

**XYTEX TISSUE SERVICES, INC.  
EMBRYO STORAGE AGREEMENT**

Name \_\_\_\_\_  
Name \_\_\_\_\_

This Embryo Storage Agreement (this “**Agreement**”) is between the Client Depositor(s) named above and Xytex Tissue Services, Inc. (“**XTS**”). If more than one Client Depositor is named above, references in this Agreement to “**you**” or “**your**” will mean both Client Depositors, jointly and severally, unless otherwise specified.

1. Scope of Agreement:

XTS agrees to store and release our cryogenically preserved embryos on the terms and conditions set forth below. This Agreement will apply to all embryos transferred to XTS by us or on our behalf (collectively, the “**Embryos**”).

2. Fees:

- a. We agree to pay XTS, in advance, a fee (the “**Storage Fee**”) of \_\_\_\_\_ plus all shipping and administrative fees.
- b. As used in this Agreement:
  - i. “**Storage Year**” means the twelve-month period beginning on the date XTS receives the first Vial (the “**Deposit Date**”), and each successive twelve-month period beginning on the anniversary of the Deposit Date.
  - ii. “**Vial**” means any vial or other storage unit acceptable to XTS
- c. We understand that we are not entitled to a refund or reduction of any Storage Fee, including if Vials are released in accordance with this Agreement. XTS may increase the Storage Fee at any time without prior notice. If our account is current, however, the increased Storage Fee will not become effective until the next Storage Year begins.
- d. The Storage Fee does not cover charges for additional services performed at our request or for our benefit, including any examination or laboratory work performed when we deposit Embryos with XTS or shipping charges on release of any Vials. We will be separately invoiced for such additional services at XTS’ standard rates in effect when the service is performed. XTS may change its rates for these services at any time without prior notice. We understand that any such changes are non-refundable.
- e. The initial Storage Fee is due upon signing of this Agreement. The initial Storage Fee for any additional Vials transferred to XTS in the future will be due upon transfer of the Vials. We agree to pay all other charges under this Agreement, including Storage Fees for subsequent Storage Years, within 15 days after the date of XTS’ invoice. Late payments are subject to a service charge of 1.5% per month (or if less, the maximum rate allowed by law) until paid. **We acknowledge that our failure to pay any Storage Fee or other charges**

**may result in all right, title and interest in the Vials and Embryos passing to XTS as described in Section 11.c. below.**

- f. Except as expressly provided in this Agreement, we agree that we are jointly and severally liable for all fees, expenses, obligations or liabilities under this Agreement.

3. Representations and Acknowledgements:

- a. We represent and warrant that:

- i. Each Vial stored by XTS on our behalf contains only human Embryos produced using eggs collected from:

(Check only one):  female partner  an anonymous egg donor  known egg donor  
and fertilized under the direction of a licensed physician using sperm of:

(Check only one):  male partner  an anonymous sperm donor  known sperm donor

- ii. The Embryos were placed in the Vials and cryogenically preserved under the direction of a licensed physician;

- iii. No other person (including any egg or sperm donor) has any right to claim ownership or possession of any of the Vials or Embryos; and

- iv. Our physician has advised us of the risks and benefits of in vitro fertilization (including, if applicable, use of anonymously donated eggs or sperm), cryopreservation and the use of cryopreserved embryos to achieve conception, and we have had an opportunity to ask any questions we may have of our physician or another health professional of our choosing. **We acknowledge that we have not relied on any statement, representation or advice by XTS, its affiliates or anyone acting on their behalf in deciding to undergo any of these procedures.**

We agree that each of these representations shall be deemed remade each time we deposit additional Vials with XTS.

- b. We acknowledge that XTS did not participate in the collection of the eggs or sperm used to produce the Embryos (or in the selection of any anonymous donor who provided any eggs or sperm), in the fertilization or cryopreservation of our Embryos, in the manufacture or selection of our Vials or in the storage or shipment of our Vials prior to delivery to XTS. Accordingly, XTS disclaims all responsibility for any damage to or defect in any Vial or Embryo arising prior to their delivery to XTS, including as a result of the collection, fertilization or cryopreservation processes. XTS cannot verify the number of Embryos cryopreserved in any Vial. Cryopreservation has no therapeutic value to the Embryos, and will not reduce the risk of transmission of disease or genetic defects when the Embryos are thawed and carried to term. We acknowledge that without thawing an entire Vial (which would result in the loss of all the Embryos it contains), there is no way to test a cryogenically preserved Embryo for infectious or genetic disease or defect, and XTS will not perform any such tests. We understand that attempted implantation of a properly cryopreserved Embryo does not guarantee pregnancy or that any resulting fetus will be carried to term or, if born alive, be healthy and free of birth defects or other conditions

