



COMPANY CONFIDENTIAL AND PROPRIETARY

<b>DATE EFFECTIVE: 06/12/13</b>	<b>Donor Oocyte Storage Client Agreement</b>	<b>FORM: FOR-121C REV: A</b>
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**Fairfax Egg Bank**

3015 Williams Drive, Fairfax, VA 22031  
info@fairfaxeggbank.com • www.fairfaxeggbank.com  
(888) 352-5577 phone • (703) 245-7059 fax

This agreement is made and entered into by and between Fairfax Egg Bank (hereafter referred to as “Fairfax”) and \_\_\_\_\_, an individual (hereafter referred to as the “Client”), for the purpose of storing Donor Oocytes/Eggs (hereafter referred to as “oocytes”).

WHEREAS, the Client has oocytes from Fairfax and the oocytes shall continue to be stored by Fairfax.

WHEREAS, Fairfax provides the service of storing stated oocytes if the requirements of this agreement are met.

WHEREAS, the Client has been fully advised and understands that there are certain inherent risks in the process of thawing of such oocytes, including but not limited to: damage to the oocytes, mishandling during shipment, loss during shipment, and cryopreservation tank failure during shipment or storage, that could result in reduced capacity for fertilization or survival, and reduced life span of oocytes after thawing, rehydration and removal of cryoprotectant buffers, and culture prior to transfer in the recipient; all of these risks the Client assumes.

WHEREAS, the parties agree that Fairfax will store the Client’s oocytes according to the terms and conditions as set forth in this Agreement. The foregoing preamble is incorporated herein in its entirety.

NOW, the parties agree as follows;

1. The Client shall purchase oocytes from Fairfax and desire the storage of oocytes by Fairfax. The Client asserts that he or she has the authority to store the oocytes because he or she is the owner of the oocytes.
2. Fairfax will store the Client’s oocytes in accordance with Fairfax’s procedures in the usual facilities maintained for that purpose until this Agreement is terminated in the manner provided in paragraph 13.
3. The Client acknowledges that he or she has received from Fairfax oral and/or written information explaining procedures for storage and release of the oocytes. The Client acknowledges that he or she has been informed of the costs associated with the services to be provided under this Agreement which include but are not limited to: storage, release, and distribution.
4. The Client has read and understands that any original signed addendum to this storage agreement must accompany this agreement when initiated. Agreement does not supersede signed terms of use.
5. The Client understands and agrees that the egg donor has been tested in accordance with FDA regulations at the time of oocyte retrieval.
6. The Client hereby agrees to pay storage fees by a pre-paid billing agreement **or** on a monthly basis, including any collection fees for failure to pay. **It is understood that this agreement shall be continuous unless terminated pursuant to the provisions of paragraph 13.** Compensation for services rendered and expenses incurred by Fairfax under this Agreement shall be set by Fairfax, and may be adjusted from time to time by Fairfax based upon market factors including but not limited to increases in costs. Periodically, the storage charge may be increased to an amount equal to the storage fee that is currently being charged to new clients. The Client also agrees to pay a handling fee, shipping fee, shipping tank fee (outgoing & return), and any outstanding fees each time one or more

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oocytes(s) is/are removed from storage. Fairfax shall give written notice to the Client of any storage fee increase for the forthcoming period.

7. **IMPORTANT NOTICE: PARENTAL RIGHTS OF CHILD.** The Oocyte Donor has given up her parental rights, per her agreement with Fairfax. **PRIOR TO USING THE OOCYTES, PLEASE CONSULT WITH AN EXPERIENCED ATTORNEY REGARDING PARENTAL RIGHTS OF THE CHILD.**
  
8. Provided the oocytes have not left Fairfax, the client may release the purchased cohort at any time effective upon Fairfax's receipt of a signed written notice from client. The client understands and agrees that upon the release of the purchased cohorts, Fairfax will have the sole ownership of the purchased cohorts. Upon any such release, and except as provided below, the client will receive a refund as follows:
  - a. If the release occurs before the fifth anniversary of the date of storage agreement, then the client will receive a refund of 50% of the original purchase price.
  - b. If the release occurs on or after the fifth anniversary of the date of storage agreement, then the client will receive a refund of 25% of the original purchase price.
  
