

Purchaser's Initials \_\_\_\_\_

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

Dark Waterspoon LLC  
Breeding Contract for Fresh Chilled Semen

Phone: 610.405.6054 cell  
<http://darkwaterspoon015.com>

### Breeding Contract for Fresh Chilled Semen

This "Agreement" is made effective as of \_\_\_\_\_ by and between Dark Waterspoon LLC ("DW LLC") and \_\_\_\_\_ ("Purchaser") for the breeding of the Mare (Section 2) to the DW LLC's Arabo Friesian Stallion named **Dark Waterspoon 015** ("Stallion") under the terms and conditions provided herein. He is an approved stallion under the European Arabo Friesian Studbook (EAFS) and the Weser-EMS Studbook.

**1. PURPOSE.** This Agreement defines the terms and conditions under which the Purchaser agrees to purchase and the DW LLC agrees to deliver fresh chilled semen of the Stallion to breed the Stallion to the Mare during the Term. Embryo transplants are expressly outside the scope of this agreement and are prohibited.

**2. THE MARE.** Subject to the conditions and requirements of **Section 5** below, the "Mare" to be bred under this Agreement is the mare named \_\_\_\_\_ and described more fully on the "Breeder Profile". In no event shall Purchaser be permitted to substitute another mare for breeding without prior written consent of the DW LLC, which shall be provided at the DW LLC's sole discretion.

**3. FEES.** Purchaser agrees to the following terms and conditions of payment of all fees due under this agreement.

**(a). "Initial Deposit".** A non-refundable fee of \$500 to confirm Purchaser's reservation of the Stallion for the Term is payable to the DW LLC upon signing of this Agreement. The Initial Agreement shall be applied against and reduce the Stallion Service Fee.

**(b). Stallion Service Fee.** The balance due on Purchaser's Stallion Service Fee as of the date hereof is **\$ 1,250**.

**(c). Method of Payment.** Prior to the date of the DW LLC's first shipment of semen, Purchaser must provide DW LLC and University of North Carolina State, College of Veterinary Medicine's Equine Health Center @ Southern Pines, NC with one of the following to provide for payment of all Additional Service Fees, described in Section 3(c) below:

**(1)** A credit card number which Purchaser hereby authorizes DW LLC to bill directly for all fees incurred in the connection with this Agreement \*. DW LLC reserves the right to refuse to perform any service under this Agreement except upon its receipt of authorization of applicable charges to the following account with respect to which Purchaser is an authorized user:

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**(2)** VISA/MasterCard Account Number \_\_\_\_\_

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

Security Code: \_\_\_\_\_

Account Holder Name: \_\_\_\_\_

Account Billing Address: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\*Purchaser agrees not to contest any charge made pursuant to this Agreement on the basis that the Mare failed to produce a live foal or otherwise become pregnant.

**(c).** The North Carolina State, College of Veterinary Medicine, Equine Health Center located@ Southern Pines, NC will manage and bill Purchaser directly for all services used and including: collection, breeding, mare care, and semen shipment using the above credit card information. The Equine Center's Estimated costs are shown as a courtesy on the Dark Waterspoon O15 website for the Purchaser's viewing, but DW LLC is not responsible for The Equine Center's information accuracy, being out of date or inconsistency.

**4. REQUESTING COLLECTION AND SHIPMENT.** All requests for collection and shipment of semen must be made as described on the "instructions for "Ordering Fresh Chilled Semen." DW LLC requests for fresh semen collection and shipment subject to the availability of the Stallion.

Purchaser understands that the Stallion may be competing away from the Old Goat Farm, Vass, NC where he stands at stud, or otherwise unavailable to fill Purchaser's request on any given day during the Term. It is Purchaser's responsibility to contact DW LLC in advance regarding the Stallion's availability and DW LLC bears no responsibility for failure to timely fill requests due to the Stallion's unavailability. Accordingly, DW LLC will fill Purchaser's collection and shipment requests subject to the following conditions:

**(a).** If there is insufficient semen to fill all requests made for a given day, DW LLC, at its sole discretion will determine which requests will be honored first.

**(b).** If DW LLC is unable to fulfill a request for collection on the requested date due to the Stallion's unavailability, DW LLC will notify the Purchaser and will fill the request on the next earliest date it determines is reasonably practicable in its sole discretion or on such other date as the Purchaser requests, subject to the Stallion's availability as described in this **Section 4**.

**5. CONDITIONS WITH RESPECT TO THE MARE.** Purchaser agrees that satisfaction of the requirements stated in this Section 5 is a precondition under this Agreement. If Purchaser fails to satisfy any such requirements, this Agreement will terminate without refund of any fees paid or incurred and DW LLC will have no further obligation to perform hereunder.

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(a). Prior to DW LLC 's execution of this Agreement, Purchase must provide a completed Breed Profile together with any applicable attachments described therein.