4. Conditions of Storage:

- a. XTS' sole obligation under this Agreement is to store the Vials using the same degree of care as a reasonably prudent person in similar circumstances and consistent with applicable mandatory governmental regulations promulgated by the U.S. Food and Drug Administration and any applicable state agency in the state where XTS stores the Vials. Without limiting any other provision of this Agreement, XTS reserves the right to reject Embryos delivered for storage in vials or storage units that XTS deems inappropriate.
- b. **EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4(a) ABOVE, XTS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY EMBRYO, VIAL OR XTS SERVICE (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND XTS EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES.**

Without limiting the generality of the foregoing, XTS makes no representation or warranty with respect to:

- i. the condition or suitability of any Vial for the cryopreservation or storage of Embryos, or of any Embryos for uterine implantation; or
- ii. the post-thaw viability of any Embryo.

5. Testing:

XTS will not accept any Vial for storage, unless we provide XTS with copies of screening and testing results (donor lab tests if a commercial egg or sperm donor used) showing, as of the time the egg(s) and sperm used to produce the stored Embryos were collected, whether either of us (or, if applicable, any egg or sperm donor) suffered from or was infected with human immunodeficiency virus (“**HIV**”), hepatitis B virus, or hepatitis C virus, or any other organism, disease or genetic condition that XTS' medical director may from time to time determine poses a significant risk of harm to other client depositors, any person in whom any Embryos are subsequently implanted for gestation or to any children born as a result of such Embryos being carried to term.

6. Disposition By Instruction:

Each of us hereby authorizes and directs XTS to release Vials to a licensed physician or clinic designated by us in writing, in each case in accordance with our jointly signed written authorization in the form attached hereto as **Embryo Transfer Authorization** form (2018.4) (“**an Authorization**”). We acknowledge that XTS will only release Vials to a licensed physician or clinic. Any release or transfer of any Vials and Embryos in accordance with an Authorization shall be at our sole risk and expense. **We acknowledge that, while we are both alive, absent a court order, XTS requires an Authorization to be signed by both of us, and that this requirement will continue to apply even if we divorce, become separated or are unable to agree for any reason on the disposition of any Embryos.** XTS will only release Vials if our account is current. We authorize XTS to provide to any Person to whom Vials are released copies of any and all

medical records pertaining to either of us or any Embryos, including, without limitation, any laboratory results provided to XTS in accordance with **Section 5**.

7. Disposition Upon Incapacity or Death of One Partner:

- a. We agree that our Vials and Embryos are held by us as joint tenants with rights of survivorship. This means that if one of us dies before the other, the survivor will be the sole owner of the Vials and Embryos and the estate or heirs of the deceased will have no right, title or interest in any of our Vials or Embryos. (The estate of the deceased will remain liable for any fees, expenses or other obligations incurred prior to the death of the deceased.) If one of us becomes legally incapacitated, XTS may, for all purposes, accept instructions from our legal representative or guardian, if any. In such event, an Authorization must be signed by both the non-incapacitated partner and the legal representative or guardian of the incapacitated partner. **In this regard, XTS recommends that we ask our legal advisors about durable powers of attorney, so that our intent for the Embryos can be honored in the event one of us becomes legally incapacitated.**
- b. If XTS receives a certified copy of a death certificate showing that one of us has died, XTS shall release the Vials to a licensed physician or clinic in accordance with an Authorization signed by the survivor. Any release or transfer of Vials in accordance with such an Authorization shall be at the sole risk and expense of the survivor.

8. Death of Both Partners:

In the event both of us have died, we request that XTS, subject to applicable law at the time:

(Check only one)

- a.  cause the Embryos to be used for scientific research(if allowed in GA) or biological studies (we acknowledge that XTS will be entitled to receive and retain any proceeds of such research);
- b.  thaw and discard the Vials and Embryos.

