

# TRANSPORTATION AGREEMENT

This Transportation Agreement, dated as of \_\_\_\_\_, 202\_\_\_\_ (this "**Agreement**"), is entered into between Ark.Cryo, Inc., an Illinois corporation ("**Courier**"), and [NAME OF THE CUSTOMER], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] ("**Customer**", and together with Courier, the "**Parties**", and each, a "**Party**").

WHEREAS, Courier is engaged in the business of courier services transporting certain biological non-hazardous materials by motor vehicle and commercial air Courier in interstate and international trade and desires to furnish to Customer certain courier, transportation, and related services, as hereinafter more fully described; and

WHEREAS, Customer desires to obtain such transportation and related services from Courier.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Definitions.

Capitalized terms have the meanings set forth or referred to in this Section

**"Action"** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise.

**"Affiliate"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

**"Agreement"** has the meaning set forth in the preamble.

**"Basic Shipment Terms"** means, collectively, any one or more of the following terms specified by Customer in a Shipment Request under Section 3.1: (a) a list of the Goods to be shipped, including the description or other identifier number of the material subject to shipment; (b) the quantity of each of the Goods to be shipped; (c) the requested shipment and delivery date (based on local time of each location); (d) Pick-up Location; (e) the billing address; and (f) the Delivery Location. For the avoidance of doubt, the term "Basic Shipment Terms" does not include any general terms or conditions that may be contained in any Bill of Lading or other Customer documentation.

**"Bill of Lading"** has the meaning set forth in Section 3.3.

**"Business Day"** means any day except Saturday, Sunday, or any other day on which commercial banks located in Chicago, Illinois, are authorized or required by Law to be closed for business.

**"Courier's Trademarks"** means all Trademarks owned or licensed by Courier.

**"Claim"** means any Action brought against a Person entitled to indemnification under Section 13.

**"Confidential Information"** has the meaning set forth in Section 11.

**"Control"** (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, regarding any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

**"Delivery Location"** means the street address of the location specified in the applicable Shipment Request where Customer requests that Courier delivers possession of the Goods in order to render the Transportation Services.

**"Disclosing Party"** has the meaning set forth in Section 11.

**"Goods"** means the biomaterial and goods to be shipped under a Shipment Request that the Courier accepts under Section 3.1.

**"Governmental Authority"** means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, award, or determination entered by or with any Governmental Authority.

**"Indemnified Party"** has the meaning set forth in Section 13.1.

**"Indemnifying Party"** has the meaning set forth in Section 13.1.

**"Individual Shipment Transaction"** means any Shipment Request that has been accepted by Courier under Section 3.2.

**"Initial Term"** has the meaning set forth in Section 10.1.

**"Intellectual Property Rights"** means all industrial property rights and other intellectual property rights comprising or relating to: (i) Patents; (ii) Trademarks; (iii) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website, and URLs; (iv) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, [application programming interfaces, architecture, files, records, schematics,] data, data files, and databases and other specifications and documentation; (v) Trade Secrets; [(vi) semiconductor chips, mask works, and the like;] and [(vi)/(vii)] all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection under the Laws of any jurisdiction in any part of the world.

**"Law"** means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order, or other requirement or rule of law of any Governmental Authority.

**"Losses"** has the meaning set forth in Section 13.1.

**"Notice"** has the meaning set forth in Section 15.4.

**"Party"** has the meaning set forth in the preamble to this Agreement.

**"Patents"** means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents, and patent utility models).

**"Payment Failure"** has the meaning set forth in Section 10.3(a).

**"Permitted Subcontractor"** has the meaning set forth in Section 2.2.

**"Person"** means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.

**"Personnel"** means agents, employees or permitted subcontractors, if any, engaged or appointed by Courier or Customer, as applicable.

**"Pick-up Location"** means the street address of the location specified in the applicable Shipment Request where Customer requests that Courier takes possession of the Goods in order to render the Transportation Services.