(b). Prior to DW LLC's first shipment of semen hereunder, and at such later times as DW LLC determines to be necessary or prudent in its sole discretion, Purchaser must provide the following:

(1) A "**current**" (not more than ninety (90) days old) veterinary certificate from a licensed veterinarian acceptable to **North Carolina State, College of Veterinary Medicine, Equine Health, Equine Health Center @ Southern Pines, 6045 US One Highway, Southern Pines, NC 28387** indicating the Mare to be in good physical and sound breeding condition, free of infection, and except for maiden mares or mares to be bred on a foal heat, a negative intrauterine culture and cytology;

(2) The Stallion is EVA positive. Proof of an EVA vaccination, or an EVA test showing a positive titer, and Such documentation regarding the physical condition of the Mare as DW LLC determines is necessary or prudent in tis reasonable discretion.

(c). A Veterinarian must administer the semen within twenty-four (24) hours after receipt from the **North Carolina State, College of Veterinary Medicine's Equine Health Center @ Southern Pines, NC** and must sign and return to DW LLC the "**Mare Breeding Passport,**" a copy of which will be included with each shipment of semen.

(d). Purchaser agrees to keep the Mare in good physical condition throughout the pregnancy. Specifically, Purchaser agrees to have the Mare examined and receive services and tests by a Veterinarian and *to promptly submit written documentation of the results as follows, or as DW LLC otherwise requests in its reasonable discretion.*

(1) Regular deworming or fecal tests throughout the pregnancy with FDA approved products for pregnant mares;

(2) Vaccinations with FDA approved products for pregnant mares for "**equine rhino pneumonitis (equine herpes virus type 1)**" at 3, 5, and 9 months of pregnancy;

(3) The following tests at the stated number of days following insemination:

a. Confirmation of pregnancy by early ultrasound between fourteen (14) and eighteen (18) days;

b. Confirmation of a single embryo by ultrasound between thirty (30) and thirty-five (35) days;

c. Routine palpation or ultrasound between (50) and sixty (60) days.

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**6. RETURN OF SERVICE.** For as long as Purchaser satisfactorily complies, the DW LLC's reasonable judgment, with the terms and conditions of this Agreement, Purchaser shall be entitled to have the Mare return to the service of the Stallion throughout the Present Breeding Season as needed.

**(a).** Subject to the first clause of the first sentence of this **Section 6**, Purchaser shall also be entitled to have the service of the Stallion during the Second Breeding Season:

**(b). If, by the end of the Present Breeding Season, the Mare has not "settled"** (become and remained pregnant as shown by the ultrasound results required pursuant to Section 5, and Purchaser provides DW LLC with a certification signed by a Veterinarian within ten (10) days of the ultrasound that includes the following:

- (1)** Identification of the Mare
- (2)** Confirmation that the Mare did not settle during the Present Breeding Season,
- (3)** Confirmation that the Mare was kept in good physical and sound breeding condition throughout the Present Breeding Season, and that the Mare timely received all vaccinations and deworming as recommended by the Veterinarian, including, but not limited to immunization for equine rhino pneumonitis; *or*

**(c).** If the Mare settles during the Present Breeding Season, but suffers a loss of such pregnancy and Purchaser provides to DW LLC, within ten (10) days of examination of loss of pregnancy, a certification signed by a Veterinarian that includes the following:

- (1)** Identification of the Mare:
- (2)** Verification of death of the foal;
- (3)** Confirmation of the performance by the Veterinarian of an autopsy, or other pertinent examination;
- (4)** An explanation for the foal's death
- (5)** The confirmation described in Section 6 above, and
- (6)** Confirmation that the Mare was properly cared for and monitored during the period of foaling in a manner adequate to reasonably insure detection of and attention to any foaling difficulties.

**(d).** For the avoidance of doubt, DW LLC's performance pursuant to this Section 6 is also contingent upon Purchaser's satisfactory compliance with all the terms and conditions of this Agreement, including but not limited to the requirements of **Section 3 (Fees)** and **Section 5 (Conditions with Respect to the Mare)**.

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**7. TERM AND TERMINATION.** The “**Term**” of this Agreement shall commence on the later of the effective date set forth on page one of this Agreement of the **DW LLC’s** receipt of the Initial Deposit and shall continue until the earliest to occur of:

- (a). The completion of the Second Breeding Season, if the **DW LLC** has approved one according to **Section 6**;
- (b). The Mare’s giving birth to a live foal sired by the Stallion;
- (c). Purchaser’s breach or failure to satisfy any applicable requirement under or term of the Agreement;
- (d). The termination of this Agreement pursuant to **Section 8** or any other Section hereof or, if applicable, any provision of the Addendum; or
- (e). The Mare’s death, inability to satisfy the conditions of **Section 5** or **Section 6** of the Agreement or sale by Purchaser. For purposes of this Agreement, the “**Present Breeding Season**” begins on **1/14/2019** and ends on **8/12/2019** and the “**Second Breeding Season,**” if any begins on or about **1/17/2020** and ends on or about **8/11/2020**.

**8. DEATH, UNFITNESS OR SALE OF THE STALLION.** The fees paid or incurred under this Agreement are nonrefundable, except as provided below in this Section \* with respect to the death, unfitness or sale of the Stallion.

