first come, first served basis. If there is no availability but units are expected to release soon, Clinics may place their name on a limited Waitlist (see our Waitlist FAQ's on our website) by contacting Client Services. Cryobank DOES NOT give preference for full siblings when units are distributed or Waitlist names taken. In addition, Cryobank limits the total number of births for any donor to 25 families (children from the same donor living in one home) reported in the US. International distribution stops when 15 families have been reported outside the US. (Cryobank recognizes that family unit limits may vary from country to country and in some cases may result in less than 15 families being created as required by law. Cryobank will work with the Clinic directly to not exceed these limits.) After the family limits have been met, vials will only be distributed for sibling pregnancies. Family units who have children by the same donor will be allowed to receive additional donor units, if available, as 'Sibling Pregnancy Only' units. If a donor has reached his maximum limits on families or total units distributed, then reactivation of that donor may be available for sibling pregnancies. (Reactivation means that a donor can be asked to provide additional samples after he has left the program. The donor must first agree to be reactivated and if he does the Clinic and/or Client will reimburse all costs to Cryobank which typically exceeds several thousand dollars.)
 8. **Clinic will report all pregnancy outcomes (clinical or a birth) 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. 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 described above.
- B. **Shipping Specimen.** If Clinic does not use specimen, it can be returned to the Cryobank for Specimen storage, Cryobank will ship Specimen via Federal Express (or similar courier service) in specially designed liquid nitrogen vapor tanks designed to keep Specimen frozen for up to 7 days (day 1 is the day of shipment).
1. **Cryobank is not responsible for any damage caused by shipping delays or tank failure.** Shipping delays may occur due to bad weather, transportation mechanical problems or other events outside of Cryobank's control.
 2. **Clinic may upgrade to a two-week tank designed to keep Specimen frozen for up to 14 days (including the day of shipment) or ship Specimen in multiple tanks.** Clinic is responsible for the additional costs of a tank upgrade or utilization of multiple tanks.
 3. **Once Specimen has been shipped out, Cryobank will not accept it back for a credit or refund.** Clinic can ship Specimen back to Cryobank for storage and future use, subject to Cryobank's applicable storage agreement (see below for the terms of Cryobank's current storage agreement).
 4. **Placing an Order to Ship.**
 - (a) Clinic should place a shipping order several days prior to date samples are needed for use. Cryobank will only ship orders Monday – Friday.
 - (b) Saturday and Sunday deliveries are not available in all locations.
 - (c) Same day shipping orders must be received by 4:00pm ET for Federal Express. Courier orders must be placed prior to 11:00am ET
 - (d) If shipping to a destination outside of the United States, Clinic must arrange for any requisite customs or other permits and, prior to shipment, must provide 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.*

5. Physicians or laboratory personnel who receive Specimen should check the tank upon arrival to be sure that Specimen arrived frozen. Prompt notification of Cryobank of thaw is critical for Cryobank to be able to timely replace Specimen. If Clinic suspects that Specimen has thawed, Clinic should contact a Cryobank Client services representative immediately.

C. **Cryobank Quality Standard.** The following are Cryobank’s specimen quality standards:

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

Subject to the following, if Clinic’s Specimen fails to meet the applicable Cryobank specimen quality standard, then Clinic may submit an application to Cryobank requesting replacement in accordance with the following: Within thirty (30) days after thawing, Clinic must call Cryobank’s Client service department (800-338-8407). Thereafter, Cryobank will send to Clinic an information request for identifying information required by Cryobank to evaluate the Specimen quality. Cryobank will review the information provided and make a determination as to whether a replacement is warranted and will provide Clinic with an explanation of its decision. If Cryobank determines that replacement is warranted but no replacement specimen is available, then Cryobank may provide a credit to Clinic.

