



www.smartrepro.com

2208 Duncan Road
Jonesboro, AR 72401

870-588-4295

Terms & Conditions

This agreement (the "Agreement"), made and entered into by and between Semen and Embryo Advanced Reproductive Technologies (SMART), LLC, an Arkansas limited liability company (hereinafter referred to as "Smart Reproduction"), and the undersigned OWNER (hereinafter referred to individually or collectively as "OWNER"). Smart Reproduction provides custom animal semen and embryo collection and storage services (herein the "Services"), and Owner desires to obtain said Services from Smart Reproduction and store and/or market frozen semen and/or embryos in liquid nitrogen container(s) owned and operated by Smart Reproduction. For the Services, Owner agrees to pay Smart Reproduction in accordance with the terms, rates, fees, and conditions listed below. This Agreement is specifically prepared for the purpose of clarifying the duties and responsibilities of Owner with respect to the inventory stored and the Services provided hereunder. In the event ownership of a donor or breeder animal is held by multiple Owners, a single person must be declared as the authorized representative (the "Agent") to conduct all business on behalf of Owner(s) with Smart Reproduction. Written proof of designation of an Agent shall be provided by Owner to Smart Reproduction to be effective.

SERVICES AND FEES: Owner and Smart Reproduction have discussed the various Services available, including the associated fees and charges, and both parties agree to be bound by the fee schedule of Smart Reproduction in effect as of the date any Service is rendered. Fees and prices for each Service are subject to change, without prior notice. A copy of the current fee schedule for Services is attached to this Agreement and incorporated herein by reference as if set forth more fully herein. Terms of payment are due upon receipt of invoice.

Smart Reproduction will provide resident donor, recipient, and breeder care (including veterinary care through a licensed veterinarian), artificial insemination services, embryo collection, freezing and transplant services, recipients and other services related to embryo transfer or artificial insemination, as requested by Owner. Smart Reproduction shall process recovered embryo(s) (transfer and/or freeze) according to Owner's desired schedule when circumstances permit. However, transfer of embryo(s) will be based upon availability of recipient animals. Such services will be performed under the supervision of a licensed veterinarian.

Smart Reproduction will use reasonable efforts to collect, process, store, and ship when applicable, embryo(s) and/or semen of the highest quality available given the applicable circumstances and limitations at the time. Notwithstanding the foregoing or any other provision herein to the contrary, the Services to be provided hereunder by Smart Reproduction shall be provided in accordance with generally accepted animal husbandry practices. Semen used for breeding donor or breeder females shall be provided by Owner at Owner's sole cost and expense. Smart Reproduction is not responsible for semen quality or embryo transfer results.

OWNER OBLIGATIONS: If Owner is utilizing storage Services, Owner is responsible for providing documents indicating the precise quantity and the identity of the semen and/or embryos that the Owner wishes to place in storage with Smart Reproduction. These documents must be presented to Smart Reproduction at the time of delivery. Straws must be properly identified and match the packing list. If there are discrepancies, they will be noted. Smart Reproduction will not be liable at any time for improperly labeled or improperly packaged semen or embryos – including typical breakage or popping plugs, nor will Smart Reproduction be held liable for shipments of semen or embryos that are poorly or improperly labeled or packaged. Shipments and transfer requests from Owner must be placed in writing using the Smart Reproduction forms and submitted back to Smart Reproduction by facsimile or mail. Owner's account must be maintained on a current PAID status for shipments or transfers to take place.

HEALTH STATUS TESTING: Owner shall provide to Smart Reproduction a photocopy of registration papers for all donor dam(s), evidencing ownership of all such animal(s). In the event the donor(s) are the subject of a lease arrangement with a third party, Owner shall provide to Smart Reproduction a copy of the registration papers for the subject donor, and a copy of the lease agreement from the actual owner of the animal naming Owner as lessee under the lease. Owner shall provide to Smart Reproduction, before collection, a health certificate signed by an accredited veterinarian for a clean bill of health. In lieu thereof, Smart Reproduction has the right to secure such tests and bill Owner for any charges associated therewith. Any other veterinarian expenses incurred will be billed according to the price schedule and shall be paid promptly by Owner.