9. Fairfax shall release the vials or straws of the Client's oocytes only to the Client or to his or her designee at the expressed written authorization of the Client. The Client understands that medical records will be sent to the physician performing a warming and/or to the Recipient of the oocytes for their evaluation and use. Accordingly, the Client hereby authorizes Fairfax to release his or her medical records and all other individually identifiable health information, whether or not contained in the Client's medical records, regarding any past or present medical conditions, including but not limited to: Client account number, oocyte quality, order history, and medical information to such a physician and Recipient the Client has identified to use the oocytes. The Client understands that this authorization is voluntary and that if the individual or entity authorized to receive this information is not a covered entity under federal privacy regulations, the release of such information may no longer be protected by federal privacy regulations. The Client also understand that once this information is used or disclosed pursuant to this authorization it may be subject to re-disclosure by the physician, and the Recipient may no longer be protected. The conditions and procedures for release shall be those reasonably established by Fairfax, with which the Client hereby agrees to comply. The Client understands and agrees that the procedures established by Fairfax may be modified at the sole discretion of Fairfax to reflect changes in industry practice, laws, or regulations. As of the date of this Agreement, the release procedures are as follows:
  - a. *During the Client's lifetime:* The oocytes stored by Fairfax for the Client shall remain his or her property and will be released (1) to a licensed physician or the physician's designee, (2) for use with the Client or the Client's designee with the intent to create a child, and (3) upon the authorization of the Client.
  - b. *Upon the Client's death:* This Agreement terminates upon the death of the Client. If the Client has a written and notarized statement signed by the Client during his or her lifetime stating an intention for use of the oocytes for procreation after the Client's death and granting ownership of stored tissue samples to a designee, disposition of the oocytes will be in accordance with the instructions following (1) notification of Fairfax in writing within 60 days after the first storage invoice following the date of the Client's death, (2) a certified copy of the Client's death certificate, and (3) if the Client's surviving designee elects to continue storage of the oocytes for his or her exclusive use, a written and notarized statement signed by the designee electing to take ownership of any remaining oocytes(s), then the oocytes stored by Fairfax shall become the property of the designee of the Client with all of the Client's rights and obligations transferred to the designee upon payment of applicable storage fees and completion of new agreement.



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**CHOOSE ONE:**

- I understand that my oocytes(s) can be used for the purpose of procreation by my surviving designee if all of the conditions of 8b are met.*
- Upon my death, I elect to have all of my stored oocytes destroyed, regardless of the desires of any surviving designee.*

**Client's Initials** \_\_\_\_\_

10. This agreement also represents the authorization for the transport of frozen oocytes, unless other documentation is required per Fairfax procedures. The Client has been fully advised and understands that there are certain inherent risks in the process of shipping and handling of the oocytes during shipment, including but not limited to loss during shipment and liquid nitrogen tank failure that may render the oocytes useless. This is a rare event; however, Fairfax offers the option to ship the vials or straws containing the oocytes in separate tanks (provided that there are at least two cryotops or storage devices to be shipped). The Client is responsible for paying the shipping costs for each tank shipped. The Client is willing to assume all of these risks and the Client fully understands and accepts that Fairfax, a division of Genetics and IVF Institute, Inc., its laboratory directors, and its laboratory personnel, do not assume responsibility or liability for the transportation, condition, or survival of the frozen oocytes.

If the shipment is to a destination outside of the United States, the Client is responsible for arranging for any requisite customs or other permits and, prior to shipment, the Client must provide Fairfax with copies of these permits or provide Fairfax with a written statement to the effect that no permits are required. The Client acknowledges that international shipments are subject to delay and to an increased risk of damage and, consequently, an increased risk of damage to or loss of the frozen oocytes; the Client assumes this increased risk.

11. The Client agrees that in the event of loss or destruction of the Client's oocytes by any reason whatsoever, damages as a result thereof would be highly conjectural and speculative and would be difficult to determine. Accordingly, pursuant to § 8.7-204(2) of the Virginia uniform commercial code, the Client agrees that in the event that his or her oocytes is lost or destroyed by virtue of negligence by Fairfax, the Client will be entitled to damages in the amount equal to the storage charge for the particular year in which the loss occurs, plus a refund of the amount equivalent to the price per unit paid at the time of purchase.
12. As part of the consideration by the Client in agreeing to ship the Client's frozen oocytes to another clinic or facility, the Client hereby agrees that any dispute arising out of this consent or directly related to the quality of care provided by Fairfax or any of its physicians, nurses, counselors, or other personnel will be decided only through arbitration by JAMS under the JAMS Streamlined Arbitration Rules and Procedures. The Client further agrees that any binding arbitration proceeding shall be conducted in Fairfax County, Virginia, the location of Fairfax, and agrees that any arbitration proceeding shall be conducted in accordance with the laws of the Commonwealth of Virginia, including, but not limited to: standard of care issues, causation issues, damage issues, qualification of experts, and rules of evidence. The Client further agrees that the decision of the arbitrator(s) shall be binding and final and shall be enforced in any court of competent jurisdiction. Any arbitration costs shall be borne equally between Fairfax and the Client. If, notwithstanding the parties' agreement to arbitrate, any dispute becomes subject to a judicial proceeding, the parties agree to waive trial by jury.

