



FAMILY FERTILITY CRYOBANK
REPRODUCTIVE MATERIAL CRYOSTORAGE AGREEMENT

THIS REPRODUCTIVE MATERIAL CRYOSTORAGE AGREEMENT (“**Agreement**”) is made by and between Family Fertility Cryobank (“**FFC**”) and the person(s) named below (“**Client**”) who shall be collectively referred to as the “**Parties.**” This Agreement shall be effective as of the date the Agreement is signed below by **Client**.

I: Collection and Storage

In accordance with the procedures for identification and testing established by FFC, FFC shall receive the Client’s reproductive materials, which have already been cryopreserved by the Client’s physician/clinic for long-term cryostorage until the Agreement is terminated pursuant to Section VI. The cryopreserved material will be stored at FFC’s facility (or the facility of FFC’s designee) during the term of this Agreement, and the Client’s cryopreserved material may be relocated from time to time as reasonably necessary, or desirable, to protect it. All cryopreservation procedures established by FFC may be modified at the sole discretion of FFC to reflect changes in industry practices, laws, or regulations.

For the purpose of this Agreement, and for all legal purposes, Client agrees and understands that Client’s frozen embryo(s) and/or oocytes and /or sperm are to be characterized and treated solely as personal property to be left in the possession of FFC (or its designee) as a depository for hire which will only be required to use ordinary care for the preservation of your cryopreserved material pursuant to California Civil Code §1852, subject only to existing laws concerning the storage of embryo(s) and/or oocytes and /or sperm. Parties acknowledges that he/she is aware that there are limited current laws or court case decisions with respect to the storage of cryopreserved material. For that reason, Client specifically agrees that, except for specific existing laws relating to the storage of embryo(s) and/or oocytes and /or sperm, the Parties’ respective rights and duties as to such cryopreserved material shall be determined by California law governing the storage of non-unique personal property, and Client waives any future legal rights or claims he/she may have concerning the storage of such property as created by future case, statutory, or other law.

Client is therefore advised, before signing this agreement, that if he/she has any questions concerning the meaning and effect of this agreement relative to his/her legal rights concerning the storage of his/her cryopreserved material, that he/she should seek independent legal counsel. FFC cannot advise Client of his/her legal rights with respect to this Agreement.

Initials: ____/____

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II: Storage Period, Storage Fees and Records

The fee for each storage period shall be payable in advance and shall be adjusted from time to time by FFC based upon market factors. The current fees for each storage period are set forth in FFC's policy manual. A storage period shall commence on the day in which FFC receives the specimens for storage.

At the end of a storage period, FFC shall send notice to Client notifying him/her of the impending end of the term and the client's right, within thirty (30) days of notice, to renew the Agreement for an additional storage period OR terminate the Agreement and complete final disposition paperwork. The notice will also [1] request payment of the renewal fee; [2] confirm that Client has not changed his/her mailing address or telephone number; and [3] request any instructions Client may have concerning the disposition of his/her cryopreserved material other than its continued storage with FFC. If Client does not respond to the notice as described above, this Agreement shall automatically renew on the 1st day following the end of the storage period for the same duration as the initial term. Subsequent renewals shall continue unless terminated pursuant to the terms set forth herein. The fees for any storage period renewal shall be due and payable in full at the commencement of the new storage period. Unused storage fees are non-refundable for any reason. Sixty (60) days after payment is due and not paid, the account shall be deemed in "default". All reproductive tissues from accounts in default shall become the SOLE property of FFC and 60 days later the tissue may be destroyed without concern. The Client understands these conditions and agrees not to sue for the destruction of any tissue whereby the account is in default for any reason.

Initials: ____/____

The Client shall keep FFC informed within ten (10) days of a change of his or her current address and phone number for billing purposes and any other matter requiring notice to FFC. The Client's name and address, as well as other records relating to the subject of this Agreement, shall be kept on file at the FFC. It is solely the Client's responsibility to notify the FFC in writing or in person of any change of address within 10 days of any change. Should FFC require to skip trace patient for any reason, FFC will charge and additional \$250 dollars to the account for obtaining these services.

