

# **ICSI SALE AGREEMENT**

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## ICSI SALE AGREEMENT

THIS AGREEMENT is made effective on the date signed by the undersigned “Buyer”, by and between said Buyer and \_\_\_\_\_ hereinafter referred to as “Seller”. Select Genes, LLC, is acting as the agent for the sale, hereinafter referred to as “Select Genes”.

The parties hereby ACKNOWLEDGE that this AGREEMENT is made for the purchase and sale of the custom intracytoplasmic sperm injection (“ICSI”) process outlined on Select Genes’ website, on the following terms and conditions as set forth herein.

NOW THEREFORE, for good and valuable consideration, receipt of which the parties hereby acknowledge, the parties AGREE AS FOLLOWS:

### **A. Description of Embryo(s) (whether one or more, the “Embryo”) to be created via ICSI.**

- a. **Mare’s Name:** \_\_\_\_\_.
- b. **Stallion’s Name\*:** \_\_\_\_\_.

\* The owner of the Mare (“Mare Owner”) shall have final approval of the pairing of the above Mare and Stallion and all terms herein are subject to this approval.

### **B. Consideration.**

Upon execution of this Agreement, Buyer shall deposit the sum of Five Hundred Dollars (\$500.00) by credit card on the Select Genes website. If the Mare Owner does not approve this Agreement, Buyer shall have the right to: (1) a return of the deposit amount; or (2) transfer their deposit amount to another mare and notify Select Genes of the same.

If this Agreement is approved by the Mare Owner, then Buyer agrees to pay the total sum of \$ \_\_\_\_\_ (“Purchase Price”), to Select Genes, in exchange for one (1) embryo that has been implanted in a recipient mare, checked by a licensed veterinarian to have a heartbeat, appear normal in shape and size (all at the discretion of such licensed veterinarian), on or after fifty-five (55) days gestation (a “Viable Embryo”). The Purchase Price shall include: (1) the follicular aspiration fee for the Mare; (2) the transport of eggs to the ICSI Lab (as hereinafter defined); and (3) the ICSI and Maturation Fee, hereinafter referred to together, as “Chute Fee”. Such Chute Fee to be Two Thousand Dollars (\$2,000.00). Additionally, Buyer is required upon execution of this Agreement to place a credit card on file with the lab chosen by Select Genes, at Select Genes’ sole discretion, hereinafter referred to as the “ICSI Lab”. Buyer hereby agrees to pay, and hereby agrees to be charged for (using the credit card placed on file), **each** blastocyst/embryo produced by the ICSI Lab (the “Embryo Production Fee”). Such Embryo Production Fee to be Eight Hundred Fifty Dollars (\$850.00) per embryo.

### **C. ICSI Process.**

Select Genes shall, at Select Genes sole discretion, schedule the aspiration of the Mare. Such aspiration is dependent upon the Mare’s reproductive cycle. Following aspiration, the ICSI Lab shall begin the process of creating embryos utilizing the ICSI method. If this embryo creation process takes place during a breeding season (February 8th to July 1<sup>st</sup> shall be the “Breeding Season”), then the first fresh blastocyst/embryo produced (a “Fresh Embryo”), will be placed in a recipient mare. If additional fresh embryo(s) are created, such fresh embryo may be placed, based upon Buyer’s written request and the availability of recipient mares. If Buyer does not wish to implant all embryos created into recipient mares as fresh embryos, or if recipient mares are unavailable, Buyer may elect to cryopreserve additional embryos

created (the “Frozen Embryos”). However, Buyer must respond within one (1) hour of being contacted by either Select Genes or ICSI Lab regarding whether an embryo shall be implanted into a recipient mare or frozen. If Buyer does not respond within such time period, then Select Genes shall make such determination and Buyer shall have no recourse against Select Genes. Buyer agrees to pay, and agrees to be charged for (using the credit card placed on file), each Frozen Embryo at a rate of Three Hundred Fifty Dollars (\$350.00) per embryo (the “Embryo Cryopreservation Fee”). If this embryo creation process is taking place outside of a Breeding Season, all embryos shall be cryopreserved.

If the Mare does not have sufficient oocytes to aspirate, Buyer may: (1) choose a different mare of equal or less value; or (2) pay an additional sum of money to obtain a different mare of greater value.

