

Infinity Canine, LLC.
Semen Freezing, Storage and Shipping Agreement

THIS SEMEN FREEZING, STORAGE AND SHIPPING AGREEMENT (*The "Agreement"*) is hereby entered into by and between the owners identified on the signature pages here into (each an "owner" and, collectively, the "Owners") and Infinity Canine, a North Carolina LLC, (*IC*) located at 310 Court Square, Sanford, NC 27331, telephone (919)-292-6376, facsimile (919)-292-6374 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 *Infinity Canine, LLC (IC)*.

The Semen donor (hereafter, referred to as "*Sire*") is:

CENTER: **Infinity Canine, LLC** DATE(S) COLLECTED: _____

REG. NAME OF DOG: _____

REG. NO.: _____ () AKC () UKC () OTHER _____

DATE CERTIF ISSUED _____ CALL NAME: _____

Breed: _____ D.O.B.: _____

Color: _____ Variety: _____

DNA No.: _____ Tattoo/Microchip No.: _____

1. **Ownership:** If Owner is an individual, then Owner represents and guarantees 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 the Owner is corporation, syndicate, partnership, or party to a co-ownership agreement, then Owner represents and warrants that Owner has the requisite corporate and 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 the Owner is not a corporation, such partnership, Limited Liability Company or other 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 IC under this agreement will require written authorization from all Owners. In the event IC receives conflicting instructions from Owners signatory to the Agreement, Owners agree the IC will not take any action except to store Semen until the Owners resolve the conflict amongst themselves and provide IC written instructions signed by each Owner.

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

3. Regulatory Compliance; Paperwork: IC follows the rules and procedures set forth 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. IC does not undertake any responsibility in this regard. Owner agrees to provide IC 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 IC for semen collection. If DNA certification has not been done prior to the first collection, IC agrees to provide information necessary to submit a DNA sample to the applicable registry organization, and when certification has been received by Owner, Owner agrees to provide IC with a copy of such paperwork. If paperwork is not provided by Owner at the time of semen collection, IC may refuse to proceed with semen collection or may require Owner to sign further documents agreeing to provide this paperwork within 10 days of semen collection. If IC does proceed with semen collection and Owner does not provide IC with the required paperwork within 10 days of semen collection, IC may in its sole discretion, destroy the semen.

4. Reproductive Evaluations; Quality of Semen: Owner authorizes IC to have a veterinarian to examine and perform a reproductive evaluation on Sire to deem advisable for IC to collect, freeze and store semen any time Sire is presented to IC by Owner and/or Agent of Owner. Owner also acknowledges and agrees that Semen may not be frozen each time Sire is presented, if veterinarian/ IC believes the quality is not sufficient for successful freezing. IC or Veterinarian makes every effort to successfully freeze Semen from every semen collection, but IC or VETERINARIAN DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RESULT FROM TREATMENT, ARTIFICIAL INSEMINATION AND/OR THE USE AND VIABILITY OF FROZEN SEMEN.

5. Semen Usage Form: The SEMEN USAGE FORM must be completed and signed by the Owner(s) signatory to this Agreement and returned to IC, either in person, e-mail or facsimile, prior to any usage, disbursement or shipment of Semen. Should IC have any reason to doubt the authenticity of such request, **IC may delay acting until reasonably assured of its authenticity and shall not be held liable by Owner or any third party for 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 at IC/ veterinarian 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 IC will ship any Semen.

_____ (owner's initials)

Owner will give IC at least 7 days advance written notice of any shipping requests within the United States; 15 days advance written notice of any shipping requests outside of the United States

(International) with complete written instructions on the SEMEN USAGE FORM. IC will try to accommodate shipping requests or changes to shipping requests made after the shipping request due date at an additional charge, but IC will not be responsible to Owner or any third party for direct or indirect damages resulting from IC's inability to accommodate such requests or changes. IC will not be responsible for any shipping delays if caused by an event beyond IC's control.

(By initialing, I agree to the above shipping requirements)

6. **No Warranties:** IC/VETERINARIAN 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 SECTION 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 IC/veterinarian grants to Owner hereunder without indemnifying IC/veterinarian for such additional warranty.

7. **Limitation of Liability:** Owner agrees that IC or Veterinarian 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 IC/ veterinarian and only if Semen is in the direct custody and care of IC/ veterinarian. **IC/veterinarian is not responsible in any way for Semen once in the hands of any shipping carrier or other persons involved in transporting Semen.** Owner and/or recipients of Semen agree to insure all shipments and immediately inspect such shipments on arrival to validate any claims.

NEITHER IC OR VETERINARIAN NOR ANY OF ITS AFFILIATES SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGE OF ANY KIND OR NATURE, REGARDLESS WHETHER IC/ VETERINARIAN HAVE BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. LIABILITY FOR DAMAGES OR ALLEGED DAMAGES HEREUNDER, WHETHER IN CONTRACT, TORT OR 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 IC/VETERINARIAN OFFICE OF NEW SEMEN FROM SIRE OR, IF SIRE IS NOT AVAILABLE FOR COLLECTION, ANOTHER DOG OF OWNER'S CHOOSING. IN NO EVENT WILL IC OR VETERINARIAN OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSS WHERE SEMEN HAS BEEN SUBJECTED TO MISUSE, NEGLIGENCE OR ACCIDENTAL DAMAGE AFTER DELIVERY BY IC/VETERINARIAN TO THE CARRIER.