Initials: ____/____

Secondary Contact Information MUST be Completed:

To assist FFC in maintaining its ability to contact Client while its cryopreserved material is being stored, please optionally provide a second address and phone number of a close friend or family member FFC can contact in the event it does not receive a response from Client, or FFC's certified mail to Client is returned as undeliverable:

Name Relationship Address

Phone: _____

Initials: ____/____

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III: Additional Potential Fees

The storage of specimens from potentially infectious clients (clients for whom testing shows a potential for an infectious disease such as, but not limited to, hepatitis, STD's, and HIV require additional safeguards and procedures. The undersigned understands and agrees that potentially infected, and infected specimens, will be stored in a separate vapor storage tank which is designed for potentially infectious specimens only.

- Specimens from clients who have tested positive for HIV will be stored in an HIV Only storage tank.
- Specimens from clients with non-HIV potential infectious conditions may be stored in a separate non-HIV tanks and their specimens will be physically segregated by use of disease specific canisters.

The undersigned further understands that because of additional required precautions, storage fees, and shipping fees will be higher than the fees charged to clients who are NOT potentially infectious. This rate will be \$200 in addition to the regular rate. FCC will assume tissues are infected unless proven otherwise with confirmed lab paperwork.

The undersigned further understands that results for infectious diseases will be disclosed to the receiving physician and the recipient (spouse or sexually intimate partner) as part of an informed consent procedure before the specimens are used.

Initials: ___/___

All clients requiring cryopreservation storage at FFC MUST have ALL of the necessary blood testing performed and recorded by a written report stored at the offices of FFC in San Diego or Tustin within 21 days of our acceptance of your reproductive tissues. **If the bloods are drawn by FFC or its business associate, then FFC shall be responsible for ensuring the results are in your files within 21 days otherwise you are fully responsible.**

Tissues accepted by FFC that still require infection disease testing must have the that report on file within 21 days of the storage of the first tissues or:

- You will be charged an additional 200 dollars to quarantine your reproductive tissues as the results are unknown.
- Your credit card information as provided below is a full agreement by the Client to this policy including all additional charges.
- Should you provide paperwork that your materials are NOT infected as determined at the sole discretion of FFC, then the quarantine fees shall be lifted for any additional storage contracts; however, the additional charges for quarantining the tissue(s) for a limited time will still be in place and non-refundable.

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For billing purposes, Credit Card information must be provided if the infectious disease fluids are drawn outside of the FFC offices or if not available upon receipt of reproductive tissues. This credit card information will ONLY be used to process charges as described previously if infectious disease information is not received within 21 days. Your initials provide authorization for this billing.

Initials: ___/___

Type of card: Visa Discovery MasterCard American Express
Name as presented on the card: _____
Credit Card Number: _____
Expiration month _____ Expiration Year _____ Security Number _____

Withdrawal Fee

Upon payment of this fee, receipt of such completed forms as FFC shall prescribe to client, and upon fifteen (15) days prior written notice to FFC, FFC will deliver to client's physician, the portion of the specimen that your physician has provided a written order.

Prior to the consideration of the shipping of any tissues, the client agrees to pay in full any outstanding charges. Additional shipping fees may apply and are the sole responsibility of the Client.

Initials: ___/___

IV: Account in Default

If FFC has not received payment in full of any and all amounts due from the Client on the execution of the initial storage or continued storage after 60 (sixty) days from the original due date then Client's account shall be considered in default (the "**Default Date**"). FFC shall provide written notice to the Client after the Default Date notifying Client that his/her account with FFC is in default. If there is no response by the Client or estate (in the case of death) within thirty (30) days of contact, **FFC will send a final notice by certified U.S. Mail to the last mailing address provided by Client, advising Client that he/she will have 30 days from the mailing of that notice to pay the storage fee. FFC shall have the right at its sole discretion to skip trace the client and will charge a fee of \$250 for this service. This policy extends to include email or contact information that is returned unopened.**

If Client does not pay the renewed storage fee within thirty (30) days of the default date, any and all cryopreserved reproductive materials can be disposed of by FFC or its delegates as determined by FFC management in accordance with Client's directions below. Until final disposition of the cryopreserved material, there will be a 100 dollar monthly fee charged until the disposition paperwork is completed & returned correctly (e.g. if car is repossessed you have no car but still owe the debt), even if the tissue is destroyed for being in default.

