

## CORD BLOOD FINANCIAL AND STORAGE AGREEMENT

THIS CORD BLOOD FINANCIAL AND STORAGE AGREEMENT ("Agreement") is made and entered into as of the Effective Date, by and between M.A.Z.E. Cord Blood Laboratories, Inc., a New York State corporation ("M.A.Z.E."), and \_\_\_\_\_ ("Donor"). M.A.Z.E. and Donor are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**WHEREAS**, Donor wishes that the blood collected from her child's umbilical cord and placenta ("Cord Blood Unit") at the time of the child's delivery ("Child") be processed, frozen, and stored at M.A.Z.E.'s facility and/or such third party vendors as selected by M.A.Z.E.; and

**WHEREAS**, M.A.Z.E. desires to, following successful completion of certain testing performed on the collected Cord Blood Unit, process, freeze, and store the Cord Blood Unit, consistent with statutory requirements and each and all of the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the covenants and conditions herein, the Parties hereby agree as follows:

### 1. PROCESSING, FREEZING AND STORAGE

a. By his/her signature below, Donor acknowledges the receipt and execution of a Donor Informed Consent in connection with the provision of processing, freezing, and storage services for the Cord Blood Unit and testing of the Donor's blood for infectious diseases by M.A.Z.E. The terms of such Donor Informed Consent are incorporated herein by reference.

b. M.A.Z.E. shall provide the Cord Blood Kit for the collection of cord blood from Donor's Child's umbilical cord and placenta during his or her delivery for a non-refundable fee equal to One Hundred

(\$100) Dollars (the "Kit Fee") payable by Donor at the time of execution of this Agreement.

c. Donor agrees to pay M.A.Z.E., as compensation for the processing, freezing, and storage of Cord Blood Unit and the testing of Donor's blood for infectious diseases ("Processing and Storage Fees 1"), under one of the two following payment schedules, as elected by Donor:

i. **Option 1** - an amount equal to (\$1,910) One Thousand Nine Hundred and Ten Dollars ("Processing Fee") which includes storage for 20 years at no charge; or

ii. **Option 2** - an amount equal to One Thousand Two Hundred (\$1,200) Dollars ("Fixed Portion") plus an annual fee in the initial year and each calendar year thereafter ("Annual Portion") for the term of this Agreement (the "Fixed and Annual Portion" shall be collectively referred to as "Processing and Storage Fee 2"). The Annual Portion for the initial year and the subsequent ten (10) calendar years ("Locked Period") shall be \$95. For each year subsequent to the Locked Period, the Annual Portion shall be billed at M.A.Z.E.'s then-current fee.

d. At the time of execution of this Agreement, Donor shall provide M.A.Z.E. with the following information: Credit Card Number, Type of Credit Card, and Expiration Date of Credit Card.

e. Upon execution of this Agreement by Donor, M.A.Z.E. shall be authorized to charge the Credit Card for the Kit Fee.

f. After delivery of child at the hospital, Donor or her designee shall notify M.A.Z.E., in compliance with instructions in the Cord Blood Kit, and M.A.Z.E. shall arrange for the pick up and transfer of the Cord Blood Unit to M.A.Z.E.'s facility. Responsibility for completing the Cord Blood Kit in accordance with the instructions shall be assumed solely by the physician or other health care practitioner involved in the delivery of child. Following transfer of

Cord Blood Unit to M.A.Z.E.'s facility, M.A.Z.E. shall be authorized to charge the Credit Card for

i. Processing Fee 1, if Donor chooses **Option 1** or

ii. the Fixed Portion and the initial Annual Portion of Processing and Storage Fee 2, if Donor chooses **Option 2**.

g. Donor acknowledges that Cord Blood Units will be deemed eligible for storage regardless of the quantity of blood, CD 34+ count or TNC. In the event M.A.Z.E. determines that the Cord Blood Unit is ineligible for processing and freezing for any reason, M.A.Z.E. will give Donor written notice of such determination. Within thirty (30) days of the date of such notice of ineligibility, this Agreement shall automatically terminate, M.A.Z.E. shall destroy such Cord Blood Units as it deems appropriate, and M.A.Z.E. will refund all amounts paid hereunder to Donor excluding kit fee and courier or transportation costs incurred by M.A.Z.E.