Owner agrees that this limitation of liability is essential to IC's Agreement to enter into this Agreement with the Owner

8. **Exclusive Remedy:** IC agrees to exercise commercially reasonable care in collecting and storing Semen, including, without limitation, storage in a secure area, periodic re-vacuuming of older tanks as necessary to minimize risk due to vacuum failure, frequent monitoring of nitrogen levels in storage tanks and "topping off" with nitrogen, regular (1 – 5 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 the liquid nitrogen tank vacuum can occur at any time without warning.

In the event of loss of Semen for which IC is responsible, Owner's exclusive remedy is replacement, at IC'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 an essential consideration to IC's agreement to enter into this Agreement. IC will not be held monetarily responsible for any future possible litters lost. Only the cost of storage and collection will be replaced.

9. **Indemnification:** Owner shall indemnify and hold IC/veterinarian, their directors, officers, agents, and employees, and any of its affiliates and their directors, officers, agents or employees (each, "Vet Party") harmless from any and all liability, damage, loss, or cost or expense (including, without limitation, reasonable attorneys' fees and expenses) resulting from any claims or suits brought against IC or Vet Party by a third party arising as a result of or in connection with (1) a breach 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 IC and its affiliates for any claims against IC 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 the recipient.

10. **Prices:** In consideration of services provided to the Owner by IC under this Agreement, IC and affiliates shall be paid pursuant to the then current price schedule, which is subject to change at the sole discretion of IC and its affiliates.

11. **Payments:** Payment for services is rendered and fees incurred under this Agreement are due at the time of service. Annual storage bills are due beginning one year from first collection and freeze and every year after until semen is no longer stored. IC will bill Owner and Owner agrees to pay for Semen storage on an annual basis in advance for the upcoming calendar year. IC will send the Owner an invoice for Semen storage 30 days prior to payment is due. Semen storage invoices are due within 30 days of the date of said invoice. If payment is not received by IC within 30 days of that invoice, all amounts due under this Agreement will bear interest at the rate of 1.5% monthly on any unpaid balance until paid. The Parties agree that the returned check charge shall be \$45.00. Returned check charge is subject to change without notice. It is the responsibility of the person signing this agreement to get payment. IC will not bill a Second party for semen storage.

12. **Overdue Balances:** **If any amount due under this Agreement have not been paid by Owner within 60 days of an invoice, IC will, following reasonable attempts during the 30 days to contact and collect such amounts due from Owner, consider Semen to be abandoned by the Owner, and IC may claim full title and ownership of Semen.** It is the Owner's responsibility to inform IC, in writing, of any changes to the Owner's billing address. **Undeliverable invoices returned to IC will be treated as unpaid invoices.** IC may then, at its sole discretion, destroy Semen or advertise and sell it for any fee as IC may determine in its sole discretion. Such action shall not relieve Owner of any payment responsibility, unless Semen sales reimburse IC for all costs and expenses hereunder. Any sales proceeds that exceed the sum total due IC, 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 IC, IC shall no longer be responsible to Owner for reimbursement thereof.

13. **Transfer Upon Owner's Death:** In case of Owner's death, the Semen should be

a. Destroyed _____
(Owners signature)

OR

b. Transferred to the following person:

NAME: _____

ADDRESS: _____

ZIP _____

TELEPHONE: _____ EMAIL: _____

14. MISCELLANEOUS:

- a. **Successor and Assigns:** This Agreement shall be binding upon IC and Owner and each of their respective heirs, administrators, 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 parties hereto and their respective successors and permitted assigns and 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 the State of North Carolina and shall in all respects be interpreted, enforced and governed under the laws of the State of North Carolina, without reference to conflict of law principles. The language of all parts of this Agreement shall in all causes be construed, according to its fair meaning, and not strictly for or against any of the parties.
- e. **Severability:** The Provisions of this Agreement are severable, and should any provision of this Agreement be declared or 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. **Heading:** The headings herein are for convenience use 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 of understanding 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 Lee County, North Carolina 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 proceedings, the substantially prevailing party shall be entitled to receive its expenses (including reasonable attorneys' fees) from the substantially non-prevailing party. _____

Owners 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 any of the above, and shall apply as well as claims arising out of state and federal statutes and local ordinances as well as to claims arising under the common law. _____ **Owner 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, (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.

OWNER states that he/she has carefully read the foregoing Agreement, knows and understands its contents and voluntarily executed this Agreement.

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

Agent of Infinity Canine (In office use only)

By: _____

Print Name: _____

Date: _____

(SIGNATURE PAGE FOR OWNER ON NEXT PAGE)