9. Government Orders:

Notwithstanding any other provision of this Agreement, XTS may release or dispose of any or all Vials, without our permission, or refrain from doing so despite receiving an Authorization, in each case if ordered to do so by any court of law or governmental body or agency or upon the issuance of any law, regulation or advisory opinion requiring, in XTS' opinion, the release, disposition or retention of such Vials.

10. Limitation of Liability; Indemnification:

- a. We acknowledge that alternative and comparable storage services are available from other embryo storage providers and that XTS' rates are based on the limitations of liability and the indemnity contained in this **Section 10**.

- b. Except in cases of XTS' gross negligence or willful misconduct, neither XTS, its affiliates nor their respective employees or agents shall have any liability to either of us or any of our heirs, offspring, estates, legal representatives or any person claiming through any of them, whether in contract or in tort or under any other legal theory, for any damages, costs or expenses (including any indirect, special, incidental, consequential, punitive or similar damages), arising out of or in connection with this Agreement, XTS' performance or nonperformance of its obligations hereunder, the birth or non-birth of any child, or any birth defects, infectious disease or genetic disease of any child resulting from gestation of any Embryo, even if XTS has been advised of the possibility of such claim.
- c. Without limiting any other provision hereof, in no event shall XTS' liability under this Agreement exceed the total Storage Fees paid to XTS under this Agreement for the most recent Storage Year.
- d. Without limiting any other provision of this Agreement, each of us, for ourselves and any person claiming through either of us, hereby irrevocably releases and discharges XTS, its affiliates and their respective employees and agents from, and forever waives, any and all claims, now or hereafter arising out of or related to:
  - i. the damage, destruction or loss of any or all Vials or Embryos, except to the extent caused by XTS' gross negligence or willful misconduct, or
  - ii. any abnormalities, birth defects, hereditary characteristics or tendencies of any offspring, or from any other adverse consequences, including the transmission of infectious or genetic disease, which may arise in connection with or as a result of use of any Embryos.
- e. Each of us agrees not to sue or bring other legal action against XTS, its affiliates or any of their respective employees and agents and shall not aid or abet anyone else in suing or bringing legal action against any of them, for or on account of any claim which may arise out of the use, storage, release or disposition of any Vials or Embryos, except to the extent arising out of XTS' gross negligence or willful misconduct.
- f. We agree, jointly and severally, to indemnify and hold harmless XTS, its affiliates and their respective employees and agents, from and against any and all losses, demands, judgments, claims, liabilities, expenses, or damages (including attorneys' fees and amounts paid in settlement) incurred in connection with any claim, legal action or defense arising out of the use, storage, release or disposition of any Vials or Embryos, including, without limitation, any claim or legal action brought by any person claiming ownership or possession of any Vials or Embryo (including any donor of any egg or sperm used to produce any Embryos), or any claim or legal action by or on behalf of any child born when any Embryo is gestated (including any claims arising out of any birth defects, infectious or genetic disease or other condition of such child), except, in each case, to the extent arising out of XTS' gross negligence or willful misconduct.
- g. In the event of any dispute with respect to ownership or possession of any Vial or Embryo, including where XTS is unable to determine, to its sole satisfaction, the validity or authenticity of any power of attorney or Authorization or other instruction received with respect to any Vials or Embryos, XTS shall be entitled to tender all Vials or Embryos into the

registry or custody of the United States District Court for the Southern District of Georgia or any other federal or state court of competent jurisdiction and to initiate such legal proceedings as it deems appropriate, and thereupon to be discharged from all further duties and liabilities under this Agreement. The filing of any such legal proceedings shall not deprive XTS of any rights to compensation accrued prior to such action or its indemnification rights under **Section 10.f**.

