

POMPONIO RANCH LLC BREEDING AGREEMENT



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San Gregorio, California

This Agreement is made this _____ day of _____, 20____ by and between H. SIGNE OSTBY and POMPONIO RANCH, LLC (collectively, hereinafter referred to as the "PR" or "Supplier") and _____ whose mailing address is _____, (hereinafter referred to as "Mare Owner").

For and in consideration of the agreements, covenants and promises herein, the sufficiency of which is hereby acknowledged by the parties, Mare Owner and Supplier hereby agree as follows:

Supplier now sells, assigns and reserves for the 20_____ breeding season One Dose of frozen semen from _____, (described below and hereinafter referred to as "Stallion") to Mare Owner. Mare Owner hereby agrees to breed the mare known as _____ (described in the Mare Owner Information Sheet and hereinafter referred to as "Mare").

STALLION

Stallion Name: _____

Stallion Color: _____

Stallion Breed and Registration Number _____

Stallion DOB: _____

A. BREEDING FEE AND COSTS

1. **Frozen Semen Fee \$1,500 and Dose.** The Frozen Semen Fee for Stallion is \$1,500. The Frozen Semen Fee is due to Supplier upon approval of Mare Owner's application. The Frozen Semen Fee entitles the Mare Owner to receive One Dose of the Stallion's frozen semen from the Supplier's vet, Pioneer Equine Hospital located in Oakdale, California (hereinafter "Pioneer Equine.") One Dose is equal to **eight (8) to sixteen (16) straws, as determined by the vets at Pioneer Equine.** All collections are frozen with a sterilized extender, which contains a cryopreservant. The extender provides antibiotics and nutrients to the Stallion's semen and prevents the growth of bacteria. Mare Owner acknowledges that this is the standard practice in the industry.
2. **Payment of Frozen Semen Fee.** Mare Owner shall have the right to pay the Frozen Semen Fee to Supplier by Cash, Check, Credit Card or Bank Wire. Supplier reserves the right to refuse the release of frozen semen until payment to Supplier and Pioneer Equine has been made and received.
3. **Pioneer Equine Ships All Frozen Semen.** The Supplier does not ship any semen. All frozen semen is in storage with Pioneer Equine and shall be shipped after Supplier has approved Mare Owner's application and has received the Frozen Semen Fee. Mare Owner shall contact Pioneer Equine directly to make arrangements for the transport and delivery of the frozen semen. Pioneer Equine will only ship the frozen semen to a licensed vet and not directly to Mare Owner, unless Mare Owner is also a licensed vet.
4. **Mare Owner's Vet Responsibilities.** Upon receipt, Mare Owner's vet shall check to ensure that the semen is still frozen. If the shipment does not arrive sealed and frozen, a claim must be made within 24 hours of receipt. Mare Owner's vet shall transfer the frozen semen from the Dry Shipper to a liquid nitrogen storage tank within 24 hours of receipt from Pioneer Equine. Should Mare Owner's vet not follow this protocol the integrity and quality of the frozen semen will be compromised. Frozen semen should not be held outside of a tank for more

than eight (8) seconds or it could be damaged. Failure to transfer semen within 24 hours to a liquid nitrogen storage tank will result in Supplier's immediate termination of this Agreement and no refund shall be given to Mare Owner.

a. **Mare Owner Pays All Pioneer Equine Fees.** All costs and expenses due to Pioneer Equine (including but not limited to the Equitainer deposit and rental) shall be Mare Owner's sole responsibility.

b. **Right to Test Motility and Replacement Dose(s).** Mare Owner's vet shall have the right to test the motility of the semen for a period of 24 hours after receipt. If he believes the semen motility falls below the standard in the industry, then he shall contact Pioneer Equine and discuss the matter before returning the semen. In order to receive a replacement Dose, Mare Owner shall not attempt insemination, or any other procedure, with the original frozen semen but shall return it to Pioneer Equine with a veterinarian's certificate attesting to the substandard motility rate. Upon receipt of the veterinarian's certificate, Supplier shall release a replacement Dose to Mare Owner. Except with regard to the return of any straws containing the frozen semen of Jonkheer Z, Mare Owner shall be solely responsible for the payment of all shipping charges to and from Pioneer Equine, and any other costs and expenses associated with the replacement Dose. (PR shall pay for the return shipping on all Jonkheer frozen semen straws.)

