

CRYOBIOLOGY SPERM USE AGREEMENT

This sperm use agreement is made between CRYOBIOLOGY, INC., an Ohio corporation (“**Cryobiology**”), and the RECIPIENT who intends to use Cryobiology donor sperm and signs this agreement (“**Recipient**”).

If Recipient is using Cryobiology’s services with a partner, both Recipient and partner need to read, initial, and sign an agreement and all applicable references to Recipient throughout the agreement will be considered to include both parties.

The parties agree as follows:

1. Purpose of Agreement. Cryobiology provides the services of screening and testing of sperm donors, collecting, processing, freezing, packaging, storing, and shipping sperm. Recipients are paying Cryobiology a fee for these services so that Recipient can use assisted insemination or assisted reproductive technology in herself or a gestational carrier, to try and become pregnant and have a child.

2. Cryobiology’s Donor Selection Process.

a. Selection of Donors. Cryobiology’s donor selection process includes personal interviews, personal and family medical and social histories, physical exams, genetic disease and genetic carrier screening and testing, and viral and sexually transmitted disease screening and testing. Cryobiology relies on the donor to truthfully report his and his family’s social and medical histories in this process.

b. Screening and Testing Process in General. Cryobiology’s sperm donors are screened and tested according to Cryobiology’s established procedures and quality control standards, which are based on industry standards and guidelines and federal and state regulations and laws. The medical and scientific communities’ ability to screen and test for diseases and conditions has changed a lot over the years, but the standards, guidelines, regulations, and laws have not changed as much. The industry standards, guidelines, regulations, and laws Cryobiology follows are based on the scientific and medical knowledge at the time they were put into practice. The diseases screened and tested for are those diseases that are common in the general population and are required by regulatory authorities.

c. Screening and Testing Process in Detail. Cryobiology’s sperm donors are currently screened and tested for viral and sexually transmitted diseases (HIV 1 and 2, Hepatitis B, Hepatitis C, HTLV I and II, Syphilis, Cytomegalovirus, Chlamydia, and Gonorrhea), general health screens (CBC and Hemoglobin evaluation), and genetic conditions (Cystic Fibrosis, Spinal Muscular Atrophy, and Karyotyping). Additional genetic testing may be performed according to the donor’s ancestry, for example, Tay-Sachs for a donor with Jewish ancestry. The screening and testing process and requirements may change over time. This means that donors are not screened and tested for every single genetic and viral and sexually transmitted disease that exists in the population. A donor participating in Cryobiology’s donor program has negative

or acceptable screening and testing results according to laws, regulations, and industry standards, however a negative or acceptable test result does not guarantee that a donor is free of disease or will not pass on a disease or condition. Recipients should contact Cryobiology senior staff with questions or concerns about specific screening and testing that was done on each donor or to arrange for further testing if possible. If Recipient has a personal or family history of genetic disease, Recipient is obligated to contact Cryobiology senior staff to discuss the use of Cryobiology donor sperm and consult with a genetic counselor and a physician.

3. Risks to Using Donor Sperm.

a. Genetic, Viral, and Sexually Transmitted Disease Screening and Testing.

Cryobiology's screening and testing process helps decrease, but does not eliminate the risk of transmitting genetic, viral, and sexually transmitted diseases when using donor sperm, including transmission of those genetic, viral, and sexually transmitted diseases to any resulting children. Furthermore, many birth defects occur spontaneously, so there is no way to prevent them even with adequate screening and testing. Recipient should not rely solely on using donor sperm to have a healthy baby, but Recipient should also undergo prenatal and in utero screening and testing. Recipient may also want to pursue genetic screening and testing personally; on a different egg source, if used; and on any embryos created using donor sperm. Even if they are not required to do so by clinic policy or federal or state regulations, Recipient, partner, or egg source may wish to be tested for sexually transmitted infections, this can potentially help lessen the risk of transmission to anyone involved.

