

## SHIPPING AGREEMENT

### 1. SCOPE OF AGREEMENT

a. This Shipping Agreement (“Agreement”) sets forth the terms by which Xytex Corporation and its independent operating affiliates (hereafter “Xytex”) agrees to ship cryogenically frozen human tissue (“Specimens”) to the undersigned individual (“Client” or “Intended Patient”). The Parties hereby agree to be bound by the terms of this Agreement.

### 2. SHIPPING TERMS AND CONDITIONS

a. Dewar Return/Late Fees: Xytex ships Specimens in cryogenic storage dewars (“Dewar”). The packaging for each Dewar contains a pre-paid return label and shipping instructions. The box the Dewar arrives in serves as the return shipping container. Client acknowledges and agrees that Client is responsible for ensuring the return of each empty Dewar. Dewars not returned to Xytex within eight (8) days from the Ship Date listed will incur a late return fee of \$40.00 per day. An additional fee of \$850.00 will be charged for each Dewar which is lost or not returned to Xytex within thirty (30) days of the Ship Date. Xytex reserves the right to apply any Client deposit against outstanding late fees. Client is responsible for informing Client’s healthcare provider of Xytex’s Dewar return and late fee policies.

b. Dewar Warranty: Xytex warrants its Dewars will remain suitable for the transport of cryopreserved Specimens for a period of seven (7) days starting with the Ship Date so long as the seal on the Dewar remains unopened. Client acknowledges and agrees Xytex is not responsible for damages to Client’s Specimens resulting from the negligence of any transportation courier once the Dewar leaves a Xytex facility.

c. No Specimen Storage: Once a sealed Dewar is opened, Client, or Client’s healthcare provider, is responsible for ensuring all of Client’s unused Specimens are transferred to a suitable cryogenic storage container. ***Opened Dewars are not suitable, nor should they be used, for cryogenic storage of Specimens. Specimens may not be returned to Xytex to be placed back into storage.***

d. Dewar Ownership/Condition: Ownership of each Dewar shall at all times remain with Xytex. Client agrees not to deface, destroy, remove or cover any tag or name plate on any Dewar showing the serial number or identifying such Dewar as Xytex property.

e. Shipping Delays: Xytex is not responsible for any shipping delays incurred by any third-party courier, including but not limited to weather or storm delays. Xytex will not replace vials or reimburse Client for the cost of vials or freight fees resulting from the abovementioned courier and/or weather delays. In the event of any anticipated inclement weather or other delay, Client is encouraged to verify the status of the courier’s operations on their website.

f. Shipping Information: Client understands it is Client’s responsibility to provide an accurate shipping address, and Xytex shall not be responsible for any damages resulting from Client providing inaccurate shipping information.

### 3. PAYMENT OF FEES

a. Client hereby agrees to pay all fees stated in Sections 2, above. Xytex reserves the right to periodically adjust its fees. Xytex accepts payment by major credit cards or check. Payments by check must allow for the funds to be deposited and available to Xytex before an order will be processed. For payments by major credit card, Client represents Client is an authorized user of the credit card, and Client authorizes Xytex to charge the credit card for the services at the time an order is placed. Client agrees to pay any credit card processing fees charged by the credit card company.

### 4. NO WARRANTIES/LIABILITY LIMITATION

a. ***Working with and shipping human reproductive tissue involves risk, uncertainties, and costs.***

b. ***With the exception of the Dewar warranty stated in Section 2 above, all Xytex products and services are provided “AS IS” with no representations or warranties of any kind, either express or implied including without limitation implied warranties of merchantability or fitness for a particular purpose.***

c. ***Client agrees that damages in the event of a loss or destruction of Client’s Specimens would be highly conjectural, speculative, and difficult to determine. Therefore, Client agrees that Xytex’s liability related to services performed under this Agreement shall be limited to the amount equal to the fees paid by Client for shipping specimens under this Agreement. Xytex shall not be***

*liable for any special, incidental, consequential, compensatory, punitive, or exemplary damages, including costs and expenses associated with infertility treatment, in connection with this Agreement.*

## 5. INDEMNIFICATION

*a. Client agrees to indemnify, defend and hold harmless Xytex and its owners, shareholders, subsidiaries, officers, directors, employees, agents, representatives, contractors, healthcare providers, vendors, successors and assigns, from any and all claims, losses, demands, damages, liabilities, offsets, charges, costs, obligations, or causes of action and expenses, including attorneys' and experts' fees, asserted by any third party, including Client's spouse, intimate partner, offspring, surrogate or gestational carrier, against Xytex arising out of or related to this Agreement.*

