



# SEMEN FREEZING STORAGE & SHIPPING AGREEMENT

RANDALL POPKIN DVM 604 ELSA DR. SANTA ROSA CA 95407

BREEDER'S VETERINARY SERVICES

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THIS SEMEN FREEZING, STORAGE AND SHIPPING AGREEMENT (the "Agreement") is hereby entered into by and between the owners identified on the signature pages hereto (each an "Owner" and, collectively, the "Owners") and Breeder's Veterinary Services, BVS, a California corporation, ("Vet"), located at 604 Elsa Drive, Santa Rosa, CA 95407, telephone 707. 545. 8052, facsimile 707. 545. 2654, for the purpose of collecting, freezing and storing all semen from the Sire named below ("Semen") and shipping or using Semen at Owner's direction.

This Agreement applies to all straws and/or vials of Semen regardless of when it was collected and whether it was collected by Vet.

### THE SEMEN DONOR (HEREAFTER, REFERRED TO AS "SIRE") IS:

REGISTERED NAME OF DOG: \_\_\_\_\_ DATE COLLECTED: \_\_\_\_\_

REGISTRATION NUMBER: \_\_\_\_\_ AKC:  OTHER:

REGISTRATION DATE \_\_\_\_\_ CALL NAME: \_\_\_\_\_

BREED: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

NAME OF SIRE: \_\_\_\_\_ REGISTRATION NUMBER: \_\_\_\_\_

NAME OF DAM: \_\_\_\_\_ REGISTRATION NUMBER: \_\_\_\_\_

COLOR: \_\_\_\_\_ TATTOO/MICROCHIP NUMBER: \_\_\_\_\_

**1. OWNERSHIP.** If Owner is an individual, then Owner represents and warrants that he/she is the sole and true owner of Sire and/or Semen and that he/she has full power and authority to enter into this Agreement. If Owner is a corporation, syndicate, partnership, or party to a co-ownership agreement, then Owner represents and warrants that Owner has the requisite corporate or partnership power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution, delivery and performance by Owner of the transactions

contemplated by this Agreement have been duly authorized by all necessary corporate action or, if Owner is not a corporation, such partnership, limited liability company or other applicable like action, on the part of Owner. This Agreement has been duly executed by Owner, and constitutes the valid and legally binding obligation of Owner, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable law. In the event multiple Owners are signatories to this Agreement, all actions requested to be made by Vet under this Agreement will require written authorization from all Owners. In the event Vet receives conflicting instructions from Owners signatory to this Agreement, Owners agree that Vet will not take any action except to store the Semen until the Owners resolve the conflict amongst themselves and provide Vet written instructions signed by each Owner.

**2. REGULATORY COMPLIANCE;** Paperwork. Vet follows the rules and procedures set by the American Kennel Club ("AKC") for the provision of services provided under this Agreement, regardless of the registry organization with which Sire is registered. All compliance with the rules and procedures of the applicable registry organization, AKC or other, is the sole responsibility of Owner. Vet does not undertake any responsibility in this regard. Owner agrees to provide Vet all required paperwork (including, without limitation, a copy of the registry organization registration and a copy of a DNA certificate) at the time Sire is first presented to Vet for semen collection. If DNA certification has not been done prior to first collection, Vet agrees to provide



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information and necessary paperwork to submit a DNA sample to the applicable registry organization, and when certification has been received by Owner, Owner agrees to provide Vet with a copy of such paperwork. If paperwork is not provided by Owner at the time of semen collection, Vet may refuse to proceed with semen collection or may require Owner to sign further documents agreeing to provide this paperwork within 10 days of the semen collection. If Vet does proceed with semen collection and Owner does not provide Vet with the required paperwork within 10 days of semen collection, Vet may, in its sole discretion, destroy the Semen.

**3. AGENTS OF OWNER.** In situations where a person other than Owner is presenting Sire for semen collection, that person shall be deemed to be an agent of Owner ("Agent") and the presentation of Sire by Agent for semen collection shall be conclusive evidence of the due authorization of such action by Owner. If Agent signs this Agreement on behalf of Owner, Agent assumes all responsibility for providing Vet with a copy of this Agreement signed by Owner within 30 days of the date of this Agreement or prior to any use, transfer or shipment of the Semen, whichever comes first. Agent also assumes all financial and legal responsibilities associated with the collection and storage of Semen of Sire under the terms of this Agreement until an Agreement is signed by Owner and received by the Vet.