**"Price"** has the meaning set forth in Section 8.1.

**"Receiving Party"** has the meaning set forth in Section 11.

**“Renewal Term”** has the meaning set forth in Section 10.2.

**“Representatives”** means a Party’s Affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns.

**“Risk of Loss”** has the meaning set forth in Section 5.

**“Shipment”** means the shipment of Goods made under an Individual Shipment Transaction.

**“Shipment Request”** means Customer’s shipment request or purchase order for transportation services issued to Courier hereunder, including all terms and conditions attached to, or incorporated into, such shipment request.

**“Term”** has the meaning set forth in Section 10.2.

**“Trademarks”** means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names, and domain names, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

**“Trade Secrets”** means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

**“Transportation Services”** means transportation by vehicle, air courier, and delivery of certain biological materials, including, but not limited to, the collection, transportation, customs clearance where applicable, and delivery of the Shipment from the Pick-up Location to the Delivery Location.

## 2. Agreement to Transport Goods

### 2.1. Transportation Services.

Courier shall provide Transportation Services to Customer from time to time during the Term in the form of Individual Shipment Transactions.

### 2.2. Subcontractors.

(a) Courier may subcontract with any Person, other than Customer’s employees or agents to perform Transportation Services for Customer (each such subcontractor or other third party, a “Permitted Subcontractor”).

(b) Prior to the commencement of any work by any Permitted Subcontractor, Courier shall enter into a written agreement with such subcontractor that binds the subcontractor to terms that are at least as protective of the rights and information of Customer as are provided under this Agreement.

(c) Courier's engagement of a Permitted Subcontractor does not relieve Courier of its obligations under this Agreement. Courier shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Courier's own employees. Nothing contained in this Agreement creates any contractual relationship between Customer and any subcontractor.

### **2.3 Relationship of the Parties.**

(a) Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Courier is an independent contractor under this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

(b) Courier shall have sole and exclusive control over the manner in which Courier Personnel perform the Transportation Services. Customer acknowledges that Courier Personnel are deemed employees or subcontractors of Courier only and are subject to employment and engagement, discharge, discipline and control, solely and exclusively by Courier.

### **2.4 No Annual Minimum Commitment.**

The Parties agree that Customer is not obligated to purchase any minimum amount of Transportation Services from Courier under this Agreement.

## **3. Shipment Request Procedure**

### **3.1 Shipment Requests.**

Customer shall initiate all Shipment Requests in written form via facsimile or e-mail. Courier must provide a written confirmation or receipt of a Shipment Request to serve as Courier's acknowledgement that the requested Transportation Services are governed by the terms of this Agreement.

### **3.2 Courier's Right to Reject Shipment Requests.**

Courier has the right to reject any Shipment Request. Courier shall accept any Shipment Request by confirming acceptance of the request (whether by written confirmation, invoice, or otherwise) or by picking up the Goods specified in the Shipment Request.

### **3.3 Bills of Lading and Shipment Receipts.**

Each Shipment under this Agreement shall be evidenced by a shipment receipt in the form specified by Courier, which shall be signed by Courier or its agent or employee showing the kind and quantity of Goods received by Courier at the Pick-up Location, but the absence or loss of such receipt shall not relieve Courier of its obligations and responsibilities under this Agreement. The Customer or its/his/her shipper is

responsible for packaging, labeling, container, temperature control, and condition of the Goods at the pick-up by the Courier. In the event that Courier elects to use a bill of lading, manifest or other form of freight receipt or contract (collectively, a "Bill of Lading"), any terms and conditions of such **Bill of Lading** shall be subject to Section 3.4 of this Agreement.

### **3.4 Terms of Agreement Prevail Over Customer's Documentation.**

The Parties intend for the express terms and conditions contained in this Agreement (including any Schedules and Exhibits hereto) and the Basic Shipment Terms contained in the applicable Shipment Request to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Agreement, and this Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any Shipment Request, Bill of Lading, or other request or communication by Customer pertaining to the Transportation Services, and any attempt to modify, supersede, supplement, or otherwise alter this Agreement, will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized Representatives of both Parties.

## **4. Shipment and Delivery**

### **4.1 Delivery.**

Unless expressly agreed to by the Parties in any Individual Shipment Transaction, Courier shall deliver the Shipment to the Delivery Location, using Courier's standard methods for shipment and delivery of the Goods. Any time quoted by Courier for pick-up and delivery are estimates only and, often depend on the air Couriers' flight schedule, weather conditions, customs, local travel conditions, and other events affecting interstate and international deliveries. Courier is not liable for or in respect of any loss or damage to the Goods resulting from a delay in delivery outside of its control.

