



## Loan of Equipment Agreement

THIS LOAN OF EQUIPMENT AGREEMENT (this "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between ORGANOGENESIS INC., a Delaware corporation, with a business address of 85 Dan Road, Canton, MA 02021 ("Organogenesis"), and Mangum City Hospital DBA: Mangum Regional Medical Center, a Hospital with a business address of 1 Wickersham Drive, Mangum, OK 73554 ("Facility").

### For Loan of Freezer ("Equipment"):

#### Ultra Low Temperature Freezer

Panasonic (Sanyo) MDFC8V1

#### Temperature Monitoring Device

Chart Recorder  Data Logger – Ethernet

Freezer Serial Number: \_\_\_\_\_

### For Loan of Refrigerator ("Equipment"):

#### Medical Refrigerator

Accucold FFAR-24L-MED-DT

#### Temperature Monitoring Device

TempAlert TM-CELL400-Z

Refrigerator Serial Number: \_\_\_\_\_

### DELIVERY ADDRESS:

Account Name: Mangum Regional Medical Center Account Number: 210775  
Address: 1 Wickersham Drive City, State, Zip: Mangum, OK 73554  
Contact Person: Josey Kenmore Title: Materials Management Coordinator  
Phone: 580-782-3353 X:231 Fax: \_\_\_\_\_ Email: jkenmore@mangumregional.org

### BILLING ADDRESS:

Address: PO Box 280 City, State, Zip: Mangum, OK 73554  
Contact Person: Melanie Wessinger Title: Accounts Payable  
Phone: 580-782-3353 Fax: \_\_\_\_\_ Email: ap@mangumregional.org

**WHEREAS**, Organogenesis has determined that the loan of the above equipment, is necessary for proper long-term storage of certain of its cryopreserved products and certain human allograft tissue products including, but not limited to, Dermagraft® (cryopreserved human fibroblast- derived dermal substitute), NuCel®, Affinity®, and ReNu®. Facility and Organogenesis agree that this equipment will allow Organogenesis to provide expeditious, efficient, and effective delivery of its product to the Facility, ensuring the availability of these products to patients. Facility has requested the above equipment for appropriate storage, monitoring and maintenance of certain cryopreserved products and certain allograft tissue products. The Facility recognizes that the eligibility for borrowing the equipment is not tied to the Facility's past or future purchases or referrals of Organogenesis products.

NOW, THEREFORE, in consideration of the above recital and the mutual agreements set forth below, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

- 1. Purpose.** Organogenesis agrees to loan the equipment described above (the "Equipment") to the Facility without charge on the terms and conditions set forth in this Agreement, and Facility accepts the loan of the Equipment on such terms and conditions. Facility shall use the Equipment exclusively for the purpose of storing Organogenesis' commercial products: Dermagraft, NuCel, Affinity, and/or ReNu products) in accordance with Organogenesis' directions for storage. Other products Organogenesis offers for sale and which require storage using this Equipment may be added, but only as specified by a written notice from Organogenesis. Facility covenants and agrees not to use the Equipment for any other purpose, *including, but not limited to*, the storage or temperature control of any other products, devices, or items.
- 2. Term; Termination; Return of Equipment.** The term of this Agreement shall be one (1) year commencing on the Effective Date. The term shall thereafter automatically extend annually for successive one (1) year terms. Notwithstanding the foregoing, either Party may terminate this Agreement, at any time and with or without cause, by providing thirty (30) days' advance written notice to the other Party. In addition, either Party may terminate this Agreement immediately upon delivery of written notice in the event of the other Party's material breach of any term of this Agreement. Upon termination of this Agreement, Facility shall return the Equipment to Organogenesis at Organogenesis' cost, the Equipment shall be returned to Organogenesis in good working condition and in the condition in which Organogenesis loaned the Equipment to Facility, ordinary wear and tear excepted.
- 3. Not a Product Purchase Agreement.** This Agreement is not, and shall not be construed as, a purchase agreement or consignment agreement for Dermagraft, NuCel, Affinity, ReNu, and/or any other products sold by Organogenesis. All products whether referenced or not referenced in this Agreement are separately purchased products for which the Facility has taken title and assumed ownership and responsibility. Any requests relating to return or credit for a purchased Organogenesis product shall be made in accordance with the Organogenesis Inc.'s Purchase, Return Goods, and Cancellation Policy for that respective product.
- 4. Organogenesis's Responsibilities.** Organogenesis shall:
  - a. Deliver the Equipment to Facility's site;
  - b. Offer training for Facility's personnel on the appropriate storage of Dermagraft, NuCel, Affinity, ReNu, and/or any other products Organogenesis offers for sale;
  - c. Make available to Facility any operating manual and other guidance provided by the Equipment manufacturer relating to the operation, maintenance, and servicing of the Equipment; and
  - d. Not be responsible for (i) the proper storage (using the Equipment or otherwise) of product purchased by Facility from Organogenesis, or (ii) any issues relating to inventory management, stock rotation, monitoring of inventory, removal of expired products, or the retrieval or return of any unused products.