Agent also agrees that he/she has no legal rights to Semen unless directly specified in writing by Owner to Vet. If Vet does not receive a copy of this Agreement signed by Owner within 30 days of the date this Agreement is signed by Agent, Vet may, in its sole discretion, destroy the Semen.

**4. REPRODUCTIVE EVALUATIONS;** Quality of Semen. Owner authorizes Vet to examine and perform a reproductive evaluation on Sire, if Vet deems it necessary or advisable, and to collect, freeze, and store Semen any time Sire is presented to Vet by Owner and/or an agent of Owner. Owner also acknowledges and agrees that Semen may not be frozen each time that Sire is presented, if Vet believes the quality is not sufficient for successful freezing. Vet makes every effort to successfully freeze Semen from every semen collection, but VET DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RESULTS FROM TREATMENT, ARTIFICIAL INSEMINATION AND/OR THE USE AND VIABILITY OF FROZEN SEMEN.

**5. INSURANCE.** Owner acknowledges and agrees that Vet does not provide insurance against damage or loss of Semen and that it is Owner's responsibility to investigate available insurance and provide any insurance that it may desire at Owner's sole expense. Notwithstanding the foregoing, as a courtesy to Owner, Vet can assist Owner in obtaining insurance. However, Owner acknowledges and agrees that Vet does not make any representation or warranty regarding the insurance or its coverage. Owner hereby accepts or declines Vet's assistance as indicated below:

a. Owner hereby requests Vet's assistance in obtaining insurance, at Owner's expense

\_\_\_\_\_  
**OWNER'S SIGNATURE**

OR

b. Owner hereby declines insurance of Semen and/or Vet's assistance in obtaining insurance, and assumes any and all risk therein

\_\_\_\_\_  
**OWNER'S SIGNATURE**



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Neither Vet nor any of its affiliates, directors, officers, partners, members, shareholders, employees or agents shall be liable to Owner or any third party in connection with any insurance referred to herein. Neither Vet nor any of its affiliates, directors, officers, partners, members, shareholders, employees or agents has any fiduciary relationship to Owner or any third party by virtue of this Agreement. Neither Vet nor any of its affiliates, directors, officers, partners, members, shareholders, employees or agents shall be responsible to Owner for any recitals, statements, representations or warranties by any insurance company or in any certificate or other document delivered in connection therewith.

### **6. SEMEN TRANSFER FORM.**

The SEMEN TRANSFER FORM must be completed and signed by any one of the Owners signatory to this Agreement and returned to Vet, either in person or by facsimile, prior to any usage, disbursement or shipment of Semen. Should Vet have any reason to doubt the authenticity of any such request, Vet may delay acting until reasonably assured of its authenticity, and shall not be held liable by Owner or any third party for any direct or indirect consequences of such delay. Owner hereby acknowledges and agrees that no Semen will be used, shipped or otherwise disbursed until all outstanding balances due Vet are paid in full. Additionally, all fees associated with the shipping of any Semen, including, without limitation, the cost of any cryogenic shipper tanks, must be paid in full before Vet will ship any Semen. Owner will give Vet at least 7 days advance written notice of any shipping requests with complete written shipping instructions on the SEMEN TRANSFER FORM. Vet will try to accommodate shipping requests or changes to shipping requests made after the shipping request due date at additional charge, but Vet will not be responsible to Owner or any third party for direct or indirect damages resulting from Vet's inability to accommodate such requests or changes. Vet will not be responsible for any shipping delays if caused by an event beyond Vet's control.

### **7. NO WARRANTIES.**

VET MAKES NO REPRESENTATION AND EXTENDS NO CONDITION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COLLECTION, STORAGE OR SHIPMENT OF SEMEN, OTHER THAN AS SPECIFICALLY PROVIDED IN SECTIONS 4 AND 7 AND EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER IMPLIED WARRANTIES WITH RESPECT TO THE CAPABILITIES, UTILITY OR APPLICATION OF SEMEN. Owner shall not grant any warranty to any other person that exceeds the warranty for Semen that Vet grants to Owner hereunder without indemnifying Vet for such additional warranty.