### **4.2 Customer Responsibilities.**

Customer shall ensure that the Goods are properly packed and labeled and that the Courier is provided with all necessary shipment and custom documentation showing the purchase order number, shipper's identification number for the Individual Shipment Transaction, the quantity of the Goods in the Shipment (including weight, volume, and the number of cartons, vials, or pallets), consignee's name and the country of origin. Customer or its/his/her shipper, as the case may be, is responsible for the completion of all customs, shipping, and clearance paperwork. Customer shall ensure that the Courier is provided with a prior written Notice if the Goods contain any hazardous or dangerous materials requiring any special handling or transportation thereof.

## 5. Risk of Loss

Courier shall bear the risk of loss of and damage to or theft of the Goods due to its intentional acts or gross negligence commencing when Courier picks up the Goods at the Pick-up Location until the time Courier delivers the Shipment to the Delivery Location/ while the Goods are in Courier's care, custody or control. Courier, however, shall have no responsibility for the loss due to packaging, container integrity, quality of biomaterials, or temperature control.

## 6. Insurance.

### 6.1 Requirement to Obtain Insurance.

Courier shall procure and keep in force continuously during the Term the following types of insurance:

- (a) Commercial general liability insurance, including blanket contractual coverage, for bodily injury and property damage in the amount of US\$1,000,000 combined single limit per occurrence; and
- (b) At Customer's costs paid in advance, primary cargo insurance in an amount equal to the full value of the maximum quantity of Goods expected to be transported at any one time under this Agreement or in such other amounts as Parties agree in writing for each shipment, to compensate Customer, its vendors, suppliers and/or customers, consignee or other owner of the Goods for any and all loss or damage to property or from property which was placed in the possession or control of Courier in connection with the Transportation Services; and
- (c) Automobile liability insurance covering owned, non-owned, and hired automobiles in the amount of US\$1,000,000 combined single limit for shipments of non-hazardous waste and US\$2,000,000 combined single limit for shipments of hazardous materials.

## 7. Insurance Contract Requirements and Certificates.

### 7.1 Insurance Contract Requirements.

Courier shall ensure that all insurance policies required under Section 6:

- (a) be issued by insurance companies reasonably acceptable to Customer with a Best's Rating of no less than A-VII;
- (b) provide that such insurance Couriers give Customer at least 30 days' prior written Notice of cancellation or non-renewal of policy coverage;
- (c) provide that such insurance be primary insurance and any similar insurance in the name of or for the benefit of Courier shall be excess and non-contributory;
- (d) regarding Section 6.1(a), name Customer and all successors and permitted assigns, as additional insureds; [and]
- (e) regarding Section 6.1(b), name Customer, including, in each case, all successors and permitted assigns, as loss payees.

## 7.2 Insurance Certificates.

On the written request of Customer, Courier shall provide Customer with copies of certificates of insurance and policy endorsements for all insurance coverage required by Section 6.1(a) and Section 6.1(b), and shall not do anything to invalidate such insurance. This Section 7.2 shall not be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold the other harmless under this Agreement).

## 7.3 Self-insurance.

Courier shall have the right to satisfy its insurance obligations under this Agreement by means of self-insurance to the extent of all or part of the insurance required hereunder but only so long as such self-insurance is permitted under all laws applicable to Courier at the time in question. "Self-insure" shall mean that Courier is itself acting as though it were the third-party insurer providing the insurance required under the provisions of this Agreement, and Courier shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Agreement. To the extent Courier chooses to provide any insurance required by this Agreement by "self-insurance," then Courier shall have all of the obligations and liabilities of an insurer, and the protection afforded Customer shall be the same as if provided by a third-party insurer under the coverages required under this Agreement. Without limiting the generality of the foregoing, all amounts which Courier pays or is required to pay and all losses or damages resulting from risks for which Courier insures or has elected to self-insure shall be subject to the waiver of subrogation provisions of this Agreement, and shall not limit Courier's indemnification obligations pursuant to this Agreement. In the event that Courier elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from a third-party insurer, Courier shall undertake the defense of any such claim, including a defense of Customer, at Courier's sole cost and expense, and use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Courier to self-insure. Any such self-insurance shall be required to provide "first dollar" coverage.