11. Term; Termination:

- a. The term of this Agreement shall begin as of the Deposit Date and shall continue until terminated in accordance with this **Section 11**.
- b. We (acting jointly, subject to **Section 7**), on the one hand, or XTS, on the other hand, may terminate this Agreement at any time, without liability, upon 90 days' prior written notice. During such period, upon payment of any Storage Fees or other amounts due under this Agreement, we may claim the Vials or arrange for alternative storage of the Embryos. Any transfer of Vials will be at our risk and expense. **If we fail to claim or to give XTS an Authorization to release and transfer any Vials and Embryos during such period, upon expiration of such period, all right, title and interest in such Vials (and the Embryos they contain) will pass to XTS.**
- c. XTS may terminate this Agreement if we fail to perform any of our obligations under this Agreement (including, any obligation to pay any invoice when due), and do not cure such failure within 15 days after notice from XTS. If XTS terminates this Agreement under this **Section 11(c)**, it will continue to hold the Vials on the terms set forth in this Agreement for a period of 30 days after such termination. During such period, upon payment of any Storage Fees or other amounts due under this Agreement, we may claim the Vials or arrange for alternative storage of the Embryos. Any transfer of the Vials will be at our risk and expense. **If we fail to claim or to give XTS an Authorization to release and transfer any Vials during such period, upon expiration of such period, all right, title and interest in such Vials (and the Embryos they contain) will pass to XTS.**
- d. If XTS becomes the legal owner of any Vials or Embryos pursuant to the provisions of this Agreement, it shall be free to dispose of such Vials or Embryos in its discretion, including by destruction or use for research purposes(if allowed by the State of GA) by XTS or another (and XTS shall be solely entitled to any proceeds resulting from the use of Vials or Embryos for such purpose), provided that XTS will not cause the gestation of any such Embryos.
- e. The termination of this Agreement shall not affect any rights or obligations of the parties accruing prior to such termination. Without limiting the previous sentence, we expressly agree that the provisions of **Section 10** shall survive the termination of this Agreement and remain in full force and effect thereafter.

12. Independent Contractor:

Our relationship with XTS hereunder shall be that of an independent contractor. XTS shall not be deemed to be a fiduciary or to have any similar duty to us, our heirs, estates, offspring or legal representatives.

13. Force Majeure:

XTS shall not be liable to any person for any failure to perform any obligation hereunder to the extent that such failure is due to fire, flood, earthquake, act of war or terrorism, interruption of public utilities or methods of transportation, compliance with governmental requests, laws, regulations (including laws and regulations adopted after the Deposit Date), order or actions, revocation or modification of governmental permits or other required licenses or approvals, accident, inability to procure necessary supplies, riot, act of court or governmental authority, act of God, or other contingencies beyond the reasonable control of XTS.

14. No Third Party Beneficiaries:

There are no third party beneficiaries of this Agreement.

15. Notices:

All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing, and shall be deemed given five days after deposit in the U.S. mail duly addressed to the intended recipient at the applicable address shown below. Either party may change its address for notice purposes by giving the other party notice of its new address in accordance with this **Section 15**. The addresses of the parties for purposes of this Agreement are:

If to XTS:  Xytex Tissue Sstorage 1100 Emmett Street Augusta GA 30904
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If to either of us:  At the address(es) set forth below our signatures
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We agree that it is our responsibility to keep XTS informed of our mailing address(es) from time to time.

16. Miscellaneous:

- a. In the event any part of this Agreement is found unenforceable, the remainder of the Agreement shall remain in effect.
- b. This Agreement shall be governed by the laws of the State of Georgia without regard to its conflict of law rules.
- c. This Agreement, including the Exhibit hereto, embodies the entire agreement and understanding of the parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement, including the Exhibit hereto, supersedes all prior agreements and understandings between the parties with respect to its subject matter.

- d. XTS is authorized to rely on and treat as valid any written authorization, release or instruction purportedly signed by us or the executors or administrators of our estates, unless XTS has actual knowledge that such document is not bona fide.
- e. The headings and captions contained herein are for convenience only and shall not control or affect the meaning or construction of any provision.
- f. This Agreement may be amended, modified or supplemented only by written agreement of all parties hereto.
- g. This Agreement shall be binding upon and inure to our benefit and the benefit of our heirs, legal representatives and estate, and to the benefit of XTS, its successors and assigns. Neither of us may assign our rights or duties under this Agreement without the prior written consent of the other parties, except that XTS may delegate the performance of its obligations hereunder to any affiliate of XTS, provided that such delegation shall not release XTS from any obligations under this Agreement.

IN WITNESS WHEREOF, we have executed this Embryo Storage Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**By our signatures below, we acknowledge that we have read and understand all of the provisions of this Agreement and agree to them all. We acknowledge that we have had an opportunity to consult with medical advisors and legal counsel of our choosing.**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SIGNATURE OF PARTNER #1

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
SIGNATURE OF PARTNER #2

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

XYTEX TISSUE STORAGE  
A Georgia Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_