#### **D. Minimum Embryos.**

It is understood that some mares will produce multiple embryos via ICSI. Buyer may elect to cap the number of embryos Buyer shall be responsible for paying the accompanying Embryo Production Fee and Embryo Cryopreservation Fee. The minimum number of embryos that Buyer may request is three (3), and Buyer hereby acknowledges the maximum number of embryos requested is set forth on Exhibit “A” attached as part hereof. If Exhibit “A” is left blank, Select Genes is hereby authorized to direct the ICSI Lab to create as many embryos as the ICSI Lab can reasonably create.

If the Buyer chooses to cap the number of embryos, Mare Owner reserves the right to direct the ICSI Lab to produce and cryopreserve additional embryos after the Buyers cap set forth on Exhibit “A”, for such Mare Owner’s personal use. Additionally, Buyer hereby releases all rights of ownership and control of these additional embryos to Mare Owner. Mare Owner will be responsible for all Embryo Production Fees and Embryo Cryopreservation Fees associated with these additional embryos. Mare Owner will not contribute to the Chute Fee or any of Buyer’s other fees, including, without limitation, any stallion semen transportation fees. Mare Owner will be responsible for paying any stallion breeding fees, according to the stallion contract.

#### **E. First Embryo.**

In connection with the first Viable Embryo produced (“First Embryo”) only, Buyer shall assume full responsibility, including all risk of loss when the recipient mare is checked to be fifty-five (55) days in-foal.

If the fresh or frozen embryo(s) implanted during the Breeding Season do not create a Viable Embryo, and ALL fresh or frozen embryo(s) created pursuant to this Agreement have not been successfully implanted into recipient mares, the Buyer will have the option to either: (1) pay an additional Chute Fee, and aspirate the Mare either in the 2023 Breeding Season or the 2024 Breeding Season (if such Mare is available for aspiration and Mare Owner and Select Genes approve of the additional aspiration); or (2) apply the value of the Purchase Price minus the Chute Fee (the “Credit”), towards a new mare in the Select Genes Program. The use of the Credit on a specific mare must be approved by both the new mare owner and Select Genes. Under no circumstances will there be a refund of the Credit, nor is the Credit assignable or alienable. Select Genes will carry over the Credit to the 2024 Breeding Season at Select Genes sole discretion. Accordingly, if the Credit is not used in the 2023 Breeding Season and Select Genes does not approve the carry-over of the Credit to the 2024 Breeding Season, Buyer will lose the Credit.

#### **F. Additional Embryos.**

Any embryo remaining after the First Embryo is created, whether currently in a recipient mare or

frozen, will be hereinafter defined as an “Additional Embryo”. Buyer must notify Select Genes, in writing, within seven (7) days of embryos being transferred into a recipient mare, with the embryo transfer date (the “ET Date”). Buyer will be required to pay a fee of Fifty Percent (50%) of the Purchase Price for each Additional Embryo that produces a foal that stands and sucks, hereinafter referred to as a “Live Foal”. Buyer must notify Select Genes in writing, within twenty-four (24) hours of the foal’s birth, of the existence of such Live Foal. Select Genes will issue an invoice to Buyer within one (1) business day, which must be paid in full within seven (7) days of receipt. When payment is made, Select Genes will transfer the Frozen Embryo Permit to Buyer via an American Quarter Horse Association Transfer.

Additional Embryos must be implanted into a mare within five (5) years of the date of the creation of the same or Select Genes shall not provide the requisite Frozen Embryo Permits for the Additional Embryos, and the ownership of these Additional Embryos shall immediately transfer to Select Genes without any further actions required by Buyer. If after said five (5) year period, Select Genes takes on ownership of the Additional Embryos, Buyer hereby agrees to assign or allow the substitution of Select Genes, or another entity selected by Select Genes, for Buyer under any existing and related stallion contract.

#### **G. Recipient Mares.**

All embryos must be implanted into recipient mares at facilities approved by Select Genes, to be determined at Select Genes sole discretion. Buyer is responsible for verifying that the recipient mare qualifies for insurance with the company of their choice, if desired.