### **8. LIMITATION OF LIABILITY.**

Owner agrees that Vet and its affiliates shall not be liable for any accident, damage, or loss of Semen, regardless of cause except if accident, damage or loss is caused in its entirety by the gross negligence or willful intent of Vet and only if Semen is in the direct custody and care of Vet. Vet is not responsible in any way for Semen once in the hands of any shipping carrier and Vet suggests that, in addition to maintaining insurance as set forth in Section 5, Owner and/or recipients of Semen insure all shipments and immediately inspect such shipments on arrival to validate any claims.

NEITHER VET NOR ANY OF ITS AFFILIATES SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, REGARDLESS WHETHER VET HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. LIABILITY FOR DAMAGES OR ALLEGED DAMAGES HEREUNDER, WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IS LIMITED TO, AND WILL NOT EXCEED, ACTUAL DIRECT DAMAGES TO OWNER. ACTUAL DIRECT DAMAGES WILL IN NO EVENT EXCEED THE COLLECTION OF SAME NUMBER OF BREEDING UNITS BY VET AT VET'S OFFICE OF NEW SEMEN FROM SIRE OR, IF SIRE IS NOT AVAILABLE FOR COLLECTION, ANOTHER



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DOG OF OWNER'S CHOOSING. IN NO EVENT WILL VET OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSS WHERE SEMEN HAS BEEN SUBJECTED TO MISUSE, NEGLIGENCE OR ACCIDENTAL DAMAGE AFTER DELIVERY BY VET TO THE CARRIER.

Owner agrees that this limitation of liability is essential consideration to Vet's agreement to enter into this Agreement with Owner.

### **9. EXCLUSIVE REMEDY.**

Vet agrees to exercise commercially reasonable care in collecting and storing Semen, including, without limitation, storage in a secure area, periodic revacuuming of older tanks as necessary to minimize risk due to vacuum failure, frequent monitoring of nitrogen levels in storage tanks and 'topping up' with nitrogen, regular (every 1-3 days) visual inspection of tanks for early signs of vacuum failure, and keeping a 'reserve' of nitrogen handy, along with spare tanks, to allow quick transfer of straws should a tank fail. However, Owner acknowledges and agrees that failure of a nitrogen tank vacuum can occur at any time without warning.

In the event of loss of Semen for which Vet is responsible, Owner's exclusive remedy is replacement, at Vet's office, of new Semen from Sire or, if Sire is not available for collection, another dog of Owner's choosing. Owner's agreement to this exclusive remedy is essential consideration to Vet's agreement to enter into this Agreement.

### **10. INDEMNIFICATION.**

Owner shall indemnify and hold Vet, its directors, officers, agents and employees, and any of its affiliates and their directors, officers, agents or employees (each, a "Vet Party") harmless from any and all liability, damage, loss, cost or expense (including, without limitation, reasonable attorneys' fees and expenses) resulting from any claims or suits brought against a Vet Party by a third party arising as a result of or in connection with (i) a breach of any of the representations or warranties made by Owner in this Agreement or (ii) any third party claim arising from a breach of any of such representations or warranties, or (iii) the collection, storage, freezing, shipment or use of Semen that is the subject of this Agreement.

Owner shall indemnify Vet and its affiliates for any claims made against Vet and its affiliates which arise in connection with any breeding or co-ownership contract. Owner shall be free to set the straw or stud fee of Sire, and shall be solely responsible for informing the recipient of Semen of such fees. Owner is solely responsible for obtaining payment of such fees from recipient.

### **11. PRICES.**

In consideration of the services provided to Owner by Vet under this Agreement, Vet shall be paid pursuant to the then current price schedule, which is subject to change in the sole discretion of Vet.

### **12. PAYMENTS.**

Payment for services rendered and fees incurred under this Agreement are due at the time of service. Annual storage bills are due on January 1st of each year. Vet will bill Owner and Owner agrees to pay for Semen storage on an annual basis in advance for the upcoming calendar year. Vet will send Owner an invoice for Semen storage on or around each December 1st for storage fees for the upcoming calendar year. Semen storage invoices, are due within 30 days of the date of such invoice. If payment is not received by Vet within 30 days of that invoice, all amounts due under this Agreement will bear interest at the rate of 1.8% monthly (21.6% per annum) on any unpaid balance until paid. The parties agree that the returned check charge shall be \$25.00.



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### 13. OVERDUE BALANCES.