h. If Donor chooses **Option 2**, in addition to the Fixed Portion of Processing and Storage Fee 2, Donor agrees to pay to M.A.Z.E. each calendar year the Annual Portion of Processing and Storage Fee 2. Thirty (30) days in advance of each calendar year, Donor shall provide M.A.Z.E. with either (i) the following information: Credit Card Number, Type of Credit Card, and Expiration Date of Credit Card, or (ii) a check in the amount of \$95 made payable to M.A.Z.E. Cord Blood Laboratories, Inc. and mailed to 2975 Westchester Avenue, Purchase, NY 10577. Where Donor provides credit card information, M.A.Z.E. shall be authorized to charge the Credit Card for the Annual Portion of Processing and Storage Fee 2 annually.

i. Donor accepts that should Donor's Credit Card issuer refuse to honor a M.A.Z.E. charge request for any reason and Donor fails to arrange for another method of payment within ten (10) days of notice, this Agreement shall be subject to termination by M.A.Z.E., as provided in Section 4(d) below.

## 2. STORAGE FEES

a. If Donor chooses **Option 1**, Processing Fee 1 includes the storage of the Cord Blood Unit for a period of twenty (20) years ("Storage Period").

b. If Donor chooses **Option 2**, for so long as Donor continues to pay the Annual Portion of Processing and Storage Fee 2 during the Storage

Period, M.A.Z.E. shall continue to store the Cord Blood Unit. Should, following the Locked Period, Donor find the Annual Fee unacceptable, Donor shall have thirty (30) days from the date the Annual Fee is due under Section 1(h) above to inform M.A.Z.E. as to (i) whether Donor wishes to store such Cord Blood Unit at another storage facility. Donor must make all arrangements for the transfer and will be responsible to pay all fees that are incurred including a possible transfer fee from M.A.Z.E, or (ii) the manner in which Donor wishes to dispose of the Cord Blood Unit. Should Donor fail to make payment of the Annual Portion of Processing and Storage Fee 2 in any year as set forth above, this Agreement shall be subject to termination by M.A.Z.E., as provided in Section 4(d) below.

c. Should Donor, after the Storage Period, wish to continue to store the Cord Blood Unit at M.A.Z.E.'s facility, under both **Option 1** and **Option 2**, Donor shall pay an additional Storage Fee for each such additional Storage Period at M.A.Z.E.'s then-current rates.

d. All Fees paid by Donor to M.A.Z.E. are non-refundable. Notwithstanding the foregoing, if this Agreement is terminated by M.A.Z.E. (as per section 4(b)(vi) and Donor has paid for the 20 year storage plan, M.A.Z.E. will reimburse to Donor pro rata at a rate of \$50 per unused year. Upon termination of this Agreement, Donor waives all claims and agrees that M.A.Z.E. has no further liability to Donor or with regard to the Cord Blood Unit.

## 3. RELEASE OF CORD BLOOD UNIT

a. M.A.Z.E. shall release the Cord Blood Unit only to Donor or to Child (after his or her eighteenth birthday) provided the appropriate, current Authorization to Release Cord Blood Unit is executed ("Authorization"). Following thirty (30) days' prior written notice and receipt by M.A.Z.E. of a duly executed Authorization, M.A.Z.E. shall release the Cord Blood Unit to the authorized person who executes the appropriate, current Acknowledgment of Cord Blood Unit Release ("Acknowledgment"). Donor shall be solely responsible for ensuring an authorized individual, or his/her designee, executes the Acknowledgment prior to the release of the Cord Blood Unit by M.A.Z.E. Failure of Donor to obtain an executed Acknowledgment shall be considered a termination event and shall result in the termination of this Agreement as provided under Section 4 below. Donor or Child shall pay any costs involved in shipping of Cord Blood Unit, which will be determined by the then-current shipping fees of M.A.Z.E. All Cord Blood Units released by M.A.Z.E. are provided "as is" without

warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

b. Donor acknowledges that all financial obligations stated hereunder need to be satisfied prior to release of Cord Blood Unit by M.A.Z.E. and that M.A.Z.E. is not obligated to release Cord Blood Unit until this satisfaction occurs.