#### **H. Embryo Storage.**

Embryos must be stored at the ICSI Lab. Buyer must submit a written request to Select Genes to have embryos transferred to another storage facility and Select Genes may approve or deny such transfer at Select Genes sole discretion. Buyer will be responsible for any Frozen Embryo storage fees from the ICSI Lab. Buyer agrees to accept all risks and be responsible for all losses or damage to any embryos during the ICSI Lab’s storage. ICSI Lab may at any time permanently destroy the embryos or transfer embryo ownership to Select Genes, including all rights for resulting foal registration, in the event: (1) Buyer and ICSI Lab do not agree in writing to the continued storage of Frozen Embryos and Buyer has not notified ICSI Lab in writing about other storage arrangements; and (2) Buyer has not timely paid ICSI Lab for all services provided.

#### **I. Stallion Fees.**

Buyer has or will enter into an agreement with the owner of the Stallion to provide semen to fertilize the oocyte(s). Buyer will be responsible for all fees related to the semen, including, but not limited to, stallion breeding fees and Chute Fees for both the First Embryo and Additional Embryo(s). Buyer will arrange, at Buyer’s expense, to ship either: (1) frozen semen, which must be received by the ICSI Lab before the day in which the oocytes are received by ICSI Lab; or (2) chilled semen which must be received by the ICSI Lab before 10 am CST the day of oocyte fertilization. Buyer shall be responsible for all transportation costs of all semen sent to and from the ICSI Lab related to this Agreement including, without limitation, express mail courier/airline shipping charges, courier service charges, and return freight charges. Select Genes and ICSI Lab are not responsible for insuring stored or shipped semen. Any claims for shortages of, or damages to, any frozen semen or deliverables suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Buyer is responsible for reporting breeding date, number of embryos produced whether fresh or frozen, and embryo transfer date(s), to the Stallion owner. Select Genes has no responsibility for ensuring breed registry requirements are met by the Stallion owner to ensure successful registration of the foal. Buyer will solely be responsible for ensuring Stallion

owner completes a Stallion Authorization Form and returns it to ICSI Lab before fertilization occurs. Buyer understands that if ICSI Lab has not received a Stallion Authorization Form before 10 am CST the day of oocyte fertilization, then ICSI Lab will not use the Stallion's semen, and Buyer will forfeit all fees paid and oocytes will be discarded.

#### **J. Registration and Ownership Transfers.**

So long as Buyer has complied with all terms of this Agreement, including payment of all costs and fees, Select Genes shall provide Buyer with a Frozen Embryo Permit for the first embryo created and for Additional Embryos so long as additional payment has been made and the same are implanted in the time period set forth herein. Buyer shall be responsible for providing all requisite paperwork to the American Quarter Horse Association ("AQHA") or the appropriate breed registry in order to register the foal(s). Buyer will be responsible for the Frozen Embryo Permit Fee on all Frozen Embryos. Select Genes will be responsible for executing the Frozen Embryo Permit(s). Buyer must have a current AQHA membership and Buyer shall pay an Embryo Permit Fee in the amount of Seventy-Five Dollars (\$75.00) per embryo.

If ONLY one (1) embryo is transferred as a fresh embryo, the AQHA Breeding Lease form will not be submitted to AQHA until the embryo is considered to be a Viable Embryo. If Additional Embryos are frozen, the Frozen Embryo Permits will be submitted to AQHA at the same time that the Additional Embryos are frozen. When the Frozen Embryo Permits are submitted, the Buyer will be required to sign a transfer on each Frozen Embryo Permit in favor of Select Genes (the "Transfer(s)"). Select Genes will hold all Frozen Embryo Permits in their possession until the resulting live foal is born, and all applicable costs and fees are paid in full.

If two (2) or more embryos are transferred as fresh embryos, the AQHA Breeding Lease form will be held until the Additional Embryo(s) produce a live foal or it is determined a live foal is not produced. Upon such determination, and further upon the payment of all applicable cost and fees being paid by Buyer in connection with the Additional Embryos, Select Genes will submit the AQHA Breeding Lease so that the applicable breeders certificates may be issued. Frozen Embryo Permits and Transfers will also be submitted at this time.

If all embryos are frozen, an AQHA Breeding Lease and the Frozen Embryo Permits and Transfers will be submitted to AQHA immediately upon Select Genes being notified in writing the number of Frozen Embryos known to exist.

If Buyer sells or transfers any frozen embryos to any third party, Select Genes shall not be held liable for any issues arising from any paperwork associated or resulting from such sale and/or transfer.

