

These are the terms and conditions for the biological sample (Cord Blood) storage agreement between the Customer and Cryosite Limited.

## 1. Agreement and term

- 1.1 Cryosite agrees to store and release the Sample in accordance with the terms and conditions of this Agreement and the Regulations for the Term.
- 1.2 Subject to payment of the Fees, the Initial Term commences on the date of execution of the Agreement (**'Commencement Date'**)
- 1.3 At the end of the Term, this Agreement is automatically extended for a Successive Term unless the Customer provides to Cryosite written notice of termination of the Agreement under clause 4.1(a) together with an election notice under clause 5.1.
- 1.4 Cryosite will notify the Customer of end date of the Term no later than 60 days prior to the date and will notify the Customer of its right and obligations under clause 1.3, 4.1 and 5.1.

## 2. Customer warranty and acknowledgement

- 2.1 The Customer warrants that it owns the Sample or has the authority from the owner of the Sample and/or any other party that has an interest in the Sample, to deal with the Sample under the terms of this Agreement. Cryosite does not and will not have any property rights in or ownership of the Sample at any time.
- 2.2 The Customer acknowledges that responsibility for storage of the Sample passes to Cryosite upon signing of the receipt of delivery at Cryosite's storage facility.
- 2.3 The Customer acknowledges and agrees that, where the Sample is transferred to Cryosite from a Predecessor, Cryosite:
  - (a) assumes that the Sample has been harvested or collected and processed in a manner that complies with the Regulations;
  - (b) relies on all descriptions and particulars of the Sample which the Customer or Predecessor provides to Cryosite at the time of transfer whether verbally or in writing; and
  - (c) assumes that the Predecessor has complied with all laws and regulations and industry guidelines relating to the nature, packaging, labelling or carriage of the Sample and that the Sample has been packed in a manner adequate to withstand the ordinary risks of carriage having regard to the nature of the Sample (**Packaging and Transport Regulations**).
- 2.4 The Customer acknowledges that Cryosite is not liable for, and it waives any right to make any claims against Cryosite for, any costs, losses or damages, arising in relation to the suitability for use of the Sample including arising out of or in connection with any misdescription or failure to properly describe the Sample or failure of the Predecessor to comply with the Packaging and Transport Regulations.
- 2.5 The Customer acknowledges that Cryosite is not a Common Carrier, does not own the Sample, and does not insure the Sample.

## 3. Service and Fees

- 3.1 The Fees payable by the Customer are available from Cryosite upon request.
- 3.2 *Storage:* The storage fee for the Term is payable in advance but no later than commencement date.
- 3.3 *Disposal:* If the Customer elects to terminate the Agreement and directs Cryosite to dispose of the Sample, the Customer must pay the disposal fee to Cryosite.
- 3.4 *Transfer/Transport:* If, at the end of the Term, the Sample is to be transferred to another storage provider or released at the direction of the Customer, the Customer must pay all fees incurred by Cryosite for the transport of the Sample at the time of the request. Cryosite will arrange these services upon payment of the Fee.
- Unless the Regulations or Clinical Rules permit otherwise, Cryosite will arrange transport service for the Customer and deliver the Sample as directed by the Customer. The risk in the Sample passes to the Customer upon the delivery of the Sample at the destination nominated by the Customer.
- 3.5 *Release fee:* If the sample is to be released, Cryosite may require the Customer to pay to a release fee.
- 3.6 *Annual review:* Notwithstanding any other provision in the Agreement, all fees are subject to annual review at Cryosite's discretion and updated fees are available from Cryosite upon request.
- 3.7 *Collection fees:* If the Customer fails to make any payments required under this Agreement on time and Cryosite refers the overdue amount to a mercantile collection agency for recovery, then the Customer agrees that the Customer will be liable for any costs or expenses or fees arising from the debt collection.
- 3.8 *Interest:* If a payment under this Agreement is not made by the due date, the Customer must pay interest to Cryosite at the Reserve Bank interest rate (being the cash rate) from time to time, calculated daily from the day following the day the payment was due until the day the payment is made.

