



AGREEMENT FOR HANDLING AND STORAGE OF BIOLOGICAL MATERIALS

THIS AGREEMENT FOR HANDLING AND STORAGE OF BIOLOGICAL MATERIALS (“Agreement”) is made and entered into this ____ day of _____, 20____ (the “Effective Date”), by and between Elite Embryo (“Elite Embryo,” “EE,” or “we / us / our”), with a business address of 122 W 400 North, Saratoga Springs, Utah 84045, and the individual(s) identified as animal owner(s) or owner’s agent (“Owner,” or “you / your”) on the “Owner Information Form,” which is attached hereto and incorporated by reference herein. You and Elite Embryo are each a party (“Party”) to this Agreement.

WHEREAS, Owner desires to have Elite Embryo perform certain services (“Services”) which may include receiving, collecting, freezing, storing, and/or transferring animal embryos, or other tissues (“Biological Materials” or “Frozen Biological Materials”); and WHEREAS, Elite Embryo is willing to provide such Services to Owner.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Elite Embryo and Owner AGREE as follows:

AGREEMENT

1. DEFINITIONS

- a. **Embryo:** An unborn offspring in the process of development

2. SERVICES; TERMS AND CONDITIONS

Freezing

As directed by you, Elite Embryo may receive, collect, and/or and freeze Biological Materials from the animal(s) (“Animal”) listed on the “Animal Information Form” which is attached hereto and incorporated by refence herein.

Storage

As directed by you, Elite Embryo may store Frozen Biological Materials from the Animal(s) listed on the “**Animal Information Form**,” which is attached hereto and incorporated by reference herein. Such storage will be at Elite Embryo’s site in Saratoga Springs, Utah, or at an off-site, long-term storage facility. You hereby authorize Elite Embryo, in its sole discretion, to transfer such Frozen Biological Materials to off-site, long-term storage facilities. Elite Embryo will notify you in advance of any such transfer.



Owner-Directed Transfer of Biological Materials

As directed by you, Elite Embryo may transfer Frozen Biological Materials to a third party (“**Transferee**”). Before Elite Embryo will perform any such transfer, the Transferee must submit to EE a signed copy of EE’s most current transferee waiver form (“**Transferee Waiver Form**”), a sample of which is attached hereto for reference.

Adequate Notice. You hereby agree to provide Elite Embryo with “**Adequate Notice**” for transfer of Biological Materials stored by EE. For transfer to an address within the continental United States, Adequate Notice is defined as at least three (3) full business days from the time of the order to the time of expected delivery. For transfer to an address outside the continental United States, Adequate Notice is defined as ten (10) full business days from time of the order to the time of expected delivery.

Email Orders. You hereby authorize Elite Embryo to transfer Biological Materials pursuant to an email communication from you, provided that such email includes all the information required by the Owner Information Form.

No Fee Collection. Elite Embryo will not collect, on your behalf, any fees owed to you by a Transferee, including but not limited to breeding fees.

Disposition of Biological Materials After Termination; Risk of Abandonment and Forfeiture

You hereby agree that within 90 days of this Agreement’s termination for any reason, you will pick up or otherwise direct Elite Embryo to transfer, at your expense, any of Owner’s Frozen Biological Materials stored by Elite Embryo. If you fail to act within 90 days, Elite Embryo may, in its sole discretion, choose to either (i) provide you with notice and an opportunity to cure, or (ii) deem the Biological Materials as abandoned and forfeited. Elite Embryo reserves the right to dispose of abandoned Biological Materials in any way it deems fit, including but not limited to destroying, retaining, or selling the Biological Materials.

Owner understands and accepts the paragraph immediately above: _____



3. OWNER OBLIGATIONS

Fees; Payments

In exchange for Services, Owner agrees to timely pay fees set forth in the “**Fee Schedule**” which is attached hereto and incorporated by reference herein. Elite Embryo, in its sole discretion, will periodically update the Fee Schedule and will provide commercially reasonable notice to Owner of any Fee Schedule changes. Owner’s account is due in full on the first day of each month. Owner will have a 30-day grace period in which to pay or dispute any fees. After the 30-day grace period, if Owner’s account is not paid in full, it will be past due and a finance charge of 1.5% per month or 18% per annum will be automatically applied to the unpaid balance, computed from the original due date. Past due accounts are subject to the Default provisions of this Agreement (see below).

Animal Registration

Owner agrees to deliver satisfactory proof of Animal registration for any Frozen Biological Materials transferred by Owner to Elite Embryo from another freezing center. Owner agrees to comply with the record-keeping requirements of the applicable registration body with which the Animal is registered.