If any action or proceeding is brought to enforce or interpret any of the provisions of this consent, the prevailing party shall be entitled to recover its reasonable attorney's fees and other reasonable costs expended in such an action or proceeding.

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13. This agreement shall terminate and Fairfax responsibility for storage shall cease upon the happening of any one or more of the following events:
- a. Fairfax reserves the absolute right to terminate this agreement by written notice to the Client if it is determined that the oocytes are inappropriate for storage.
  - b. The Client fails to complete and return signed original Agreement and necessary paperwork for storage.
  - c. Release of the oocytes by written authorization of the Client.
  - d. Written notarized direction of the Client to Fairfax authorizing destruction of all oocytes then presently stored.
  - e. Failure to pay the storage charges due resulting in the termination of this Agreement and the abandonment of the oocytes.
    - i. If at any time Fairfax has not received full payment of all amounts due under this Agreement by 180 (one hundred eighty) days from the due date, the nonpayment of the full amount shall result in the termination of this Agreement and abandonment of the oocytes. If at any time storage charges are due and owing but remain unpaid, Fairfax will pursue collection of the storage charges, including referral of claim to a collection agency. In that event, the Client agrees to pay all costs of such collection including any reasonable fees charged by the collection agency, other costs of collection, and reasonable attorney's fees.
    - ii. **It is imperative that the Client notify Fairfax of any change in address, extended absence, or sabbaticals.** Fairfax will send written notice, via U.S. Mail, of non-payment from Fairfax to the Client at his or her latest address on file at Fairfax. If a notice is returned for insufficient address or similar reason, or if no written response is received from either the Client or the Client's representative, it is agreed that this Agreement is terminated.
  - f. Death of Client. Disposition of the stored oocytes will be in accordance with the Client's instructions following receipt of a copy of the formal death certificate issued by the appropriate authority of the state in which the Client resided at the time of his or her death and a notarized copy of the statement described in paragraph 9b.
  - g. The fee for an additional cohort purchase and single cycle basic treatment does not include oocyte storage fees. If the Recipients elect to store the purchased cohort with Fairfax and fail to pay the associated storage fee, then, without need for further action, ownership of the purchased cohort will be transferred to Fairfax and Recipients will receive a refund in such amount as specified in Section 8 above. The date the unpaid egg storage fee was due will be the date of transfer of ownership and the release date for purposes of calculating the refund under this Section 8.
14. Upon termination of this Agreement, any remaining oocytes held in storage by Fairfax shall become the sole and exclusive property of Fairfax; all right, title, claim and interest therein being transferred, conveyed and delivered to Fairfax by the execution of this Agreement.
15. Either party may terminate this agreement upon 30 days written notice to the other. Upon termination, any past due or current storage fees are still required to be paid in full before the Client's account is closed. Failure to pay unpaid fees will be handled as described in paragraph 13. In the event such notice is given by the Client and the Client has an annual or multi-year contract, the storage fee shall be prorated over the storage period used based on the current monthly storage rate then in effect, an administrative fee applied, and the remainder, if any, refunded to the Client upon receipt of a signed release for the Client's oocytes(s) stored by Fairfax. In the event such notice is given by Fairfax, the storage fee shall be prorated over the storage period used and the remaining prepaid storage fee refunded upon receipt of a signed release for the Client's oocytes(s) stored by Fairfax. It shall be the Client's obligation to make arrangements for transfer, use, or disposition of the oocytes in the event of a termination of this contract for any reason other than the Client's death or failure to pay storage charges. Fairfax shall exercise its

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reasonable best efforts to cooperate with the Client in the transfer and release of the oocytes.