#### **4. Termination of Agreement**

- 4.1 *Termination by Customer:*
- (a) The Customer may terminate the Agreement at end of the Term by giving Cryosite a written notice of termination no later than 30 days prior to the end of the Term.
  - (b) The Customer may terminate this Agreement at any time by giving Cryosite 30 days written notice. The Customer must complete and sign a termination notice provided by Cryosite, acting reasonably.
- 4.2 Upon the termination of the Agreement, the Customer must give Cryosite an election notice in accordance with clause 5.1.
- 4.3 The Customer will remain liable to Cryosite for all outstanding payments and costs under this Agreement for the period up until the expiration of the notice period. The Customer is not entitled to a pro-rata refund of the storage fee for any remaining portion of the Term.
- 4.4 *Termination by Cryosite:* Cryosite may terminate this Agreement by notice in writing to the Customer:
- (a) if the Customer fails to pay any fees which is due and payable, within 60 days of the due date indicated on the invoice;

- (b) with immediate effect if Cryosite becomes aware that any information provided by the Customer at the time of receiving the Sample from the Predecessor is false or misleading, or that a Customer or Predecessor has intentionally withheld material information from Cryosite;
- (c) if the Sample is lost or destroyed for reasons beyond Cryosite's control;
- (d) with immediate effect if Cryosite reasonably forms the opinion a Sample, received from a Predecessor, cannot be used or stored safely for any lawfully permitted purpose.
- (e) on reasonable notice if Cryosite is required by law or a governmental or regulatory agency to terminate this Agreement including any change of law making this Agreement illegal;
- (f) on reasonable notice if there is any change in law, governmental regulations or medical practices that makes this Agreement commercially unsustainable.

## **5. Election notice and Disposal of the Sample**

- 5.1 If the Customer or Cryosite terminates the Agreement the Customer must provide Cryosite with a notice instructing Cryosite to deal with the Sample by:
- (a) destroying the Sample;
  - (b) transferring the Sample to another storage provider if permitted by the Regulations; or
  - (c) releasing the Sample to the facility nominated in writing by a person authorised to do so under the Regulations .
- The notice provided by the Customer must comply with any Regulations or Clinical Rules.
- 5.2 Cryosite may refuse to release or transfer the Sample where directed by a person authorised under the Regulations to do so, or in any event for any purpose not approved by the Regulations or, if the Customer directs that the Sample be delivered to a nominated storage provider which is not appropriately licensed under the Regulations to store the Sample.
- 5.3 if the Customer fails to provide an election notice within a 180 days in accordance with clause 5.1, Cryosite may, in its absolute discretion, continue storing or dispose of the Sample at the Customer's sole cost.
- 5.4 The Customer irrevocably authorises Cryosite to dispose of any Sample that does not meet the legal requirement for use in a living organism , as determined by Cryosite in its absolute discretion.
- 5.5 Subject to clause 5.6, where Cryosite is entitled to dispose of the Sample, Cryosite may, in its absolute discretion,:
- (a) destroy the Sample;
  - (b) if applicable, utilise the Sample for quality control, quality assurance or process validation testing, prior to the disposal;
  - (c) if applicable, use the Sample for purpose of conducting scientific research; or
  - (d) donate the Sample to any relevant public institution in Australia.
- 5.6 Subclauses 5.5 (c) and 5.5 (d) do not apply to any sample which comprises of gamete or embryo material.

- 5.7 Any disposal of the Sample must be carried out by Cryosite in compliance with all relevant Regulations or Clinical Rules at the time of disposal and will be at Customer's costs.

The Customer warrants that it has read and understood the terms in the document related to the disposal of a Sample and warrants that it has obtained all necessary consents or approval required for the disposal of a Sample from any relevant third party.

## **6. Release and use of Sample**

- 6.1 The Customer acknowledges and agrees that no assurance has been given to the Customer by Cryosite, its employees or representatives, and no warranties or guarantees are given by Cryosite, regarding:

- (a) Whether Sample stored and released by Cryosite pursuant to this Agreement will be suitable for any future therapeutic use or other medical use or research purpose;
- (b) The availability of any future medical or therapeutic use(s) of the cells derived from Sample;
- (c) The viability of the Sample or any product derived from the Sample for any particular medical or therapeutic use(s);
- (d) Where relevant, whether the Sample will be the best source of cells or other product derived from the Sample for the treatment of any disease; or
- (e) Whether any diseases or conditions suffered by intended recipient or beneficiary of use of the Sample in the future will be able to be successfully treated with cells or other product derived from the Sample released by Cryosite.

- 6.2 Cryosite is not liable to the Customer for any matters arising out of or in relation to any handling by third parties, without limitation to any temperature deviations, improper handling or adverse outcomes associated with the use of third-party suppliers, including transport units, transport companies and third party clinical laboratories.

