

# **EXHIBIT B**

## **STORAGE AGREEMENT**



508 WEST 6<sup>th</sup> AVE. SUITE #801 1-800-786-5251 (509) 232-0132

SPOKANE, WA 99204 Fax (509) 232-0145 E-MAIL: info@nwcryobank.com

## GAMETE STORAGE AGREEMENT

FOR STORAGE OF CLIENT DEPOSITOR GAMETE SPECIMENS  
For Anonymous Donor, Intimate Partner Donor, or Directed Donor use

This agreement is made and entered into by and between NW Cryobank (Cryobank), and

\_\_\_\_\_  
Client Name Last MI First (please print clearly in ink)

a Client, at Spokane, WA., with reference to the following facts:

For purposes of this Agreement, the following terms are defined as stated below:

*1-Gametes:* Sperm or Oocytes (eggs)

*2-Intimate Partner Donor (IPD):* The donors' gamete specimens are to be used solely for reproductive purposes with the donors' sexually intimate partner.

*3-Directed Donor (DD):* This type of arrangement covers any gamete donation made by a donor for directed use by another (specific) known non-intimate party. This situation covers a friend donating for someone, as well as a family member donating for another family member. If the donor and recipient are not intimate partners then it must be by definition, a directed donor arrangement.

Whereas, client wishes to have their cryopreserved (frozen) gamete specimens stored in liquid nitrogen for possible thawing at some future date; and

Whereas, Client has been fully advised and understands that there are certain inherent risks in the process of freezing, storage, shipping, handling, and thawing of gamete specimens, including but not limited to damage and mortality to the specimen, reduced capacity for biological functions and/or fertilization, and reduced lifespan after thawing, and assumes all such risks; and

Whereas, the parties agree that Cryobank shall store clients' gamete specimens pursuant to the terms and conditions set forth below;

Now, therefore, pursuant to the foregoing recitals and terms, conditions and covenants contained herein, agree as follows:

1. Cryobank shall store clients' gamete specimens. This agreement shall automatically renew at the end of the designated period for an additional period unless terminated pursuant to the provisions provided below.

\_\_\_\_\_  
client initials

2. Client(s) hereby agree/s to pay in advance the storage charge for each billing cycle. Storage charges are subject to change. Cryobank shall give written notice prior to the expiration of pricing agreement. All charges shall be promptly paid within 15 days of billing if client wishes to have the storage agreement renewed. Cryobank shall release the vials/straws of client gamete specimens only to the registered client or to the designee upon the written or oral authorization of the client and only if all then due storage charges are paid in full. All conditions and procedures for release shall be reasonably established by the Cryobank.

\_\_\_\_\_  
client initials

3. This agreement shall terminate, and Cryobanks' responsibility for storage shall cease upon the happening of any of the following events:

- A. Release of the gamete specimen(s) by written, or verbal authorization of client or clients' physician, or other designee;
- B. Written direction of client depositor to the Cryobank authorizing destruction of all gamete specimens currently stored; or
- C. Failure of client to pay storage charges as described above, or failure of client to provide completed new specimen storage agreement to Cryobank as updates in this agreement are requested. Any such updated agreements will be provided to client at the time of renewal for sperm storage. Client will be provided 30 days for the completion and submission of any such updated storage agreement in order to continue storage with Cryobank.

\_\_\_\_\_  
client initials

- 4. In the event of termination of the agreement by reason of failure of client depositor to pay storage charges, Cryobank will destroy the gamete specimens. Cryobank will only be responsible to send notice to the last available address thirty days in advance of specimen destruction.

\_\_\_\_\_  
client initials

5. **LIMITATION OF LIABILITY  
WAIVER OF CLAIMS / LIQUIDATED DAMAGES**

The client hereby acknowledges, and by placing his initials where indicated below confirms, that the following provisions concerning the limitation of the Cryobanks' liability have been specifically negotiated and bargained for and that they form a portion of the consideration in support of this Agreement.

\_\_\_\_\_  
client initials

The services rendered by the Cryobank in connection with this Agreement are elective, non-essential, and exclusively for the benefit of the client. The client could obtain said services from a facility or provider other than Cryobank. The client understands that there are risks inherent to the processes that are the subject of this Agreement. Without limiting the generality of the foregoing, these include the freezing, storage, handling, transportation, and thawing of gamete specimens. Said risks may result in the unintentional and /or negligent loss, destruction and/or rendering of the specimen ineffective for the purposes of fertilization. While steps are taken to control said risks, the Cryobank is not, and the client does not expect the Cryobank to be a guarantor or insurer of the security, uninterrupted possession, integrity, and/or viability of the gamete specimen, or any of them, stored hereunder. Having acknowledged the existence of these risks, the client hereby exclusively assumes the same.