B. MARE OWNER OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

1. **Approved or Surrogate Mare in Good Health.** Mare Owner represents and warrants that the Approved Mare (which includes any surrogate or recipient mare) is in good health and condition, free from all contagious or infectious diseases, and capable of conceiving a foal. Mare is current on all vaccinations and worming, and has returned a negative uterine culture within the last thirty (30) days. Mare Owner will furnish a health certificate to demonstrate said representations.
2. **Right to Breed Mare.** Mare Owner warrants that he is the true and lawful owner or lessee of the Mare whose name and registration number appear on this Agreement. Prior to delivery of any Dose(s), Mare Owner shall deliver to Supplier the Photos, Documents and Records listed in the Mare Information Form.
3. **Vet Check to Ensure in Foal.** Mare Owner understands and agrees that after the Approved Mare (which includes any surrogate or recipient mare) is bred with the Stallion's frozen semen, the Mare should be examined by a licensed vet to determine if she is in foal (i.e. there is a foal with a heart beat) at 45 days and again at 60 days after the date of breeding. Mare Owner must then notify the Supplier in writing of the pregnancy status of the Mare at that time using the attached Veterinary Verification Form attached on the last page hereto.
4. **Stallion Manager/No Liability.** If Mare Owner fails to comply with the requirements, terms and conditions set forth in this Agreement, it may result in a delay in shipping the Dose(s), and/or a missed estrus cycle for the Mare. Mare Owner recognizes his obligations hereunder and assumes the risk of lost opportunity in such event. Supplier shall not bear any responsibility or liability for any lost opportunity due to Mare Owner's failure to faithfully comply with this Agreement.
5. **Obligation to Use Licensed Vet.** Mare Owner agrees to use a licensed veterinarian to check the Approved Mare for normal breeding health and condition and to provide the Health Certificate required hereunder for the Approved Mare and/or any surrogate or recipient mare, and for all AI or ICSI procedures hereunder. Failure to use a licensed veterinarian to accomplish artificial insemination or ICSI of the Mare shall result in the termination of this Agreement and Supplier shall not be required to furnish a Breeders Certificate. Additionally Mare Owner shall be required to return the unused semen to Pioneer Equine within five (5) days or pay the liquidated damages as specified in Para. E 6.
6. **Mare Veterinary Fees and Costs.** Any and all veterinary and diagnostic fees and costs incurred by Mare Owner in connection with the Approved Mare and/or the subject matter of this Agreement shall be the sole and exclusive responsibility of the Mare Owner.
7. **No Stockpiling of Semen Straws.** This Agreement is for the breeding of Approved Mare with one Dose of Stallion's frozen semen and not for the sale of semen as a product. Mare Owner has no right to stockpile or

store any of the selected Stallion's unused frozen semen straws or to store said straws for future use with the approved mare or with any other mare. Mare Owner is obligated within five (5) business days of returning the Veterinary Verification Form to Supplier, to return all unused semen straws to Pioneer Equine or alternatively destroy unused straws, and deliver to Supplier a certificate of destruction signed under the penalty of perjury by Mare Owner's vet. (Except as to the frozen semen of Jonkheer Z, which must be returned to Pioneer Equine). Should Mare Owner fail to either return the unused straws or provide a certificate of destruction within five (5) business days, Mare Owner shall pay liquidated damages in accordance with Para. E (6) and Supplier shall not be required to issue a Foal Certificate.

8. **Retention of Straws to Use for Second Foal.** If the Mare Owner wishes to retain unused straws of frozen semen for the breeding of a second foal, Mare Owner shall inform Supplier in writing within five (5) business days of returning the Veterinary Verification Form to Supplier, that he wishes to retain the unused frozen semen, submit a new mare application package for approval and pay Supplier a second Frozen Semen Fee of \$1,500. If the second mare is not approved by Supplier, then Mare Owner shall return the frozen semen to Pioneer Equine (or destroy it as set forth above in Para. B8), and Supplier will refund the second Frozen Semen Fee after receiving confirmation by Pioneer Equine of receipt of the frozen semen from the Mare Owner (or Supplier receives the certificate of destruction from the Mare Owner's vet.)