#### **K. Warranties; Disclaimers; Terms.**

**(1) Buyer understands and agrees that many factors affect the successful embryo production, transport, and/or establishment of pregnancy, and that Select Genes and ICSI Lab shall use its best efforts to perform the services required by this Agreement, however, Select Genes and ICSI Lab make no representation and do not guarantee success of the procedures.**

**(2) Buyer acknowledges that Buyer has conducted such investigations and inspections, as Buyer deems necessary, and is satisfied with the Buyer's choices set forth herein. Buyer further acknowledges that Select Genes makes no warranties, guarantees or representations whatsoever, express or implied, with respect to the aspirations, ICSI process, implantation of any embryos into the Mare, or warranties, guarantees or representations with respect to the viability, merchantability or fitness for any embryos and foals produced as provided herein or fitness for any particular**

purpose, all of which warranties are hereby disclaimed and specifically excluded. The parties to this Agreement acknowledge that the embryos, if any, and foals, if any, are sold “as is”, “with all faults” and subject to all existing conditions and defects. Therefore, Buyer acknowledges that Buyer is not relying on any statements made by Select Genes, or by Select Genes’ affiliates, managers, members, agents, servants and employees and are relying solely on Buyers own investigations or inspections prior to entering into this Agreement.

(3) Buyer is responsible for parentage testing of any foal produced by any embryos shipped by ICSI Lab. Buyer acknowledges there are inherent risks with respect to parentage in connection with the services and procedures provided by ICSI Lab and, except in the case of willful negligence or willful misconduct of ICSI Lab or Select Genes, Buyer accepts responsibility for all results from such services and procedures, including, for example, all loss or damage to the embryos whether by mishandling, infection, theft, loss or otherwise. Buyer shall bear sole responsibility to insure or to self-insure against damage, loss or injury including destruction or damage or loss to any oocytes or embryos, semen, or production of embryos with incorrect parentage not solely caused by the willful negligence or willful misconduct of ICSI Lab or Select Genes. ICSI Lab and Select Genes are not responsible for any service or conduct of third parties including for example biopsy diagnostics, embryo warming, transportation, identification, or labeling, or for any loss or damage caused in whole or in part by any third party. Select Genes and ICSI Lab MAKE NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FOR ANY RESULTS OF ANY SERVICE PROVIDED UNDER THIS AGREEMENT.

(4) In executing this Agreement, the parties expressly represent and warrant that each party is relying solely on the terms set forth in this Agreement, and not upon any representation, warranty, agreement, promise or information, written or oral, made by any other party, person or entity. Each party is relying solely on such parties’ own judgement in entering into and executing this Agreement.

(5) Buyer hereby agrees to all terms set forth on Select Genes’ website as it relates to the terms of this Agreement and processes described therein. Additionally, all terms set forth on Select Genes’ website are incorporated by reference herein.

#### **H. Risk of Loss.**

Select Genes and ICSI Lab will assist Buyer in arranging transport; however, Select Genes and ICSI Lab assume no responsibility for any damage or destruction of the any embryo(s) that could result while such embryo(s) is in transporters care. Buyer assumes responsibility for any damages or loss of the any embryos during transport or while waiting to be picked up at the Select Genes facility, ICSI Lab, or any other facility. Buyer understands Select Genes and ICSI Lab do not endorse any transport company. Buyer is responsible for all transport costs and expenses.

#### **I. Agent.**

Buyer understands that Select Genes is acting only as an agent for the purpose of this Agreement. It is the position of Select Genes that the ICSI process and all accompanying processes set forth herein are being provided on an “AS IS, WHERE IS, WITH ALL FAULTS AND DEFECTS, WITHOUT EXPRESS OR IMPLIED WARRANTY OF VIABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY” or any other warranty.

#### **J. Law.**

This Agreement shall be governed by the laws of the State of Texas, with venue to be solely in the District Court in Grayson County, Texas.

**K. Time of the Essence.**

Time is of the essence of each provision in this Agreement.

**L. Default.**

Should either Buyer or Select Genes default under any provision herein, the other party shall give written notice of such default and the defaulting party shall have five (5) business days to cure. If such default is not cured within this timeline, the party claiming such default shall be able to pursue any right or remedy under law or in equity.

**M. Survival.**

All representations, warranties, disclaimers, releases and indemnities set forth herein shall survive the termination or completion of the purpose of this Agreement.