# 8. Price and Payment.

## 8.1 Price.

As compensation for the Transportation Services provided by Courier pursuant to this Agreement, Customer shall pay Courier in advance in accordance with Courier's standard rates and charges then currently in effect and set forth on **Schedule A**, which is attached and made a part of this Agreement. Customer acknowledges that Courier's standard rates and charges may be modified at any time or from time to time at Courier's sole discretion to reflect changes in the transportation costs and market conditions, and Customer agrees to pay such rates in accordance with this Agreement.

## 8.2 Taxes.

Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, custom fees, tolls, levies, and charges of any kind imposed by any foreign, federal, state, or local governmental entity on any amounts payable by Customer hereunder; *provided, that*, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, Courier's income, revenues, gross receipts, personnel, or real or personal property, or other assets.

## 8.3 Payment Terms.

Customer shall pay all invoices properly issued by Courier based on the estimated cost of services and third-party fees upon receipt of such invoice and in advance of the Transportation Services to be provided hereunder. Courier's invoice shall set forth in reasonable detail the calculation of the costs and estimated charges for the services to be provided hereunder. In addition, at Customer's request, Courier shall provide to Customer a copy of all delivery receipts, Bills of Lading, manifests, and other receipts or documents pertaining thereto received in connection with the Transportation Services provided hereunder. Unless agreed otherwise in writing, Customer shall make all payments in US dollars by wire transfer, credit card, or other means of the immediately available funds. If Courier incurs unanticipated third-party fees in connection with the transportation of the Goods, such as additional country entry fees, custom charges, taxes, or airline fees, Customer agrees to reimburse Courier for such fees within ten (10) business days of receipt of the invoice therefor. In the event Customer provides a credit card to Courier to be used as a payment for the Transportation Services provided hereunder, Customer hereby authorizes, in advance, Courier to charge said credit card for such unanticipated third-party fees and costs without any additional authorization or approval thereof.

## 8.4 Unsatisfactory Credit Status.

If Courier determines in its sole discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Courier's other rights, Courier may without liability or penalty take any of the following actions:

- (a) accelerate all amounts owed by Customer to Courier under this Agreement and any Individual Shipment Transaction;
- (b) on ten (10) day's prior written Notice, modify the payment terms specified in Section 8.3 for outstanding and future Individual Shipment Transactions, including requiring Customer to pay cash in advance of service;
- (c) cancel any previously accepted Shipment Requests;
- (d) delay any future Shipments;
- (e) on thirty day's prior written Notice, terminate this Agreement; or
- (f) any combination of the above.

No actions taken by Courier under this Section 8.4 (nor any failure of Courier to act under this Section) constitute a waiver by Courier of any of its rights to enforce Customer's obligations under this Agreement including, but not limited to, the obligation of Customer to make payments as required under this Agreement.

### 8.5 No Setoff Right.

Customer shall not, and acknowledges that it will have no right, under this Agreement, any Shipment Request, any other agreement, document, or Law, to withhold, offset, recoup, or debit any amounts owed (or to become due and owing ) to Courier or any of its Affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Courier or Courier’s Affiliates, whether relating to Courier’s or its Affiliates’ breach or non-performance of this Agreement, any Shipment Request, any other agreement between (a) Customer or any of its Affiliates and (b) Courier or any of its Affiliates, or otherwise.

## 9. Compliance with Laws.

### 9.1 Price.

Each party shall at all times comply with all Laws applicable to this Agreement except to the extent that failure to comply therewith would not, in the aggregate, reasonably be expected to have a material adverse effect on its business or financial condition or its ability to perform its obligations under this Agreement. Customer agrees that it will not request Transportation Services that would require Courier or any of its Representatives, subcontractors, or others to violate any Law.

