

Canadian Terms of Use

PLEASE LIST YOUR NAME EXACTLY AS YOU WANT THE ACCOUNT LISTED.

Account # _____
(For Cryobank Use Only)

Date Entered _____
(For Cryobank Use Only)

_____ Date

_____ Recipient's Date of Birth

_____ Recipient's Name

_____ Recipient's Email Address

_____ Recipient's Home Address

_____ Health Card Number

_____ Recipient's Phone Number

_____ Recipient's City, State/Province and Zip/Postal Code

Spouse/Partner's Name: _____

Physician's Name: _____

Clinic: _____

Physician's Shipping Address: _____

Physician's City: _____ Physician's State/Province: _____

Physician's Zip or Postal Code: _____ Physician's Country (if outside of United States): _____

Physician's Phone Number: _____

Physician's Fax Number: _____

Physician's Contact Email Address: _____

New physician and physician contact information may be provided to Cryobank in writing.

This Terms of Use Agreement (this “Agreement”) sets forth the terms associated with the purchase of semen by the individual identified as “Recipient” above (“Client”) as well the terms associated with optional services provided by Authorized Canadian distributors of semen products from Fairfax Cryobank, Inc., in Fairfax, VA USA and Roseville, MN USA (“Cryobank”). *By signing this Agreement, Client agrees to be bound by its terms, as well as the terms set forth with respect to the optional services Client elects, either now or in the future, to receive.*

A. Certain Client Agreements and Acknowledgements. In order to ensure compliance with applicable legal requirements, adhere to the highest ethical standards and protect donor anonymity, Client and Cryobank make the following agreements and acknowledgements relative to the purchase of one or multiple lots of semen by Client (“Specimen”).

1. **Client will not resell or otherwise redistribute Specimen without the written approval of Cryobank.** Donor sperm purchased by Client is to be used solely by Client. 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.
2. **Information provided by Cryobank regarding donors, *including photographs*, will be used by Client exclusively for purposes of making a selection of a donor, and will not be distributed or otherwise made public in any manner by the Client.** 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.*
3. **Client will not seek a donor’s identity by any means. Cryobank will not disclose Client’s identifying information to the donor.** If Cryobank discovers that Client has made attempts to discover donor’s identity, it will pursue any and all appropriate action to protect the donor’s interests.
4. **Client will be the legal parent(s) (subject to laws in your jurisdiction) of the children born to Client(s) with the use of donated sperm, and will be solely responsible for their support and custody.** The donor has given up all of his rights and is released from any obligations to children born using his sperm. Client is encouraged to consult legal counsel regarding paternity rights.
5. **Client 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 Client to note the following:
 - (a) 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.
 - (b) Even if donor testing shows normal test results, the tests have limitations and may not always be reliable, even when properly administered.
 - (c) 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.
6. 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 (www.fairfaxcryobank.ca) to learn more about how we inform clients about these medical issues on the Check Donor Medical Status page. **Cryobank encourages Client to check donor medical status online prior to use in a fertility procedure.**

7. **Client 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. You can check availability online at www.fairfaxcryobank.ca. Cryobank DOES NOT give preference for full siblings when units are sold. In addition, Cryobank limits the total number of births for any donor to 15 reported families (children from the same donor living in one home) outside the US.. 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 sold additional donor units, if available, as 'Sibling Pregnancy Only' units. In addition, Cryobank also monitors the reported location of births and limits the geographic distribution of a donor consistent with the guideline of the American Society of Reproductive Medicine (ASRM). If a donor has reached his maximum limits on families or total sales, 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 Client will pay all costs which typically exceed several thousand dollars.)
8. **Client 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 our donor pregnancy limitations described above.

B. Shipping Specimen. Cryobank will ship Specimen via Federal Express (FedEx) or Purolator as well as other local couriers in specially designed liquid nitrogen vapor tanks.

1. **Cryobank is not responsible for any damage caused by shipping delays or tank failure while the shipment is in the hands of the freight carrier.** Shipping delays may occur due to bad weather, transportation mechanical problems or other events outside of Cryobank's control.
2. **Once Specimen has been shipped out, Cryobank will not accept it back for a credit or refund.** Client can ship Specimen back to Cryobank for storage and future use, subject to Cryobank's applicable storage agreement (contact Cryobank for current storage terms and conditions).

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	18 million/vial	CLI: Ready for intracervical insemination (ICI) or can be washed for IUI specimen
ICI	10 million/vial	Fairfax: 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 Client's Specimen fails to meet the applicable Cryobank specimen quality standard, then Client may submit an application to Cryobank requesting replacement in accordance with the following: Within thirty (30) days after thawing, Client or Client's clinic must call the Authorized Canadian distributor from where you ordered the sample(s).. The distributor will send the client's physician a complaint request form 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 Client 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 Client.