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If your account is in default, then FFC shall have the right to send the account to collections. An additional charge of \$1,500 dollars shall be administered to the fee for collections plus all additional fees as charged by the collection agency including but not limited to collection fees and surcharges, court costs, attorney fees, mailings and processing charges.

Initials: ____/____

The client understands that human reproductive tissues are under the general guidelines of the American Society of Reproductive Medicine (ASRM) which requires storage facilities such as FFC to contact the patient for their authority for final disposition. As result, should the Client not respond, FFC, at its sole discretion, can use any legal remedies to collect outstanding fees including but not limited to court actions, legal representation, small claims court and or collection agency activities. In the event of utilizing any of these options, the Client understands, agrees and authorizes:

1. FFC may, in its sole discretion, refer Client's account to an attorney or collection agency for collection of any default in payment. Client agrees a \$1,500 charge will be assessed for retaining the attorney or collection agency and Client further agrees to pay all costs of the collection, including but not limited to all additional fees charged by the collection agency and/or attorney in the course of its service in settling the account.

Initials: ____/____

2. Until disposition forms are signed and notarized and the tissues are in default for non-payment, FFC may change yearly fees of \$1200 (not refundable for any portion) until the final disposition forms are completed to the sole satisfaction of Family Fertility CryoBank.

Initials: ____/____

3. The Client recognizes that even in the case of bankruptcy, tissues are still in storage at FFC. Because of governmental regulations that do not permit us to destroy tissues at that specific time, the client agrees that they are still under contract with Family Fertility CryoBank. If the account is NOT settled prior to the date of bankruptcy, then upon legal declaration of the bankruptcy, the contract / agreement for continuing storage shall be considered fully in place for 1 year at the cost of \$1,200, Signing this agreement is recognized that these terms are understood and agreed to by the client. The agreement shall continue upon the same terms and conditions with the exception that all costs to the date of bankruptcy will legally dissolved; however, a new charge of \$1200 for one year charge shall be applied to the Client's account and is to be paid within 30 days of the date of bankruptcy or the account shall be considered in default.

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Please note that should the client want to donate any human materials at any time to a non-sexually intimate partner, additional testing at the time of donation (freezing) IS REQUIRED. Please be sure to ask what additional tests and their cost or you may NOT be able to donate to other people. Initials: ____ / ____

V: Discarded Specimens

The term “discard” or “dispose of” means that the FFC will thaw and destroy the specimens in a professional and ethical manner as determined solely by FFC. Discarded specimens cannot and will NOT be used for reproductive purposes or on behalf of any person or persons. The client hereby agrees not to sue FFC, or its owners, or officers if tissues are destroyed as a result of non-payment.

Initials: ____ / ____

VI: Termination of this Agreement

Client may terminate this Agreement at any time. Unused storage fees are non-refundable. FFC may terminate this Agreement only by giving written notice of its intent to do so, sent to Client at least ninety (90) days prior to the end of any storage period, under this Agreement as established above.

This Agreement shall terminate and FFC’s responsibilities for storage of specimens hereunder will cease:

1. upon the release of all specimens stored by FFC pursuant to conditions of release; or
2. upon the disposition of all specimens stored by FFC pursuant to a default under Section 3; or
3. upon the notarized execution of FFC’s separate termination agreement by the Client or his surviving spouse / legal partner; or
4. Upon receipt of a certified copy of the death certificate, if the client dies without leaving a surviving partner / legal partner.

Initials: ____ / ____

VII: No Warranty

The client acknowledges that neither FFC nor any of its officers, directors, shareholders, executives, employees, or consultants has NOT made any other representations or warranties to the client of any kind or nature, including, without limiting the generality of the foregoing; Any representations or warranties with respect to 1) the viability of eggs, embryos, or sperm; 2) the possibility of the successful use of the specimen(s) at any time; 3) the lack of risk of a birth defect or miscarriage after any ART procedure with the use of the client’s specimen(s); 4) the possibility of the lack of complications in pregnancy and delivery after use of the client’s specimen(s) in any ART procedure; 5) the infallibility of FFC’s liquid nitrogen cooled refrigerators or any other of FFC’s equipment; 6) the competence of any of FFC’s executives, employees or consultants.

