

Dark Waterspoon LLC Breeding Contract for Frozen Semen

This **Agreement** is made effective as of _____ by and between Dark Waterspoon LLC ("**Farm**") and _____ ("**Purchaser**") for the breeding of the Mare (**Section 2**) to the Farm's stallion named: **Dark Waterspoon 015 ("Stallion")** under the terms and conditions provided herein.

1. **PURPOSE.** This Agreement defines the terms and conditions under which the Purchaser agrees to purchase and the Farm agrees to deliver up to 2 shipments, each containing (2 doses), for a total limited to 4 frozen semen doses of the Stallion for the purpose of breeding the Stallion to the **Mare** during the Term.
2. **Embryo Transplants** are **expressly outside the scope of this Agreement** and are prohibited except with the prior written consent of the Farm and the Purchaser's execution of the Farm's Embryo Transfer Agreement.
3. **THE MARE.** Subject to the conditions and requirements of **Section E** below, the "mare" to be bred under this Agreement is the mare named _____ and described more fully on the "**Mare Breeder Profile**". In no event shall Purchaser be permitted to substitute another mare for breeding without prior written consent of the Farm, which shall be provided in Farm's sole discretion.
4. **FEES.** Purchaser agrees to the following terms and conditions of payment of all fees payable to the Farm and to **North Carolina State University, % its College of Veterinary Medicine Veterinary Hospital, Andrology Service, 1060 William Moore Drive, Raleigh, NC 27695, here by referred to (NCS)** under this Agreement.
5. **STALLION'S HEALTH:** Genetic Disease testing results as of 6/2018 are:
 WFFS - Negative
 Friesian Dwarfism - Negative
 Friesian Hydrocephaly - Negative
6. **STALLION SERO POSITIVE FOR EVA. (Follow NCS, Andrology Service Recommendations)**
 Proof of an EVA vaccination, or an EVA test showing a positive titer; and such other documentation regarding the physical condition of the Mare as the Farm determines is necessary or prudent in its reasonable discretion.
7. **Live Foal Guarantee (LFG). See Sections D, E, F, G, H.**

A. Fees payable to the Farm. The Farm accepts payment of the following fees by Bank Wire, Paypal, or Zelle. (Account information and instructions will be provided)

- i. **"Initial Deposit".** A non-refundable fee of \$500 to confirm Purchaser's reservation of the Stallion for the Term is payable by Purchaser to the Farm immediately upon the signing of this Agreement.

Date: _____

Purchaser's Initial _____

ii. The Initial Deposit shall be "**Stallion Service Fee**". A one-time, non-refundable fee of **\$ 500** (plus state's sales tax, * if applicable), is payable in full as advance payment of the purchase price of frozen semen before the Farm will approve any shipment of semen by (NCS). The balance due on Purchaser's Stallion Service Fee as of the date hereon is:

Stallion Service Fee: _____
 Sales Tax: + _____
 (Initial Deposit): _____
 Balance Due: _____

*State sales tax shall be added to all purchases of semen as made here under is applicable and applied against and reduce the Stallion Service Fee.

B. Fees payable to (NCS). Frozen semen of the Farm are stored and shipped directly from (NC State Vet School, Raleigh NC) upon the Farm's request and authorization. Shipments from are subject to additional charges payable to **NC State Vet School, Andrology Service** for shipment and special handling ("**Shipping Charges**"), which are described in detail, along with amounts, terms and conditions of payment in the (NC State Vet School, Andrology Service Semen Shipping Program literature attached hereto (the "**NCState Literature**").

The NCS Literature is incorporated into the provisions hereof, and, by executing this Agreement, Purchaser represents that he or she has reviewed it. NCS will not honor the Farm's requests for shipment on Purchaser's behalf except upon satisfaction of the terms and conditions described in the NCS Literature.

C. Method of Payment of NCS Shipping Charges. Purchaser agrees to provide advance payment to the Farm, to be forwarded to NCS and applied to the Distribution Charges, as elected below in one or a combination of the following ways:

i. _____ Purchaser requests that the NCS keep the following credit card account on file for payment of (check, or one, as applicable)

Container Deposit Only _____
 Other Shipping Charges Only _____

Visa/MasterCard Account #: _____
 Expiration Date: _____
 Security Code: _____
 Account Holder Name: _____
 Account Billing Address: _____

ii. _____ Purchaser elects to provide NCS with a check in the amount of \$ _____ for the Container Deposit only, which NCS shall hold on Purchaser's account.

iii. **NOTE:** While NCS does not require a check or credit card to be kept on file for payment of Shipping Charges other than the Container Deposit,

Date: _____ Purchaser's Initial _____

Purchaser understands that if it does not provide a credit card account to be kept on file for this purpose, all such applicable fees must then be paid by check or credit card in advance of each individual shipment. Any delay in NCS's receipt of payment will result in delay of the requested shipment.

iv. _____ In lieu of providing the Container Deposit, Purchaser elects to forgo use of an NCS Container and to provide a tank to NCS, subject to the conditions and limitations applicable thereto in the NCS Literature.