#### **4. TERM AND TERMINATION**

a. This Agreement shall commence on the date hereof and shall continue for the Storage Period following the first deposit of the Cord Blood Unit into storage, subject to earlier termination as herein provided. Thereafter, this Agreement may be renewed for a successive Storage Period only upon the mutual agreement of the parties.

b. This Agreement shall terminate upon the happening of any one of the following events ("Terminating Event"): (i) release of the Cord Blood Unit in accordance with the terms of Section 4 hereof; (ii) written direction of Donor to M.A.Z.E. authorizing destruction of the Cord Blood Unit; (iii) failure of Donor to pay fee when due; (iv) failure of Donor to obtain a signed Acknowledgement as required by Section 3(a) above; (v) failure of Donor to provide blood samples as requested by M.A.Z.E., or (vi) either Party delivers thirty (30) days' written notice to the other terminating this Agreement.

c. Upon the occurrence of any Terminating Event, all obligations of M.A.Z.E. for processing, freezing, and storage of the Cord Blood Unit, except with respect to obligations contained in Section 9, shall cease and Donor shall make arrangements for release, use, or other disposition of the Cord Blood Unit within fifteen (15) days. Should Donor fail to arrange for the disposition of the Cord Blood Unit within such fifteen (15) day period, M.A.Z.E. shall have the right to destroy such Cord Blood Unit as it deems appropriate.

d. Notwithstanding any provision to the contrary in this Agreement, including, without limitation, this Section 4, if Donor fails to pay either Processing and Storage Fee 1 or any portion of Processing and Storage Fee 2 when due hereunder and such fee has not been paid for thirty (30) days from the date due, M.A.Z.E. may destroy or dispose of such Cord Blood Unit, as it deems appropriate, without any notice to Donor. Upon such destruction, this Agreement shall be deemed terminated.

e. If Donor is no longer located at the address set forth in the signature block below and fails to timely provide a forwarding address to M.A.Z.E. as required by Section 8 below, M.A.Z.E. may, at its option, deem the Donor to have consented to the termination of this Agreement. Upon any such termination, M.A.Z.E. may destroy or dispose of the Cord Blood Unit, as it deems appropriate, without any further notice to Donor.

#### **5. RELEASE**

a. Donor has been advised and understands that there are inherent risks in the process of freezing and thawing Cord Blood Units, including but not limited to, destruction of or damage to the cord blood or reduced capacity or life span of the stem cells after thawing. Due to the nature of the chemicals and equipment required for cord blood storage, there is a risk of destruction of the Cord Blood Unit as a result of equipment malfunction or damage to the storage vial. Donor acknowledges that at no time should MAZE's liability exceed the total amount paid to MAZE under this agreement. MAZE will not be liable for any special, indirect or consequential damages including, without limitation, damages arising under any cause of action.

b. Further, Donor understands that the Cord Blood Unit may be damaged or destroyed due to factors beyond the control of M.A.Z.E., such as theft, natural disasters or acts of God. In consideration of the foregoing, Donor for herself and for her heirs, spouse, executors, administrators, agents, representatives, successors, and assigns, hereby releases and forever discharges M.A.Z.E., its shareholders, directors, officers, employees, agents, and representatives, as well as the health care facility at which the Cord Blood Unit is collected and the physician(s) and health care professional(s) involved in the collection of the Cord Blood Unit, from, and hereby waives all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, defense, offsets, or demands, whatsoever arising out of or relating to, directly or indirectly, the collection, freezing, storage, release, loss, damage, or destruction of the Cord Blood Unit. It is the intention of the Parties hereto that the foregoing general release shall be effective as a full and final accord and satisfaction of and as a bar to all actions, causes of actions, obligation, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, defenses, offsets, or demands referred to hereinabove and shall survive termination of this Agreement for any reason whatsoever.

c. This general release shall extend to and cover any claim based on any alleged act or omission of M.A.Z.E. and the other releasees described above, whether known or suspected at the time of the execution of this release, or which becomes known to or suspected by Donor, at any time in the future.

## **6. NO WARRANTY**

a. Donor acknowledges that neither M.A.Z.E., nor any of its officers, directors, shareholders, executives, or employees has made any other representations or warranties to Donor of any kind or nature, including, without limiting the generality of the foregoing, any representations or warranties with respect to (i) suitability of cord blood for future treatment of diseases; (ii) successful treatment of diseases through cord blood transplantation; and (iii) advantages of cord blood transplantation over other types of treatment using stem cells.

b. When using stored umbilical cord blood, there are many varied factors that determine the success of the transplant. Some of the known factors include, but are not limited to, the receptivity of the patient to a transplant, the type of disease for which treatment is being provided, the match between donor and recipient, and the underlying medical care being provided to the patient. At this point in time, the chance that a family will need to use a child's stored umbilical cord blood is relatively low. Also, should the need arise for a transplant, there is no guarantee that the stored umbilical cord blood will either provide a match or a cure for a particular disease.