WARRANTIES; LIMITATIONS OF LIABILITY: Owner understands and acknowledges that there are multiple risks inherent in animal production agriculture, including the feeding and boarding of animals; processing, freezing, and thawing of semen and embryos; transportation of animals, semen and embryos; and techniques and technology of artificial breeding and embryo transfer. Owner also recognizes the possible risk of adhesion formation from embryo recovery, dominant follicle ablation and



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the complications related to such procedures. Under no circumstances shall Smart Reproduction be liable to Owner or any other party for any costs of procurement of substitute goods or services or any direct, indirect, special, incidental, exemplary, or punitive damages, including, without limitation, lost profits, loss of goodwill, or business interruption, regardless of whether such party was advised of the possibility of the foregoing or whether or not any damage or loss results from the use, handling, removal, transfer and storage of semen or embryos, the care or treatment of the donor and/or recipient and/or breeder females and any offspring thereof, the health status testing, or the use and/or disclosure of test results or related information.

Smart Reproduction makes no guarantee or warranty as to the fertility of donor(s) or breeder(s), and makes no guarantee or warranty as to Smart Reproduction's ability to effectuate conception of donor(s) or breeder(s) which Smart Reproduction artificially inseminates. Owner acknowledges that Owner has had a reasonable opportunity to research and inspect the donor, recipient, or breeder animals, or offspring thereof, as applicable, as well as the semen, embryos and genetic materials associated therewith (each a "Product" and collectively the "Products"), and the Services and procedures for storing, freezing, thawing, transporting, transferring, extracting, implanting, and inseminating same (each a "Procedure" and collectively the "Procedures") and that the Products and Procedures are good and acceptable to Owner and that Smart Reproduction has made no warranties or representations regarding the same. Owner acknowledges Owner will receive, and hereby accepts, the Product(s) on an "AS IS" and "WITH ALL FAULTS" basis. SMART REPRODUCTION MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL, WARRANTIES WITH RESPECT TO THE SERVICES, PRODUCT(S) AND PROCEDURE(S), WHETHER EXPRESSED, IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, ACCURACY OF DATA, OR ARISING FROM A COURSE OF DEALING.

SMART REPRODUCTION WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE FOR LOSS OR DAMAGE TO THE PRODUCT(S) OR OWNER'S INTEREST THEREIN, PARTICULARLY AS THE SAME RELATES TO EQUIPMENT OR TANK FAILURE, DEATH, INJURIES OR DAMAGES RESULTING FROM CARE AND HANDLING, FIRE, FLOOD, WIND, CASUALTY, OR EVENTS OF FORCE MAJEURE AND LIKE SITUATIONS OUTSIDE SMART REPRODUCTION'S CONTROL.

SMART REPRODUCTION'S LIABILITY UNDER THIS AGREEMENT AND IN CONNECTION WITH THE SERVICES, PRODUCTS OR PROCEDURES SHALL IN NO EVENT EXCEED THE AGGREGATE FEES PAID OR OWED TO SMART REPRODUCTION UNDER THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE. IN NO EVENT WILL THIS LIMITATION APPLY TO THE AMOUNTS DUE SMART REPRODUCTION FOR SERVICES, PRODUCTS OR PROCEDURES PROVIDED UNDER THIS AGREEMENT.

WAIVER, INDEMNIFICATION, AND COVENANT NOT TO SUE: OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SMART REPRODUCTION AND SMART REPRODUCTION'S MEMBERS, EMPLOYEES, AGENTS, ATTORNEYS, SUCCESSORS, AND ASSIGNS (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL, AND FURTHER, OWNER SHALL NOT SUE OR BRING ANY LEGAL PROCEEDINGS AGAINST ANY OF THE INDEMNIFIED PARTIES FOR ANY, CLAIMS, LIABILITIES, LOSSES, DAMAGES, OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) RESULTING FROM SMART REPRODUCTION'S PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT; ANY PRODUCTS USED, HANDLED, REMOVED, TRANSFERRED, OR STORED; OR SERVICES OR PROCEDURES PERFORMED AS A RESULT OF, INCIDENT TO, OR IN ANY WAY ASSOCIATED WITH THIS AGREEMENT; INCLUDING, BUT NOT LIMITED TO, ANY CLAIM, LIABILITY, LOSS, DAMAGE, OR EXPENSE ARISING BY REASON OF:

