

Agreement dated

2010.

## Parties

**Heather Adcock** trading as Kalimna Stud ABN 33 903 643 107 of 57 Russell Court, Cedar Grove in the State of Queensland (**Kalimna**)

The person or entity specified in Item 1 of the Schedule (**Client**)

## Agreement

### 1. Definitions and Interpretations

#### Definitions

In this document:

**Additional Costs** means any costs that may be incurred by Kalimna in connection with the Mare, in addition to the Service Fee and or Agistment Fee (where applicable) including without limitation the costs of Collection, the shipping of the Semen to the Client (where applicable), Insemination, and the Handling Fee.

**Agistment Fee** means \$175 per week (or \$25 per day).

**Agistment Services** means permitting the Mare to depasture on the Property and feeding and watering the Mare in a paddock or yard until such time as Insemination has taken place.

**Breeding Season** means 1 October 2010 to 28 February 2011 or such other period/s as may be determined by Kalimna from time to time.

**Business Day** means a day other than a Saturday, Sunday, or public or bank holiday in Brisbane.

**Kalimna Bank Account** means the bank account nominated by Kalimna from time to time, and as at the date of this Agreement is as follows:

Heather Adcock trading as Kalimna Stud  
ABN 33 903 643 107

Queensland Professional Credit Union

BSB: 704 604

Account No:000075032

**Cancellation Fee** means an amount equivalent to 20% of the Service Fee plus any Agistment Fees and or Additional Costs.

**Claim** means any claim, demand, loss, damage, cost, expense (including legal costs on an indemnity basis) or liability (whether, actual, contingent or prospective).

**Collection** means the physical collection of the Semen from the Stallion.

**GST Law** means a *New Tax System (Goods and Services Tax) Act 1999* and any regulation or subordinate legislation made under that Act.

**Handling Fee** means the fee charged by Kalimna or the Preferred AI Technician for Collection which as at the date of this Agreement is \$250 plus GST and to avoid doubt, excludes the Insemination Fee/s.

**Insemination** means the act of inseminating the Mare with the Semen collected from the Collection.

**Insemination Fee** means the fee charged by Kalimna or the Preferred AI Technician for Insemination.

**Mare** means the mare described in Item 2 of Schedule 1.

**Next Breeding Season** means the period the Stallion will be available for Collection following the Breeding Season.

**Order Form** means the order form annexed to this Agreement as Annexure A.

**Preferred AI Technician** means the artificial insemination technician of choice of Kalimna from time to time.

**Property** means 57 Russell Court, Cedar Grove in the State of Queensland or such other property as may be notified by Kalimna to the Client from time to time.

**Shipping Costs** means Kalimna's reasonable estimation of the costs associated with shipping the Semen from Kalimna or the Preferred AI Technician to the Client in accordance with the Order Form.

**Semen** means a vile of semen of the Stallion consisting of live sperm in a quantity consistent with industry standards (for an insemination of a single mare) and as determined by Kalimna or the Preferred AI Technician.

**Schedule** means schedule 1 to this Agreement.

**Service Fee** means the fee specified in Item 3 of the Schedule.

**Stallion** means the black warmblood stallion known as 'Legend of Loxley', identification number 443430390907 or the brown warmblood stallion known as "Kalimna Reflections", registration number 61 07 701 566 03.

**Supply** has the same meaning given in the GST law.

**Vet Certificate** means a vet certificate in the form contained in Annexure B to this Agreement.

### 2. Purchase of Semen

The Client agrees to purchase from Kalimna and Kalimna agrees to sell to the Client the Semen in connection with the breeding of the Mare for the purpose of producing a single live foal in accordance with the terms and conditions contained in this Agreement.