C. **SUPPLIER RIGHTS, DUTIES, AND OBLIGATIONS REGARDING ADDITIONAL DOSE(S)**

1. **If Mare Does Not Take.** If a licensed veterinarian determines that the Mare is not in foal 45 days after insemination, and all straws from the first Dose have been used, Mare Owner shall provide Supplier with a vet's certificate and Supplier shall release a second Dose to Mare Owner with no additional Frozen Semen Fee due, however Mare Owner shall pay all shipping, costs and expenses charged by Pioneer Equine. If three (3) attempts to breed the Mare are unsuccessful, the Supplier shall be entitled to require the Mare Owner to obtain a diagnostic evaluation of the Mare before any additional Doses are shipped. If the diagnostic test reflects that the Mare is not a good breeding candidate, Supplier shall have no further obligation to provide any additional Doses.
2. **Limitation on Use of Stallion's Semen.** Stallion's semen and any Dose(s) supplied to Mare Owner hereunder shall only be used on the Mare approved by Supplier (and any approved surrogate or recipient mare) under this Agreement, and no other mares. **Mare Owner may not use the frozen semen and/or Dose(s), or any part thereof, to impregnate more than one mare or any unapproved mare.** If the Approved Mare is not a good breeding candidate or problems arise, then Mare Owner may request in writing that Supplier approve a substitute mare. No substitute mare will be allowed without the express written consent of the Supplier. Approval shall be at Supplier's sole discretion. If Mare Owner violates any of these provisions, he will forever forfeit all rights under this Agreement, shall be required to return the semen straws to Pioneer Equine at his own expense, and shall be required to pay liquidated damages to Supplier in accordance with Para. E6. For any breach of this Agreement, Supplier shall be entitled to refuse to issue a Foal Certificate to Mare Owner. If Mare Owner wishes to sell a pregnant mare before the foal is born, in order for this Agreement, or rights hereunder to run with the mare, Supplier must approve the assignment of the Agreement to the purchaser of the pregnant mare, otherwise, the assignment shall have no force and effect as set forth hereunder at Para. E2.
3. **Rebreed Rights Upon Death of Mare.** In the event that the Approved Mare dies during gestation, Mare Owner shall have the right to request to re-breed a substituted approved mare back to the selected Stallion without payment of an additional Frozen Semen Fee. Approval of substituted mare shall be at Supplier's sole discretion. Before Supplier releases any replacement Dose(s) to Mare Owner, he shall provide Supplier with a vet's certificate attesting to the circumstances of losing the Approved Mare.
4. **No Rebreed Rights if Mare Not Vaccinated.** The Rebreed rights provided in Section C3 above are dependent upon the appropriate vaccination of the Approved Mare against Rhinopneumonitis (viral abortion). Proof of such vaccination must be provided to Supplier before rebreed rights will vest.

5. **No Obligation to Approve Mare.** Supplier shall have no obligation to accept or approve any proposed mare. Supplier reserves the right to reject any mare at its exclusive discretion. The Agreement does not become effective until signed by an authorized representative of Supplier.
6. **No Live Foal Guarantee.** This Agreement pertains to the provision of frozen semen in order to inseminate one Approved Mare and not to the sale of goods as that term is defined under the California Commercial Code. Supplier is not providing a service to Mare Owner, but only the opportunity to create a foal using the selected Stallion's frozen semen. The parties hereto agree and understand that the successful insemination and impregnation of the approved Mare is completely out of the hands of the Supplier. The Supplier has no control over the Mare during gestation and cannot ensure the quality of care that the approved Mare receives during gestation to ensure a live foal delivery. **Therefore, Supplier expressly denies and does not grant any "Live Foal Guarantee" or warranty under this Agreement.**
7. **No Joint Venture.** The parties hereto do not intend to create a joint venture by entering into this Agreement. Nothing herein creates a joint venture and the parties understand and acknowledge that they stand apart at arm's length in the creation of this contract and in the breeding of the approved Mare. Supplier shall have no interest in any foal resulting from the breeding of the Approved Mare to the selected Stallion.