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The client acknowledges that the risks to the pregnancy as above, and complications with labor and delivery are generally the same following the use of frozen embryo(s) or frozen egg(s) or frozen sperm as that for pregnancy, labor and delivery after use with fresh egg(s) or fresh embryo(s). The client further acknowledges that he/she/they understand that the viability of all reproductive tissue varies from specimen to specimen and may deteriorate, and that no guarantee of any kind can be made with respect to the possibility of the successful use of the banked cells or tissue for the purpose of any ART procedure.

Initials: ____/____

VIII: Responsibilities and Liabilities of the FFC

The Client acknowledges that he or she has been fully advised concerning the process of cryopreservation of any and all specimens. The Client acknowledges that he or she understands that the viability of the reproductive materials and the results from subsequent fertility attempts depend almost in their entirety upon the client and the recipient. Accordingly, the Client understands and agrees that **FFC's responsibilities shall be limited hereunder solely to the adequate cryostorage of said specimens consistent with the industry's best practices at the date of entering into this Agreement.** The total liability of FFC for failure to meet any of its responsibilities to the Client shall not exceed the amount of storage and or shipping fees paid in total by Client.

In the event FFC terminates the operations of its storage facility, it may, thirty (30) days after written notice to the Client at his/her last known address, assign and transfer its obligations hereunder and the specimens held on behalf of the Client to a similar storage facility. If an assignment occurs, Client agrees it will only look to assignee for any actions that transpire from and after the date of the assignment and further agrees to release FFC from any and all actions, claims and liability occurring after the date the assignment.

This agreement is assignable by FFC to any individual, association, partnership or other corporation which is either providing a similar service or intends, subsequent to such assignment, to provide a similar service.

Initials: ____/____

IX: Non-Performance

The client agrees that neither FFC nor any of its officers, directors, shareholders, executives, employees, or consultants shall be liable for any destruction or damage to, or misuse of the specimen in a frozen state, the improper withdrawal, thawing, and/or deliver of the specimen, or any other matter, cause or thing, unless such destruction, damage, misuse, improper testing, freezing, maintenance, storage, withdrawal, thawing, and/or delivery or other matter, cause or thing is caused by, or results from, the gross negligence of FFC. Without limiting the generality of the foregoing, neither FFC nor any of its officers, directors, shareholders, executives, employees, or consultants shall be liable for destruction, damage, misuse, improper testing, freezing, maintenance,

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storage, withdrawal, thawing, and/or delivery caused by or resulting from any malfunction of the liquid nitrogen cooled refrigerator, and failure of any utilities, any strike, cessation of services, or other labor disturbances, any fire, earthquake, flood or any other acts of nature, or the failure of any other laboratory.

All long term storage of reproductive tissues has been insured by FFC in the amount of 10,000 dollars per family regardless of the number of tissues or types of tissues in storage. This insurance has been initiated in the case of natural disasters or acts of God other than acts of war.

Each Client should consider the value to them of their reproductive tissues and are strongly encouraged to purchase additional insurance at their cost from reputable insurance companies such as Lloyds of London.

Initials: ____/____

X: Additional Testing

The Client understands that FDA guidelines require extended communicable disease testing to be performed for additional costs. This may allow the specimens to be used for someone other than a sexually intimate partner in the future. **If this is my intended use, then I agree to receive a physical exam, interview, health history assessment, 6 month quarantine testing and any other requirements required by the FDA prior to the release of my specimens.** I am aware that release of specimens is contingent upon a thorough donor eligibility determination and that FFC will not release specimens that do not meet eligibility. Furthermore, I understand that FFC is not responsible for the eligibility criteria of other facilities and that specimen(s) deemed eligible by FFC may not be accepted by the Assisted Reproductive Technology (ART) facility. I am also aware that I will be responsible for any and all costs associated with the release and that FFC cannot guarantee the handling of any testing performed off site.

Initials: ____/____

I HAVE READ AND UNDERSTOOD THE FOLLOWING STATEMENT:

I understand that if I am misleading or misrepresenting my intended use of this specimen and it is discovered as such by any FFC staff member; my specimen will not be released to me and I WILL be responsible for payment of ALL services performed.