16. It is specifically acknowledged and agreed by and between the parties hereto that there is an inherent risk in the process of collection, freezing, storage, and thawing of oocytes that may render them ineffective for a reproductive procedure and that the Client has expressly agreed to assume this risk. The Client also understands and agrees that the viability of the oocytes and the results from any reproductive procedure also depends upon health and age of the Client/ Recipient and quality of the sperm. The Client understands this information and has been given the opportunity to ask questions and receive adequate additional information to make an informed decision.
17. The Client understands that Fairfax may keep the Client's name, address, and required health information on file indefinitely. However, the Client's information will be kept confidential and used only to comply with the terms of this agreement. Any information obtained during these procedures that may identify the Client will remain confidential and will be disclosed to individuals not connected with this agreement only with the Client's written permission. The Client understands that photographs or videotapes may be taken of him, her, or the oocytes as a permanent record and for identification. The Client understands that he or she has the right to review this information at any reasonable time, and the Client acknowledges and agrees that any government agency with legal authority to do so may also review such records.
18. In the event Fairfax terminates the operation of its storage facility, it may, 30 days after providing written notice to the Client (or to the surviving partner/designee) at his or her last known address, assign and transfer its obligations and the oocytes held on behalf of the Client to a similar storage facility.
19. It shall be the Client's obligation to make arrangements for transfer or disposition of the stored oocytes. Fairfax shall exercise its reasonable best efforts to cooperate with the Client in the transfer of the Client's stored oocytes.
20. The Client understands and accepts that Fairfax, its physicians, laboratory directors and laboratory personnel do not assume responsibility or liability for the transportation, condition, or survival of the oocytes or the physical, mental, or other characteristics of any child or children born as a result of the use of the stored oocytes.
21. The Client further agrees to indemnify, defend, and hold harmless Fairfax and its past, present, or future officers, directors, employees, agents, assignees, contractors and affiliates, from any and all claims, demands, causes, charges, costs, expenses, obligations, or action for damages or otherwise asserted against Fairfax arising out of the, storage, shipping, handling, thawing, disposition and any other action involving the receipt, handling, transfer, disposition or release of the Client's oocytes.
22. If the Client names Fairfax or any of its employees or agents party to any litigation arising from any disagreement between the Client and their spouse, or intimate partner, as to the rights of either/ both of them, or as to each other, or as to Fairfax, the Client or his or her estate shall be liable for the reasonable attorney's fees and other cost of Fairfax in such litigation. Also, if any action or proceeding is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and other reasonable costs expended in such an action or proceeding.
23. Any notices to be provided to a party hereunder shall be sent to the address set forth beneath the party's signature or such other address as a party may request in writing be used for that purpose. The Client (or the surviving partner/designee, if applicable) shall keep Fairfax informed in writing at all times during the term of the agreement of any change in address, including current mailing address, email addresses, and telephone number. The Client shall advise Fairfax promptly in writing on each change of address or prolonged absence from the last address on



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file. The Client acknowledges that his or her current mailing address is set forth on the patient information form provided with this Agreement, and acknowledges that it is his or her obligation to provide in writing to Fairfax any change in address.

- 24. If any provision of this Agreement is found to be invalid or unenforceable by any court, that provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions hereof, unless such invalidity and unenforceability would defeat an essential purpose of this Agreement.
- 25. This represents the entire agreement between the parties concerning the subject matter; and there are no understanding, agreements, or representations other than as herein set forth. This Agreement shall be modified only by a writing signed by all parties.
- 26. The agreement shall be binding upon the parties and their respective assignees, heirs, executors, and administrators. This agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, USA.
- 27. Fairfax is a division of Genetics & IVF Institute, Inc., a Virginia corporation. All references in this Agreement to "Fairfax" shall be deemed to include Genetics & IVF Institute, Inc., unless the context otherwise requires.

By providing a signature below, the Client expressly agrees that his or her failure to comply with the terms of this Agreement will constitute termination of this Agreement, and shall result in the abandonment of said oocytes to Fairfax.

This agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by

\_\_\_\_\_

(Client's signature)

\_\_\_\_\_ Account #: \_\_\_\_\_

(Print client name)

(Fairfax will complete)

\_\_\_\_\_

If applicable, Partner's signature

Partner's printed name

**Fairfax will complete:**

The Fairfax Representative signs below agreeing to provide all services referred to in the agreement.

Fairfax representative printed name	Signature	Date
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