b. Donor's Characteristics and Traits. Recipient may have selected a donor based on certain characteristics or traits of the donor with the expectation that these characteristics or traits would transmit to any resulting children. *The inheritance of characteristics and traits is an uncertain science and Cryobiology does not guarantee that the characteristics or traits Recipient desires will occur in any resulting child.*

c. Donor's Medical and Social histories. Many of Cryobiology's donors participate in the donation program when they are in their early twenties, and so a donor's medical and social histories may be incomplete due to medical conditions that he or his family were not aware of during donation. The donor or his family may develop other medical conditions after the donor's participation in the program. Cryobiology requests donor health updates on a routine basis during the donor's participation in the program and relies on the donor to truthfully report information.

d. Screening and Testing Issues. Cryobiology uses independent, accredited reference laboratories for screening and testing. Cryobiology relies on the accuracy of the test results and reports it receives from these laboratories. *All laboratory screening and testing has the potential for error and Cryobiology can not and does not guarantee that the screening and testing is completely accurate.* A donor with a negative test result can still transmit disease. Donors are screened and tested for viral and sexually transmitted diseases multiple times before the sperm is released for use. This repeated testing of the donor decreases the likelihood of inaccurate or misinterpreted test results. A donor is only genetically screened and tested once while he is participating in the program. Recipient may request additional genetic screening and

testing on the donor and Cryobiology will attempt to comply with this request as long as the donor and Cryobiology's genetic counselor agree to it.

e. Health Risks of Pregnancy and Birth when Using Donor Sperm.

Recipient's use of donor sperm does not eliminate any of the common risks of pregnancy and birth, such as miscarriage, stillbirth, and injury during birth.

f. Health Risks to Offspring. Recipient's use of donor sperm does not eliminate the risk of having children with mental health conditions, autism spectrum disorders, or any condition caused by environmental or unknown factors. Recipient's use of donor sperm does not eliminate any risk to any resulting children associated with Recipient's age, health, or genetic background.

4. Alternatives to Using Donor Sperm. Recipient does not have to attempt to have and raise a child, but if Recipient chooses to do so there are several alternatives to using Cryobiology's services. For example, Recipient could use another FDA registered sperm bank, attempt a pregnancy without using donor sperm, or pursue adoption.

5. Recommendations to Consult with Various Professionals.

a. Mental Health Professional. Recipient should consider consulting a mental health professional before and while using Cryobiology's services.

b. Attorney. Recipient should consult an attorney before using donor sperm because the law in this area is unsettled and may change. Cryobiology is not giving legal advice to Recipient.

c. Genetic Counselor. Recipient should consult a genetic counselor if Recipient has a personal or family history of disease, is at an age, or is part of an ethnic group that is at greater risk of disease. If Recipient has specific concerns about her own and any potential children's genetic risk, these concerns should be discussed with a genetic counselor before selecting a sperm donor. Upon request, Cryobiology can provide a specific donor's genetic report to Recipient's genetic counselor.

d. Physician. Recipient should be cleared by a physician prior to attempting a pregnancy and should be under a physician's care when using donor sperm. A physician should go over the Recipient's individual health history addressing any concerns and the risks, benefits, and alternatives to using donor sperm. The American Society for Reproductive Medicine suggests that Recipient should consider blood type and Rh-factor when selecting a donor, and review this with a physician.