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### 3. Acknowledgement regarding Collection

The parties acknowledge and agree:

- (a) Kalimna or a Preferred AI Technician, may for the duration of the Breeding Season collect Semen from the Stallion;
- (b) The Service Fee includes the initial Handling Fee and the Insemination Fee associated with a single insemination;
- (c) Kalimna is not responsible for the costs associated with Collection or Insemination;
- (d) Kalimna or the Preferred AI Technician will inseminate the Mare with the Semen;
- (e) Kalimna is not responsible for any Claim incurred by the Client as a consequence of any services performed by Kalimna or the Preferred AI Technician in connection with the Mare (including Insemination) and the Client indemnifies Kalimna for any such Claim;
- (f) Subject to the terms of this agreement, the Semen may only be inseminated in one mare; and
- (g) Subject to the terms of this Agreement, the Client is responsible for all costs and expenses associated with Collection and Insemination including any Additional Costs, and indemnifies and agrees to keep indemnified Kalimna in relation to such costs.

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### 4. Conditions of the Provision of Semen

The Client must comply with the following conditions before Kalimna will be required to provide Semen to the Client:

- (a) The Client must properly complete and fax to Kalimna an Order Form, which the parties agree forms part of this Agreement;
- (b) Must deposit the Service Fee and the Shipping Costs (where applicable) in cleared funds into the Kalimna Bank Account;
- (c) If requested, provide Kalimna with a certificate from a registered veterinarian, certifying the following:
  - (i) the Mare is in a healthy condition; and
  - (ii) there are no existing health conditions that would put the Mare at risk of aborting the foetus.

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### 5. Matters Affecting Provision of Semen

- (a) The Client acknowledges the Stallion actively participates in dressage training and competition.
- (b) The parties acknowledge and agree that in circumstances where the Stallion:
  - (i) Is otherwise actively engaged in training or competition; or
  - (ii) Is suffering from injury, illness, disease, vice or any other disposition that Kalimna considers

may, in its discretion adversely effect the Stallion;

then Kalimna may by notice to the Client defer its obligation to provide the Semen until such time as the Stallion is available for Collection, provided that the deferred period does not exceed 30 days from the date Kalimna was originally required to provide the Semen to the Client, and in those circumstances, unless the parties agree otherwise this Agreement will be at an end and all monies paid by the Client to Kalimna must be promptly refunded and the Client will have no further Claim against Kalimna.

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### 6. Notice Requiring Semen

- (a) Subject to the terms of this Agreement, Kalimna will use its best endeavours to ensure the Semen purchased by the Client is:
  - (i) Made available for Insemination - in circumstances where the Client elects to use Kalimna or the Preferred AI Technician for Insemination; or
  - (ii) Shipped to the address nominated by the Client in the Order Form - in circumstances where the Client has elected not to use Kalimna or the Preferred AI Technician for Insemination;

within 72 hours after receiving written or verbal notice from the Client that the Semen is needed.

- (b) In circumstances where the Client requires the Semen to be shipped to it and a vet other than Kalimna or the Preferred AI Technician (**Client's Vet**) is attending to insemination of the Mare, the Client:
  - (i) warrants the Semen will only be used for insemination of the Mare during the Breeding Season, and any excess Semen will be immediately destroyed; and
  - (ii) must, within 5 days of Insemination being effected cause a Vet Certificate, completed and signed by the Client's Vet, to be delivered to Kalimna.
- (c) The parties agree that despite any provision contained in this Agreement to the contrary, clause 7 of this Agreement does not apply in circumstances where the Client fails to comply with its obligations under clause 6(b).

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### 7. Conditions of Free Return

- (a) The pregnancy of the Mare must be certified by a registered veterinarian by conducting a pregnancy test not earlier than 42 days and not later than 65 days following the last date of insemination of the Mare (**Initial Pregnancy Test**).
- (b) The Client must within 7 days after the Initial Pregnancy Test provide Kalimna with a copy of the veterinarian certificate, certifying the results of the Initial Pregnancy Test.