Disease-Free Materials

Owner agrees to only transfer disease-free Biological Materials to Elite Embryo. Elite Embryo reserves the right to refuse Biological Materials that are not disease-free.

Communication

Changes to Ownership. If Owner becomes aware of any changes to Animal ownership, Owner shall (i) promptly notify Elite Embryo, in writing and with reasonable detail, (ii) confirm that Owner’s Representations and Warranties in this Agreement are still valid, and (iii) obtain relevant consents from any new owner or co-owner in connection with the transfer of Biological Materials.

Phone; Address.

You hereby authorize Elite Embryo to discuss and transact business for your account via telephone, and you further authorize EE to record such conversations. However, any order or authorization for storage or destruction of Biological Materials must be confirmed by you in writing before EE will act. You also agree to keep Elite Embryo apprised, in writing, of any changes to Owner’s mailing or billing address as originally provided in the Owner Information Form.



4. OWNER REPRESENTATIONS AND WARRANTIES

Ownership

Owner is the sole owner or owner's agent of (i) any Animal listed on the Embryo Information Form and (ii) any Biological Materials that Owner furnishes to Elite Embryo.

Authority

Owner has the legal capacity and authority to enter into this Agreement and perform Owner's obligations under this Agreement, and no additional approval or consent of any person is necessary in connection with it.

5. LIMITATIONS ON LIABILITY; INDEMNIFICATION

No Breeding Warranties

Elite Embryo shall perform its Services in a commercially reasonable manner. Elite Embryo makes no representation or warranty that a successful birth will result from any breeding using Biological Materials handled by EE. Elite Embryo recommends that Owners use trained veterinarians to conduct frozen embryo transfers to maximize the chances of a successful breeding.

Breed Registration

Elite Embryo shall not be responsible for breed registration, or for providing documentation in support of breed registration, for any offspring resulting from transfer using Biological Materials handled by EE.

No Liability for Acts or Omissions of Third Parties or Transferees

Elite Embryo expressly disclaims any liability for the acts or omissions of veterinarians, Owners, Transferees, or any other persons or entities who are not officers, directors, agents, or employees of Elite Embryo. Elite Embryo specifically disclaims liability for a Transferee's failure to follow post thaw/ thawing instructions sent from EE to the Transferee.



No Liability for Import / Export Requirements.

Elite Embryo shall not be responsible for collected Biological Materials that fail to meet government import or export requirements where applicable. Current country-specific requirements for import or export shall be provided by the Owner for EE's consideration prior to shipment to a transferee.

No Refund of Vapor Shipping Fees

If Owner requests that Elite Embryo use a third-party vapor shipper, Elite Embryo will not be responsible, under any conditions, for return of the prepaid shipping fees.

Force Majeure.

Elite Embryo disclaims liability for any delay, damage, loss, or non-performance caused by persons, events, conditions, or circumstances beyond the reasonable control of Elite Embryo, including but not limited to Owner's acts, Transferee's acts, delay or non-performance of a subcontractor or subcontractor's supplier, government acts or orders, equipment failure, extraordinary natural events, fire, explosion, typhoon, flood, earthquake, tide, lightning, material shortage, labor shortage, labor dispute, transportation failure or delay, default of a common carrier, embargo, disease, pandemic, public health emergency, riot, civil unrest, or war. If any of the foregoing events occur, Elite Embryo's sole liability will be the return of prepaid fees for Services not rendered.

Assumption of Risk; Release;

Indemnification Owner hereby acknowledges that Elite Embryo's Services carry inherent risks to Biological Materials, including but not limited to equipment failure, storage failure, transportation failure, thawing, lost or misplaced shipments, and acts or omissions by Elite Embryo officers, directors, agents, employees, or affiliates. Owner hereby assumes all such risks, and Owner releases and holds harmless Elite Embryo and its respective officers, directors, agents, employees, affiliates, shareholders, successors, and assigns (collectively, the "EE Indemnified Parties") from and against any claims, demands, and liabilities which Owner or Owner's successors and assigns may have, now or in the future, known or unknown, which may arise or result from Owner's participation in this Agreement. Owner further agrees to indemnify and hold the EE Indemnified Parties harmless for any "Losses" (Losses defined to include all liabilities, costs, damages, penalties, assessments, demands, claims, and causes of action, including but not limited to reasonable attorney fees, accountant fees, consultant fees, expenses, and court costs) related to or arising directly or indirectly out of any breach by Owner of this Agreement. IN NO EVENT SHALL ELITE EMBRYO BE LIABLE UNDER ANY LEGAL THEORY FOR ANY LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL



DAMAGES, INCLUDING THE VALUE OF ANY ANIMAL BIOLOGICAL MATERIALS WHICH ARE HEREBY EXPRESSLY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER ELITE EMBRYO HAS BEEN ADVISED OF EITHER THE POSSIBILITY OF SUCH DAMAGES OR OF THE VALUE OF THE BIOLOGICAL MATERIALS.