6. Program Policies.

a. Payment. Recipient is obligated to pay Cryobiology for their services before Cryobiology will ship any vial. Cryobiology may change the price of their services from time to time and will give notice on the website that pricing is changing before it goes into effect.

b. Ordering. Recipient should check the physician's policy on accepting shipments. Recipient is obligated to place the order with Cryobiology on the website or by phone with enough time so that all required forms are complete and the sperm will arrive at Recipient's physician's office in time for the procedure. Recipient is responsible for ordering the correct donor selected.

c. Shipping Methods and Risks. Cryobiology uses independent delivery services for shipping. *Cryobiology is not responsible for shipping problems that are beyond Cryobiology's control and Cryobiology does not control the tanks once they leave the sperm bank.* There are always risks associated with shipping, for example, weather related delays or tank mishandling may affect delivery; a tank may get lost; or not maintain proper temperature resulting in compromised quality of the sperm. Recipient can choose to arrange and pay for alternate shipping methods, for example, shipping sperm in multiple tanks, using her own tanks, or contracting with a shipping company of her own selection.

d. Shipping Confirmation. Recipient is obligated to confirm or have her physician's office confirm that the sperm has arrived without damage. Recipient is obligated to confirm that the donor number that Recipient ordered is the donor number that was received. Recipient or her physician's office is obligated to do this when the sperm arrives and again right before the procedure.

e. Sperm Storage. Cryobiology also provides storage for donor sperm. If Recipient stores donor sperm with Cryobiology, Recipient is obligated to enter into a storage agreement with Cryobiology and pay storage fees when they are due. Cryobiology is not obligated to keep Recipient's selected donor sperm in stock if Recipient has not purchased extra vials of selected donor and stored them with Cryobiology.

f. Contact Information. Recipient is obligated to provide current and accurate contact information to Cryobiology when creating an account. If Recipient orders sperm from Cryobiology, Recipient is obligated to update this information as it changes. Cryobiology uses Recipient's contact information to send receipts or notices about payment; and to inform Recipient if there is a recall of the sperm, or a health problem with the donor, or any other children from the same donor. If Recipient does not update Recipient's contact information with Cryobiology and verify that Cryobiology has received the updated information, then Cryobiology is not responsible for any harm that occurs because Cryobiology was unable to contact Recipient. Recipient should provide contact information where Recipient can receive potentially confidential or sensitive information.

g. Outcome of Sperm Use. Recipient is obligated to update Cryobiology about pregnancy and birth outcomes. Cryobiology is not obligated to notify Recipient about any health recall issues with the sperm if they are unaware that Recipient has used the sperm to become pregnant and have children. Recipient can update Cryobiology through the provided shipping inserts or through the website.

h. Confidentiality Concerns. Cryobiology keeps all information Recipient provides to Cryobiology in the course of this relationship confidential, except, any information

that is shared with Recipient's physician on record and to comply with any federal and state regulations.

i. Retention of Donor Records. Cryobiology keeps all records about the donors as required by law and industry standard.

j. Cryobiology's Transfer of Vials and Records. If Cryobiology decides to no longer provide the services under this agreement, they may transfer any remaining vials and records to their successor. Cryobiology will provide notice of this transfer to any Recipient who reported successful pregnancy and birth information and updated her contact information. Cryobiology's obligations to Recipient and any of Recipient's representatives will end at this transfer.

k. Sperm is Intended for Recipient's Use. Recipient intends to use the sperm herself or with a gestational carrier to attempt a pregnancy and have children. Recipient will not provide Cryobiology donor sperm to anyone else to use without notifying Cryobiology. If Recipient does this without notifying Cryobiology, then Cryobiology will be unable to notify any unknown users about health recall issues.

7. Miscellaneous.

a. Waiver. If either party does not enforce a term of this agreement that does not mean that it has been waived and they may enforce it in the future.

b. Entire Agreement in Writing. This agreement sets forth all obligations between the parties. There are no other agreements, oral or written, between the parties. The only exception is if the parties have entered into a separate written agreement for Cryobiology to provide additional services beyond those described in this agreement.

c. No Reliance on Statements or Communications Beyond this Agreement. Recipient is not relying on any other statements or communications made by Cryobiology or its representatives related to the services provided by Cryobiology that are described in this agreement, unless these statements or communications have been put into writing and included in this agreement or in a separate agreement between the parties.

d. Incorporated Terms of this Agreement. The price list on Cryobiology's website is incorporated as a term of this agreement.