## **7. INDEMNIFICATION OF THIRD PARTY ACTIONS OR CLAIMS.**

Donor agrees to indemnify, defend, and hold harmless M.A.Z.E., its shareholders, directors, officers, employees, agents, and representatives from and against any loss or damage, including, without limitation, expenses, attorneys' fees, claims, liabilities, defenses, offsets or demands, whatsoever, sustained by M.A.Z.E. as a result of or relating to the testing, collection, freezing, storage, release, processing, loss, damage, destruction, use, or other disposition of the Cord Blood Unit.

## **8. LIQUIDATED DAMAGES**

It is acknowledged and agreed that there are substantial risks of loss, damage, or destruction of the Cord Blood Unit and that in the event of such loss, damage, or destruction it would be impractical or extremely difficult to determine the nature and extent of

the damage which the Donor may claim to sustain as a result of any alleged breach of contract, negligence, or any other cause attributable to M.A.Z.E. Accordingly, the parties agree that in the event of any such loss, damage, or destruction of the Cord Blood Unit, for any reason whatsoever, after delivery thereof to M.A.Z.E., a reasonable liquidated damage for M.A.Z.E. to pay in response to any such claim of liability by the Client is a sum equal to the total Processing and Storage Fees paid by Donor under either **Option 1** or **Option 2** of this Agreement reduced on a pro-rata basis for the previously completed portion of the Storage Period. Donor's recovery is therefore limited to a damage award in said amount. The parties agree that the foregoing liquidated damages are in fact liquidated damages, not penalties, and that such damages shall be Donor's sole and exclusive remedy for the loss, damage, or destruction of Cord Blood Unit.

## **9. NOTICES**

Any notice required or permitted to be provided to a Party hereunder shall be in writing and shall be effective as of the date personally delivered or sent by electronic facsimile or three (3) days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the Party at the address set forth beneath such Party's signature hereto or at such other address as a Party may hereafter request in writing be used for that purpose. Donor acknowledges that it is Donor's obligation to provide a correct mailing address for Donor at all times during the term hereof.

## **10. RECORDS**

M.A.Z.E. shall maintain complete and accurate records of Cord Blood Unit processed, frozen, stored, and released in a manner and for such time periods in accordance with applicable law and such records shall be open to inspection by the New York State Department of Health, Food and Drug Administration, Department of Health and Human Services, and all other applicable governmental agencies.

## **11. MISCELLANEOUS PROVISIONS**

a. Entire Agreement. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof and there are no understandings, agreements, or representations other than as herein set forth. This Agreement shall be binding upon the Parties and their respective heirs, spouses, executors, administrators, agents,

representatives, successors and assigns, shareholders, directors, officers, and employees.

b. Governing Law. This Agreement shall be construed in accordance with the laws of the State of New York. Each party to this Agreement hereby agrees and consents that any legal action or proceedings with respect to this Agreement shall only be brought in the courts of the State of New York in Westchester County. By execution and delivery of this Agreement, each such party hereby (i) accepts the jurisdiction of the aforesaid courts; (ii) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue set forth above; and (iii) further waives any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

c. Effective Date. The Effective Date shall be the date on which this Agreement is executed below by M.A.Z.E.

d. Additional Provisions. If any provision of the Agreement is determined to be unenforceable, the remaining provisions hereof shall nevertheless be fully enforceable in accordance with their terms. No assignment by Donor of this Agreement or the rights and obligations hereunder shall be valid. This Agreement may be assigned by M.A.Z.E. The Parties agree to execute and deliver such other documents and perform such further acts as shall be reasonably necessary to carry out and effectuate the purposes of this Agreement. The waiver by any Party of any default, misrepresentation, or breach of any provision of this Agreement shall not be deemed to extend to any prior or subsequent default, misrepresentation, or breach of such provision or any other provision of this Agreement. This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding agreement. This Agreement shall not be modified, except in writing and signed by all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

**Donor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

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

**Telephone No:** \_\_\_\_\_

**Where applicable:**

**Father Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

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

**Telephone No:** \_\_\_\_\_

