

**XYTEX TISSUE STORAGE, INC.**  
**SEMEN/TESTICULAR TISSUE STORAGE AGREEMENT**  
**FOR CLIENT DEPOSITOR**

<p><b>Client Depositor:</b> My semen/testicular tissue is for the <b>use of my intimate sexual partner only.</b></p> <p>L #: _____</p>	<p><i>Please Complete:</i></p> <p><b>Client Depositor:</b> _____</p> <p><b>Physician:</b> _____</p> <p><b>Date:</b> _____</p>
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This Semen/Testicular Tissue Storage Agreement (this “**Agreement**”) is between the semen/testicular tissue depositor named above (“**I**” or “**me**”) and XTS Tissue Storage, Inc. (“**XTS**”).

**11114. Scope of Agreement:**

XTS agrees to freeze, store and release or destroy my semen/testicular tissue in the manner and on the terms and conditions set forth below. This Agreement will apply to all semen/testicular tissue samples now or hereafter deposited with XTS by me or at my request, including any semen/testicular tissue samples transferred from another storage facility (collectively, the “**Samples**”).

**22222. Fees:**

(a) The storage fee (the “**Storage Fee**”) is \$\_\_\_\_\_ for up to three ejaculates or tissue samples, per Storage Year, payable in advance. An additional fee will be payable if leaving additional samples. A “**Storage Year**” is the twelve-month period beginning on the date XTS receives the first Samples (which may be before the date of this Agreement) (the “**Deposit Date**”), and each successive twelve-month period beginning on the anniversary of the Deposit Date. I understand that I am not entitled to a refund of any Storage Fees paid to XTS for Samples deposited under this Agreement, including any Samples that are used for testing, released from storage or destroyed in accordance with this Agreement. XTS may increase the Storage Fee at any time without prior notice. If my account is current, however, any increased Storage Fee will be effective only as of the beginning of the next Storage Year.

(b) The Storage Fee does not cover charges for any additional services performed at my request or for my benefit, including the initial examination and blood work performed each time I deposit Samples with XTS, and any subsequent shipping of any Samples. I 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. I agree to pay for such additional services in accordance with **Section 2(c)** below. I understand that any such charges are non-refundable.

(c) The initial Storage Fee is due upon signing of this Agreement. The initial Storage Fee for any additional Samples deposited with XTS in the future will be due when the Samples are first deposited. I agree to pay all other charges under this Agreement, including Storage Fees for subsequent Storage Years, within 30 days after the date of XTS’ invoice. Late payments are subject to a service charge of 1.5% per month (or partial month) until paid. **I acknowledge that my failure to pay any Storage Fee or other charges when due may result in the destruction of the Samples as described in Section 10(c) below.**

33333. Representations and Acknowledgments:

- (a) I acknowledge that the cryopreservation and storage of any Samples adds no therapeutic value to the Samples. The Samples may transmit disease or genetic defects and any pregnancy resulting from insemination utilizing the Samples may result in birth defects, miscarriage and complications with the delivery of a baby. I represent and warrant that: (i) all Samples are my own semen/testicular tissue, (ii) I have not given any other person any right to claim ownership or possession of any of the Samples.
- (b) I further represent, warrant and agree that the intended recipient of the Samples is my intimate sexual partner and that the oocyte to be fertilized with my sperm is not the oocyte of a blood relative such that its *in vitro* fertilization with my sperm would constitute an incestual conception.
- (c) I further represent, warrant and agree to the following:
- (i) I have chosen not to complete the additional testing and screening required and I am aware that no one but my intimate sexual partner can be the recipient of the samples. \_\_\_\_\_ (initial)

My intended recipient (sexual intimate partner) is:

\_\_\_\_\_

I do not have an intimate sexual partner at this time. I will inform XTS of any future sexual partner. \_\_\_\_\_ (initial) by amending my storage agreement. At that time, my intimate sexual partner must sign Exh C.