- (c) Where the Initial Pregnancy Test reveals that the Mare is not pregnant (**Negative Pregnancy**), the parties agree the Client will be entitled to further Semen provided the Client pays the Additional Costs and Shipping Costs (where applicable) associated with Collection and shipping.
- (d) Where clause 7(c) above applies, the parties agree, that subject to the terms of this Agreement:
- (i) where the Client gives Kalimna notice of a Negative Pregnancy in accordance with clause 7(b) within the current Breeding Season - the Client will be entitled to the additional Semen within the current Breeding Season; or
- (ii) where the Client gives Kalimna notice of a Negative Pregnancy outside of the current Breeding Season - the Client will be entitled to the additional Semen during the Next Breeding Season; and
- all other terms and conditions of this Agreement will continue to apply.
- (e) In circumstances where:
- (i) the Mare is examined in foal but thereafter becomes barren during gestation and a certified veterinarian acceptable to Kalimna issues to Kalimna a certificate to that effect within 7 days after the examination; or
- (ii) the Mare produces a live foal that is unable to stand alone and nurse and the foal dies within 48 hours of birth, and a veterinarian acceptable to Kalimna issues to Kalimna a certificate to that effect within 7 days of the date of death;
- the Client will be entitled to additional Semen (or semen from a different stallion owned by Kalimna if the stallion is not available) during the Next Breeding Season on the following terms:
- (i) the Client will be responsible for all Additional Costs associated with the provision of additional Semen (including costs of Collection, Insemination, Handling Fees, Agistment Fees and or Shipping Costs (where applicable));
- (ii) the Client will not be required to pay an additional Service Fee for the additional Semen; and
- (iii) all other provisions contained in this Agreement will continue to apply in respect to the provision of Semen during the Next Breeding Season.
- (f) The parties agree that in the event the Client fails to obtain any of the veterinary examinations required in this clause 7, the Client will not be entitled to additional Semen in accordance with the terms and conditions contained in this Agreement
- unless otherwise agreed in writing between the parties.
- (g) The parties agree and acknowledge that provided the Client complies with its obligations under this clause 7, clauses 7(d) and 7(e) will continue to apply until such time as the Mare gives birth to a foal that is able to stand alone and nurse for more than 48 hours after birth, unless otherwise agreed in writing.
- (h) The parties agree that unless specifically provided for in this Agreement, the Client will not be entitled to a refund of any money paid to Kalimna (or any third party) in accordance with the terms and conditions contained in this Agreement.
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- 8. Service Certificate**
- Kalimna will provide the Client with a service certificate issued by the Australian Warmblood Horse Association upon receipt of a veterinary certificate certifying the positive pregnancy of the Mare (as a consequence of the Insemination) provided that the Client provides Kalimna with a certified copy of the Mare's registration papers and the Vet Certificate (where applicable). Kalimna is under no obligation to provide the Client with a service certificate in circumstances where the client has breached its warranty under clause 6(b)(i).
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- 9. Cancellation or Refund of Fees**
- (a) In the event the Stallion should die or become unfit for breeding prior to any shipment of Semen to the Client, then this Agreement shall be at an end in which case any money paid by the Client to Kalimna under this Agreement will be refunded. The Client will not be entitled to any refund if the Stallion should die or becomes unfit for breeding purposes after:
- (i) The current Breeding Season, in circumstances where the provisions of clause 7 apply; or
- (ii) Kalimna has provided or shipped (as the case may be) the Semen to the Client in accordance with the terms of this Agreement.
- (b) In circumstances where after signing this Agreement and prior to Insemination the Client does not wish to proceed with Insemination, the parties agree the Client must give notice to Kalimna of that fact and at the same time pay to Kalimna the Cancellation Fee in which case this Agreement will automatically be at an end.
- (c) Where clause 9(b) applies, the parties agree that the Client must pay the Cancellation Fee to Kalimna in consideration for Kalimna agreeing to the covenants contained in this Agreement.
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- 10. Client Warranty**
- The Client warrants that he/she/it is the beneficial owner of the Mare or is authorised by the beneficial owner/s of the Mare to enter into this Agreement and that the details of the Mare provided to Kalimna are true and correct and that the Mare is free of injury,

illness and disease and is in sound breeding condition.