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XI: Arbitration

Any dispute, claim, or controversy which arises relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including but not limited to the determination of the scope or applicability of the parties' agreement to arbitrate, shall be determined by binding arbitration to take place in the County of San Diego, in the State of California, at the sole discretion of Family Fertility CryoBank.

Initials: _____ / _____

XII: Indemnification

To the maximum extent permitted by law, the Client agrees to indemnify, defend, save, and hold harmless FFC, its successors and assigns, and each of their respective officers, directors, shareholders, members, managers, physicians, employees, storage facilities, medical group, or other personnel engaged by FFC in connection with the services rendered hereunder (each individually an "**Indemnified Party**") (and each such third party is hereby expressly made an intended third-party beneficiary to this agreement) from and against any actions, liabilities, damages, losses, fees, penalties, claims, or costs that such Indemnified Party may suffer, sustain or become subject to, as a result of, relating or incidental to, by virtue of, or in connection with (a) FFC's or such Indemnified Party's performance hereunder, including acts or omissions in connection with this Agreement; (b) any claims made against such Indemnified Party by a child, or offspring, or by any heirs, or administrators of a child born as a result of the services described in this Agreement; (c) any claims made against such Indemnified Party by any current or future spouse, domestic partner, child, assignee, agent, attorney, representative, heir, executor, administrator, and/or any other person or entity which may claim through or on behalf of the undersigned as a result of the services described in this Agreement; and (d) from any loss and or expenses incurred with the defense or payment of any claim by any other party relating to the subject of this Agreement. Notwithstanding the foregoing, the undersigned shall not have any indemnity or defense obligation for an Indemnified Party's grossly negligent acts, omissions or willful misconduct.

Initials: _____ / _____

XIII: Damage Waiver

Client has read this agreement and understands the known and potential risks of the services described herein. Measuring or determining potential future damage claims relating to the storage of such cryopreserved material is impossible and impracticable. Therefore, to the maximum extent permitted by law, Client on his/her own behalf and on behalf of his/her successors, executors, administrators, agents, heirs and estate, hereby expressly releases and forever discharges FFC, its successors and assigns, and each of their respective officers, directors, shareholders, members, managers, physicians, employees, storage facilities, medical group or other personnel engaged by FFC in connection with the services rendered hereunder (and each such third-party is hereby expressly made an intended third-party beneficiary hereto) (all foregoing indemnified parties, individually a "**Released Party**" and collectively, the "**Released Parties**") from

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all past, present and future disputes, claims, controversies, demands, rights, obligations, liabilities, actions, and causes of action of every kind and nature, including any unknown, unsuspected, or undisclosed claim, and any claim, right or cause of action based upon any breach of any express, implied, oral or written contract or agreement, related to or arising out of any problems, risks, or other consequences of cryopreservation, both with respect to the viability of reproductive material after long term freezing and/or resulting birth defects or other health problems of any child conceived from cryopreserved material.

Initials: _____ / _____

XIV: Legal Considerations

This document and any directive agreements are considered to be legal documents that describe your intentions regarding the transfer, storage, use, disposition, or destruction of your reproductive materials. CLIENT IS ADVISED TO CONSULT WITH AN ATTORNEY to prepare a tissue directive. The use of FFC's forms does not constitute FFC providing any legal advice. FFC strongly urges Client to independently consult with a knowledgeable reproductive attorney regarding any directives. Client further understands that there are currently few existing laws concerning his or her rights and liabilities regarding the storage and use of cryopreserved reproductive materials and that Client accepts all risks and liabilities that he or she may incur by storing and in the future use of such cryopreserved material Client is storing with FFC pursuant to this agreement.

Initials: _____ / _____

Additional Terms

The Agreement shall be binding upon the Client and his or her assigns, heirs, executors, and administrators.

XV: Conditions of Release of Cryopreserved Reproductive Materials from Storage During Lifetime of Client

Release of cryopreserved reproductive materials may occur during the lifetime of the Client, only upon the occurrence of the following conditions:

- only to a licensed physician;
- only for use by the Client's spouse; or sexually intimate partner; or intended recipient;
- upon the express notarized authorization of the Client; and,
- upon the authorization of the Recipient's clinic; and;
- upon the completion of serology/virology tests required by FFC.