**Or**

- (ii) I have chosen to complete the full screening and testing required by the FDA because the end user may be a directed donor. By doing so, I am aware that the recipient of the samples is not required to be my intimate sexual partner. \_\_\_\_\_ (initial)

44444. Conditions of Storage:

(a) XTS' sole obligation under this Agreement is to use the same level of care to freeze, test and store the Samples as XTS uses with respect to semen/testicular tissue samples received by XTS in the ordinary course of its business for use in anonymous donor artificial insemination.

**(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 SAMPLE OR XTS' SERVICES (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 Sample for use in artificial insemination or for any other purpose;

(ii) The viability, future motility (survival) or fertilizing ability of any Sample, notwithstanding the results of any post-thaw motility test; or

(iii) The results of any laboratory test (including any genetic or infectious disease screening) that may be performed by or on behalf of XTS.

**55555.** Testing:

(a) Simultaneously with delivery of any Samples for storage, I will provide XTS with any blood and other fluid specimens reasonably requested, for use by XTS or its agent in diagnostic laboratory tests for human immunodeficiency virus, Treponema pallidum, hepatitis B virus, or hepatitis C virus, HTLV I/II, 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 any inseminated recipient, any offspring born through use of my Samples, or any other person, or of contamination of semen/testicular tissue of other depositors. I may, in the alternative, provide XTS with certified copies of current lab test results confirming the absence of such organisms, diseases or conditions. XTS, may, however, require me to submit to new tests in its discretion.) I agree to sign any consents and specific authorizations that XTS may reasonably request from time to time to permit XTS to carry out the testing contemplated by this paragraph. I acknowledge that, if required by law, XTS will notify public health authorities if any specimen tests positive for certain infectious diseases.

(b) I authorize XTS to perform a post-thaw evaluation (test) of sperm survival on a portion (typically one "post-thaw unit") of a Sample. This test is typically performed within 7 days after the Sample arrives at XTS. The sperm in the unit is discarded after the test. Unless I instruct XTS differently, the results of the test will be sent by regular mail to me, to the physician named on page 1, if any. I agree to discuss these results with my physician in order to decide whether I want XTS to continue to store the Samples. I will advise XTS of my decision within 60 days after receiving such report. **I acknowledge that failure to comply with my obligations under this Section may result in the destruction of the Samples as described in Section 10(c) below.**

(c) At my written request, XTS will perform additional post-thaw tests. Each post-thaw test I request will consume one unit, which will decrease the total number of units that are being stored. Unless I instruct XTS differently, the results of each test will be mailed to me, to the Designated Recipient, if applicable, and to the physician I designate, if any.

(d) XTS will not charge me for any post-thaw test (unless my units were processed and transferred from another facility to XTS for storage, the cost will be \$55 for each post thaw I request). I will be responsible for Storage Fees for the current Storage Year without deduction for any Samples consumed in post-thaw tests.

**66666.** Disposition By Instruction:

(a) I hereby authorize and direct XTS to release my Samples to a licensed physician or clinic designated by me, or to destroy my Samples, in each case in accordance with my signed written authorization ("**Authorization**") in the form attached hereto as Exhibit B or checked to destroy (see #7 below). **I acknowledge that XTS will release my Samples only to a licensed physician or clinic**, and will only release Samples if my account is current. Any release or transfer of any Samples in accordance with an Authorization shall be at my sole risk and expense. Without limiting I agree that XTS may inform any person or entity to whom any Samples are released of the existence and results of any tests conducted on my semen/testicular tissue or other bodily fluids, as well as of the risks of becoming infected with infectious organisms or diseases as a consequence of artificial insemination as well as the risk of inherited genetic conditions to any offspring resulting from use of my Samples.

(b) XTS will only release my Samples upon receipt of a signed acknowledgment in the form of Exhibit C from my intimate sexual partner who is to be inseminated using the Samples.