\_\_\_\_\_  
client initials

In the event of the loss or destruction of the gamete specimen(s) stored hereunder, or any of it, by any reason or cause whatsoever, the client agrees that the harm they will suffer in connection therewith is highly conjectural and speculative, and extremely difficult, if not impossible to determine with any degree of certainty. As such, the parties agree that in the event that any gamete specimen stored hereunder is lost or destroyed as a result of any cause whatsoever, including the negligence of the Cryobank, its' officers, directors, employees, independent contractors, and/or agents, (hereinafter the "Potential Liable Parties"), the client's sole and exclusive remedy as to the Potentially Liable Parties are hereby limited to an amount equal to the storage charges paid by the client for the calendar year in which said loss is alleged to have occurred, plus one hundred dollars (\$100.00) per vial/straw stored. In this regard, the tender by the Potentially Liable Parties of said amount shall bar any and all further

claims by the client against the Potentially Liable Parties, or any of them, in connection therewith. The client acknowledges that the storage fees charged in connection herewith are very nominal, especially in relation to conjectural and speculative nature of potential claims of harm as referenced herein.

\_\_\_\_\_  
client initials

Client further agrees to indemnify, defend and hold Cryobank harmless from any claim for damages, demand, and/or cause of action, of whatever nature, brought by any third party in connection with or in any way related to the gamete specimen, or any of them, that are the subject of this agreement. The provisions of this paragraph shall extend to and include Cryobank, its officers, directors, shareholders, agents and independent contractors.

\_\_\_\_\_  
client initials

Notwithstanding the foregoing, Client further understands that in the event of any dispute arising between or among the Client and those persons that Client has authorized release of specimens to, or either of them, and any third party as to competing or inconsistent claims of entitlement to possess, control or dispose of the specimen(s), or any of them, Cryobank shall not be required to determine such claims, or to take any action in the premises, but Cryobank may await settlement of the controversy by final, appropriate legal proceedings, or otherwise, as it may require, or Cryobank may, at its sole and exclusive option, file a suit in interpleader in Spokane County Superior Court, Spokane, Washington, for the purpose of having the respective rights of the disputing parties adjudicated.

\_\_\_\_\_  
client initials

The prevailing party in any action or proceeding arising out of or in any way related to the Storage Agreement shall be entitled to recover from the non-prevailing party, in addition to any other amounts recovered, their reasonable attorney's fees and costs incurred therein

\_\_\_\_\_  
client initials

6. Any notices to be provided to Client hereunder shall be sent to the address set forth below or to such other address as a party may request in writing. Client depositor acknowledges that it is their obligation to provide in writing, a correct mailing address for Client to Cryobank.

\_\_\_\_\_  
client initials

7. Notwithstanding any other provisions herein contained, either party may terminate this agreement upon 30 days written notice to the other. In the event said client depositor gives notice of termination, the storage fee for the then current period shall be deemed totally earned by Cryobank. In the event such notice is given by Cryobank, any unused portion of the storage charge for the then current period shall be pro-rated and refunded upon release of client's vials/straws of gamete specimens stored by Cryobank. Client shall be obligated to make arrangements for transfer, use, or disposition of the specimens if this agreement is terminated for any reasons other than clients' death or failure to pay storage charges. Cryobank shall exercise its best efforts to cooperate with client depositor in the transfer and release of the specimens.

\_\_\_\_\_  
client initials

- 8. Client understands that all gamete specimens shall be stored in special containers in an inert gas called nitrogen compressed to liquid form. The straws, vials and containers may ultimately fail to function correctly at these ultra low temperatures because of structural, mechanical or other failure. We understand that such failure may happen despite the supervision and maintenance by the Cryobank and its staff.

\_\_\_\_\_   
 client initials

- 9. Client hereby agrees that Clients' gamete specimens are available for release to the following parties listed below, once those parties have completed the registration process with NW Cryobank, for their use and/or destruction. Specific situations could prevent the release of the Clients' specimens to another party for their use which include but are not limited to the following:

- The gamete specimens have not been released from quarantine.
- The use of the specific donor has been restricted due to a significant medical update by the donor or the number of pregnancies achieved by clients utilizing the donor.
- The client purchasing and storing specimens cannot utilize this agreement as a way to sell/provide specimens to a third party who would not be eligible to register and become a client of NW Cryobank. (example: a female 14 years of age)

Client hereby further agrees that the parties listed below have my authorization and authority to submit a signed, dated and notarized request on my behalf for NW Cryobank to destroy the specimens I have in storage. The authorized parties are not required to complete NW Cryobank's registration process. I understand that once the specimens are destroyed. The specimens are no longer available and that the process is not reversible.