e. Severability. If any part of this agreement is found to be unenforceable, the rest of the agreement remains in effect, to the extent that it can be enforced.

f. Governing law and consent to jurisdiction in Ohio courts. The laws of the state of Ohio govern any proceedings between the parties and their representatives arising out of this agreement and the screening, testing, and selection of donors, and the collecting, processing, freezing, storing, shipping, and use of donor sperm. Only the federal and state courts of Franklin County, Ohio, have jurisdiction over these proceedings.

g. Changing the Agreement. Cryobiology and Recipient may change the terms of this agreement, but only if the changes are in writing and both parties have agreed to the changes.

8. Cryobiology's Standard of Care. Cryobiology provides services under this agreement using a standard of care that incorporates guidelines of the following professional groups into setting internal policies and procedures: American Society for Reproductive Medicine, American Association of Tissue Banks, American College of Obstetrics and Gynecologists, and American College of Medical Genetics. Cryobiology's standard of care also incorporates Cryobiology's professional knowledge, skill, quality control practices and procedures; and various federal and state laws and regulations.

9. No Warranties or Guarantees. *Cryobiology is providing a service, they are not selling a product, and so Cryobiology makes no warranties, express or implied, as to the donor sperm's fitness for a particular purpose or merchantability. Cryobiology does not guarantee a pregnancy from use of the donor sperm. Cryobiology does not guarantee that the donor sperm provided will create a child without disease or health conditions or a child with the traits of the donor.*

Initials: _____ **Initials:** _____

10. No Obligations to Children. Neither Cryobiology nor any donor has any parental, social, or financial obligations to any resulting children without making a separate agreement beyond the terms of this agreement.

Initials: _____ **Initials:** _____

11. Changes in Laws, Regulations or Industry Standards. Cryobiology is not responsible for any changes in laws, regulations, and industry standard that prevent them from fulfilling their obligations under this contract.

Initials: _____ **Initials:** _____

12. Assumption of Risk, Waiver of Negligence, and Limitation of Liability.

a. Viral and Sexually Transmitted Diseases. There is always a risk that viral and sexually transmitted diseases may be transmitted when using donor sperm.

Initials: _____ **Initials:** _____

b. Genetic Diseases and Conditions. There is always a risk that genetic diseases and conditions may be transmitted when using donor sperm.

Initials: _____ **Initials:** _____

c. Spontaneous Birth Defects. Many birth defects, diseases, and disorders are spontaneous. This means they can occur without inherited transmission and without any way to screen or test donors to detect them.

Initials: _____ **Initials:** _____

d. Screening and Testing. Cryobiology screens and tests donors to help prevent transmission of genetic, viral, and sexually transmitted disease, but no screening and testing procedures are completely accurate all of the time.

Initials: _____ **Initials:** _____

e. Other Testing. Recipient's use of donor sperm does not eliminate the need for prenatal and in utero testing.

Initials: _____ **Initials:** _____

f. Shipping Issues. Cryobiology is not responsible for shipping issues beyond Cryobiology's control.

Initials: _____ **Initials:** _____

By signing this agreement and ordering and using the donor sperm, Recipient accepts the risks of using Cryobiology's services. Recipient agrees that Cryobiology and any of its agents, employees, directors, officers, consultants and assignees will not be liable for negligence in providing these services, except where damage is caused by or is the result of willful, wanton, or reckless behavior. If, despite the waiver of negligence above, Cryobiology is found liable in a proceeding under a theory based in contract, tort, or otherwise, damages will be capped at the cost of a replacement vial and shipping fees.

Initials: _____ **Initials:** _____

SIGNING

The parties signing below have read this agreement. They have had an opportunity to consult with the various recommended professionals. They have had a chance to ask questions and these questions have been answered satisfactorily. They understand and accept the terms of this agreement.

Recipient

Date

Partner

Date