(A) ANY DEATH OF OR INJURY TO ANY PERSON OR DAMAGE OR DESTRUCTION OF PROPERTY AS A RESULT OF ANY GOODS OR SERVICES EXCHANGED OR PERFORMED OR IN ANY WAY CONNECTED WITH THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DEATH OR INJURY TO THE PERSON OR DAMAGE OR DESTRUCTION OF PERSONAL PROPERTY OF OWNER OR OF ITS AGENTS, REPRESENTATIVES, OR GUESTS FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, SMART REPRODUCTION'S NEGLIGENCE OR CARELESSNESS, FIRE, FLOOD, RAIN, HAIL, ICE, SNOW, SMOKE, STORM, TORNADO, LIGHTNING, DUST, WIND, INSECT, BUG, ANIMAL, POLLEN, MOLD, AIR QUALITY, ALLERGY, DISEASE, MEDICAL CONDITION, SUNLIGHT, EXPLOSION, INTERRUPTION OF UTILITY SERVICES, MALFUNCTION OR DEFECT OF UTILITY SERVICES, ANY ACT OF NATURE OR ACT OF GOD, ANY DEFECT IN OR ON THE PREMISES, MALFUNCTION OR DEFECT OF ANY MAN-MADE OBJECT, MALFUNCTION OR DEFECT OF ANY EQUIPMENT OR MEDICAL OR VETERINARY DEVICE, CAR ACCIDENT, THEFT, BURGLARY, ASSAULT, BATTERY, VANDALISM, OR ANY OTHER CRIME;

(B) ANY WORK PERFORMED OR GOODS OR MATERIALS FURNISHED BY OWNER OR AT THE REQUEST OF OWNER OR OWNER'S REPRESENTATIVES OR AGENTS;

(C) ANY FAILURE BY OWNER TO PERFORM ANY PROVISION OF THIS AGREEMENT OR TO COMPLY WITH ANY REQUIREMENT IMPOSED BY ANY DULY AUTHORIZED GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION WITH RESPECT TO ANY REAL PROPERTY OR FACILITIES WHERE ANY OF SMART REPRODUCTION'S SERVICES, PROCEDURE(S) OR OPERATIONS ARE



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PERFORMED, OR WITH RESPECT TO ANY PRODUCT(S) OR ANY OTHER PERSONAL PROPERTY UPON WHICH ANY SERVICES ARE PERFORMED HEREUNDER OR THAT ARE OTHERWISE ASSOCIATED WITH OR INCIDENT TO THIS AGREEMENT;

(D) ANY FAILURE OR INABILITY BY OWNER TO PAY, AS THEY BECOME DUE, ANY OBLIGATIONS INCURRED BY OWNER;

(E) THE CARELESSNESS, NEGLIGENCE, INTENTIONAL OR IMPROPER CONDUCT OF OWNER OR OF ITS AGENTS, REPRESENTATIVES, OR GUESTS;

(F) OWNER'S BREACH OR VIOLATION OF ANY APPLICABLE LAWS, REGULATIONS, RULES, ORDERS, DECREES, CODES OR ORDINANCES; AND

(G) A THIRD PARTY'S CLAIM THAT THE SERVICES, PRODUCT(S) OR PROCEDURE(S), AS PROVIDED BY SMART REPRODUCTION TO OWNER WITHIN THE SCOPE THIS AGREEMENT, INFRINGE ANY TRADEMARK, COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.

INSURANCE: At all times during the term of this Agreement, Owner shall keep and maintain in force, at its own expense, property casualty, livestock, or other similar insurance in an amount at least equal to the full replacement cost of the Product(s) and Owner's interest therein which may be stored on, or shipped to or from, Smart Reproduction premises. Owner understands that insurance may or may not be available for shipping of embryos and/or semen by common carrier, and expressly assumes the risk of loss therefore. OWNER FURTHER AGREES THAT SMART REPRODUCTION WILL NOT PROVIDE ANY INSURANCE COVERAGE ON ANY OF THE PRODUCT(S) OR OWNER'S INTEREST THEREIN. OWNER HEREBY WAIVES ANY AND EVERY CLAIM FOR RECOVERY FROM SMART REPRODUCTION FOR ANY AND ALL LOSS OF OR DAMAGE TO THE PRODUCT(S), WHICH LOSS OR DAMAGE IS COVERED BY VALID AND COLLECTIBLE PHYSICAL DAMAGE INSURANCE POLICIES, IT BEING UNDERSTOOD AND AGREED THAT THE FOREGOING WAIVER SHALL ALSO APPLY TO THE DEDUCTIBLE UNDER ANY SUCH POLICY. OWNER WAIVES ANY AND EVERY CLAIM AGAINST SMART REPRODUCTION FOR ANY AND ALL LOSS OF OR DAMAGE TO THE PRODUCT(S) WHICH WOULD HAVE BEEN COVERED HAD THE INSURANCE POLICIES REQUIRED TO BE MAINTAINED BY OWNER BY THIS AGREEMENT BEEN IN FORCE, TO THE EXTENT THAT SUCH LOSS OR DAMAGE WOULD HAVE BEEN RECOVERABLE UNDER SUCH INSURANCE POLICIES. IN THAT THIS WAIVER WILL PRECLUDE THE ASSIGNMENT OF ANY SUCH CLAIM BY SUBROGATION (OR OTHERWISE) TO AN INSURANCE COMPANY (OR ANY OTHER PERSON), OWNER AGREES TO GIVE TO EACH INSURANCE COMPANY WHICH HAS ISSUED, OR IN THE FUTURE MAY ISSUE, TO IT POLICIES OF PHYSICAL DAMAGE INSURANCE COVERING THE PRODUCT(S), OR OWNER'S INTEREST THEREIN, WRITTEN NOTICE OF THE TERMS OF THIS WAIVER, AND TO HAVE SAID INSURANCE POLICIES PROPERLY ENDORSED, IF NECESSARY, TO PREVENT THE INVALIDATION OF SAID INSURANCE COVERAGE BY REASON OF SAID WAIVER.