The following terms and conditions apply with respect to Clinic’s entitlement to replacement or credit:

1. **Clinic acknowledges that it must follow, and must ensure that they follow, all of Cryobank’s printed thaw procedures enclosed in each shipment and other written handling instructions (including shipping requirements if Clinic desires to ship the Specimen), in order to be eligible for any replacement or credit based on a specimen’s failure to meet quality standards.** Thaw procedures may vary among specimen types, and all are subject to contamination or spoilage if handled or shipped improperly.
2. **Cell counts conducted to ensure a specimen meets quality standard must be conducted prior to any processing other than specified thaw procedures.** Improper handling, storage or processing can adversely affect the quality of a specimen.
3. **Clinic acknowledges that sperm counts will vary 10-30% depending on the lab personnel and counting method.**
4. **Clinic acknowledges that replacement or credit is not available after specimens are offsite for more than 120 days or if pregnancy is achieved.** Cryobank does not have control over the storage and handling practices of outside laboratories or at other storage facilities.
5. **Clinic acknowledges that replacement or credit is exclusive of shipping, handling or any other associated costs.**

D. **Dispute Resolution; Limitation of Liability; Governing Law.** The following terms and provisions will apply to all disputes between Clinic and Cryobank under this Agreement, including all optional services Clinic elects to receive.

1. Any dispute arising out of this Agreement (other than disputes related to storage fees) or directly related to the quality of care provided by Cryobank or any of its physicians, nurses, counselors or other personnel will be resolved through binding arbitration by JAMS under the JAMS Streamlined Arbitration Rules and Procedures. Any arbitration proceeding will be conducted in Fairfax County, Virginia. The decision of the arbitrator(s) will be binding and final, and will be enforceable by any court of competent jurisdiction. Arbitration costs will be borne equally between Cryobank and Clinic. 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.

2. This Agreement and the terms of all optional services Clinic elects to receive will be interpreted and construed under and governed by the laws of the Commonwealth of Virginia.
3. If Clinic names Cryobank or any of its employees or agents party to any litigation arising from any disagreement, the Clinic or his or her estate shall be liable for the reasonable attorney's fees and other cost of Cryobank in such litigation.
4. Liability Limitation.
 - (a) Specimen Quality. Cryobank's liability for any deficiency in Specimen quality is limited to Cryobank's quality standard described in Section C above.
 - (b) Storage Services. If Clinic elects to store Specimen with Cryobank and there occurs any loss or destruction Specimen for any reason, 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 Cryobank's failure to satisfy the standard of care applicable to Cryobank's 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 purchase price for the Specimen, or portion thereof, lost or destroyed.
 - (c) General Limitation. In no event will Cryobank be liable for special, consequential or incidental damages, including, without limitation, the costs and expenses associated with infertility treatment.

E. Payment.

1. Purchase of Specimen. Clinic will pay the purchase price of the Specimen as applicable to the semen purchase by Clinic. Clinic acknowledges that prices may vary and are subject to change without notice. At the time Clinic determines which semen to purchase, the price will be determined. At the time of selection, Clinic will determine which method of payment then accepted by Cryobank Clinic will utilize.

F. Miscellaneous Provisions.

1. Notices. Any notices to be provided to Clinic will be sent to the address set forth on the Physician Account Set Up Form or such other address as Clinic may request in writing be used for that purpose. Any notices to be provided to Cryobank will be sent to the Fairfax, Virginia, address set forth on the first page of this Agreement. Clinic (or the surviving partner/designee, if applicable) will keep Cryobank informed in writing at all times during the term of the agreement of any change in address, including current mailing address, email addresses, and telephone number.
2. Severability. If any provision of this Agreement is found to be invalid or unenforceable by any court, that provision will be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions, unless such invalidity and unenforceability would defeat an essential purpose of this Agreement.
3. Entire Agreement. 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 may be modified only by a writing signed by all parties.
4. Binding Effect. This Agreement will be binding upon the parties and their respective assignees, heirs, executors, and administrators.
5. Cryobank. Cryobank is a division of Genetics & IVF Institute, Inc., a Virginia corporation. All references in this Agreement to "Cryobank" include Genetics & IVF Institute, Inc.

By setting up an account with Cryobank, Clinic and Cryobank agree to be bound by the terms set forth above as well as the terms associated with the optional services elected by Clinic and described below.