**5. Facility's General Responsibilities.** Facility shall:

- a. Be responsible for the proper storage (using the Equipment or otherwise) of product purchased by Facility from Organogenesis;
- b. Be responsible for all issues relating to inventory management, stock rotation, inventory monitoring, removal of expired products, and retrieval and/or return of any unused products purchased by Facility from Organogenesis;
- c. Be responsible for the proper usage of all products purchased by Facility from Organogenesis;
- d. Ensure that the Equipment is installed, maintained, and used only by appropriately skilled and trained personnel;
- e. Only install the Equipment at Facility's site described in this Agreement and not move or relocate the Equipment to any other location;
- f. Notify Organogenesis of the specific location within Facility's site where the Equipment will be installed and also in the event of any relocation of the Equipment at that site;
- g. Follow all operating, safety, calibration, maintenance and service guidelines recommended by the Equipment manufacturer, including using the Equipment only for the purpose for which it was designed and in accordance with this Agreement;
- h. Keep the Equipment in its possession and control and ensuring that the Equipment is secure against loss, damage and theft;
- i. Notify Organogenesis in writing within ten (10) days of receipt of the Equipment of the Equipment's serial number;
- j. Ensure that any identification marks or labels on the Equipment are not removed, defaced, amended, or obscured, including those identifying the Equipment as belonging to Organogenesis;
- k. Ensure that the Equipment is not used for any purpose other than as expressly permitted by this Agreement;
- l. Follow all operating, safety, and other guidelines recommended by the Equipment manufacturer, including using the Equipment only for the purpose for which it was designed and in accordance with this Agreement;
- m. Comply with all laws, rules, and regulations relating to the Equipment, storage of the product within the Equipment, and the Equipment's use;
- n. Notify Organogenesis immediately of any Equipment malfunction or other issue that could compromise the integrity, quality, safety, or usability of any product sold by Organogenesis;
- o. Maintain, monitor, and update, at least daily, a chart tracking the quantity of product sold and/or distributed by Organogenesis that is stored in the Equipment and provide copies of that chart to Organogenesis upon request from time to time;
- p. Permit Organogenesis to inspect the Equipment and temperature monitoring device upon demand to ensure that the use thereof is consistent with this Agreement, and
- q. Certify in writing upon request and otherwise not less than annually that Facility's use of the Equipment is in compliance with this Agreement.

**6. Equipment Calibration and Maintenance.** Facility agrees to manage and perform, only using appropriately skilled and trained personnel, all Equipment calibration, maintenance, and service according to the Equipment manufacturer's recommendations and in accordance with applicable federal and state laws, rules, regulations, and guidelines or standards that govern the Facility.