TRANSPORTATION: Owner shall be responsible for transportation of donor and/or recipient and/or breeder females, semen, embryos, or both, to and from Smart Reproduction designated facilities. Smart Reproduction shall ship all animals, semen, or embryos upon authorization of Owner subject to the regulations of the state or country of destination. Owner agrees that expenses of shipment, title, and risk of loss shall at all times be in and on Owner. Owner agrees that all shipments from Smart Reproduction's facility shall be made on a freight collect basis and all shipments received by Smart Reproduction shall be on a freight prepaid basis. If other arrangements are to be made, Owner is responsible to establish in writing the specific requirements of transfer, which must be pre-approved by Smart Reproduction.

LIENS: Owner grants to Smart Reproduction a first priority lien and continuing security interest for all fees, expenses and other amounts due hereunder, upon all of Owner's interest in and to any Product(s) and any goods, wares, equipment, inventory and other personal property of Owner at the premises of Smart Reproduction, and such property shall not be removed from the premises without the consent of Smart Reproduction, except in the ordinary course of business. Upon a default by Owner hereunder, Smart Reproduction shall have, in addition to all other remedies provided in this Agreement, all rights and remedies under applicable state law or the Uniform Commercial Code ("UCC") regarding security interests, including the right to sell such property at a public or private sale, and Owner specifically waives any statutory obligations Smart Reproduction may have regarding such personal property. Smart Reproduction shall be entitled to file any and all documents necessary to secure the lien(s) contemplated herein including, but not limited to, a UCC filing with the Arkansas Secretary of State or other applicable filing officer.

TERM OF AGREEMENT; PAYMENT: Smart Reproduction reserves the right to require Owner to pay a deposit prior to the commencement of services under this Agreement. Such deposit shall be in an amount determined by Smart Reproduction and shall be retained by Smart Reproduction until such time that Owner has fully and completely paid all sums that are due to Smart Reproduction under this Agreement or under any other agreement between Owner and Smart Reproduction. The



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deposit may be commingled by Smart Reproduction with its other funds and shall be received and held by Smart Reproduction without liability for interest as security for the faithful performance of all the terms and provisions of this Agreement by Owner, including the obligation of payment hereunder. If Owner should default with respect to any covenant, duty or obligation of Owner hereunder, then the deposit, or any part thereof, may be applied by Smart Reproduction on the damages sustained by Smart Reproduction by reason of any such default or on any indebtedness owing by reason of any failure of Owner to make any required monetary payment hereunder. At any time or times when Smart Reproduction has made any such application of all or any portion of the deposit, Smart Reproduction shall have the right at any time thereafter to demand that Owner pay to Smart Reproduction a sum equal to or greater than the amount(s) so applied by Smart Reproduction so that Smart Reproduction will always be in possession of a deposit in an amount satisfactory in the sole discretion of Smart Reproduction. If Owner fails to pay any amount due hereunder within thirty (30) days of its due date, or fails to pay within thirty (30) days of its due date any sum arising under any other agreement between Owner and Smart Reproduction, then Owner shall be deemed to be in default under this Agreement. Upon such default, any deposit that Smart Reproduction may have retained may be applied against the sums owed by Owner hereunder. Further, upon an event of default under this Agreement, Owner shall be deemed to have abandoned any Product(s) that Smart Reproduction may have in its possession, storage or control. Owner acknowledges and agrees that upon such default, Smart Reproduction shall have the right to dispose of any such Product(s) in any manner chosen by Smart Reproduction, in its sole and absolute discretion, which may include, but not be limited to, the transfer, sale, or destruction of such Product(s). Owner acknowledges and agrees that such disposition of the Product(s) by Smart Reproduction shall be free and clear of any liens or security agreements of any other party and Owner shall indemnify, defend and hold harmless Smart Reproduction from any loss, expense, cost, cause of action or other claim brought against or incurred by Smart Reproduction in the disposition of any Product(s).