D. REQUESTING COLLECTION AND SHIPMENT. All requests for shipment of semen must be directed to the Farm in writing via email using the Farm's "Frozen Semen Shipment Request Form" as further described on the Farm's "Instructions for Ordering Frozen Semen". NCS will not make any shipments without the Farm's prior written authorization. Semen orders may be called into the farm as long as a completed frozen semen order form is on file with the Farm.

E. Conditions with Respect to the Mare and the Handling of Semen. Purchaser agrees that satisfaction of the requirements stated in this Section G is a precondition of the Farm's initial and ongoing performance under this "Agreement". If Purchaser fails to satisfy any such requirement, this Agreement will terminate without refund of any fees paid, or incurred, and the Farm will have no further obligation to perform hereunder.

- i. Prior to the Farm's execution of this Agreement, Purchaser must provide a completed **Client & Mare Information** sheet together with any applicable attachments described therein.
- ii. Prior to the Farm's authorizing NCS to make the first shipment of semen hereunder, and at such later times as the Farm determines to be necessary, or prudent in its sole discretion, Purchaser must provide the following:
 - iii. A "**current**" (not more than 30 (thirty) days old) **veterinary certificate** from a licensed veterinarian acceptable to the Farm ("Veterinarian") 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;

F. A Licensed Veterinarian must inseminate the mare with the semen at the time of breeding. The veterinarian must sign and return to the Farm the "**Frozen Semen Insemination Certificate**," a copy of which will be included with each shipment of semen. The "Frozen Semen Insemination Certificate," must be returned to Dark Waterspoon LLC within **five days of the last date of insemination on each cycle** the mare is bred. The certificate can be returned by email or mail. Failure to do so will void this breeding contract.

No further semen will be sent without this documentation. This document includes certification that any unused semen has been destroyed, (may only be kept in storage under the veterinarian's supervision with written permission from Dark Waterspoon LLC). All used straws in the dose used for breeding as well as the unused straws that are destroyed must be returned to Dark Waterspoon LLC.

Date: _____

Purchaser's Initial _____

The stallion's semen **may only be inseminated in the mare indicated in this agreement.** All semen sent is the property of Dark Waterspoon LLC, leftover or unused semen may not be used on any other mares without the purchaser signing another stallion breeding contract and making payment for the additional stallion service fee, prior to breeding the second mare. Any and all storage fees charged by the purchaser's veterinarian are solely the responsibility of the purchaser. Purchaser must also have their veterinarian sign agreement stating they agree to the terms above before any semen is shipped.

G. 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 the Farm otherwise request in its reasonable discretion:

- i. _____ Vaccination with USDA approved products for pregnant mares for "equine rhinopneumonitis" (equine herpes virus type 1) at three (3), five (5), seven (7), and nine (9) months of pregnancy:
- ii. _____ 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; and
 - c. Routine palpation or ultrasound between forty (50) and sixty (60) days.

H. Return of service. Subject to the limitation on the number of straws of semen Purchaser is entitled to receive pursuant to Section 1 and the Farm's reasonable judgment that the Purchaser has satisfactorily complied with the terms and conditions of this Agreement, Purchaser shall be instilled to have the Mare return to the service of the Stallion throughout the Present Breeding Season as needed. Subject to the first clause of the first sentence of this Section G, Purchaser shall also be entitled to have the Mare return to the service of the Stallion during the Second Breeding Season:

- i. 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 to Section E and Purchaser provides Farm with a certification signed by a Veterinarian within ten (10) days of the ultrasound that includes the following:
 - a. Identification of the Mare:
 - b. Confirmation that the Mare did not settle during the Present Breeding Season; and
 - c. 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 listed to immunization for equine rhinopneumonitis; or

Date: _____

Purchaser's Initial _____

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

- a. Identification of the Mare;
- b. An explanation for the loss of Pregnancy

iii. If the Mare gives birth, but fails to produce a "live foal", defined as a foal which stands and nurses within twenty-four (24) hours after foaling, and Purchaser verbally notifies Farm within forty-eight (48) hours of the foal's death and provides to the Farm, within five (5) days of the verbal notification, a certification signed by a Veterinarian that includes the following:

- a. Identification of the Mare;
- b. Verification of death of the foal;
- c. Confirmation of the performance by the Veterinarian of an autopsy or other pertinent examination;
- d. An explanation for the foal's death
- e. The confirmation described in Section H; and
- f. Confirmation that the Mare was properly cared for and monitored during the period of foaling in a manner adequate to reasonable insure detection of and attention to any foaling difficulties

iv. For the avoidance of doubt, the Farm's performance pursuant to this Section H 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 D, E, F and G. Accordingly, in addition to the requirements in this Section, the Farm shall require updated information and documentation pursuant to Section E as it deems appropriate in its sole discretion before providing any return of service under this Section H.