Optional Storage Terms

If Clinic so elects, Cryobank will store Clinic's Specimen at Cryobank's storage facility. If Clinic does not elect at the time of purchase of Specimen to store the Specimen at Cryobank's storage facility, Clinic may do so in the future and the following terms will apply to the storage services provided by Cryobank.

- A. **Storage of Specimen.** Clinic hereby delivers custody of Clinic's Specimen to Cryobank for storage in Cryobank's facility, subject to the terms and conditions of this Agreement.
- B. **Storage Fees.** Storage, handling, removal and other fees and payment options are identified on Cryobank's website and are subject to change without notice. Clinic is responsible for prompt payment of all applicable fees. At the time Clinic chooses to store Clinic's Specimen with Cryobank, Clinic will choose a payment option, including method of payment, which will be acknowledged at that time.
- 1.** As a professional courtesy, Cryobank provides the clinic 90 days of storage free of charge. After the 90 day period, the clinic will be responsible for payment of all storage charges for specimens being authorized for storage under the account.
 - 2.** Any cancellation of a pre-paid billing arrangement requires written notification to Cryobank. The cancellation of an annual or multi- year storage contract for any reason, before the completion of the term will result in a \$50.00 administration fee being subtracted from any refund of storage fees pro-rated over the storage period used based on the current monthly storage fee in effect.
 - 3.** 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 such 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.
- C. **Termination of Storage Services.** Cryobank's responsibility for storage will cease upon the happening of any one or more of the following events:
- 1.** **Cryobank provides Clinic with written notice that it has determined that the Specimen is no longer appropriate for storage.** Changes in law, public policy and ethic requirements may result in changes in the services of Cryobank. If such changes occur, Cryobank must have the ability to comply with those requirements.
 - 2.** **Clinic fails to pay storage fees within 180 days after their due date.** Upon termination of the storage provisions due to failure to pay storage fees, Cryobank will treat the Specimen as abandoned. *It is imperative that the Clinic 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 Clinic at his or her 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 Clinic or the Clinic's representative, it is agreed that this Agreement is terminated.
 - 3.** **Release of Specimen by Clinic in accordance with the terms of the storage provisions.** After release of Specimen pursuant to Clinic's instructions, Cryobank will have no further obligation to provide storage services with respect to the Specimen. If Clinic desires Cryobank to provide further storage services, Clinic must then enter an independent storage agreement with Cryobank.
 - 4.** **Cryobank receives written notarized direction of the Clinic authorizing destruction/return of all Specimens then presently stored.**
 - 5.** **Thirty (30) days after Clinic or Cryobank provides the other with notice of termination.** Either Cryobank

or Clinic may terminate the storage arrangement on 30-days written notice. If Cryobank terminates its operations of its storage facility, then Cryobank may terminate the storage services in accordance with this section.

D. Effects of Termination of Storage Services.

- 1. Clinic is responsible for storage fees through the effective date of termination of the storage services.** If Clinic has paid storage fees in advance, then Clinic will be entitled to a prorated amount based on the period remaining pursuant to the pre-paid arrangement. If the Clinic has not paid storage fees that are due and owing at the time of termination, then Clinic will continue to be responsible for those storage fees.

- 2. Clinic is responsible for arranging the transfer and disposition of Clinic's Specimen upon termination of the storage services.** Cryobank will reasonably cooperate with Clinic with respect to Clinic's transfer of Specimen. If the storage services terminate due to Cryobank's termination of operations of its storage facility, then at the time of termination (and unless Cryobank has received alternative instructions from Clinic) Cryobank will have the right to transfer and assign the Clinic's Specimen and Cryobank's storage services to a similar storage facility. Cryobank will provide notice to Clinic of such transfer together with applicable contact information for such alternative storage facility.

To utilize Cryobank's storage services, please contact a Cryobank service representative for applicable fees and methods of payment. If Clinic chooses to utilize Cryobank's storage services, the foregoing terms and provisions will apply.