If any amounts due under this Agreement have not been paid by Owner within 60 days of the date of an invoice, Vet will, following reasonable attempts during the following 30 days to contact and collect such amounts due from Owner, consider Semen to be abandoned by Owner, and Vet may claim full title and ownership of Semen. It is Owner's responsibility to inform Vet, in writing, of any changes to Owner's billing address. Undeliverable invoices returned to Vet will be treated as unpaid invoices. Vet may then, at its sole discretion, destroy Semen or advertise and sell it for any fee as Vet may determine in its sole discretion. Such action shall not relieve Owner of any payment responsibility, unless Semen sales reimburse Vet for all costs and expenses hereunder. Any sales proceeds that exceed the sum total due Vet, including, without limitation, costs and expenses involved in attempting to locate and collect from Owner, and costs and expenses involved in subsequent advertising and sale of Semen, shall be sent to Owner at Owner's last known address, and if unclaimed or returned to Vet, Vet shall no longer be responsible to Owner for reimbursement thereof.

### 14. TRANSFER UPON OWNER'S DEATH.

In case of Owner's death, the Semen should be:

a. Destroyed \_\_\_\_\_

OR

b. Transferred to the following person:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

TELEPHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_

### 15. MISCELLANEOUS.

a. **Successor and Assigns.** This Agreement shall be binding upon Vet and Owner and each of their respective heirs, administrators, representatives, executors, successors and assigns and shall inure to the benefit of the parties hereto and their representatives, and each of them, and to their heirs, administrators, representatives, executors, successors and assigns.

b. **No Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

c. **Counterparts.** This Agreement may be executed in counterparts and each counterpart shall be deemed a duplicate original.

d. **Governing Law.** This Agreement is deemed to have been made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California, without reference to conflict of law principles. The language of all parts of this Agreement shall in all causes be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.



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**e. Severability.** The provisions of this Agreement are severable, and should any provision of this Agreement be declared or be determined by any arbitrator or court to be illegal or invalid, any such provision shall be stricken, and the validity of the remaining parts, terms or provisions shall not be affected.

**f. Headings.** The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

**g. Entire Agreement; Amendment.** This Agreement sets forth the entire agreement between the parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the same subject matter, further, this Agreement may not be changed except by explicit written agreement by the parties hereto.

**h. Arbitration.** The parties agree that all questions concerning the validity, interpretation and enforcement of this Agreement shall be determined by arbitration conducted in Los Angeles, California in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association ("AAA") before a single neutral arbitrator chosen by AAA. The decision of the arbitrator shall be final and binding on both parties, and neither party shall have a right to appeal or to judicial review. A judgment on the arbitrator's decision may be entered by any court having jurisdiction over the parties. In connection with such proceeding, the substantially prevailing party shall be entitled to receive its expenses (including reasonable attorneys' fees) from the substantially non-prevailing party.

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### OWNER'S INITIALS

This agreement to resolve any disputes by binding arbitration shall extend to claims against any parent, subsidiary or affiliate of each party, and, when acting within such capacity, any officer, director, shareholder, employee or agent of each party, or of any of the above, and shall apply as well to claims arising out of state and federal statutes and local ordinances as well as to claims arising under the common law.

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### OWNER'S INITIALS

**i. Notice.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given when (1) personally delivered to the party to be given such notice or other communication, (2) if sent by facsimile, upon receipt of proof of sending thereof, or (3) on the business day following the day such notice or other communication is sent by overnight courier, and (4) if mailed by first-class registered or certified mail, return receipt requested, postage prepaid, two days after posting in the U.S. mails, in each case delivered to the party at the address set forth on the first page of this Agreement or to such other address as the parties may designate in writing.

**j. Leptospirosis.** We recommend Leptospirosis titres at the time of freezing. This is required if any semen from this collection is to be shipped to New Zealand or Australia (additional countries may require this as well). We encourage everyone to check current import/export requirements at [HTTP://WWW.APHIS.USDA.GOV/VS/NCIE/IREGS/ANIMALS](http://www.aphis.usda.gov/vs/ncie/iregs/animals) before freeze appointment. It is the client's responsibility to research this before appointment.

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### OWNER'S INITIALS



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OWNER states that he/she/it has carefully read the foregoing Agreement, knows and understands its contents and voluntarily executes this Agreement. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

## **BREEDER'S VETERINARY SERVICES, BVS.**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

Owner Signature Page to Breeder's Veterinary Services, BVS.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

\_\_\_\_\_  
**NAME OF OWNER**

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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

ADDRESS FOR NOTICE: \_\_\_\_\_

STREET: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ CELL NUMBER: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_