6. DEFAULT

Cure or Termination

If Owner defaults under any terms of this Agreement, then Elite Embryo may elect to (i) terminate the Agreement with ten (10) days' notice to Owner; or (ii) permit Owner to cure the default within a ten (10) day period following notice to the Owner. If Owner fails to cure the default under option two, then this Agreement shall be terminated.

Effect of Termination for Owner Default

If this Agreement is terminated due to Owner default, then Owner hereby accepts responsibility to pay its account in full, plus any reasonable costs incurred by Elite Embryo for repossession or return of property, enforcement of the Agreement, and collection on Owner's account, including reasonable attorney fees and costs. In addition to any other remedies for default provided for under this Agreement or applicable law, Elite Embryo expressly reserves the right to enforce all its lien rights, including statutory lien rights under Utah Code Title 38 Chapter 38, as amended, with respect to agister liens and liens for personal property services. Elite Embryo will also dispose of Owner's Biological Materials as explained under "Services; Terms and Conditions" above.

7. GENERAL PROVISIONS

Assignment

Any assignment of this Agreement by Owner without the prior written consent of Elite Embryo shall be void. No assignment shall relieve the assignor from any obligation hereunder.

Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties, their heirs, representatives, successors, and assigns.

Costs

If any legal or alternative dispute resolution proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in



connection with any of the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

Entire Agreement

This Agreement constitutes the entire contract between the parties with respect to the subject matter hereof. Any previous agreement, understanding, or representations by or between the Parties, written or oral, that may have related in any way to the subject matter hereof, is superseded by this Agreement.

Further Action

The Parties shall execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, and any disputes arising out of this Agreement shall be resolved in the Fourth District Court, Utah County, State of Utah.

Headings

The various section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Interpretation

This Agreement will be interpreted as broadly as necessary to implement and comply with applicable Utah law. Any ambiguity in this Agreement will be resolved in favor of a meaning that complies and is consistent with applicable Utah law.

Modification

Any modification of this Agreement will be binding only if done in writing between authorized representatives of each Party.



Notice

Any notice required or permitted by this Agreement shall be in writing and shall be sent certified mail, return receipt requested, to the last known address of the receiving Party. It shall be Owner's responsibility to notify Elite Embryo of any change in address. Notice shall be effective 3 days after deposit of the same into the United States Mail with sufficient postage attached.

Severability

Any term or provision of this Agreement that is invalid or unenforceable under applicable law will not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Third-Party Beneficiaries

Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or organization other than the Parties and their permitted successor and assigns, any rights, remedies, obligations, or liabilities whatsoever.

Waiver

No waiver by any Party of any default, misrepresentation, breach, or covenant under this Agreement, whether intentional or not, will be deemed to extend to any prior or subsequent fault, misrepresentation, breach, or covenant under this Agreement, or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

The undersigned Parties have read, understood, and consented to abide by every provision of this Agreement. In witness whereof, the Parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

Owner

By: _____

Name: _____

Title: _____

Elite Embryo

By: _____

Name: _____

Title: _____



Fee Schedule

- Pick up fees (Vapor Shipper Rental and Delivery Service Fee (FedEx)) are waived for any local pick up. A deposit of \$150 (one hundred and fifty dollars) is required for the rental of a dry-shipper to transport frozen biological materials. Upon the return of the dry-shipper, \$100 will be refunded to the account.
- Elite Embryo charges two hundred and forty dollars (\$240) yearly, per Mare x Stallion cross for frozen Biological Materials storage services on site, billed monthly (\$20 per month).
- All fees for long-term Biological Materials storage will be billed from the date of arrival of the animal at the storage facility. Elite Embryo does not pro-rate storage fees.
- Domestic shipping costs include Shipment Preparation Fee, Vapor Shipper Rental and Round-trip Delivery Service Fee., at a rate of five-hundred dollars (\$500).
- If a vapor shipper is not returned within 7 days for domestic shipments, and 14 days for international shipments, there is a twenty seven dollars and thirty two cents (\$27.32) a day late return fee for each day the shipper is returned late. If unreturned, the charge is two thousand dollars (\$2000) for replacement.