7. **Equipment Repair.** Facility shall notify Organogenesis immediately if the Equipment requires any repair. Organogenesis must authorize all Equipment repairs in advance. Authorized repairs shall be performed only by qualified technical personnel as authorized by Organogenesis. Except in the case of willful or negligent damage or repairs otherwise required due to any breach of Facility's obligations in this Agreement, the Equipment will be repaired or replaced at Organogenesis' sole expense.
- Subject to the above conditions, any product stored within the Equipment that requires repair shall be replaced at Organogenesis' sole expense.
8. **Risk of Loss.** Organogenesis shall bear all risk of loss and damage for the Equipment until it has been delivered to Facility's site described on Page 1 of this Agreement. Thereafter, Facility shall bear all risk of loss and damage for the Equipment until such time as it shall have returned the Equipment to Organogenesis. Facility also bears all risk of loss and damage for any product that Facility chooses to store in the Equipment.
9. **Insurance.** Facility shall provide a certificate of insurance to Organogenesis evidencing insurance for all risks of physical loss or damage to the Equipment with a carrier and in amounts reasonably acceptable to Organogenesis. Organogenesis shall be named as an additional insured and a loss payee with respect to the Equipment, and any modification of coverage shall require ten (10) days' written notice to Organogenesis.
10. **No Assignment or Liens.** Facility shall not dispose of the Equipment, assign any rights or possession of the Equipment under this Agreement, or loan the Equipment to any third party. Facility shall, at all times, keep the Equipment free and clear of all taxes, liens, encumbrances, and security interests. Any and all costs, expenses (including all court costs and attorneys' fees), damages, judgements, fines, or other amounts paid or incurred by Organogenesis in procuring the release or discharge of any such taxes, liens, encumbrances, or security interests shall be reimbursed on demand by Facility to Organogenesis as an additional part of Facility's obligations hereunder.
11. **Property of Organogenesis; Filings.** **The Equipment and all replacements and additions thereto shall remain the sole property of Organogenesis. The Equipment shall at all times be and remain personal property and shall not in any manner be permanently affixed or attached to any land or building so that it becomes a fixture under applicable real estate law. Organogenesis shall retain all rights attendant to and associated with the ownership of the Equipment, including, without limitation, the right to depreciate the Equipment for tax, accounting, and all other purposes.** Facility (a) acknowledges that Organogenesis may file financing statements and other notifications of its ownership of the Equipment with such government offices and agencies as Organogenesis deems necessary or appropriate, (b) authorizes Organogenesis to make such filings, and (c) agrees to promptly sign such filings and take such further actions in connection therewith as Organogenesis may request. The Equipment shall be subject to inspection, from time to time, by Organogenesis and any of its directors, officers, employees, or agents, at times chosen by Organogenesis, during the ordinary business hours of Facility.
12. **No Warranties.** The Equipment is being provided "As Is" with no warranties whatsoever, and Facility assumes all risk arising from and relating to the use of the Equipment. ORGANOGENESIS MAKES AND PROVIDES NO WARRANTIES WITH RESPECT TO THE EQUIPMENT OR OTHERWISE RELATING TO THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING BY CUSTOM, TRADE USAGE, OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ORGANOGENESIS HEREBY DISCLAIMS ANY AND ALL WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BYLAW.
13. **Limitation of Liability.**
- a) ORGANOGENESIS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE EQUIPMENT OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT

LIABILITY, OR OTHERWISE, EVEN IF ORGANOGENESIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- b) THE AGGREGATE LIABILITY OF ORGANOGENESIS FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF (I) FIVE HUNDRED DOLLARS (\$500.00) OR (II) THE PURCHASE PRICE OF THE EQUIPMENT.

**14. Relationship of Parties.** The relationship of Organogenesis and Facility established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (a) give either Party the power to direct and control the day-to-day activities of the other; (b) constitute the Parties as partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking; or (c) allow Facility to create or assume any obligation on behalf of Organogenesis for any purpose whatsoever.

**15. Notices.** Facility shall notify Organogenesis via telephone to Organogenesis' Customer Service Center in La Jolla, CA at (888) 432-5232 option 1. Written notifications to Organogenesis shall be sent to:

Customer Service  
Organogenesis Inc.  
65 Dan Road  
Canton, MA, 02021  
Fax: (781) 401-1049  
Email: Freezers@organo.com

**16. Miscellaneous.** This Agreement is the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all other representations, understandings, discussions, offers, and/or agreements between the Parties relating in any way to the subject matter hereof. No waiver of or amendment to this Agreement will be effective unless set forth in writing and signed by Facility and Organogenesis. In particular, all different, conflicting, and additional terms in any current or future purchase order or other writing or communication from Facility are excluded and shall be of no force or effect with respect to this Agreement. This Agreement shall be governed by and construed under the substantive laws of the Commonwealth of Massachusetts, U.S.A. without regard to its conflict of laws provisions. The provisions in Sections 2, 8, and 10 through 16 of this Agreement shall survive any termination of this Agreement. This Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument. This Agreement may be executed by facsimile signature or electronic exchanges of documents bearing a scanned signature, and a facsimile, scanned image, or copy of a signature is valid as an original.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives, as of the Effective Date.

**FACILITY NAME:** Mangum Regional Medical Center  
\_\_\_\_\_

**ORGANOGENESIS INC.:**

Signed By: \_\_\_\_\_

Signed By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Gary Gillheeney Jr.

Title: \_\_\_\_\_

Title: Vice President, Customer Experience

Date: \_\_\_\_\_

Date: \_\_\_\_\_