The following terms and conditions apply with respect to Client's entitlement to replacement or credit:

1. **Client acknowledges that it must follow, and must ensure Client's physician and/or clinic follow, all of Cryobank's printed thaw procedures enclosed in each shipment and other written handling instructions (including shipping requirements if Client 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. **Client acknowledges that sperm counts will vary 10-30% depending on the lab personnel and counting method.**
4. **Client 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. **Client 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 Client and Cryobank under this Agreement, including all optional services Client 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 Client. 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 Client elects to receive will be interpreted and construed under and governed by the laws of the Province of Ontario..
3. If Client names Cryobank or any of its employees or agents party to any litigation arising from any disagreement between the Client and their spouse, or intimate partner, as to the rights of either/ both of them, or as to each other, or as to Cryobank, the Client 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) **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.** Client will pay the purchase price of the Specimen as applicable to the semen purchase by Client. Client acknowledges that prices may vary and are subject to change. At the time Client determines which semen to purchase, the price will be determined. At the time of selection, Client will determine which method of payment accepted by Cryobank that Client may utilize.

F. Miscellaneous Provisions.

1. **Notices.** Any notices to be provided to Client will be sent from the Cryobank to the address set forth on the first page of this Agreement or such other address as Client may request in writing be used for that purpose. Any notices to be provided to Cryobank will be sent to the distributor from which the Client did business that are listed in the resource section of our web site, (www.fairfaxcryobank.ca). Client (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 and 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.** The Authorized Canadian distributors of semen products from Fairfax Cryobank, Inc., in Fairfax VA, USA and Roseville, MN, USA are independent businesses within the province of Ontario, Canada. Fairfax Cryobank, Inc. is part of Genetics & IVF Institute, Inc., a Virginia, USA corporation. All references in this Agreement to “Cryobank” include the distributors and Genetics & IVF Institute, Inc.

By signing below, Client and Cryobank agree to be bound by the terms set forth above as well as the terms associated with the optional services elected by Client and described below.

Client Signature:

Cryobank Signature:

Name:

Date:

Name:

Title:

Date:

Optional ID Donor Terms

The following provisions will apply beginning at any time Client elects to participate in the Identity (ID) Donor Program. Client may elect to participate in the ID Donor Program at any time prior to any child resulting from the use of Specimen (“Offspring”) reaches the age of 18.

If the donor of the Specimen (“Donor”) is part of the ID Donor Program at Cryobank, Client has the option of participating in the ID Donor Program. Under the ID Donor Program:

- A.** When an Offspring is registered in the ID Donor Program (“Registered Offspring”) and reaches the age of 18, Cryobank will, at Registered Offspring’s written request, provide Registered Offspring with Donor’s full name, date of birth, last known telephone numbers, email address(es), physical address, and other contact information that Donor has agreed to release and provided to Cryobank for that purpose. A Registered Offspring is the only individual(s) with the authority to request and be provided with Donor’s contact information.
- B.** Cryobank is not responsible for locating, updating, or otherwise obtaining new contact information about Donor. Cryobank will release to the Registered Offspring the contact information that was provided to it by Donor and in Cryobank’s possession at the time of the Registered Offspring’s request.
- C.** Participation in the ID Donor Program does not guarantee that contact between Donor and Registered Offspring will be established.
- D.** If any embryos are created using the Specimen and are then donated for adoption, Client must inform the adopting family that they must independently register with Cryobank in order to participate in the ID Donor Program.
- E.** The contact information is for the exclusive use of the Registered Offspring and the Registered Offspring will be required to hold and keep the contact information in strict confidence, not publish, publicize or sell the contact information, and not disclose the contact information to any other person or entity in order to receive the Donor’s contact information. Any violation of this provision would be a breach of this Agreement, and would cause immediate and irrevocable harm to Donor and would be the basis for Cryobank and/or Donor obtaining an immediate injunction and subject Client and Registered Offspring to damages.

To participate in the ID Donor Program, Client must complete the ID Option Birth Registration form, located at www.fairfaxcryobank.ca, any time after birth and prior to the Offspring’s 18th birthday. Merely using the Specimen or reporting the pregnancy/birth online does not allow any Offspring access to the contact information.

Optional Storage Terms

If Client so elects, Cryobank will store Client’s Specimens at Cryobank’s storage facilities. If Client does not elect at the time of purchase of Specimen to store the Specimen at Cryobank’s storage facility, Client may do so in the future. The specific terms of storage services provided by Cryobank are specific to each distributor and therefore subject to the terms and conditions of their respective agreements. Please contact the distributor directly for storage terms, release of information/specimens, storage fees, and termination of storage services.