FORCE MAJEURE: Neither party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service resulting directly or indirectly from strikes, lock-outs, casualties, hurricanes, tornadoes, derailments, acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, riots, civil disturbance, acts of civil or military authority, insurrection, war, delays attributable to the other party, or other causes beyond the reasonable control of a party (each and "Event of Force Majeure") In the Event of Force Majeure, the non-performing party shall not be liable or responsible for any such delays, failures or interruptions, and the doing or performing of such required acts shall be excused for the period of the Event of Force Majeure, and the period for the performance of any such act shall be extended for a period equivalent to the period of such Event of Force Majeure. Notwithstanding any other provision herein to the contrary, under no circumstances shall an Event of Force Majeure excuse any delay, failure or interruption in the performance of any monetary obligations owed under this Agreement by Owner to Smart Reproduction.

AUTHORITY: Each person executing this Agreement on behalf of either party hereby represents that all necessary and appropriate actions have been taken to obtain authorization for execution of this Agreement on behalf of the respective parties and the party so executing has full power and authority to execute and deliver this Agreement and fulfill its obligations and responsibilities under this Agreement.

GOVERNING LAW; NON-JURY TRIAL: This Agreement shall be governed by the laws of the State of Arkansas. The parties agree and submit to the exclusive jurisdiction of any federal or state court located in Jonesboro, Arkansas in connection with any actions or proceedings arising out of or in relation to this Agreement, the Services, Product(s), or Procedure(s). Further, the parties agree that venue is proper in any federal or state court located in Jonesboro, Arkansas. In any lawsuit or other proceeding brought to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all reasonable costs and expenses, including but not limited to attorney fees, paralegal fees, filing fees and court costs, incurred by the prevailing party in connection with the lawsuit or proceeding. The parties hereby mutually waive all rights to request a jury trial in any action, proceeding, or counterclaim arising out of this Agreement.

BINDING EFFECT: This Agreement shall be binding upon the parties hereto and upon their heirs, successors, and assigns, as applicable.

TERMS OF AGREEMENT: This Agreement shall remain in effect until the later of the following: (i) for as long as Smart Reproduction has possession of the Product(s) sought to be collected hereunder, (ii) for so long as Smart Reproduction maintains animal, semen, or embryo storage for Owner, or (iii) for as long as charges remain unpaid for which Smart Reproduction has provided Services.



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INDEPENDENT CONTRACTORS: In performing under this Agreement, each party is acting as an independent contractor, and in no way are the parties to be construed as partners, joint venturers, or agents of one another in any respect.

ASSIGNMENT: Either party may assign this Agreement in connection with a merger, acquisition or sale of all or substantially all of its assets related thereto. Except as expressly stated in this section, Owner may not assign its rights or obligations under this Agreement without obtaining Smart Reproduction's prior written consent. Notwithstanding the foregoing, Smart Reproduction may assign its rights or obligations under this Agreement without the consent of Owner or any other party.

SEVERABILITY: If any one or more of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect under the applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, and in such case the parties hereto oblige themselves to reach the purpose of the invalid provisions by a new, valid and legal stipulation.

HEADINGS: The section headings herein are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

ENTIRE AGREEMENT; AMENDMENTS: This Agreement, inclusive of any fee schedules, appendices, addenda, if any, attached hereto or expressly incorporated herein, sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges and supersedes all prior discussions, agreements and understandings of any and every nature between them and neither party shall be bound by any condition, definition, warranty or representation other than as expressly provided for in this Agreement or as may be on a subsequent date duly set forth in writing and signed by duly authorized representatives of all the parties hereto. No amendment, modification or alteration of this Agreement shall be effective unless the same is in writing and signed by each party hereto.

IN WITNESS WHEREOF, the parties have entered and executed this Agreement by affixing their digital signatures upon form submission.