I. **OPTION TO BREED MARE AT THE FARM.** Not available.

J. **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 or the Farm's receipt of the Initial Deposit and shall continue until the earliest to occur:

- (i) the Farm's provision of the total number of straws required under Section A.
- (ii) the completion of the Second Breeding Season, if the Farm has approved one according to Section H; (iii) the Mare's giving with to a live foal sired by the Stallion;

Date: _____

Purchaser's Initial _____

(iii) Purchaser's breach or failure to satisfy an applicable requirements under or term of this agreement; (v) the termination of this Agreement pursuant to Section L, or any other Section hereof, including, if applicable, an provision of the Addendum; or

(iv) the Mare's death, inability to satisfy any condition of Section G or Section H of this Agreement or sale by the Purchaser. For purposes of this Agreement, the "Present Breeding Season" begins on 1/2/2019 and ends on 8/2/2019 and the "Second Breeding Season", if any, begins on or about 1/6/2020 and ends on or about 7/31/2020.

K. UNAVAILABILITY OF FROZEN SEMEN OF THE STALLION. The fees paid or incurred under this Agreement are nonrefundable except as provided in this Section K.

i. If frozen semen of the Stallion is insufficient to satisfy the number of doses required to be provided pursuant to Section A becomes unavailable before any service has been provided hereunder, then this Agreement shall automatically terminate and the the Farm shall refund to Purchaser all fees paid hereunder, including the Initial Deposit, with forty-five (45) days. After service has been provided hereunder but before the total number of straws required under Section A has been provided, then Purchaser may elect this option:

a. Purchaser may terminate this Agreement without refund of the Initial Deposit or Stallion Service Fee.

L. MISCELLANEOUS.

1. Farm Website: The Farm provides information about its services on its internet "Website" at www.darkwaterspoon.com. The Farm 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.

2. 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 to the Farm hereunder (including under the Addendum, if applicable) are incorporated into and made a part of this Agreement by reference. Purchaser is solely responsible for and acknowledges the Farm's reliance on all information provided by the Purchaser and Purchaser's Veterinarian.

3. Non-Assignment. Except with prior written consent of the Farm, 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.

4. 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 call be solely r responsible for purchasing and maintaining insurance on the Mare.

Date: _____

Purchaser's Initial _____

(iii) Purchaser's breach or failure to satisfy an applicable requirements under or term of this agreement; (v) the termination of this Agreement pursuant to Section L, or any other Section hereof, including, if applicable, an provision of the Addendum; or

(iv) the Mare's death, inability to satisfy any condition of Section G or Section H of this Agreement or sale by the Purchaser. For purposes of this Agreement, the "**Present Breeding Season**" begins on **1/2/2019** and ends on **8/2/2019** and the "**Second Breeding Season**", if any, begins on or about **1/6/2020** and ends on or about **7/31/2020**.

K. UNAVAILABILITY OF FROZEN SEMEN OF THE STALLION. The fees paid or incurred under this Agreement are nonrefundable except as provided in this Section K.

i. If frozen semen of the Stallion is insufficient to satisfy the number of doses required to be provided pursuant to Section A becomes unavailable before any service has been provided hereunder, then this Agreement shall automatically terminate and the the Farm shall refund to Purchaser all fees paid hereunder, including the Initial Deposit, with forty-five (45) days. After service has been provided hereunder but before the total number of straws required under Section A has been provided, then Purchaser may elect this option:

a. Purchaser may terminate this Agreement without refund of the Initial Deposit or Stallion Service Fee.

L. MISCELLANEOUS.

1. Farm Website: The Farm provides information about its services on its internet "**Website**" at www.darkwaterspoon.com. The Farm 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.

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3. Non-Assignment. Except with prior written consent of the Farm, 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.

4. 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 call be solely r responsible for purchasing and maintaining insurance on the Mare.

Date: _____

Purchaser's Initial _____

5. Indemnification. Purchaser agrees to indemnify, release and hold harmless the Farm, 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 or unknown, in any way related to or arising from the Mare, or the breeding or insemination of the Mare.

6. Warranty. The Farm is not responsible for lost, delayed, or damaged semen and makes no representations or warranties of any kind with respect to any semen furnished hereunder except that it is the Stallion's semen. **ALL WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR PURPOSE ARE HEREBY EXCLUDED.**

7. 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.

8. Notices. Except as otherwise provided in this Agreement or as the Farm may otherwise specifically direct, all notices and other communications provided for under this Agreement shall be in writing and shall be sent via email or mail. Such notices shall be addressed to the parties at their respective address set forth above or such other address as either party may be by notice as aforesaid designate.

9. 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.

10. 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 hereon or for any other purpose.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties have entered into this agreement as of the date and year first written above.

Date: _____

Purchaser's Initial _____

DATE

DARK WATERSPOON LLC

BY: _____
CAMILLA VANCE SHADLEY
TITLE: STALLION MANAGER

DATE:

PURCHASER:

BY: _____
(Print Name)

Signature

Date: _____

Purchaser's Initial _____