**N. Unpaid Amounts.**

Buyer hereby acknowledges and agrees that should there be any unpaid, invoices, costs, fees or monetary amounts due by Buyer to Select Genes or ICSI Lab, Select Genes and ICSI Lab has the right to withhold all paperwork set forth herein, including, without limitation, Frozen Embryo Permits, AQHA Breeding Lease, Breeding certificates or any other requisite documentation. An estimate of such costs and fees are set forth at Exhibit "B" attached as a part hereof, but are subject to change without the requirement of notification to Buyer and Buyer agrees to be bound by the same. Additionally, as a related entity to Select Genes, Select Genes reserves the right to apply any funds held by Select Genes on behalf of Buyer to any outstanding amounts due to Solo Select Horses, LLC.

**O. Entire Agreement.**

This Agreement constitutes the entire Agreement between the parties. Any modifications or additions must be in writing and signed by all parties to this Agreement. No oral modifications will be considered part of this Agreement unless reduced to writing and signed by all parties. All decisions are final, as it relates to all terms of this Agreement, including, without limitation, the Buyer's choice of a mare and stallion. Until such time as the Mare Owner executes this Agreement, this Agreement will not be an existing, binding agreement.

BUYER:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Select Genes:

Select Genes, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Melanie Smith, Manager

Date: \_\_\_\_\_

This Agreement is acknowledged and agreed to by the Mare Owner in its' entirety evidenced by the signature of the Mare Owner below and the validity and enforceability of this Agreement is contingent upon the Mare Owner's signature below acknowledging acceptance.

Mare Owner:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
(Maximum Number of Embryos)

Buyer hereby sets the maximum number of embryos to be created by ICSI Lab at: \_\_\_\_\_.

**EXHIBIT “B”**  
**(Fee Schedule)**

Buyer is solely responsible for all fees set forth in this Agreement, including, without limitation, those below. These fees are subject to change without notice to Buyer.

<b>Name</b>	<b>Price</b>	<b>Description</b>
<b>Purchase Price</b>	<i>Variable, Listed on Website</i>	Paid in Exchange for 1 Viable Embryo*. Purchase price listed on website include the Chute Fee (*See contract for additional information about the Viable Embryo and Purchase Price)
<b>Additional Embry(os)</b>	<i>50% of Purchase Price per Additional Embryo that produces a Live Foal</i>	For the Additional Embryos, this fee is paid when a Live Foal is born
<b>Chute Fee</b>	<i>\$2,000</i>	**INCLUDED in listed Purchase Price on the website. Includes the follicular aspiration fee for the chosen mare, transport of eggs to the lab, and the ICSI & Maturation Fee
<b>Embryo Production Fee</b>	<i>\$850 per embryo</i>	Per embryo (blastocyst) produced
<b>Embryo Cryopreservation Fee</b>	<i>\$350 per embryo</i>	Per embryo (blastocyst) frozen (cryopreserved)
<b>Embryo Warming Fee</b>	<i>\$250 per embryo</i>	Per embryo, to thaw embryos before being transported to the recipient mare farm
<b>Embryo Handling Fee</b>	<i>\$50</i>	Evaluation and Packing of Embryos after warming
<b>Embryo Biopsy Fee</b>	<i>\$600 per embryo</i>	*OPTIONAL - embryos can be biopsied to determine gender, some color(s)/patterns and genetic disease panel. Testing at UC Davis is additional
<b>Embryo Disposal Fee</b>	<i>\$150 per embryo</i>	*ONLY applicable if you cap the number of embryos you want, and the mare owner chooses not to take them. This fee is charged for each embryo created over the cap, that must be disposed of.
<b>Embryo Courier or Shipping</b>	<i>Variable</i>	Fee for a courier or shipping to transport embryos from the ICSI Lab to the Recipient Mare Farm
<b>Frozen Embryo Permit Fee</b>	<i>\$100 per frozen embryo</i>	Fee to file for an AQHA Frozen Embryo Permit. It will be transferred into Select Genes name to hold until additional embryo(s) that produce a live foal are paid for in full. *Buyer must have current AQHA Membership
<b>AQHA Lease Fee</b>	<i>\$100</i>	Fee to file a Breeding Lease to AQHA to allow you to be listed as the Breeder on any resulting foals