- 6.3 The Customer agrees that the decision to use the Sample or cells or other products derived from the Sample for any legally permitted purpose will be at the Customer's absolute discretion having regard to any advice from the Customer's medical practitioner(s) or health authorities.

The Customer irrevocably authorises Cryosite to provide any information held by Cryosite to the Customer's medical practitioner(s) or other authorised person or health authorities nominated by the Customer or prescribed by the Regulations.

## **7. Limitation of Liability**

- 7.1 In this Agreement Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

- 7.2 The Customer agrees that where the Customer is entitled to a statutory guarantee under sections 60 to 62 of the Australian Consumer Law, then to the extent permitted by law that Cryosite fails to comply with such guarantee Cryosite's liability for such a failure is limited to, at Cryosite's option:

- (a) supply the services again; or
- (b) pay the cost of having the services supplied again.

unless it is not fair or reasonable for Cryosite to rely on this term of Agreement

7.3 To the extent permitted by law Cryosite disclaims any other express or implied standards, guarantees, or warranties, including any warranties of merchantability, fitness for a particular purpose or non-infringement, and any warranties that may be alleged to arise as a result of custom or usage, any warranty of error-free performance, or any warranty of third-party products or services.

7.4 Nothing in this Agreement excludes guarantees or warranties that cannot be excluded by law.

In no event shall either party be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages or losses (including, but not limited to, lost profits, or lost business opportunities arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss and notwithstanding any failure of essential purpose of any limited remedy).

## 8. **Governing Law**

This Agreement is governed by the laws of the State or Territory within Australia in which the Sample was collected, harvested and processed, or if that process occurred outside of Australia, the laws of the State New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

## 9. **Variation**

9.1 If there are changes in laws (including, without limitation, under legislation or regulations) which affect any of the subject matter of this Agreement or the conduct of Cryosite's business in connection with this Agreement (a '**Regulatory Impact**') and Cryosite considers (acting reasonably) that this Agreement should be varied for it to comply with the law on account of that Regulatory Impact, Cryosite may provide the Customer with a notice in writing (a '**Variation Notice**') setting out the variations to this Agreement and the date upon which such changes will come into effect, being not less than 60 days after the date of the notice (the '**Variation Date**') unless otherwise required by law.

9.2 If the Customer does not agree with the variations to the Agreement as set out in the Variation Notice, the Customer may terminate this Agreement by giving Cryosite not less than 30 days prior written notice. Where such a termination notice is given by the Customer, the termination date will be the same date as the Variation Date, and the provisions of clause 6 will apply, except that the Customer will be entitled to a pro-rated refund of the unexpired portion of the Term.

9.3 The Customer agrees that if the Customer has not given a termination notice pursuant to clause 9.2, then this Agreement will be varied in the manner set out in the Variation Notice from the Variation Date.

## 10. **Successors**

This Agreement binds and benefits the parties and their respective legal personal representatives, successors and permitted assigns.

## 11. **Entire Agreement:**

This Agreement constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. Each party acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and having negotiated and freely entered into this Agreement, agrees that it will have no remedy in respect of any other such representation or warranty except in the case of fraud.

## **12. Force majeure**

- 12.1 If an event occurs that is beyond the reasonable control of the Cryosite and results in the Cryosite being unable to observe or perform an obligation under the Terms on time (including acts of God, natural disaster, war, malicious damage, strikes, fire, shortages of raw materials or transport or import restrictions) the Cryosite will have no obligation to provide the Services and while the circumstances continue Cryosite may cancel or rescind the Agreement.

## **13. Notices**

- 13.1 Any notice by one party to the other will be effective if served personally, by fax, email or pre-paid post to the registered office of a party or its last known place of business. The notice will be deemed to have been received within 2 Business Days of posting or immediately if served personally or by fax or email.

## **14. Severance**

- 14.1 If any provision of these Terms is found to be invalid or unenforceable then it is deemed to be severed, and the remainder of these Terms will remain valid and enforceable.

## **15. Confidentiality**

- 15.1 Each Party acknowledges that in connection with its performance of this Agreement it will introduce to the other party and create information of a commercially sensitive and confidential nature, such as its trade secrets, pricing, technical knowhow and business strategies (Confidential Information).
- 15.2 The Party must not disclose to a third party other than a Related Body Corporate of the disclosing party, or a professional adviser providing specialist services any Confidential Information without the written consent of the other Party.
- 15.3 If a Party is required by law to disclose Confidential Information to a third party, then prior to such disclosure it must:
- (a) notify the other party of such requirement; or
  - (b) take such steps as will permit the other party to have a reasonable opportunity to oppose or restrict such disclosure by lawful means.
- 15.4 The restriction imposed by this clause does not apply to any disclosure of information:
- (a) which at the material time was in the public domain, other than by breach of this Agreement;
  - (b) was known to the Parties on a non confidential basis prior to a Party receiving the information; and

- (c) which is required by law to be communicated to a person who is authorised by law to receive that information.