## 10. Term; Termination.

### 10.1 Initial Term.

The term of this Agreement commences on the Effective Date, \_\_\_\_\_, 20\_\_\_\_\_, and continues for a period of twelve (12) months unless and until earlier terminated as provided under this Agreement (the “**Initial Term**”).

### 10.2 Renewal Term.

On expiration of the Initial Term, this Agreement automatically renews for additional successive twelve (12) month terms unless and until either Party provides a written Notice of nonrenewal at least sixty (60) days prior to the end of the then-current term, or unless and until earlier terminated as provided under this Agreement (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”). In the event either Party provides timely Notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

### 10.3 Courier’s Right to Terminate.

Courier may terminate this Agreement at any time on written Notice to Customer:

- (a) if Customer fails to pay any amount when due under this Agreement (“**Payment Failure**”) and such failure continues for thirty (30) calendar days after Customer’s receipt of written Notice of nonpayment;

- (b) if within any sixty (60) month period, two (2) or more Payment Failures occur;
- (c) if Customer breaches any provision of this Agreement or any Individual Shipment Transaction (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Customer within thirty (30) days after Customer's receipt of written Notice of such breach; or
- (d) if Customer (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

#### **10.4 Effect of Termination.**

- (a) Expiration or termination of the Term will not affect any rights or obligations of the Parties that:
  - (i) come into effect on or after expiration or earlier termination of this Agreement; or
  - (ii) otherwise survive the expiration or earlier termination of this Agreement under Section 15.3 and were incurred by the Parties prior to such expiration or earlier termination.
- (b) Upon the expiration or earlier termination of this Agreement, all indebtedness of Customer to Courier under this Agreement, any other agreement or otherwise, of any kind, shall become immediately due and payable to Courier, without further notice to Customer.
- (c) Any Notice of termination under this Agreement automatically operates as a cancellation of any Shipments that are scheduled to be picked-up after the effective date of termination, whether or not Courier had accepted any Shipment Request. Regarding any Shipments that are still in transit on termination of this Agreement, Courier may require, in its sole and absolute discretion, that all deliveries of such Shipments be made on either a cash-only or certified check basis.
- (d) On the expiration or earlier termination of this Agreement, Customer shall promptly:
  - (i) return to Courier or destroy, at Courier's sole discretion, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Courier's Confidential Information;
  - (ii) permanently erase all of Courier's Confidential Information from its computer systems; and
  - (iii) certify in writing to Courier that it has complied with the requirements of this clause.
- (e) Subject to Section 10.4(a), the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of the terminating Party's rights or remedies/either

Party's rights, remedies or defenses under this Agreement, at law, in equity or otherwise.

## **11. Confidentiality.**

From time to time during the Term, either Party (as "Disclosing Party") may disclose or make available to other Party (as "Receiving Party") information about its business, intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 11 by Receiving Party or any of its Representatives; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of Receiving Party or its Representatives prior to being disclosed by or on behalf of Disclosing Party; (iv) was or is independently developed by Receiving Party without reference to or use of, in whole or in part, any of Disclosing Party's Confidential Information; or (v) is required to be disclosed pursuant to applicable federal, state, or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. Receiving Party shall: (A) protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to Receiving Party's Representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. Receiving Party shall be responsible for any breach of this Section 12 caused by any of its Representatives. Disclosing Party may seek equitable relief (including injunctive relief) against Receiving Party and its Representatives to prevent the breach or threatened breach of this Section 12 and to secure its enforcement, in addition to all other remedies available at law.

## **12. Service Warranties.**

### **12.1 Limited Warranty.**

Courier warrants to Customer that it shall perform the Transportation Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized and commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

## 12.2 Customer's Exclusive Remedy for Breach of Service Warranties.

Courier warrants to Customer that it shall perform the Transportation Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized and commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

THIS SECTION 12.2 SETS FORTH CUSTOMER'S SOLE REMEDY AND COURIER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12.1.

## 12.3 Disclaimer.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, COURIER MAKES NO WARRANTY WHATSOEVER REGARDING THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY COURIER, OR ANY OTHER PERSON ON COURIER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 12.1 OF THIS AGREEMENT.