(c) I agree that until XTS receives a certified copy of my death certificate, or other evidence of my death satisfactory to XTS in its sole discretion, XTS shall be entitled to honor (and shall have no liability for honoring) any Authorization. I acknowledge that XTS has no responsibility to honor, and in its sole discretion may refuse to honor, any instruction or document (other than a duly signed Authorization) that purports to give any person other than me any interest in any Samples, or any right to direct XTS to release, transfer or destroy any Samples, other than a release to the

administrator or executor of my estate as described in **Section 7**, or the release or destruction of any Samples pursuant to a government order in accordance with **Section 8**.

~~77777~~. Disposition Upon My Death:

I understand that my legal rights and XTS' obligations concerning the disposition of the Samples after my death are unclear at this time in Georgia. Because of this uncertainty, I agree that neither XTS nor its employees or agents will be responsible or liable in the event that XTS does not comply with my wishes regarding the disposition of any Samples upon my death. Nonetheless, I understand that XTS would like to know my wishes concerning the disposition of the Samples upon my death so that it may attempt to comply with my wishes if they are legally permissible at that time. So that XTS might know my preferences, I have checked one of the following:

**In the event of my death, I would prefer that, and authorize XTS to**

**IF ADULT:**

- a)  Destroy all Samples upon receipt of a copy of my death certificate or other evidence of my death satisfactory to XTS in its sole discretion.
- b)  Release all Samples to the administrator or executor of my estate. To facilitate my estate's disposition of the samples, I hereby declare that the intended recipient of the samples is my intimate sexual partner, named on pg 2 of this agreement. The preceding sentence shall not be deemed to make any present or future sexual partner a third party beneficiary of this agreement or to confer on any such person any right in or to any of the samples. I may amend this agreement at anytime by contacting XTS.

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**IF MINOR:**

- c)  As a minor, if I am fully screened and tested, I agree to permit my guardian(s) to use my semen samples for the intent of producing an offspring.
- d)  As a minor, I prefer to have all samples destroyed upon receipt of a copy of my death certificate.

**I understand that, if I select choice (b), XTS may nonetheless decline to deliver the Samples to my estate without express instructions in my will or court order, as is the present standard in the industry. As mentioned above, the law in Georgia is unsettled concerning the disposition of stored semen/testicular tissue after the death of the client depositor. Accordingly, XTS strongly recommends that I consult with an attorney regarding the disposition of the Samples upon my death if I do not want them to be destroyed.**

~~88888~~. Government Orders:

Notwithstanding any other provision of this Agreement, XTS may release or destroy any or all Samples, without my 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 of competent jurisdiction or upon the issuance of any law, regulation or advisory opinion requiring, in XTS' opinion, the release or destruction of such Samples. For purposes of this Agreement,

“regulation” includes, without limitation, the requirements of any federal and state permits or licenses, held or required to be held by XTS and “agency of competent jurisdiction” includes any authority using any such permit or license.

99999. Limitation of Liability; Indemnification:

(a) I acknowledge that alternative and comparable storage services are available from other semen/testicular tissue storage providers and that XTS’ rates are based on the limitations of liability and the indemnity contained in this **Section 9**.

(b) Except in cases of XTS’ gross negligence or willful misconduct, XTS shall have no liability to me, or any Designated Recipient, or my heirs, estate, legal representatives, spouse or intimate sexual partner, 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 or similar damages), arising out of or in connection with this Agreement or XTS’ performance or nonperformance of its obligations hereunder, 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 for the most recent Storage Year.