## 16. Privacy

16.1 The Customer acknowledges and expressly consents that:

- (a) Cryosite may collect any Personal Information, including Sensitive Information, from the Customer, its medical practitioner(s), or a Predecessor for purpose of performing the Services;
- (b) Cryosite will hold or manage any Personal Information and/or Sensitive Information collected under clause 16.1.(a) in compliance with Privacy Act;
- (c) Cryosite may use and/or disclose any Personal Inform and/or Sensitive Information to the related third party provided that the use and/or disclosure are permitted under Privacy Act and Cryosite shall inform the Customer in writing the use and/or disclosure; and
- (d) It has read and understood Cryosite's Privacy Policy (located on the Cryosite website <https://www.cryosite.com.au/privacy-policy/>) and understand that the personal information that Customer provides to Cryosite will be collected, stored, and used in accordance with that Privacy Policy.

16.2 Cryosite must collect, keep, use or disclose any information obtained under clause 16.1 in compliance with Privacy Act.

## 17. Update

17.1 Cryosite may modify, update, or amend the terms of this Agreement from time to time. Such changes will be effective immediately upon posting the updated terms on the Cryosite's website or upon written notification to the Customer. By continuing to use the services after such modification, the Customer agrees to be bound by the Agreement as amended.

## 18. Definitions and Abbreviations

18.1 In this Agreement the following words and phrases are defined:

- (a) **Agreement** means the Contract Details and these terms and conditions.
- (b) **APVMA** means Australian Pesticides And Veterinary Medicines Authority.
- (c) **Clinical Rules** means guidelines and rules adopted by a Predecessor or any other storage provider (if relevant) in relation to any verification of or dealing with, a Sample (including Sample transfer or destruction).
- (d) **Commencement Date** has the meaning given to this term in clause 1.1.
- (e) **Common Carrier** has the meaning given in the section 3 of *Common Carriers Act 1902 (NSW)*



- (f) **Contract Details** means the Customer and payment details entered by the Customer into the Cryosite website or document control system when entering into this Agreement.
- (g) **Cryosite** means Cryosite Limited ABN 86 090 919 476.
- (h) **Customer** means the person enters into this Agreement
- (i) **Fees** means the fees charged by Cryosite under this Agreement.
- (j) **FSA** means Fertility Society AU & NZ
- (k) **Initial Term** means the storage period selected in the Contract Details .
- (l) **Party** means either party to this Agreement or both, as the case requires.
- (m) **Personal Information** has the meaning given in the Privacy Act.
- (n) **Predecessor** means a third party which held and/or stored the Sample prior to the transfer of the Sample to Cryosite.
- (o) **Privacy Act** means *The Privacy Act 1988* (Commonwealth) as amended and, where the context permits, includes the Australian Privacy Principles (APPs) contained in the Act.
- (p) **Related Body Corporate** has the meaning given in the section 50 of *Corporations Act 2001*
- (q) **Regulations** means any guidelines, rules, regulations, and legislations in Australia applicable to the collection, storage, release or dealing with biological material such as the Sample from time to time which may include TGA rules, AVPMA rules and/or rules of RTAC and FSA depending on the nature of the Sample.
- (r) **RTAC** Reproductive Technology Accreditation Committee
- (s) **Sample** means any or all biological material , including cells and proteins, obtained from a living organism and processed for storage and/or future clinical medical or other therapeutic use or scientific research purpose .
- (t) **Sensitive Information** has the meaning given in the Privacy Act.
- (u) **Services** means the services set out in clause 3 and any other service expressly agreed in writing by the parties.
- (v) **Successive Term** the storage period equal to the Initial Term by which this agreement automatically renews.
- (w) **Term** means the Initial Term or the Successive Term as the case requires.
- (x) **TGA** means the Therapeutic Goods Administration.
- (y) **TGA Rules** means the requirements of the *Therapeutic Goods Act 1989* and *Therapeutic Goods Orders 108 and 94* and any other rules or regulations or codes of practice published and administered by the TGA in relation to the storage and use of Samples from time to time