## 6. DISPUTE RESOLUTION

a. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration before a panel of three (3) arbitrators. Within fifteen (15) days after the commencement of arbitration, each Party shall select one person to act as arbitrator, and the two so selected shall select a third arbitrator within thirty (30) days of the commencement of the arbitration. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent and impartial arbitrators. For Clients based in the United States of America, the arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. For international Clients, the arbitration shall be administered by JAMS pursuant to JAMS' International Arbitration Rules. The place of arbitration will be in **Richmond County, Georgia** and the language used in the arbitral proceedings will be English. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This clause shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Arbitration costs will be borne equally between Xytex and Client. If the arbitrators determine a Party to be the prevailing Party under circumstances where the prevailing Party won on some but not all of the claims and counterclaims, the arbitrators may award the prevailing Party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration. The Parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.

## 7. GENERAL PROVISIONS

a. Governing Law, Jurisdiction, and Venue: This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Georgia. In the event that the arbitration clause in section 6 is invalidated or voided, or there is a judicial challenge to an arbitration award, the Parties agree that the venue for any subsequent litigation shall be the state or federal courts in **Richmond County, Georgia** and the Parties agree to the personal jurisdiction in the state and federal courts in Richmond County, Georgia. **The Parties further agree that they irrevocably waive any right to a jury trial.**

b. Termination: Xytex may unilaterally terminate this Agreement if the Client's acts or omissions are deemed by Xytex to be harmful to Xytex's business operations or reputation.

c. Headings: The headings in this Agreement are for convenience of reference only and are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

d. Entire/Prior Agreement: This Agreement represents the complete and exclusive statement of the mutual understanding of the Parties and supersedes and replaces any previous shipping or substantially similar Agreement entered into between Xytex and Client.

e. Severability: If any provision of this Agreement is found to be unlawful, void, invalid or for any reason unenforceable by any court, then that provision shall be deemed ineffective and severable from this Agreement only to the extent it is in contravention of applicable laws and shall not affect the validity and enforceability of any remaining provisions.

f. Compliance with Foreign Laws: Xytex does not represent its products and services are compliant with laws outside of the United States. Clients in foreign jurisdictions are responsible for compliance with local laws, and should consult with an attorney if necessary.

g. Notices: Xytex shall satisfy any notice obligation or requirement under this Agreement by sending its correspondence to the most recent address or email provided by Client. Client agrees to keep Xytex informed in writing of any change in Client's pertinent contact information including, current mailing address, email address and telephone numbers. Any notices to Xytex shall be made in writing and mailed to Xytex Corporation, 1100 Emmett Street, Augusta, Georgia 30904 and emailed to info@xytexas.com.

h. Binding Effect: This Agreement will be binding upon the Parties and their respective assignees, heirs, executors, and administrators.

i. **Force Majeure:** In no event shall Xytex be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, pandemic or health emergency, acts of war or terrorism, civil or military disturbances, weather emergency, nuclear or natural catastrophes or acts of God, interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that Xytex shall use reasonable best efforts which are consistent with accepted industry practices to resume performance as soon as practicable under the circumstances.

j. **Survival:** The provisions of Sections 4, 5, 6, and 7 shall expressly survive the termination of this Agreement.

k. **Counterparts and Electronic Signatures:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. Signatures transmitted by facsimile, email or other means of electronic transmission shall be deemed for all purposes to have the same legal effect as delivery of an original executed copy of this Agreement.

## 8. SIGNATURES

a. Donor Number Purchased:

b. By affixing their signatures hereto, Client(s)/Intended Patient(s) and Xytex agree to be bound by all of the terms set forth in this Agreement. This Agreement is not effective unless signed by an authorized representative of Xytex.

**Client/Intended Patient:**

Client's Name	Client Signature	Date
---------------	------------------	------

**Additional Client/Intended Patient (if applicable):**

Client's Name	Client Signature	Date
---------------	------------------	------

**Xytex:**

Authorized Representative	Authorized Representative Signature	Date
---------------------------	-------------------------------------	------

SAMPLE FORM ONLY