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**11. Agistment**

- (a) In circumstances where the Client requires Kalimna or the Preferred AI Technician to inseminate the Mare, Kalimna agrees to provide the Agistment Services subject to the terms below.
- (b) In consideration for providing the Agistment Services, the Client agrees to pay Kalimna the Agistment Fee weekly in advance based on Kalimna's estimate of the time it will take to inseminate the Mare.
- (c) The Client will be refunded any amounts determined by Kalimna to be over paid under clause 11(b).
- (d) The Client is responsible for all costs associated with transporting the Mare to and from the Property and indemnifies and agrees to keep indemnified Kalimna for such costs.
- (e) The client is responsible for any Additional Costs (in addition to the Agistment Fee) incurred by Kalimna as a consequence of the Agistment of the Mare on the Property and indemnifies and agrees to keep indemnified Kalimna for such costs.
- (f) Where this clause applies, the Mare is agisted at the Property at the Client's sole risk.

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**12. Client Assurances to Kalimna**

- (a) The Client releases and indemnifies Kalimna from any Claim incurred by the Client or Kalimna, arising as a consequence of utilising the services of the Preferred AI Technician or otherwise arising in connection with this Agreement.
- (b) Despite anything contained in this Agreement, the parties agree that any condition or warranty required to be given or implied by statute is not excluded by this Agreement. To the extent permitted by law, Kalimna's liability under any condition or warranty which is required to be implied or given by statute is limited to the provision of the additional Semen subject to the terms and conditions contained in this Agreement, and in circumstances where the additional Semen cannot be provided, the Service Fee.

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**13. GST**

- (a) Any amount referred to in this Agreement as the amount payable of any supply is exclusive of GST unless expressly included.
- (b) If GST is payable on any supply made pursuant to this Agreement, then the amount payable will be increased by the amount of GST payable.
- (c) On receipt of any amount payable to Kalimna for a supply under this Agreement, Kalimna will give to the Client a GST tax invoice as required by law.

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**14. General**

- (a) Any notice or other communication to a party under this document must be in writing and delivered personally, sent by prepaid mail, or sent by facsimile transmission to the recipient at the address or the facsimile number appearing in this clause or such other address or facsimile number as the recipient may have notified to the sender.

**Kalimna**

Attention: Heather Adcock  
Address: 57 Russell Court, Cedar Grove  
Facsimile: (07) 5543 5362

**Client**

Attention:  
Address:  
Facsimile:

A notice is deemed to be received:

- (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 5 Business Days after posting; and
  - (iii) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.
- (b) This document may be executed in any number of counterparts and all counterparts taken together will be deemed to be a single instrument.
  - (c) The terms and conditions of this document and all negotiations between the parties relating to the subject matter of this document are confidential.
  - (d) A party must not make any public disclosure, communication or announcement about this document except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.
  - (e) The parties agree that time is of the essence in relation to the performance of this Agreement.
  - (f) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this document, does not result in a waiver of that right, power, authority, discretion or remedy.
  - (g) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.
  - (h) All parties must do all things reasonably necessary to give full effect to this document and the transactions contemplated by this document.

- (i) If any part of this document is, or becomes, legally invalid or unenforceable, the remainder of this document subsists and remains enforceable.
- (j) This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are merged in this document and do not have any effect from the date of this document.
- (k) This document is governed by the law of Queensland.
- (l) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.
- (m) Unless otherwise agreed between the parties in writing, a party may not assign its rights or benefit under this Agreement without the consent of all other parties.
- (n) This Agreement may be entered into by and shall become binding on the parties named in the Agreement upon one party signing the Agreement that has been signed by the other party or a photocopy, e-mail or facsimile copy of the same and transmitting a facsimile copy of the Agreement to the other party or the other party's agent or Solicitor.
- (viii) any party to this document, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

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## 15. Interpretation

Unless expressed to the contrary in this Agreement:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this document;
- (b) where an expression is defined anywhere in this document another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;
  - (ii) any gender includes all genders;
  - (iii) the singular includes the plural and vice versa;
  - (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this document;
  - (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
  - (vi) money is to Australian currency;
  - (vii) this document or another document includes the document as varied or replaced; and