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Advanced Directives for Cryopreserved Reproductive Materials in the event of Death of Client

If the Client is a minor, this Advanced Directives section does NOT need to be completed. When the Client is an adult and or marries, FFC strongly recommends completing a new cryopreserved reproductive materials agreement including the Advanced Directive section.

If the Client IS NOT MARRIED at the time of cryopreservation or upon receipt of stored materials, the Client directs the following disposition for the reproductive materials, upon receipt by FFC of a certified copy of the death certificate:

CHOOSE ONE of the following by marking your choice with a check and signing and dating below your choice. CHOOSE A or B ONLY.

A. The Client directs that the reproductive materials shall become the property of another person and may be used for his/her purposes of procreation or other purposes, upon their written and notarized acceptance and of agreement to be bound by the terms of this Agreement. The person accepting this material hereby with their signature affirms all custodial and financial obligations attached to the materials NOTING that the tissue MAY NOT BE USEABLE if all blood tests were not conducted and reported at the time of cryopreservation.

Client Signature Date

Other Person printed name / Signature Date

Complete Address

email

~OR~

B. The Client directs that the reproductive materials be discarded.

Client Signature Date

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If the Client IS MARRIED at the time of cryopreservation or upon receipt of stored materials, the Client directs the following disposition for the reproductive materials, upon receipt by FFC of a certified copy of the death certificate:

CHOOSE ONE of the following by marking your choice with a check and signing and dating below your choice. CHOOSE C, D or E ONLY.

- C. The Client directs that the reproductive materials shall become the property of the surviving partner and may be used for his or her purposes of procreation or other purposes, upon the surviving partner's written and notarized acceptance and of agreement to be bound by the terms of this Agreement.

_____/_____/_____
Client Signature / Partner Signature

~OR~

- D. The Client directs that the reproductive materials shall become the property of another person and may be used for his/her purposes of procreation or other purposes, upon their written and notarized acceptance and of agreement to be bound by the terms of this Agreement. The person accepting this material hereby with their signature affirms all custodial and financial obligations attached to the materials NOTING that the tissue MAY NOT BE USEABLE if all blood tests were not conducted and reported at the time of cryopreservation.

Client Signature / Date

_____/_____
Other Person printed name / Signature / Date

Complete Address

email

~OR~

- E. The Client directs that the reproductive materials be discarded.

_____/_____/_____
Client Signature / Partner Signature / date

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If the Client IS MARRIED in case of Divorce or Legal Separation must be completed:

CHOOSE ONE of the following by marking your choice with a check and signing and dating below your choice. CHOOSE F or G ONLY

In the Case of Divorce or Legal Separation:

- F. The Client directs that the reproductive materials shall become the sole property of the named person below and may be used for his/her purposes of procreation or other purposes, upon their written and notarized acceptance and of agreement to be bound by the terms of this Agreement. The person accepting this material hereby with their signature affirms all custodial and financial obligations attached to the materials NOTING that the tissue MAY NOT BE USEABLE if all blood tests were not conducted and reported at the time of cryopreservation.

Client Signature / _____ Date

Other Person printed name / Signature / _____ Date

Complete Address

email

~OR~

- G. The Client directs that the reproductive materials be discarded.

Client Signature / Partner Signature / ____/____/____

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By my witnessed signature below, I acknowledge that I have read and understand the terms of this agreement. I acknowledge that I further understand that my cryopreserved specimens cannot be used in the event of my death unless all conditions in Section XV, conditions of release and advanced directives are fully completed.

By: _____
Print Name Signature Date

By: _____
Print Partner Name Signature Date

If the patient above is a minor, a parent or guardian of the minor must sign below:

By: _____
Print Name of Parent Signature Date
or Guardian

The undersigned Witness affirms that they know the Client and or Parent/guardian, if applicable, and that he/she was present and witnessed the Client signature and Parent/Guardian on this document.

By: _____
Print Name of Witness Signature Date

By: _____
FFC Representative Date FFC Account

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