**(d) Without limiting any other provision of this Agreement, I hereby irrevocably release and discharge XTS, its employees and agents from, and forever waive, any and all claims, now or hereafter arising out of or related to:**

**(i) The damage, destruction or loss of any or all Samples, except to the extent caused by XTS’ gross negligence or willful misconduct, or**

**(ii) The physical appearance of or 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 insemination using any Samples, except to the extent caused by XTS’ gross negligence or willful misconduct.**

**(e) I agree not to sue or bring other legal action against XTS, and shall not aid or abet anyone else in suing or bringing legal action against XTS, for or on account of any claim which may arise out of the use, storage, release or destruction of any Samples, except to the extent arising out of XTS’ gross negligence or willful misconduct.**

**(f) I agree to indemnify and hold harmless XTS, its 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 destruction of any Samples, including, without limitation, any claim or legal action brought by any person claiming a right of ownership or possession in or to any Sample or by any children resulting from insemination using any Samples, 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 Sample, XTS shall be entitled to tender all Samples into the registry or custody of the United States District Court for the Southern District of Georgia 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 compensation earned under this Agreement prior to such action.

1010101040. 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 10**.

(b) Either party may terminate this Agreement at any time, without liability, upon 90 days' prior written notice. I understand that if either party gives notice of termination under this paragraph, I will have until the end of the notice period to pick up or arrange for alternative storage of the Samples. Any transfer of Samples will be at my risk and expense. **If I fail to claim or to give XTS an Authorization to release and transfer any Samples during such period, XTS may, without further notice and without liability, destroy such Samples.**

(c) XTS may terminate this Agreement if I fail to perform any of my 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 10(c)**, it will continue to hold the Samples 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, I may claim the Samples or arrange for alternative storage of the Samples. Any transfer of the Samples will be at my risk and expense. **If I fail to claim or to give XTS an Authorization to release and transfer any Samples during such period, XTS may, without further notice and without liability, destroy such Samples.**

(d) The termination of this Agreement shall not affect any rights or obligations of the parties occurring prior to such termination. Without limiting the previous sentence, I expressly agree that the provisions of **Section 9** shall survive the termination of this Agreement and remain in full force and effect thereafter.

1111111144. Independent Contractor:

XTS' obligations hereunder are performed as an independent contractor. XTS shall not be deemed to be my fiduciary or to have any similar duty to heirs, my estate, legal representatives or me.

1212121242. Force Majuro:

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, 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.

1313131343. No Third Party Beneficiaries:

This Agreement is solely between XTS and me. There are no third party beneficiaries of this Agreement.

1414141444. 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 14**. The addresses of the parties for purposes of this Agreement are:

If to XTS:

Xytex Tissue Services, Inc.  
1100 Emmett Street  
Augusta, Georgia 30904

If to me:

At the address set forth  
below my signature

1515151545. Miscellaneous:

(a1a1a) In the event any part of this Agreement is found unenforceable, the remainder of the Agreement shall remain in effect.

(b2b2b) This Agreement shall be governed by the laws of the State of Georgia without regard to its conflict of law rules.

(c3c3e) This Agreement, including the Exhibits 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 Exhibits hereto, supersedes all prior agreements and understandings between the parties with respect to its subject matter.

(d4d4e) XTS is authorized to rely on and treat as valid any written authorization, release or instruction purportedly signed by me, unless XTS has actual knowledge that such document is not bona fide.

(e5e5e) The headings and captions contained herein are for convenience only and shall not control or affect the meaning or construction of any provision. Any reference in this Agreement to the freezing of any Sample shall not apply to (and XTS shall have no obligation with respect to the freezing of) any Sample that has been frozen by a third party before delivery to XTS.

(f6f6f) This Agreement may be amended, modified or supplemented only by written agreement of the parties hereto.

(g7g7g) This Agreement shall be binding upon and inure to my benefit and the benefit of my heirs, legal representatives and estate, and to the benefit of XTS, its successors and assigns. I may not assign my rights or duties under this Agreement without prior written consent of XTS.

IN WITNESS WHEREOF, I have executed this Semen/Testicular Tissue Storage Agreement as of the date written on page 1.

**I acknowledge that I have had an opportunity to consult with medical advisors and legal counsel of my choosing:**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Signature of Depositor

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Guardian(s) (If client depositor is a minor, signature of legal guardian is required)

\_\_\_\_\_  
Printed name of Guardian

**Reviewed By:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_