Client(s) is aware that any person designated for access to Clients' specimens will have full access to any and all specimens under this Storage Agreement (**Client must choose option A or B below and provide the appropriate initials and or other information. Do not leave blank.**)

A. Client him/herself only \_\_\_\_\_ default option, or   
 client initials

B. Client and/or the person(s) designated below \_\_\_\_\_   
 client initials

(Please provide complete name, address, email, and phone number of any and all designees in the space provided below)

**#1** Last Name: \_\_\_\_\_ MI \_\_\_\_\_ First Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

**#2** Last Name: \_\_\_\_\_ MI \_\_\_\_\_ First Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

Please provide any additional designee information on an additional sheet of paper attached to this agreement and titled "Part 9, Additional Designees". Client alone is responsible for notice Cryobank of any change in contact information in regard to designees indicated in this section of the Agreement. Cryobank cannot be held responsible for locating any designee, other than by the information provided here by client(s).

\_\_\_\_\_  
client initials

10. For IPD or DD gamete specimen storage or for Anonymous donor specimens transferred from another facility, client further agrees to provide to Cryobank a copy of laboratory disease testing results, or proof of such testing, as Cryobank shall request. Minimum requirements for said testing will be those tests required by the FDA at the time of original specimen manufacture, but may not be limited to those criteria. Cryobank retains the right to refuse shipments, and/or to provide storage services for specimens that do not meet disease-testing requirements, or labeling requirements as reasonably set forth by Cryobank.

\_\_\_\_\_  
client initials

Cryobank requires the following testing for storage of IPD (intimate partner donor) specimens, HTLV I/II, HIV 1 & 2, and Hepatitis C. (Without full directed donor (DD) testing as noted below, IPD specimens can never be donated to be used by any non intimate partner in the future. IPD specimens can only be identified by Donor name on the storage container.

Cryobank and the FDA require the following testing for storage of DD (directed donor) and Anonymous Donor specimens. HTLV I/II, HIV 1 & 2, Hepatitis C, HEP B SURFACE AND CORE, RPR (syphilis), CMV IgG/IgM, N. Gonorrhea, Chlamydia, and any other disease determined to be relevant for such purpose as determined by the FDA. Should Client wish to act as a DD, then at Clients' option, specimens may be identified by a random, but unique donor number by Cryobank.

\_\_\_\_\_  
client initials

11. Client must decide on the potential future disposition of any stored gamete specimens, under the conditions listed below, prior to this agreement becoming enforceable. Since this is a rapidly evolving field both medically and legally, one cannot be certain what the available or acceptable avenues of disposition will be at any future time. At present, the alternatives are discarding the specimen, or donation for research purposes only for IPD specimens, but includes possible donation to another recipient if frozen under DD (directed donor) standards.

Subject to the above, Client understands that:

- A. In the event of divorce or dissolution of Clients' marriage or other legal partnership, the ownership and/or rights in and to the gametes will be as directed by the decree. If the decree does not address this matter Cryobank shall have the right to release specimen(s) to any of the parties entering into this agreement or their designees as described herein. Client cannot hold Cryobank responsible for knowing of the dissolution of the marriage/legal partnership unless notified by certified mail prior to the release of any stored specimens.
- B. In the event of client death, the ownership and/or other rights in and to the specimen(s) shall revert to any legally recognized surviving spouse/partner, or their designees as described herein.
- C. On the death of the client and legally recognized spouse/partner, and all other designees, the ownership and/or rights to the specimen(s) shall revert to the Cryobank. Client(s) hereby agree that

in this event, clients' specimen(s) are to be disposed of as follows (you must initial one option only, do not leave blank)

- \_\_\_\_\_ -Discarded/destroyed, no use whatsoever
- \_\_\_\_\_ -Donated to another couple if possible (DD), or destroyed
- \_\_\_\_\_ -Used for research if possible, or destroyed

In any event, it is understood that the Cryobank and its' staff must abide by any applicable federal, state or local laws or regulations in meeting those arrangements.

\_\_\_\_\_  
client initials

12 This instrument represents the entire agreement between parties, and no understandings, agreements of representations exist other than as herein set forth. No express or implied warranties of merchantability fitness for a particular purpose exist. The agreement shall be binding upon the parties and their respective assigns, heirs, personal representatives, and administrators. This agreement shall be construed in accordance with the laws of Washington; and if any portion thereof is determined to be unenforceable, the remaining provisions hereof shall be fully enforceable in accordance with their terms. This Agreement contains provisions that are contractual in nature and not mere recitals. By placing their initials on this agreement where indicated and signing below, the client acknowledges that the effect of these provisions includes the clients' known waiver of otherwise potentially unlimited claims for damages, and the clients' agreement to specifically limit the liability of the Cryobank as provided herein.

The Client acknowledges that these provisions and this agreement have been negotiated and bargained for by the parties after full and fair opportunity of the client to consult with independent legal counsel of their choosing.

\_\_\_\_\_  
client initials

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Client: \_\_\_\_\_  
Signature

Last Name: \_\_\_\_\_ MI \_\_\_\_\_ First Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

**Optional Contact Information**

Emergency Contact Person; should we be unable to contact you with the information you have provided above and the destruction of your specimens becomes imminent. (i.e. should you move or change phone numbers and fail to contact the Cryobank)

Last Name: \_\_\_\_\_ MI \_\_\_\_\_ First Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_