## Schedule 1

Item No	Description	Particulars
<b>1</b>	<b>Name of Client:</b>  <b>Address of Client:</b>	
<b>2</b>	<b>Mare:</b> <b>Name:</b> <b>Colour:</b> <b>Brand/Microchip No:</b> <b>Markings:</b> <b>Height:</b> <b>Age:</b> <b>Breeding: (Sire/Dam)</b>	
<b>3</b>	<b>Service Fee</b> (circle applicable stallion): Legend Of Loxley (Imp)	<b>\$1,980 (including GST) Discount of 15% is applied if payment is made before 30/09/10</b>
	Kalimna Reflections	<b>\$1,320 (including GST) Discount of 15% is applied if payment is made before 30/09/10</b>

**Executed as an agreement**

**KALIMNA**

Signed by

Heather Adcock in the presence of:

\_\_\_\_\_  
 ^ Signature of witness

\_\_\_\_\_  
 ^ Director/Secretary

\_\_\_\_\_  
 ^ Name of witness (print)

\_\_\_\_\_  
 ^ Full name of Director/Secretary

**CLIENT**

Signed by \_\_\_\_\_ in the presence of:

\_\_\_\_\_  
 ^ Signature of [#insert name]

\_\_\_\_\_  
 ^ Signature of witness

\_\_\_\_\_  
 ^ Name of witness (print)

Executed by

\_\_\_\_\_ Pty Ltd ACN \_\_\_\_\_ by:

\_\_\_\_\_  
 ^ Director

\_\_\_\_\_  
 ^ Director/Secretary

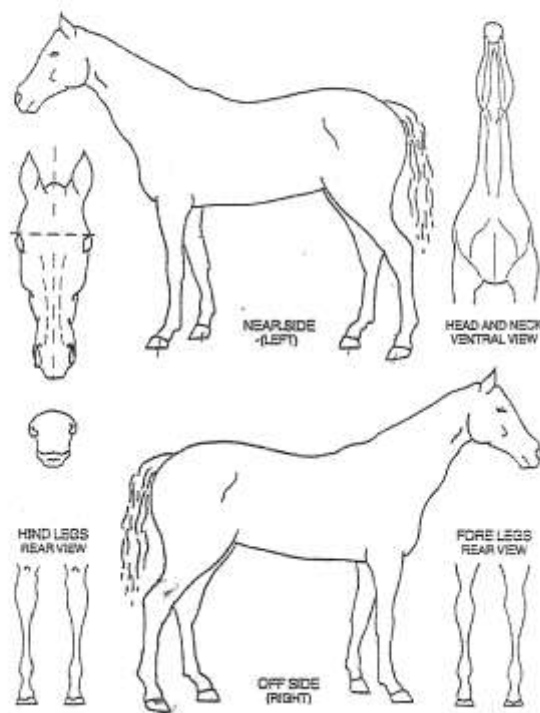
\_\_\_\_\_  
 ^ Full name of Director

\_\_\_\_\_  
 ^ Full name of Director/Secretary

## Annexure "A" – Order Form

1. Name and Address of Client:	
2. Name of Mare:	
3. Description of Mare:	Colour: Microchip No: Brand: Sire: Dam: Age:  Markings: As per the completed description diagram <b>attached.</b>
4. Will the Client be engaging Kalimna or the Preferred AI Technician to inseminate the Mare?	
5. If the answer to question 4 is no, please state the name and delivery address for shipment of the Semen?	

### DESCRIPTION OF MARE



## Annexure B – Vet Certificate

I, \_\_\_\_\_ the undersigned Veterinarian duly registered to practice in the State of \_\_\_\_\_ **[insert State]** certify as follow:

- (a) Prior to inseminating the Mare, I tested the Semen and it comprised live and healthy sperm.
- (b) That at the following times and the following days, I artificially inseminated the mare \_\_\_\_\_ **[insert full description of Mare including Brand/Microchip no.] (Mare)** with the Semen of the Stallion Legend of Loxley, and the inseminations were carried out in accordance with standard veterinary practices.
- (c) That no other Mare was inseminated with the Stallion’s Semen designated for the Mare and that any excess Semen was promptly and properly destroyed.
- (d) I further certify that I am not an agent for Kalimna and I will indemnify and hold harmless Kalimna from any claims arising from the negligent, improper or ineffective insemination by me.

Signed by

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**[Insert Name of Vet]**