(a). If the Stallion should die, be sold by the DW LLC, or otherwise become unfit for service before the DW LLC makes any shipment of semen, then this Agreement shall automatically terminate and the DW LLC shall refund to Purchaser all fees paid hereunder, including the Initial Deposit, within forty-five (45) days;

(b). If the Stallion should die, be sold by the DW LLC or otherwise become unfit for service during the Term after the DW LLC makes at least one shipment of semen, then the Purchaser may elect on of the following options:

- (1) Purchaser may terminate this Agreement and the DW LLC will refund to Purchaser the unused balance of the Additional Service Fee Deposit, if any, within forty-five (45) days;
- (2) If frozen semen of the Stallion is available, Purchaser may substitute frozen semen of the Stallion to breed the Mare by executing the DW LLC’s “Breeding Contract for Frozen Semen.” Upon execution of the Breeding Contract for Frozen Semen, this Agreement will automatically terminate and the unused balance of the Additional Service Fee Deposit, if any, shall be applied against the fees payable under the “**Breeding Contract for Frozen Semen**” under the terms and conditions thereof.

## **9. MISCELLANEOUS.**

(a). **Dark Waterspoon015 Website.** Provides information about the DW LLC and its related Arabo Friesian stallion, Dark Waterspoon 015, under **Stallion services** on

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its **Facebook** "website" **www.darkwaterspoon.com**. The DW LLC bears no liability for any information displayed on the Website that is or may become incorrect, out of date, or inconsistent with any term of this Agreement. Purchaser acknowledges and agrees that, notwithstanding any information to the contrary displayed on the Website, the parties' rights and obligations with respect to all matters contemplated by this Agreement shall be absolutely governed by the terms stated herein.

**(b). Incorporation of Forms and Documents.** The forms and various types of information and documentation that Purchaser and Purchaser's Veterinarian are, or may be required to provide the DW LLC hereunder (including under the **Section 9 Miscellaneous, if applicable**) are incorporated into and made a part of this Agreement by reference. Purchaser is solely responsible for and acknowledges the DW LLC's reliance on all information provided by Purchaser and Purchaser's Veterinarian.

**(c). Non-Assignment.** Except with the prior written consent of the DW LLC, Purchaser may not assign or transfer, this Agreement, in whole or in part, and any attempt to assign or otherwise transfer this Agreement shall be null and void.

**(d). Liability.** Purchaser assumes all responsibility for the care, custody, control and condition of the Mare and bears all risk of loss or damage to the Mare, whether by death, disease, injury, infection or otherwise, during and after the Term. The Purchaser shall be solely responsible for purchasing and maintaining insurance on the Mare.

**(e). Indemnification.** Purchaser agrees to indemnify, release and hold harmless the DW LLC, its agents, employees and assigns, from any and all claims, demands, damages, actions, suits, attorney's fees and costs, obligations or liabilities of any kind, known, in any related to or arising from the Mare, or the breeding or insemination of the Mare.

**(f). Warranty.** The DW LLC is not responsible for lost, delayed, or damaged semen and makes no representation or warranties of any kind with respect to any semen furnished hereunder, except that it is the Stallion's semen. **ALL WARRANTIES FOR MERCHANT ABILITY AND FITNESS FOR PURPOSE ARE HEREBY EXCLUDED.**

**(g). Entire Agreement: Severability; Amendment.** This Agreement supersedes all prior communications between the parties, whether oral or written, and constitutes the entire understanding of the parties with respect to the subject matter contained herein. If any term or condition of this Agreement or the application thereof shall be illegal, invalid or unenforceable, all other provisions hereof shall continue in full force and effect as if the illegal, invalid or unenforceable provision were not a part of this Agreement. Except as expressly provided herein, this Agreement may not be modified except by written mutual consent of the parties.

**(h). Notices.** Except as otherwise provided in this Agreement or as DW LLC may otherwise specifically direct, all notices and other communications provide for under this Agreement shall be in writing and shall be sent via U.S. certified mail, return receipt requested, postage prepaid, or via reputable overnight carrier, postage prepaid. Such

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notices and communications shall be addressed to the parties at their respective addresses set forth above, or such other address as either party may by notice aforesaid designate.

**(i). Governing Law; Jurisdiction.** This Agreement shall be governed by the laws of the Commonwealth of North Carolina and shall be binding upon the parties hereto and their personal representatives. Purchaser hereby consents to the exclusive jurisdiction of the state courts of the Commonwealth of North Carolina and the United States Courts for the North Carolina in all matters arising out of this Agreement.

**(j). No Waiver.** The DW LLC 's failure to insist on any performance and any waiver of any breach of this Agreement by the DW LLC is not to be construed as a waiver of the DW LLC's rights or of Purchaser's obligations under any provision of this Agreement unless the DW LLC specifically so provides in a signed writing attached hereto.

**(k). Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument as against any party whose signature appears heron or for any other purpose.

**DARK WATERSPOON LLC  
Old Goat Farm  
650 Aiken Rd  
Vass, NC 28394**

**DATE:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
Name, Camilla Vance Shadley  
Title: Breeding Manager

**PURCHASER:**

\_\_\_\_\_  
Print Name

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
Signature