# 13. Indemnification.

## 13.1 Customer Indemnification.

Subject to the terms and conditions of this Agreement, including those set forth in Section 13.2, Customer ("**Indemnifying Party**") shall indemnify, defend and hold harmless Courier and its Representatives, officers, directors, employees, agents, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party/awarded against Indemnified Party in a final judgment (collectively, "**Losses**"), relating to/arising out of or resulting from any Claim of a third party or Indemnified Party alleging:

- (a) breach or non-fulfillment of any material representation, warranty or covenant under/representation or warranty set forth in this Agreement by Indemnifying Party or Indemnifying Party's Personnel;
- (b) any grossly negligent or more culpable act or omission of Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement;
- (c) any bodily injury, death of any Person or damage to real or tangible personal property caused by the willful or grossly negligent acts or omissions of Indemnifying Party or Indemnifying Party's Personnel; or

(d) any failure by Indemnifying Party or its Personnel to comply with applicable Laws.

### **13.2 Exceptions and Limitations on Indemnification.**

Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from, in whole or in part, Indemnified Party's or its Personnel's:

(a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) bad faith failure to materially comply with any of its material obligations set forth in this Agreement.

### **13.3 Hazardous Materials.**

Courier is not in the business of arranging for transportation or delivery of hazardous materials, and Customer acknowledges that Courier's acceptance of any hazardous shipment is unintended. Without limiting the foregoing, Courier shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that goods in any shipments constitute hazardous materials. Customer shall notify Courier immediately if any such shipments contain hazardous materials. Customer shall defend and indemnify, and hold harmless, Courier from any liability, loss, damage, or penalties of any kind (including reasonable attorney fees) resulting from Customer's (a) failure to notify Courier of any shipments containing hazardous materials, and (b) any failure by Courier to comply with all applicable hazardous materials laws and regulations.

### **13.4 Exclusive Remedy.**

SECTION 13.1 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR EACH INDEMNIFIED PARTY FOR ANY LOSSES COVERED BY SECTION 13.

## **14. Limitation of Liability.**

### **14.1 No Liability for Consequential or Indirect Damages.**

EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY NOR ITS REPRESENTATIVES IS LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER THE DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## **14.2 Maximum Liability.**

COURIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT/AN INDIVIDUAL SHIPMENT TRANSACTION, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO COURIER UNDER THIS AGREEMENT IN THE TWELVE MONTHS PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM/ THE CORRESPONDING INDIVIDUAL SHIPMENT TRANSACTION.

## **15. Miscellaneous.**

### **15.1 Further Assurances.**

On Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

### **15.2 Entire Agreement.**

(a) Subject to Section 3.4, this Agreement, including all related exhibits, together with the Basic Shipment Terms, constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

(b) Without limitation of anything contained in Section 15.2(a), Customer acknowledges that except for the limited service warranty contained in Section 12.1, neither Courier nor any other Person has made or makes any express or implied representation or warranty, either written or oral, on behalf of Courier, including any representation or warranty arising from statute or otherwise in law.

### **15.3 Survival; Statute of Limitations.**

Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement for a period of 12 months after such expiration or termination; (b) Sections 9, 11, and 15 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of 24 months after such expiration or termination, and (c) Section 13 of this Agreement shall survive the expiration or earlier termination of this Agreement for the period of applicable statute of limitations. All other provisions of this Agreement shall not survive the expiration or earlier termination of this Agreement. Notwithstanding any right under any applicable statute of limitations to bring a claim, no Action based on or arising in any way out of this Agreement may be brought by either Party after the expiration of the applicable survival or other period set forth in this Section 15.3 and the Parties waive the right to file any such Action after the expiration of the applicable survival or other period; provided, however, that the foregoing waiver and limitation do not apply to the collection of any amounts due to Courier under this Agreement.