D. SUPPLIER REPRESENTATIONS AND WARRANTIES

1. **Selected Stallion's Semen has Been Tested and is Fit.** Stallion's semen is fit for the purpose for which it is intended. The semen is SCID and EVA Negative. No other representations or warranties are provided hereunder. All other warranties are disclaimed to the fullest extent allowed by law.
2. **Breeder's (Foal) Certificate.** It is the responsibility of the Mare Owner to inform the Supplier in writing the dates that the approved Mare was impregnated so that the information can correctly be entered on the Stallion Report. Failure to do this will make registration of the resulting foal impossible. Upon notification of birth of a live foal and the performance of all other obligations of Mare Owner under this Agreement including payment of all invoices and amounts due to Pioneer Equine, Supplier shall issue and deliver to Mare Owner a Breeder's (Foal) Certificate for registration of the foal to the Belgian Warmblood Registry. Twin foals will not be allowed under the terms of this Agreement and if the Mare Owner allows the Approved Mare to foal out twin foals, such occurrence will render Supplier's obligation to provide a Breeder's Certificate null and void, and no certificates shall be issued.

E. GENERAL PROVISIONS

1. **Integration Clause.** This Agreement is the entire and integrated agreement of the parties hereto. There are no written or oral statements, representations, inducements, understandings, or agreements made by or between the parties hereto except as expressly set forth herein. This Agreement shall not be amended, modified, or supplemented except by means of a subsequent instrument in writing signed by the parties hereto.
2. **No Assignment of Agreement.** The Mare Owner shall not transfer or assign this Agreement or any Dose(s) supplied hereunder without the express written consent of Supplier. Any attempted assignment made without approval of the Supplier shall be invalid and without any force or effect, and the Agreement may not be enforced against the Supplier by any unapproved assignee. The right of rebreed granted herein shall terminate and become null and void if the Approved Mare is sold or transferred to a new owner without the written approval of Supplier.
3. **No Waiver of Performance.** No waiver of any breach of any provision in this Agreement shall be made except by means of an instrument in writing signed by the party to be charged with such waiver. No such written waiver by a party shall be deemed to be a waiver of any other performance or breach hereof.
4. **Survival of Provisions.** All provisions of this Agreement, which by their own terms are intended to survive the termination of this Agreement, shall so survive the termination of this Agreement for any reason. All other rights and obligations of the parties shall cease upon termination of this Agreement.

5. **Breeding is Risky Business.** MARE OWNER ACKNOWLEDGES THAT BREEDING HORSES IS RISKY BUSINESS WITH NO GUARANTEE OF SUCCESS. ALL RISKS CONNECTED WITH BREEDING THE APPROVED MARE SHALL BE BORNE SOLELY AND EXCLUSIVELY BY MARE OWNER. NEITHER SUPPLIER, OR ITS OWNERS, AGENTS, EMPLOYEES AND VETERINARIANS, WILL BE LIABLE TO MARE OWNER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR UNDER ANY DISPUTE, TERM, OR MATTER COVERED BY THIS AGREEMENT.
6. **Liquidated Damages.** If Mare Owner breaches its obligation to return unused straws or supply a certificate of destruction of unused straws, Mare Owner shall pay Supplier \$24,000.00 as liquidated damages. The parties agree that quantifying losses arising from Mare Owner's breach to return the unused straws is inherently difficult and further stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages, based upon the parties' experience in the horse breeding industry and given the nature of the losses that may result from Mare Owner's breach.
7. **California Law Applies.** This Agreement is made and is to be performed in the State of California, and shall be governed in all respect by the laws of the State of California, provided, however, this Agreement has been negotiated and reviewed by each of the parties hereto and shall not be construed or interpreted for or against either party hereto, but shall be construed and interpreted fairly and equitably according to the intentions of the parties as expressed herein at the time of the execution of this Agreement. Venue for all disputes shall be in San Mateo County. If any part or provision of this Agreement is ever held by any court of competent jurisdiction to be invalid or unenforceable, then that particular part or provision shall be stricken and the remaining provisions of this Agreement shall remain in full force and effect.
8. **Mediation and Arbitration.**
 - a. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause set forth in Paragraph (e) below.
 - b. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.
 - c. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.
 - d. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
 - e. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire.
 - f. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph (c) above.

- g. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.
 - h. In accordance with paragraph (e) following unsuccessful mediation, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration at JAMS of San Francisco before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
9. **Prevailing Party Attorney Fees.** In the event that either party ever brings any legal action to interpret or enforce this Agreement or any part or provision hereof, or with respect to any dispute arising under this Agreement, then the prevailing party therein shall be entitled to, in addition to all other relief, an award of reasonable attorney's fees, costs, expenses and court costs.
10. **Counterparts and DocuSign Accepted as Originals.** This Agreement may be executed by the parties hereto via DocuSign and/or in counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Any such counterpart shall be admissible into evidence as an original copy of this Agreement. DocuSign signatures shall be deemed to be originals.

In Witness whereof, Supplier and Mare Owner have entered into this Frozen Semen Agreement by providing their authorized signature below as of the date set forth by their names.

H. SIGNE OSTBY

_____ Dated: _____

POMPONIO RANCH, LLC Dated: _____

By: _____
Managing Member/Designated Authorized Agent

MARE OWNER/AUTHORIZED LESSEE Dated: _____

 (Print Name)



POMPONIO RANCH

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MARE INFORMATION FORM

Name of Mare: _____ DOB:

Breed: _____ Registration # _____

Owners name exactly how it appears on registration papers:

Daytime Phone: _____

Owner Address:

E-mail: _____

Intended Type of Breeding?

- Artificial Insemination
- Surrogate/Recipient Mare _____ (Name)
- ICSI (Intracytoplasmic Sperm Injection)

(If Mare Owner is intending to use a Recipient/Surrogate Mare, then health records and vet certificate must also be submitted for her in addition to the biological mare.)

SHIPPING INFORMATION OF OWNER'S LICENSED VET:

Name of Owner's Vet: _____

Address: _____

Telephone Number: _____

Email: _____

**List of Photos, Documents and Records Which Must be Submitted to Supplier
Applies to Identified Mare and/or Recipient/Surrogate Mare**

- Copy of International Passport
- Copy of 5x5 Pedigree
- Performance Record
- Vet Certificate of Good Health and Vet Record for last 2 years
- Complete Breeding/Recipient Carry History
- Six (6) recent photos of Mare
 - a) Head On Conformation
 - b) From Rear Conformation
 - c) Both Sides (2) Conformation
 - d) Front Feet
 - e) Rear Feet

VETERINARY VERIFICATION FORM

I, the undersigned veterinarian, duly licensed by the state of _____ do hereby attest that the following occurred:

1. That on _____, I artificially inseminated/performed ICSI on the mare identified below with the frozen semen received from Pioneer Equine of the stallion known as _____ and said procedure(s) were performed in accordance with standard veterinary practices and the terms and conditions of the Breeding Agreement between the Supplier and the Mare Owner.

2. Further, I hereby certify that after careful inspection of the mare, she is the mare described in the mare information box set forth below. Said inspection consisted of my comparing the written description of the mare with the mare on which I performed the procedure and I found that she corresponds in description.

3. Further, I certify that no other mare was inseminated with the stallion frozen semen designated for the mare identified below and that any excess straws were either properly frozen, returned to Pioneer Equine, or promptly destroyed by me.

4. I hereby examined the identified mare on the dates set forth below and made the findings noted.

Signed this day _____ (date), _____ (year), under penalty of perjury according to the laws of the state of California.

Licensed Veterinarian

(Signature)

(Print Name)

Examination Date: _____ In foal ___ Not in Foal _____

Examination Date: _____ In foal ___ Not in Foal _____

Examination Date: _____ In foal ___ Not in Foal _____

Name of Mare: _____ DOB: _____	
Breed: _____	Registration # _____
Color: _____	Special Markings: _____
Name and Address of Mare Owner: _____ _____	