**15.4 Notices.**

All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a **“Notice”**) must be in writing and addressed to the receiving Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Notwithstanding the foregoing, for the purposes of Sections 4, 8, and 15 of this Agreement, Notice given by facsimile or e-mail (with confirmation of transmission) will satisfy the requirements of this Section 15.4. Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Courier:

Ark.Cryo, Inc.  
 [COURIER ADDRESS]  
 Facsimile: [FAX NUMBER]  
 E-mail: [E-MAIL ADDRESS]  
 Attention: [TITLE OF OFFICER  
 TO RECEIVE NOTICES]

With a Copy to:

Lexern Law Group, Ltd.  
 100 S. Saunders Rd., Ste. 150  
 Lake Forest, IL 60045  
 Facsimile: 847-574-8008  
 Email: oleg@lexern.com  
 Attn: Oleg N. Feldman Esq.

Notice to Customer:

[CUSTOMER ADDRESS]  
 Facsimile: [FAX NUMBER]  
 E-mail: [E-MAIL ADDRESS]  
 Website: [WEBSITE ADDRESS]  
 Attention: [TITLE OF OFFICER  
 TO RECEIVE NOTICES]

### **15.5 Interpretation.**

For purposes of this Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

### **15.6 Headings.**

The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

### **15.7 Severability.**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to the court, which may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

### **15.8 Amendment and Modification.**

No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized Representative of each Party.

### **15.9 Waiver.**

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the Party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

- (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or
- (ii) any act, omission, or course of dealing between the Parties.

#### **15.10 Cumulative Remedies.**

All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Customer's right under Section 12.2 and Section 13 are Customer's exclusive remedies for the events specified therein.

#### **15.11 No Equitable Remedies.**

Notwithstanding any other provision to the contrary contained in this Agreement, Customer acknowledges and agrees that (a) monetary damages at law are a fully adequate remedy to compensate Customer for any breach or threatened breach of this Agreement by Courier, and (b) an action at law for monetary damages is Customer's sole and exclusive remedy for any such breach. No breach by Courier of this Agreement will entitle Customer to equitable relief, including specific performance, injunctive relief, rescission, or any other form of equitable remedy. Without limiting the generality of the immediately preceding two sentences, Customer shall not seek equitable relief to rescind this Agreement or any grant of rights to Courier hereunder.

#### **15.12 Assignment.**

Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Courier. Courier may assign any of its rights without Customer's consent. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

#### **15.13 Successors and Assigns.**

This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

#### **15.14 No Third-Party Beneficiaries.**

Subject to Section 16.14(b), this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**15.15 Choice of Law.**

This Agreement, including all Individual Shipment Transaction documents and exhibits, schedules, attachments and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the Laws of the State of Illinois, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the Laws of any jurisdiction other than those of the State of Illinois.

**15.16 Choice of Forum.**

Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all Individual Shipment Transaction documents and exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than for the US District Court for the Northern District of Illinois, eastern division, or, if such court does not have subject matter jurisdiction, the courts of the State of Illinois sitting in Cook County, Illinois, District 1, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in US District Court for the Northern District of Illinois, eastern division or, if such court does not have subject matter jurisdiction, the courts of the State of Illinois, sitting in Cook County, District 1. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

**15.17 Waiver of Jury Trial.**

Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any Individual Shipment Transaction documents or exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any Individual Shipment Transaction documents, exhibits, schedules, attachments, or appendices attached to this Agreement, or the transactions contemplated hereby. Each Party certifies and acknowledges that (a) no Representative of the other Party has represented, expressly or otherwise, that such other Party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such Party has considered the implications of this waiver, (c) such Party makes this waiver voluntarily, and (d) such Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

**15.18 Counterparts.**

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of

electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

#### **15.19 Force Majeure.**

No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Service Provider hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, hurricane and other natural and weather event affecting air and ground transportation, health epidemic, explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate Transportation Services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 5 days (or, as soon as possible upon receipt of notice thereof) of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of five consecutive days following a notice given by it under this Section 15.19, either Party may thereafter terminate the Individual Shipment Transaction subject to such event; provided, however, that, if substantial courier and Transportation Services have already been rendered, any amount paid in connection with such Individual Shipment Transaction shall be deemed earned and non-refundable.

#### **15.20 No Public Announcements.**

Neither Party shall make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding the other Party or its business unless: (a) it has received the express written consent of the other Party; or (b) it is required to do so by Law and only upon a prior written notice provided to the other Party of such disclosure.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

ARK.CRYO, INC

By \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

By \_\_\_\_\_

Name:

Title: