

Racehorse
Ownership



CO-OWNERSHIP OF A RACEHORSE – OWNERS DEED
SCHEDULE 1 – REFERENCE SCHEDULE

Important notice: This Co-ownership arrangement ("Syndicate") is a private arrangement and is not subject to regulation by the Corporations Act. Shares may only be transferred in accordance with the procedures set in this document.

Item 1
Date | This Deed is made the _____ day of _____, 2020

Item 2
Manager
Address
Telephone
Facsimile
Contact Person(s)

Item 3
Horse
Life Number
Microchip Number

Item 4
Syndicate Name, if any
(Optional)

Item 5
Number of Shares

Item 6
Application Price

Item 7
Commencement Date

Item 8
Racing Colours

Item 9
Trainer

Item 10
Manager's Remuneration
(if any)

Manager's Additional
Remuneration and
Gratuities (if any)

Item 11
Governing law
(state/territory)

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EXECUTED BY THE PARTIES AS A DEED

[Manager - if an individual]

Signed, Sealed and Delivered by)
)
in the presence of:)

.....
Signature of witness

.....
Signature of Applicant

.....
Name of witness (BLOCK LETTERS)

[Manager - if a company]

Executed by)
)
ACN/ABN #)
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director (BLOCK LETTERS)

Executed by)
PTY LTD)
ABN)
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Name of Sole Director/Sole Company secretary
(BLOCK LETTERS)

.....
Sole Director/Sole Company Secretary

This document is comprised of 16 pages, including this page

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Telephone: 02 9235 2500; Email: legal@maclegal.com.au; Website: www.maclegal.com.au

CO-OWNERSHIP OF A RACEHORSE

THIS OWNERS DEED is made on the date specified in Schedule 1.

BETWEEN: The Owners

AND: The Manager

WHEREAS

- A. The Owners of the Horse have agreed to their relationship being governed by this Deed to enable them to obtain the benefit of the Horse from racing.
- B. The Manager has agreed to operate the Syndicate on behalf of the Owners in accordance with this Deed.

NOW BY THIS DEED OF AGREEMENT it is agreed as follows:

1. OWNERSHIP

1.1 The Owners agree to the ownership of the Horse, together with the Syndicate Property, being governed by this Deed for the Term.

1.2 This Deed:

(a) will be legally enforceable by each Owner and the Manager against each other Owner and the Manager respectively, and against all persons claiming through an Owner and the Manager as if they were parties to it; and

(b) excludes and replaces the TOR Co-owners Agreement published by Racing Australia, as permitted by TOR Rule 1(5).

1.3 Each Owner expressly and irrevocably authorises the Manager to give notice to the other Owners of any breach by the Owner of a material obligation under this Deed, including any payment obligation.

1.4 (1) Subject to each Owner being approved as the Owner of a Share and providing a completed Application Deed, the Owners will:

(a) hold the whole of the legal and beneficial title to the Horse, divided into the number of Shares specified in Schedule 1, as tenants-in-common, free of any Encumbrance, EXCEPT for any Security Interest granted or permitted by this Deed;

(b) participate in the Common Enterprise that constitutes the Syndicate;

(c) contribute to the Common Enterprise:

(ii) the right to use their respective ownership interests (in the Horse) in the operation of the Common Enterprise; and

(iii) money [in the same proportions as the number of Shares held bears to the total number of Shares] to pay operating costs when due and in doing so ensure the Common Enterprise is liquid and solvent;

to facilitate their interests being managed in common (the Horse as a whole) for the benefit of the group;

(d) apportion the benefits [in the same proportions as the number of Shares held bears to the total number of Shares]; and

(e) in consideration of the provisions of clauses 10 and 20, waive any right to petition the court for an order requiring the sale of the Horse and partitioning of the Proceeds.

(2) The Manager will hold the Syndicate Property upon trust for the Owners [in the same proportions as the number of Shares held bears to the total number of Shares], free of any Encumbrance, EXCEPT for any Security Interest granted or permitted by this Deed.

1.5 PRIZE MONEY

Subject to clauses 12.4, 15, 19.2, 19.3 and 19.4, each Owner will be entitled to the same proportion of the Income of the Syndicate [net Prize money, Owners' Bonus or Incentive Scheme payments and other bonuses earned by the Horse] as the number of Shares held bears to the total number of Shares.

1.6 TROPHIES

If the Horse wins a Trophy ("Original Trophy"):

(a) the Manager will receive the Original Trophy and request each of the Owners to indicate if they wish to acquire it. If more than 1 Owner so indicates, then the Manager will determine the matter by ballot. Such transaction will be treated as a sale and purchase of the Original Trophy;

(b) the Owner who acquires the Original Trophy must compensate the other Owners by paying to each of them a proportion of the advertised value of the Original Trophy, in the same proportion as the number of Shares held bears to the total number of Shares;

(c) if none of the Owners wish to acquire the Original Trophy, the Manager may retain it if it does not have any significant realisable value, but otherwise must use reasonable endeavours to sell it for the best possible price and apportion the proceeds between each of the Owners in the same proportion as the number of Shares held bears to the total number of Shares; and

(d) if any Owner wishes to acquire a replica of the Original Trophy, the Manager will endeavour either to procure same at the best

possible price, [which will be invoiced to and paid by that Owner prior to order], or to procure and provide to such Owner details of the supplier of the Original Trophy.

1.7 RACEBOOK

Each Owner of 5% or more of the Horse is entitled to be named in the racebook as a co-owner of the Horse. If a Share is held by 2 or more persons jointly, the Manager may require those persons to register a syndicate at their own cost and to hold the Share in the name of that syndicate. The registered manager of any such syndicate will:

(a) hold the Share as trustee for the other members of that syndicate;

(b) represent them in all dealings relating to the ownership of the Horse; and

(c) be responsible for ensuring that they comply with their collective obligations as the Owner of a Share under this Deed.

In any event, the total number of registered Owners of the Horse must be no more than 20 and the total number of individual persons who hold a legal interest, jointly or otherwise, in all the Shares must be no more than 20.

1.8 RACING COLOURS

The Horse will carry the Racing Colours specified in Schedule 1, or such other Racing Colours as the Manager may determine from time to time with the Owners' approval (by an Extraordinary Resolution).

1.9 REGISTRATION OF OWNERSHIP

Each Owner authorises the Manager to do anything required to be done by an Owner to comply with this Deed and the Rules of Racing, including (without limitation) authority to sign on the Owner's behalf any instrument required to be signed and lodged with the Registrar of Racehorses or Principal Racing Authority to give effect to any application for registration of the Horse, a syndicate, or change of ownership. If the Manager is a corporation, this authority will vest in the duly authorised officer of such entity.

1.10 SYNDICATE RECORDS

All books, records and other documents relating to the Syndicate will be kept by the Manager but remain the property of the Owners. If for any reason the Owners take possession of such books, records or other documents, the Manager will have full and unfettered right of access to inspect and freely copy same.

1.11 This Deed relates to the Horse only and to no other horse or investment.

1.12 None of the provisions of this Deed concerning the Manager, in such capacity, bestow any share or interest in the legal or beneficial title to the Horse.

1.13 The Manager may beneficially hold any number of Shares, without liability to account, and will have the same rights and obligations as the Owner of such Shares as any other Owner, notwithstanding that the Manager is also acting in another capacity under this Deed.

2. EXPENSES

2.1 (1) The Owners will be severally liable for all expenses properly incurred in operating the Syndicate in accordance with this Deed, including (without limitation):

(a) all fees and expenses incurred in caring for, training and racing the Horse, including agistment, pre-training and training fees, race entry fees (nomination, acceptance and scratching) chiropractic, dentistry, farriery and veterinary fees, and transportation costs; and

(b) fees payable to the Manager and compliance costs.

(2) All such expenses will be borne and paid by the Owners in accordance with clause 12.4.

2.2 Any arrangement to pay to or bestow upon the Trainer or the jockey any additional remuneration or gratuity must be:

(a) in accordance with the terms of the Training Agreement and Fees Notice; or

(b) approved by the Owners (by an Extraordinary Resolution); and such additional remuneration or gratuity will constitute a racing expense payable by the Owners pursuant to clause 2.1.

3. MANAGER

3.1 APPOINTMENT

Subject to clause 3.10 and 3.11, the Owners appoint the Manager and the Manager accepts the appointment to:

(a) operate the Syndicate on behalf of the Owners; and

(b) act as trustee of the Syndicate and custodian of the Syndicate Property;

in accordance with this Deed.

3.2 The Manager may, with the Owners' approval (by an Extraordinary Resolution), delegate any of the Manager's duties to a third party, including (without limitation) the Trainer.

3.3 OBLIGATIONS

The Manager will, exercising reasonable care, skill and diligence:

(a) operate the Syndicate in a proper and efficient manner in accordance with the normal standards applying in relation to the management of syndicated racehorses;

- (b) exercise the Manager's powers and perform the Manager's duties in the best interests of all the Owners collectively;
- (c) treat each Owner fairly and impartially; and
- (d) ensure that no Syndicate Property is applied other than for the benefit of the Syndicate.
- 3.4 SYNDICATE PROPERTY
The Syndicate Property must be clearly identified as property of the Syndicate and held separately from the assets of the Manager and any other person.
- 3.5 If the Manager receives money for or on behalf of the Owners, it must be held either as their agent or as Syndicate Property (as the case requires) and the Manager will, subject to clauses 12.4, 15 and 19, if requested by the Owners, apportion and account to them for such money.
- 3.6 DUTIES
The Manager's duties include (without limitation):
- (a) obtaining the Owners' approval to the appointment of a Trainer, including any change of Trainer (by an Extraordinary Resolution);
- (b) providing to the Owners a copy of the Training Agreement and Fees Notice;
- (c) communicating on a regular basis with the Trainer on behalf of the Owners and the Owners on behalf of the Trainer in relation to the management, training and racing, of the Horse, including (without limitation) the Horse's general well-being and progress, proposed racing program and race performances (pre-race and post-race reports);
- (d) arranging for the Trainer and other Third-Party Service Providers to invoice all fees and charges of caring for, training and racing the Horse either:
- (i) to the Owners via the Manager; or
- (ii) subject to clause 2.1, to each Owner directly that Owner's proportion of such fees and charges;
- (e) arranging for the Principal Racing Authority to distribute Prize money due to the Owners either to:
- (i) the Syndicate's designated bank account maintained by the Manager; or
- (ii) each Owner directly that Owner's proportion of such Prize money;
- (f) establishing and maintaining a trust account, or other designated bank account, into which all Owners' contributions, income and any other money, including Proceeds, received on behalf of the Owners must be deposited AND from which all fees and expenses payable by the Owners and distributions of income and other money, including Proceeds, payable to the Owners must be paid, EXCEPT for when direct invoicing and distribution arrangements contemplated by paragraphs (d)(ii) and (e)(ii) are in place;
- (g) appointing a person to be Secretary to the Syndicate and keeping the Accounts and such other records of the Syndicate as the Manager considers necessary;
- (h) providing or arranging for the provision of all necessary accounting, taxation and legal advice to the Syndicate;
- (i) keeping a register of Owners which contains their names, addresses, contact details (including telephone and facsimile numbers and email addresses), and the number of Shares held by each Owner, the date upon which the Owner was entered in the register and the date upon which any person ceased to be an Owner and in respect of any Security Interest referred to in clause 11. The Manager will make available to any Owner for inspection at all reasonable times and without charge, the register of Owners and a copy of this Deed. Subject to clause 11, the Manager will not be obliged to enter into the register notice of any trust, whether express or implied, and only the person so entered will be entitled to vote, or otherwise exercise, the rights of an Owner under this Deed;
- (j) administering race day Owners' privileges, including the allocation of ticketing and mounting yards passes on days when Owners' privileges are restricted, resulting in the number of Owners' privileges allocated by the relevant race club being insufficient to enable an equal distribution to all the Owners.
- 3.7 The Manager is not obliged to:
- (a) act in accordance with any direction of an Owner or Owners, UNLESS such direction is set out in either:
- (i) a Resolution proposed at a meeting of Owners and passed by more than 50% of the votes that may be cast by Owners entitled to attend the meeting and vote on the Resolution; or
- (ii) an Extraordinary Resolution or a Special Resolution (as the case requires); or
- (b) sell a Share on behalf of an Owner. If the Manager sells a Share as agent on behalf of an Owner, this will not obligate the Manager to sell a Share on behalf of any other Owner.
- 3.8 REMUNERATION
Subject to the proper performance of the Manager's duties, the Manager will be entitled to:
- (a) charge and be paid the fee specified in Schedule 1 for the first year of the Syndicate and, for subsequent years, as adjusted in accordance with increases in the consumer price index (all groups) for the capital city of the state or territory specified in Schedule 1, as remuneration for performing those duties;
- (b) charge and be paid or reimbursed the cost of any accounting, administration, bookkeeping, legal and secretarial services provided or procured, and for reasonable travel and accommodation expenses incurred, in relation to the Syndicate; and
- (c) receive or have bestowed the following additional remuneration and other entitlements if:
- (i) the Horse earns gross Prize money, Owners Bonus or Incentive Scheme payments, or other bonuses, above the amount specified in Schedule 1 (Surplus Prize money), a proportion of Surplus Prize money equal to the percentage specified in Schedule 1;
- (ii) the Horse or a Share in the Horse is sold (including any allotment and sale of additional shares), a commission on the gross sale price (excluding GST) equal to the percentage specified in Schedule 1; and
- (iii) the Horse is an Entire and retired from racing to perform stud duties at a stud, the number of Lifetime Service Rights specified in Schedule 1.
- The provisions of this paragraph (c) will apply for the benefit of the first appointee only of the Owners as Manager (as named in Schedule 1) and will survive both the removal of that person or entity as the Manager AND the sale of the Horse (either as a racehorse or Entire for stud duties) and the winding up of the Syndicate. Furthermore, the Owners must ensure that any buyer of a Share, or the Horse, acknowledges these obligations and agrees to novate them.
- 3.9 All fees and expenses paid to the Syndicate Manager during the Accounting Period must be set out in the Accounts.
- 3.10 RETIREMENT
The Manager may at any time give the Owners not less than 30 days' notice of an intention to retire as Manager, in which case the Owners must agree the appointment of a new Manager (by an Extraordinary Resolution). If the Manager retires voluntarily, clause 3.8(c) will no longer apply.
- 3.11 REMOVAL
The Owners may at any time agree (by an Extraordinary Resolution) to remove the Manager and appoint a new Manager.
- 3.12 (1) The outgoing Manager:
- (a) must deliver up to the new Manager all books, records and other documents relating to this Deed, but will retain an unfettered right of access to inspect and copy same; and
- (b) is released from any further obligations under this Deed.
- (2) The retirement or removal of the Manager will not affect any right of indemnity which the Manager may have in relation to the exercise of the Manager's powers and performance of the Manager's duties prior to retirement or removal.
- 3.13 The Manager must not accept any payment, gratuity or benefit for ceasing to act as Manager, unless such payment, gratuity or benefit is approved by the Owners (by an Extraordinary Resolution).
- 4. CARE OF HORSE**
- 4.1 MANAGER
The Manager will manage the Horse, including (without limitation) appointing the Trainer to take actual possession of the Horse and control over the management or carrying-out of those activities which make up the act of training, including:
- (a) training and racing the Horse to best advantage;
- (b) caring for and maintaining the Horse, including:
- (i) providing stabling and ancillary facilities, equipment and gear, feed and supplements; and
- (ii) providing [or as the agent of the Owners procuring the services of such Third-Party Service Providers as the Trainer considers necessary to provide] agistment, breaking-in and pre-training, transportation, chiropractic care, dentistry, farriery and veterinary care;
- (c) determining in consultation with the Manager the racing program of the Horse and the jockey who will ride it in each of its races; and
- (d) as the representative of the Manager, entering (including nominating and accepting) the Horse for or scratching it from any race or trial, at the Trainer's discretion, unless otherwise specifically agreed with the Manager. The Manager will not be liable to the Owners for any act or omission on the part of the Trainer resulting in the Horse not being entered for any specific race that may be preferred by the Owners.

- 4.2 **TRAINER AND OTHER THIRD-PARTY SERVICE PROVIDERS**
The Owners acknowledge that it will be necessary for the Manager to place the Horse in the care of the Trainer and other Third-Party Service Providers from time-to-time, in the normal course, to facilitate the Horse being properly cared for while on agistment, in pre-training, training and racing, including transportation, AND THAT it will also be necessary for those parties from time-to-time, at their discretion, to prescribe and administer various treatments, including (without limitation) chiropractic care, dentistry, farriery and veterinary care.
- 4.3 If the Horse is an Entire it must not be gelded, EXCEPT with the approval of the Manager and the Owners (by an Extraordinary Resolution).
- 4.4 Except in circumstances where the Manager, acting reasonably, is unable to obtain veterinary advice or the Owners' approval (by an Extraordinary Resolution), the Manager will not permit the Horse to be euthanized because of accident, illness, injury, or other cause, unless such action is recommended on humane grounds and certified by a qualified equine veterinarian retained by the Manager or relevant race club.

5. RULES OF RACING

Each Owner and the Manager must:

- (a) be eligible to be an Owner under the Rules of Racing; and
- (b) comply with the Rules of Racing, including the Training Fees Disputes Resolution Procedures, as administered by the Principal Racing Authority in the place where the Horse is racing or may race.

6. OWNERS' MEETINGS

- 6.1 (1) The Manager is not obliged to convene Owners' meetings but may do so at any time upon the giving of at least 21 days' notice to the Owners. The Manager may determine the date, place and time for an Owners' meeting and the procedure for convening the meeting.
- (2) Subject to clause 19.2, an Owner or Owners with at least 5% of the votes that may be cast on any Extraordinary Resolution or Special Resolution may either:
- (a) request the Manager to call an Owners' meeting; or
 - (b) call such meeting upon the giving of at least 21 days' notice to the other Owners and the Manager.
- If the Manager receives a request to call an Owners' meeting, the Manager must within 21 days call such meeting, which must be held not later than 2 months after such request is made.
- (3) The notice must state the date, place and time for the Owners' meeting (and, if such meeting is to be held in 2 or more places, the technology that will be used to facilitate this) and the general nature of the business to be dealt with. If there is any dispute as to the date, place and time for the meeting, such dispute will be determined by the Manager.
- (4) A notice of meeting at which either an Extraordinary Resolution or a Special Resolution is to be proposed must:
- (a) set out an intention to propose the Extraordinary Resolution or Special Resolution and state the resolution; and
 - (b) contain a statement setting out the following information:
 - (i) that the Owner has the right to appoint an attorney, proxy or representative;
 - (ii) that the attorney, proxy or representative does not need to be an Owner; and
 - (iii) that if the Owner appoints 2 attorneys, proxies or representatives, the Owner must specify the proportion or number of votes each attorney, proxy or representative is appointed to exercise.
- (5) Subject to clause 19.2, the Owner of each Share and the Manager may attend and be heard at any Owners meeting.
- 6.2 A quorum for an Owners' meeting is 2 Owners present either in person, or by attorney, proxy or representative.
- 6.3 (1) The Manager will either act as Chairman, or nominate a person to so act, of any Owners' meeting convened by the Manager.
- (2) If an Owners' meeting is called by an Owner or by the Manager in response to a request by an Owner to call an Owners' meeting, then the Manager will act as Chairman of the meeting unless the Owners nominate or elect an alternate Chairman.
- (3) If no such Chairman is nominated or elected, or if at any Owners' meeting the Chairman is not present at the time appointed for the commencement of such meeting, then the Owners present may choose 1 of their number to be Chairman.
- 6.4 (1) Owners may vote personally, or by attorney, proxy, or representative.
- (2) No business will be transacted at an Owners' meeting unless a quorum is present and if a quorum is not present within 30 minutes of the time for commencement of the meeting, such meeting will be adjourned to the same day of the next week,

at the same time and place, or such other date, time and place as the Manager determines, and at that meeting any 1 or more of the Owners present in person or by proxy, attorney or representative will constitute a quorum.

- (3) When an Owners' meeting is adjourned, notice of the adjourned meeting must be given to the Owners and [if the meeting has been convened by an Owner or Owners, notice must also be given to] the Manager.
- 6.5 Subject to clause 19.2, the Owner of each Share is entitled to 1 vote and the passing of a Resolution will, unless otherwise stated in this Deed, be by simple majority (passed by more than 50% of the votes cast by Owners who vote on the Resolution). The Chairman does not have a second or casting vote. A Resolution binds all Owners, whether they are present at the meeting or not. No objection may be made to any vote cast unless the objection is made at the meeting. The decision of the chair on any matter is final.
- 6.6 Notwithstanding anything to the contrary in this clause 6, but subject to the Manager's approval, at the Manager's discretion, and there being no objection received by the Manager from any Owner within 2 days after giving notice to the Owners of a proposal to proceed with either of the following:
- (a) the period of notice required to be given in relation to the calling of an Owners' meeting at which it is intended to propose an Extraordinary Resolution or Special Resolution may be shortened or dispensed with if the Owners with the number of votes required to pass such a resolution at such meeting agree; or
 - (b) an Extraordinary Resolution or Special Resolution in writing and signed by at least the number of Owners required to pass such a resolution will be as effective as an Extraordinary Resolution or Special Resolution passed at an Owners' meeting, duly convened and held, and may consist of several documents in like form, each signed by one or more of the Owners (including any attorney, proxy or representative).
- 6.7 The Manager will ensure that minutes are kept of all Owners' meetings which must be signed by the Chairman as a true record of the proceedings when Resolutions are reduced to writing.

7. ATTORNEY PROXY OR REPRESENTATIVE

- 7.1 An Owner may appoint another person as the Owner's attorney, proxy or representative for any question to be considered at an Owners' meeting and must give notice to the Manager of that appointment in the manner and no later than such period as is advised in the notice of meeting.
- 7.2 A proxy is valid:
- (a) for such period as is advised in the notice of an Owners' meeting; and
 - (b) after the Owner who gave it dies, or becomes subject to a legal disability, or becomes bankrupt or insolvent, resulting in that Owner's assets having passed to a trustee in bankruptcy, or similar administrator, unless the Manager has received written notice or has actual knowledge of that fact before the relevant Owners' meeting.
- 7.3 A proxy will be in such form as the Manager determines.
- 7.4 The Manager is not obliged to enquire whether the appointment of an attorney, proxy or representative has been validly made.

8. JOINT HOLDERS

- Where a Share is held by 2 or more persons (whether in equal shares or not):
- (a) seniority will be determined by the order in which the names appear in the register of Owners;
 - (b) at an Owners' meeting the vote of the most senior who tenders a vote (whether in person or by attorney, proxy or representative) will be accepted to the exclusion of the vote of the other joint holders;
 - (c) any notice, demand, consent or other document may be given to all joint holders by giving it to the senior joint holder;
 - (d) any 1 of the joint holders may give an effectual receipt for any money payable to joint holders pursuant to this Deed; and
 - (e) this Deed will bind the joint holders of a Share jointly and each of them severally.

If there is any dispute between the joint holders of a Share, the Manager may direct all dealings in relation to the Share to the senior joint holder under paragraph (a).

9. BALLOTS

- Any ballot under this Deed will be conducted by the Manager as follows:
- (a) each person entitled to participate in a ballot will be given 7 days' notice of the time and place of such ballot and will be entitled to attend and observe such ballot, either in person or by attorney, proxy or representative; and
 - (b) at such ballot an Owner will be entitled to one ballot paper (marked with the Owner's name) for each Share owned.

10. TRANSFER OF SHARES

10.1 An Owner may transfer, sell or otherwise dispose of a Share in accordance with the procedures set out in this clause 10, with the Manager's approval, which will not be unreasonably withheld or delayed. However, it will not be unreasonable for the Manager to withhold approval if the Owner is in breach of any payment obligation under this Deed.

10.2 Notwithstanding anything contained in this Deed, any transfer, sale or other disposal of a Share will be conditional upon:

- (a) the transferee:
 - (i) receiving a copy of this Deed;
 - (ii) being eligible to be an owner under the Rules of Racing; and
 - (iii) executing an Application Deed in favour of the Manager and the Owners pursuant to which the transferee covenants to be bound by this Deed as if such transferee was an original party to it; and
- (b) the transferee and the transferor:
 - (i) executing a Share Transfer; and
 - (ii) [or the Manager on behalf of each of them], executing a Transfer of Ownership as required by the Registrar of Racehorses.

10.3 Subject to clauses 10.1 and 10.2, the Manager's approval will not be required for the transfer, sale, or other disposal of a Share:

- (a) by the Owner who was the initial offeror of the Shares to any other eligible person for a period of 6 months after the Commencement Date;
- (b) to the spouse or child of an Owner, or family trust or company in either case that is and remains controlled by such Owner, spouse or child;
- (c) to transmit a Share to the legal personal representative of a deceased Owner; or
- (d) by the legal personal representative of a deceased Owner to the heir or beneficiary of the estate of such deceased Owner.

Clause 10.4 will not apply to the transfer, sale, or other disposal, of a Share to any of these persons.

- 10.4
- (1) If at any time an Owner wishes to transfer a Share (proposing transferor) to any person other than a person referred to in clause 10.3, the Owner or Owner's authorised representative must give notice to the Manager (transfer notice) that the Owner wishes to transfer the Share at the price and on the terms (sale terms) specified in the transfer notice. A transfer notice will constitute the Manager the Owner's agent for the sale of the Share on the sale terms. Subject to the right of the proposing transferor to offer any number of Shares for sale and to require that such Shares be sold together as one transaction, if a transfer notice relates to more than 1 Share it will operate as if it were a separate transfer notice for each Share. A transfer notice cannot be revoked, EXCEPT with the approval of the Manager, at the Manager's discretion.
 - (2) Upon receipt of a transfer notice the Manager will forthwith offer the Share for sale to the other Owners on the sale terms, allowing each of them 14 days within which to notify the Manager in writing if they wish to accept the offer and acquire the Share.
 - (3) If the Manager within 21 days after being served with a transfer notice finds a buyer for the Share on the sale terms and gives notice to the proposing transferor, such proposing transferor will be bound upon payment of the price in accordance with the sale terms to transfer [subject to clause 10.2(b)] the Share to the buyer and will execute any instrument and do any act or thing required to convey and assure the buyer the Share sold.
 - (4) If more than 1 Owner accepts the offer of the Share, then those Owners will acquire the Share jointly, as tenants-in-common, in the same proportions as the number of Shares held.
 - (5) If no buyer of the Share is found by the Manager following the procedure required by this clause 10.4, then the proposing transferor may at any time within the next 90 days, subject to clauses 10.1 and 10.2:
 - (a) sell and transfer the Share to any eligible person on the sale terms;
 - (b) offer the Share for sale by public auction or tender; or
 - (c) offer to surrender the Share "free of consideration" to the other Owners, or such of them who are willing to acquire it, free of any consideration.
 - (6) If the proposing transferor offers to surrender the Share "free of consideration" to the other Owners and none of them are willing to acquire it, then the Manager may declare, by giving notice to the Owners in accordance with clause 20.3 of an intention to wind up the Syndicate because the Syndicate's purpose cannot be accomplished.

10.5 (1) An Owner must obtain the Manager's approval before either directly or via an agent:

- (a) publicly offering a Share for sale by any means, including (without limitation) by private treaty, public auction or tender; or
- (b) publicly advertising or promoting a Share for sale by any means, including (without limitation) issuing an invitation to treat offers in the print media, on radio, TV or the internet.

(2) The proposing transferor must give the Manager at least 21 days prior notice of the date, place and time of the proposed public auction or tender, which information the Manager must communicate to the Owners.

10.6 The expenses incurred by the Manager in properly complying with the procedure set out in this clause 10 will be borne and paid by the proposing transferor regardless of whether the Share is sold or not.

10.7 The transferee will be liable for all obligations and liabilities attaching to the Share whether arising before or after the date of registration of the transferee as the Owner, but the transferor will also not be released from and will remain liable for all such obligations and liabilities attaching to the Share to the date of registration of the transferee as the Owner until they are satisfied.

10.8 This clause 10 will also apply to an interest in a Share.

11. GRANT OF SECURITY INTEREST TO OUTSIDE PARTY

11.1 An Owner may grant a Security Interest attaching to the Owner's own Share, subject to giving 7 days' notice to the Manager. Such notice must include the name, address and description of the grantee of the Security Interest (Grantee), the identity of the party entitled to receive Prize money during the term of the Security Interest and any other information that may reasonably be required by the Manager to enable the Manager to make the appropriate recording of the Security Interest in the register of Owners.

11.2 Upon entering the name of the Grantee into the register of Owners in relation to a Share the Manager will issue the Grantee with a certificate (Caveat Certificate). Until the Caveat Certificate is surrendered to the Manager by the Grantee no further transactions relating to the Share will be registered.

11.3 While a person is recorded in the register as the Grantee of a Security Interest, that person in lieu of the Owner will be entitled to the rights attaching to the Share. If there is more than 1 Grantee recorded in respect of a Share, the voting and attendance rights will belong to the Grantee first recorded in the register of Owners.

11.4 The Manager may rely and act upon the matters recorded in the register of Owners in respect of any Security Interest and will not be obliged to take account of any claim or any other matter alleged by the Manager either:

- (a) has reason to believe the information provided in relation to a Security Interest is not genuine; or
- (b) is otherwise directed to do so by a court of competent jurisdiction.

11.5 The rights of the Grantee under any Security Interest recorded on the register of Owners in accordance with this clause will be subject to the due observance and proper performance of this Deed on the part of the Owner and the Security Interests granted by each Owner to the other Owners and the Manager under this Deed having priority over such Security Interest.

11.6 The Manager will be entitled to a reasonable fee from the Owner and the Grantee in relation to all acts performed under this clause 11 and the Manager will not be obliged to record any entries in the register of Owners prior to receipt of such fee.

12. EXPENSES AND LIABILITY FOR EXPENSES

12.1 INSURANCE

(1) Each Owner is responsible for procuring insurance cover for mortality and other insurable risks in relation to the Owner's own Share. If the Manager procures insurance cover for any of the Owners, it will be as their representative (duly authorised in writing), and neither the policy of insurance nor any Proceeds received in settlement of a claim will comprise Syndicate Property. Furthermore, each Owner is directly and solely responsible for:

- (a) payment of that proportion of the insurance premium as relates to the Owner's own Share;
- (b) all negotiations and arrangements with the relevant insurer regarding either renewal of the existing cover, or the procurement of alternative cover, unless otherwise agreed with and confirmed in writing by the Manager prior to the expiry date of the existing cover; and
- (c) providing the Owner's insurer with a copy of this Deed.

(2) The Manager may procure such public liability cover in relation to the Horse as the Manager considers is desirable, the cost of which will be borne and paid by the Owners.

12.2 SALE RACE SERIES OR OWNERS' BONUS OR INCENTIVE SCHEME

(1) The Manager may from time to time pay a sum of money (Qualifying Fee) to any person or entity conducting a Sale Race Series or Owners' Bonus or Incentive Scheme.

- (2) If the Manager elects to pay a Qualifying Fee, it will be borne and paid by the Owners.
- (3) Subject to clauses 12.4, 19.2, 19.3 and 19.4 if the Manager receives any significant Owners' Bonus or Incentive Scheme payments, such money will be payable to the Owners noted in the register of Owners at the time it is earned and must be paid to them by the Manager within 30 days of receipt.
- 12.3 COMPLIANCE EXPENSES**
The Owners must promptly pay or reimburse the Manager all fees and expenses properly earned or incurred in complying with this Deed, including (without limitation) the cost of:
- (a) administering the Complaints handling procedures under clause 14;
- (b) obtaining accounting and legal advice, as necessary, in relation to the Syndicate; and
- (c) reviewing and amending, as necessary, this Deed.
- The bona fide determination as to whether any fees and expenses are compliance expenses and the amount of such fees and expenses will be made by the Manager, whose determination will be final and binding upon the Owners.
- 12.4 LIABILITY FOR EXPENSES**
- (1) Subject to clauses 2.1 and 16.2, all the Syndicate's operating expenses will be borne and paid by each Owner proportionately, in the same proportions as the number of Shares held bears to the total number of Shares.
- (2) The Manager may from time to time, by notice, require the Owners to make contributions, in the proportions required by paragraph (1), to cover all fees and expenses which the Manager estimates all parties who provide services in relation to the Horse, the Syndicate, or under this Deed, will properly earn or incur during the Accounting Period, and such contributions must be made by the Owners within 14 days after notice is given.
- (3) The Owners must, in the proportions required by paragraph (1), pay or reimburse (within 14 days after notice requiring payment is given by the Manager) all fees and expenses properly earned or incurred by all parties in relation to the Horse, the Syndicate, or under this Deed.
- (4) The Manager may from time to time retain out of Income or any other money, including Prize money and Proceeds, received for or on behalf of each Owner, such amount as may be required to satisfy any obligation of that Owner to make contributions or payments pursuant to this clause 12.4.
- (5) The rights of the Manager pursuant to this clause 12.4 are subject to clause 16.2.
- 13. GST**
- 13.1** The parties acknowledge that the GST Act has application and accordingly any charge hereunder will increase by the amount of GST payable under the GST Act for providing a Taxable Supply.
- 13.2** Each party warrants that if required by the GST Act, such party will be registered at the time of any supply made on which GST is imposed. If the other party requests written evidence of registration, the party claiming to be registered will promptly produce evidence satisfactory to the party seeking such evidence.
- 13.3** Any invoice rendered by a party to this Deed in connection with a supply under this Deed which seeks to recover an amount of GST payable by that party must conform to the requirements for a Tax Invoice.
- 14. COMPLAINTS**
- 14.1** The Owners and the Manager agree that all internal Complaints will be dealt with in accordance with the procedure set out in clause 14.2.
- 14.2** If the Manager receives a Complaint from an Owner regarding the operation of the Syndicate, or the conduct of the Manager, including the amount of any fees and expenses charged under this Deed, then the Manager:
- (a) must acknowledge the Complaint as soon as practicable;
- (b) must ensure the Complaint is given proper consideration;
- (c) must act in good faith to correct any problem identified by the complainant as far as possible without adversely affecting the rights of third parties;
- (d) may provide any of the following:
- (i) an explanation of the circumstances giving rise to the Complaint;
- (ii) an apology; or
- (iii) such remedy as the Manager considers is appropriate in the circumstances; and
- (e) must communicate with the complainant within 45 days of receipt of the Complaint:
- (i) the Manager's determination in relation to the Complaint;
- (ii) the remedies (if any) available to the complainant; and
- (iii) information regarding further avenues of Complaint including, subject to agreement between the parties, independent arbitration of the dispute.
- 15. LIEN AND CHARGE**
- 15.1** Each Owner (Grantor) grants to the other Owners and the Manager collectively a Lien over the Grantor's Share and a Charge over the Grantor's Share, Prize money and Proceeds, as security for the proper performance of the Grantor's obligations under this Deed, including (without limitation):
- (a) to pay the Grantor's proportion of the Syndicate's operating expenses when due; and
- (b) not to transfer, sell or otherwise dispose of, or create any Encumbrance attaching to, the Grantor's Share other than in accordance with this Deed.
- 15.2** This Lien and Charge:
- (a) entitles the Manager to possession of the Grantor's Share; and
- (b) includes the right of the Manager to:
- (i) apply in accordance with clause 19.3 any distributions of Income and Proceeds otherwise due to the Grantor;
- (ii) give a direction in accordance with clause 19.4 for the payment of the Grantor's proportion of Prize money and Proceeds; and
- (iii) sell and transfer in accordance with clause 19.5 the Grantor's Share;
- when the Grantor's breach of this Deed occurs.
- 15.3** The rights conferred by this clause 15 are in addition to and not in substitution of any rights of the parties at common law or under any statute.
- 16. INDEMNITIES**
- 16.1** (1) The Owners acknowledge that as between themselves all liabilities and expenses incurred under this Deed are to be borne proportionately, in the same proportions as the number of Shares held bears to the total number of Shares.
- (2) Each Owner covenants with every other Owner to indemnify them and keep them indemnified against all liabilities and expenses to the extent that such liabilities and expenses are borne otherwise than in the proportions stated in this Deed, PROVIDED THAT nothing in this clause will require an Owner to indemnify any other Owner for liabilities and expenses which may be incurred because of another Owner's breach of this Deed or contravention of any statute.
- 16.2** No Owner will pledge the credit of the Syndicate or hold oneself out as acting on behalf of the other Owners, and if an Owner purports to do so such Owner will be personally liable for any debt so created.
- 16.3** Unless specifically contemplated by this Deed, no Owner will bind any other Owner to a transaction with any third party EXCEPT with a written authorization from that Owner enabling the first mentioned Owner to do so.
- 16.4** (1) The Owners must severally indemnify (in the same proportions as the number of Shares held bears to the total number of Shares) the Manager for all liabilities and expenses incurred in relation to the proper performance of the Manager's duties.
- (2) The Manager has a right to be paid fees out of Syndicate Property and to be indemnified for liabilities and expenses incurred in performing the Manager's duties, subject to the proper performance of those duties.
- 17. LIMITATIONS TO OWNERS' RIGHT OF INDEMNITY**
- 17.1** The Manager will not be liable to the Owners for damages for harm suffered by the loss or diminution in value of the Horse through market forces, or if it dies, or value is diminished because of:
- (a) the materialisation of a risk, howsoever arising, that is either:
- (i) an Inherent Risk, including (without limitation) accident, illness, infertility or sub-fertility, injury, or natural cause; or
- (ii) any other risk that was insignificant or not reasonably foreseeable; or
- (b) its failure to compete in or win any races or Prize money.
- 17.2** (1) Except for any right of indemnity specifically preserved by this Deed, the Owners expressly surrender, so far as the law permits, any rights which any of them, either individually or collectively, may have against the Manager to claim damages for harm suffered by the loss or diminution in value of the Horse, howsoever arising, including liability in negligence and the right of an Owner to claim for economic loss or loss of opportunity to earn future income.
- (2) Any such right of indemnity either specifically preserved or not capable of surrender will be limited in damages to the Application Price.
- 17.3** Certain legislation, including the Competition and Consumer Act, may impose consumer guarantees or imply warranties or conditions or impose obligations upon the Manager which cannot be excluded, restricted or modified, or cannot be excluded, restricted or modified EXCEPT to a limited extent. This Deed must be read subject to these statutory provisions. If these statutory

provisions apply, to the extent to which the Manager is entitled to limit the Manager's liability, such liability is limited to:

- (a) in the case of goods, at the Manager's option:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services, at the Manager's option:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

18. OWNERS' ACKNOWLEDGEMENTS AND DECLARATIONS

18.1 Each Owner acknowledges executing this Deed at the Owner's own risk and that, EXCEPT for what is set out in this Deed, the Manager has neither made any representation nor provided any warranty in relation to:

- (a) the services to be provided by the Manager;
- (b) the physical soundness or suitability of the Horse for racing or any other purpose;
- (c) the adequacy or reliability of any insurance cover procured by the Manager pursuant to clause 12.1; or
- (d) the future value or saleability of the Shares, or the Horse, either at any time during the Term or upon termination of the Syndicate.

18.2 Each Owner further acknowledges that:

- (a) [SPECULATIVE NATURE OF INVESTMENT AND RISK] - owning and racing the Horse and thoroughbred racehorses generally:
 - (i) is speculative, as the Owners will incur significant obligations and expense without the assurance of any financial return; and
 - (ii) involves risks, including (without limitation) those risks specifically referred to in clause 17.1;
- (b) prior to executing this Deed, the Owner has been given and has read and understood the attachment marked "WARNING - IMPORTANT INFORMATION";
- (c) a breach by any Owner of a payment obligation under this Deed may result in [the Syndicate Property being insufficient to pay all the operating expenses when due] the Common Enterprise being illiquid or insolvent, necessitating the sale or other disposal of the Horse and the winding up of the Syndicate;
- (d) [NO ASSURANCE OF READY MARKET FOR SHARES OR HORSE] - there may be no ready market for the Shares, or the Horse, either at any time during the Term or upon the winding up of the Syndicate;
- (e) that the Horse, if it is an Entire, may require gelding because of physical or behavioural considerations in an attempt to enhance racing performance, or if permitted to remain an Entire, a residual value as a stallion is not assured; and
- (f) that any assessment or expression of opinion by the Manager as to how the Horse may perform in any specific race, or generally, will not constitute a representation or warranty as to performance.

18.3 Each Owner declares that prior to executing this Deed the Owner has had the opportunity to obtain:

- (a) independent legal advice in relation to the Owner's individual and collective rights and obligations as an Owner under this Deed;
 - (b) a copy of the Training Agreement, including the Fees Notice; and
 - (c) a copy of the Rules of Racing from website [www.racingaustralia.com.au]; and
- and has either done so or freely declined the opportunity to do so.

19. DEFAULT

19.1 (1) If an Owner fails to make any contribution or payment under this Deed by the due date the Manager may give notice to that Owner requiring payment of the outstanding amount within 14 days.

- (2) The right conferred by paragraph (1) will not prejudice any other rights which the Manager may have against that Owner.

19.2 If an Owner:

- (a) breaches a material obligation under this Deed, including (without limitation) any payment obligation, and does not remedy such breach within 14 days after being given notice by the Manager requiring that it be remedied;
- (b) is declared by a Principal Racing Authority to be ineligible to be an Owner under the Rules of Racing; or
- (c) is either bankrupt or insolvent resulting in the Owner's assets having passed to a trustee in bankruptcy or similar administrator;

then that Owner ("Defaulting Party") will not until the breach is remedied be entitled to exercise any of the rights conferred upon an Owner by this Deed, AND the Manager may suspend all such rights and proceed to exercise the full range of legal and equitable remedies against the Defaulting Party.

19.3 RIGHT TO APPLY INCOME AND PROCEEDS

- (1) The Manager may, while the Defaulting Party continues to be in breach of any payment obligation, apply any distribution of the Income or Proceeds otherwise due to the Defaulting Party in payment of that obligation.
- (2) The Manager must pay to the Defaulting Party any distribution of Income and Proceeds not required to be applied by the Manager either in remedying or because of the Defaulting Party's breach of this Deed.

19.4 RIGHT TO GIVE A DIRECTION FOR THE PAYMENT OF PRIZE MONEY AND PROCEEDS

- (1) The Manager may exercise the Manager's right to give a direction for the payment of Prize money or Proceeds if:
 - (a) the Horse is racing, by notice to the Principal Racing Authority;
 - (b) the Defaulting Party's Share or the Horse is sold, by notice to the selling agent or buyer, as the case requires; or
 - (c) there is a claim under any insurance policy attaching to the Defaulting Party's Share or the Horse, by notice to the insurer;

requiring payment directly to the Manager of such amount as is required to fully discharge any outstanding payment obligation of the Defaulting Party as a first call on the Defaulting Party's proportion of any net Prize money and Proceeds.

- (2) The Defaulting Party, in consideration of these presents and for good and valuable consideration, expressly and irrevocably directs the recipient of a notice given pursuant to paragraph (1) to make payment in accordance with that notice without reference to the Defaulting Party and without requiring a direction by order of the court for payment and attachment of debt. A statement specifying the outstanding amount and a copy of this Deed will constitute adequate notice.

19.5 POWER OF SALE

- (1) If the Defaulting Party is in breach of a material obligation, including any payment obligation, for more than 60 days, the Manager may, with the Owners' approval (by an Extraordinary Resolution), give notice to the Defaulting Party requiring the sale of the Defaulting Party's Share either:

- (a) to them or such of them as are able and willing to acquire it; or
- (b) subject to clause 10.2, to such other eligible person and by such means as the resolution may authorise; without requiring a direction by order of the court for sale and attachment of debt.

- (2) For the purpose only of the Manager exercising the Manager's right to sell the Defaulting Party's Share when the Defaulting Party's breach of this Deed occurs, the Defaulting Party, in consideration of these presents and for good and valuable consideration:

- (a) irrevocably nominates, constitutes and appoints the Manager as the Defaulting Party's agent, attorney or representative, as the law permits, to sell the Share and to execute any instrument and do any act or thing required to effect the sale and convey and assure the buyer the Share sold, including (without limitation) registration of the Transfer of Ownership with the Registrar of Racehorses or Principal Racing Authority; and
- (b) expressly and irrevocably directs the Registrar of Racehorses or Principal Racing Authority to register such Transfer of Ownership without reference to the Defaulting Party and without requiring a direction by order of the court for registration.

- (3) Any sale of the Defaulting Party's Share, other than at public auction, must be in good faith and at a price not less than the fair market value of the Share, as determined in writing by either MM or WI, or if neither of them is able and willing to act, then another member of the FBAA who is able and willing to act, at the Manager's discretion. Such determination will be as an expert and will be final and binding upon the parties.

- (4) The Manager will effect the sale of the Defaulting Party's Share as soon as practicable after the sale price has been determined.

- (5) Upon the sale of the Defaulting Party's Share the Manager must apply the Proceeds:

- (a) firstly, in payment of all sale fees and charges, including (without limitation) the sale entry fee and commission; and
- (b) secondly, in payment of any outstanding payment obligation of the Defaulting Party.

- The Manager must pay to the Defaulting Party any net Proceeds not required to be applied by the Manager either in remedying or because of the Defaulting Party's breach of this Deed.
- 19.6 If the Manager is unable to:
- secure the Defaulting Party's compliance with the Defaulting Party's payment obligations; or
 - effect the sale or surrender of the Defaulting Party's Share either to the other Owners or other eligible person;
- then the Manager may give notice to the Owners in accordance with clause 20.3 of an intention to wind up the Syndicate because the Syndicate's purpose cannot be accomplished [because the Syndicate Property is insufficient to pay all the operating costs of the Syndicate when due resulting in the Common Enterprise being illiquid or insolvent].
- 19.7 **RIGHT TO INDEMNITY COSTS**
If the Manager or nominee undertakes any account management or debt recovery action with any agency or legal proceedings against the Defaulting Party in relation to the breach of a material obligation under this Deed, including (without limitation) any payment obligation, the Manager may recover from the Defaulting Party all fees and expenses, including account management fees, agency commissions, legal fees and other costs, incurred in relation to such action or proceedings on a full indemnity basis.
- 19.8 **OTHER RIGHTS**
The rights conferred by clauses 19.1 to 19.7 inclusive will not prejudice any other rights which the Manager or other party to this Deed may have against the Defaulting Party.

20. TERMINATION

- 20.1 This Deed (as amended by modification or replacement deed) will have full force and effect until it is ended by the first to occur of the following:
- the Horse dies, or is retired from racing, sold or otherwise disposed of in accordance with this Deed;
 - the Owners agree (by an Extraordinary Resolution) to end the Syndicate and terminate [the rights, powers and authorities conferred by] this Deed;
 - the Manager exercises the Manager's right conferred by clause 20.3 to wind up the Syndicate; or
 - when a direction by order of the court requiring the winding up of the Syndicate takes effect.
- 20.2 The following parties may petition the court for an order requiring the sale of the Horse and the winding up of the Syndicate:
- an Owner or Owners of at least 50% of the legal and beneficial title to the Horse; and
 - the Manager, if the Manager considers the Syndicate's purpose either has been accomplished or cannot be accomplished.
- The court may order that the manager proceed to sell the Horse and wind up the Syndicate or appoint a trustee or receiver (or similar administrator) to do so.
- 20.3 **MANAGER'S RIGHT TO WIND UP SYNDICATE**
- If the Manager considers that the Syndicate's purpose either:
 - has been accomplished; or
 - cannot be accomplished;
 the Manager may, in accordance with the procedure set out in this clause 20.3, take steps to wind up the Syndicate.
 - The Manager must give notice to the Owners:
 - explaining the proposal to wind up the Syndicate, including explaining how the Syndicate's purpose has been accomplished or why that purpose cannot be accomplished; and
 - informing the Owners:
 - of their rights to call an Owners' meeting to consider the proposed winding up and to vote on any Extraordinary Resolution the Owners propose about the winding up of the Syndicate; and
 - that the Manager is permitted to wind up the Syndicate UNLESS an Owners' meeting is called to consider the proposed winding within 28 days of the Manager giving notice to the Owners.
 - If the Manager gives notice to the Owners of an intention to wind up the Syndicate because the Syndicate's purpose cannot be accomplished, and this situation is remedied within 28 days after notice is given, the Manager will not take any further action to wind up the Syndicate. However, if either no Owners' meeting is called to consider the proposed winding up, or an Owners' meeting is called but the situation is not remedied within 7 days after the Owners' meeting, then the Manager may proceed with the sale or other disposal of the Horse and the winding up of the Syndicate, or appoint a trustee or receiver (or similar administrator) to do so, without requiring a direction by order of the court for such action.

20.4 RETIREMENT FROM RACING

- If the Horse is to be retired from racing and is suitable for breeding purposes, the Horse must be sold in accordance with clause 20.5, UNLESS:
 - the Owners agree (by an Extraordinary Resolution) to modify or replace this Deed with provisions that provide for the continuing ongoing operation of the Common Enterprise as a breeding enterprise; and
 - any Owner who wishes to sell a Share can achieve a sale via the process set out in clause 10.4.
- If the Horse is a gelding or otherwise unsuitable for breeding purposes, the Horse must be sold in accordance with clause 20.5, UNLESS all the Owners agree (by a Resolution at a meeting of Owners with all Owners who vote on the Resolution casting votes to pass the Resolution) to the Horse being:
 - transferred to an Owner or other appropriate person for its retirement; or
 - retrained and rehomed as an equestrian or riding horse.

If the Horse requires retraining to facilitate its rehoming, all fees and expenses incurred during the process of retraining will be borne and paid by the Owners.

20.5 SALE

- UNLESS otherwise expressly authorised by this Deed or directed by order of the court, the Horse will only be transferred, sold or otherwise disposed of by the Manager on behalf of the Owners pursuant to and in accordance with the terms of an Extraordinary Resolution of the Owners. In the absence of an Extraordinary Resolution of the Owners to the contrary, any sale other than by public auction must be in good faith and at a price not less than the fair market value of the Horse as determined in writing by either MM or WI, or if neither of them is able and willing to act, then another member of the FBAA who is able and willing to act, at the Manager's discretion.
- For the purpose only of the Manager exercising the Manager's right to undertake the sale of the Horse in accordance with this clause 20, the Owners, in consideration of these presents and for good and valuable consideration:
 - irrevocably appoint and direct the Manager as their agent, attorney or representative, as the law permits, to sell or otherwise dispose of the Horse and to execute any instrument and do any act or thing required to effect such action and convey and assure the buyer the Horse sold or otherwise conveyed, including (without limitation) registration of the Transfer of Ownership with the Registrar of Racehorses or Principal Racing Authority; and
 - expressly and irrevocably direct the Registrar of Racehorses or Principal Racing Authority to register such Transfer of Ownership without reference to the Owners and without requiring a direction by order of the court for registration.

- 20.6 If the Manager proceeds to sell the Horse either by private treaty or at public auction, any Owner, EXCEPT for a Defaulting Party under clause 19.2, may submit an offer to purchase, or bid at auction, without reference to the other Owners. A Defaulting Party under clause 19.2 will not be entitled to submit an offer to purchase or bid at auction.

20.7 PROCEEDS

Upon the sale of the Horse the Manager must:

- apportion the net Proceeds to the Owners [in the same proportions as the number of Shares held bears to the total number of Shares,]; and
 - distribute to each Owner that Owner's proportion of such Proceeds, subject to the right of the Manager to deduct from each Owner's proportion of such Proceeds any outstanding contribution or levy due to the Syndicate and payable by the Owner.
- 20.8 All rights and obligations accruing prior to the End Date will not be affected or prejudiced by the Syndicate ending.
- 20.9 Upon the termination of this Deed and the completion of the winding up of the Syndicate, the Manager will:
- apportion and distribute to the Owners the Syndicate Property and any other money held by the Manager on behalf of the Owners;
 - prepare the Accounts for the final Accounting Period; and
 - forward a copy of the Accounts to the Owners.

21. PPSA

21.1 SECURITY AGREEMENT

This Deed will constitute a Security Agreement under the PPSA. The rights conferred by this clause are in addition to and not in substitution of any rights of the parties at common law or under any statute.

21.2 GRANT OF SECURITY INTEREST AND CONSENT TO REGISTRATION

Each Owner (Grantor):

- (a) grants to the other Owners collectively and the Manager (each a "Secured Party") a Security Interest attaching to the Grantor's Share as livestock (as that term is defined in the PPSA) and Proceeds to secure the proper performance of the Grantor's obligations under this Deed;
- (b) consents to the Secured Parties registering the Security Interests on the PPSR;
- (c) authorizes the Manager to create a secured party group which includes all the Secured Parties, and to act as their agent for the purposes of registration, maintenance and enforcement of the Security Interests;
- (d) undertakes:
 - (i) to execute any instrument required to enable the Manager to register a Financing Statement or Financing Change Statement from time to time on the PPSR to perfect each of the Security Interests and, together with the other Secured Parties, to pay all fees and expenses incurred in relation to the registration, maintenance, enforcement or discharge of the Security Interests; and
 - (ii) not to grant any Encumbrance to any other person attaching to the Grantor's Share without first obtaining the consent in writing of the Manager, which consent will be deemed to be consent of all the Secured Parties;
- (e) declares that, to the extent permitted under the PPSA, sections 142 and 143 of the PPSA do not apply to this Deed or the Security Interests; and
- (f) waives any right as permissible under the PPSA to receive a notice.

22. NOTICES

22.1 Any notice, demand, or other instrument given pursuant to this Deed will be deemed properly given if it is in writing and delivered to or sent by prepaid mail to an address within Australia, or by prepaid airmail post to an address outside Australia, or by facsimile or email transmission, in the case of:

- (a) the Manager, to the Manager's address or number specified in Schedule 1; and
- (b) an Owner, to the Owner's address or number set out in the register of Owners.

22.2 Notice given in accordance with clause 22.1 will be deemed to have been duly served, in the case of:

- (a) prepaid mail to an address within Australia, upon the expiration of 5 Business Days after the day of posting;
- (b) prepaid airmail post to an address outside Australia, at the expiration of 7 Business Days after the day of posting; and
- (c) facsimile or email transmission, on the day after the date of transmission.

23. FURTHER ASSURANCES

23.1 Each Owner will at the Owner's own expense, when called upon by the Manager to do so, execute any instrument and do any act or thing required to give effect to this Deed.

23.2 If the Manager gives notice to an Owner requiring the Owner to perform any obligation under clauses 10.1, 10.4, or 23.1, and the Owner fails to perform the obligation within 21 days after notice is given, then the Owner, in consideration of these presents and for good and valuable consideration, irrevocably appoints the Manager as the Owner's agent, attorney or representative, as the law permits, to execute any instrument and do any act or thing required to fulfil the obligation.

24. GOVERNING LAW

24.1 The law governing this Deed is the law of the Commonwealth of Australia and of the state or territory specified in Schedule 1, and the forum for all disputes will be either the Federal Court of Australia, or the Courts, of that place, to the authority of and which, including any appellate jurisdictions of such courts, the parties unconditionally submit and confine themselves.

24.2 The parties submit themselves to the jurisdictions of the Courts of the Commonwealth of Australia and that place for all proceedings arising from this Deed.

25. AMENDMENT

25.1 The Manager may only amend (including add to or delete from) this Deed by modification or replacement deed with the Owners' approval (by a Special Resolution).

25.2 No amendment will be made to this Deed that adversely affects the rights of each Owner to receive that Owner's proportion of the Income and Proceeds.

26. EXECUTION

An Owner can apply to become a party to this Deed by executing an Application Deed and forwarding it to the Manager and will become bound by this Deed upon being registered as an Owner.

27. DEFINITIONS AND INTERPRETATION

27.1 The following words have these meanings in this Deed unless the contrary intention appears:

Accounting Period means any one of the following periods:

- (a) the period from the Commencement Date to 30 June next;
- (b) each following period of 12 months ending on 30 June in each year until 30 June immediately preceding the End Date; or
- (c) the period from 1 July immediately preceding the End Date to the End Date;

but the Manager may alter the Accounting Period to a period of 12 months ending on a date other than 30 June and in those circumstances the reference to 30 June and 1 July are altered accordingly.

Accounts means the profit and loss accounts and balance sheet for the Syndicate and includes statements, reports and notes attached to or intended to be read with any of those profit and loss accounts or balance sheets, which accounts must be prepared in accordance with generally accepted accounting principles.

Applicant means each person who, in accordance with this Deed, is entitled to acquire a Share.

Application Deed means an application for a Share in the form of Schedule 2.

Application Price means the amount specified in Schedule 1 at which Shares were initially offered for sale prior to the Commencement Date of the Syndicate.

Associate has the meaning given to it in the Corporations Act.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in the state specified in Schedule 1.

Charge means right to seize and sell (including a power of sale and right to receive and apply Prize money and Proceeds).

Commencement Date means the commencement date of the Syndicate or this Deed, as the context requires.

Competition and Consumer Act means the *Competition and Consumer Act 2010 (Cth)*, as amended.

Complaint means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly expected.

Corporations Act means the *Corporations Act 2001 (Cth)*, as amended.

Deed means the provisions (including all covenants, terms and conditions) of this document, including any modification or replacement deed adopted by the Manager with the Owners approval.

Encumbrance means any:

- (a) Security Interest;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors, including any right of set-off;
- (c) third-party right or interest in property, or any right arising from the enforcement of a judgement;

or any agreement to create any of them or allow them to exist.

End Date means the date upon which the Syndicate is ended in accordance with clause 20.

Entire means a male horse that has not been gelded.

Extraordinary Resolution means a resolution:

- (a) of which notice in accordance with clause 6.1 has been given; and
- (b) that has been passed by at least 50% of the total votes that are capable of being cast by Owners entitled to vote on the resolution (including Owners who are not present in person or by attorney, proxy or representative).

FBAA means *Federation of Bloodstock Agents Australia Ltd (ABN 27 003 596 718)*.

Fees Notice means the notice (as amended) of the Trainer's current basic fees and charges, including any additional remuneration or gratuities that the Owners may be required to pay to or bestow upon the Trainer for maintaining, training and racing the Horse.

Financing Statement has the meaning given to it in the PPSA.

Financing Change Statement has the meaning given to it in the PPSA.

GST Act means the "*A New Tax System (Goods and Services Tax) Act 1999*", as amended.

Horse means the thoroughbred colt, filly, Entire, gelding or mare the object of this Deed described in Schedule 1.

Income means, for the Syndicate and any Accounting Period, the net income of the Syndicate in respect of the Accounting Period determined in accordance with generally accepted accounting principles, whether accrued, due or receivable or received and not previously accounted for.

Inherent Risk means a risk of something occurring that cannot be avoided by the exercise of reasonable care.

Lien means the right to retain.

Lifetime Service Right means a service right each stud season free of any service fee. The granting of a Lifetime Service Right will not bestow any interest in the legal and beneficial title to the Horse.

MM means *Magic Millions Sales Pty Ltd (ABN 54 078 396 317)*.

Manager means the person or entity named in Schedule 1, or subsequently appointed by the Owners under this Deed, as the Manager.

Month means calendar month.

Owner means a person or entity who holds a Share in the Horse. Joint holders of a Share will count as a single Owner unless otherwise provided.

Owners' Bonus or Incentive Scheme means any owners bonus or incentive scheme (e.g. BOBS, QRIS, SABIS or VOBIS) for which the Horse is eligible.

PPSA means the *Personal Property Securities Act 2009 (Cth)*, as amended.

PPSR means the *Personal Property Securities Register* under the PPSA.

Principal Racing Authority means the body responsible for the regulation of thoroughbred horse racing in the place in which the Horse is racing or may race.

Prize money means money earned from racing the Horse.

Proceeds means proceeds of sale and of any insurance claim paid in relation to a Share or the Horse, as the context requires.

Racing Colours means the racing colours specified in Schedule 1.

Registrar of Racehorses means the registrar under the Rules of Racing.

Resolution (subject to any further qualification specified in this Deed) means:

- (a) a resolution passed at an Owners' meeting;
 - (i) on a show of hands, by the requisite majority of Owners present in person or by attorney, proxy or representative; or
 - (ii) if a poll is demanded, by the Owners of the requisite majority of Shares held by Owners present in person or by attorney, proxy, or representative voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Owners holding the requisite majority of the Shares.

Rules of Racing means the rules of racing applying in the place where the Horse is racing or may race. These rules in Australia comprise the Australian Rules of Racing ("AR"), published by *Racing Australia*, and any local rules ("LR") determined by each Principal Racing Authority, as amended.

Sale Race Series means any sale race or race series (e.g. MM, QRIS, or WI) for which the Horse is eligible.

Secretary means the Secretary referred to in clause 3.6(e) of this Deed.

Secured Party means a person who is granted a Security Interest or Caveat Certificate under this Deed.

Security Interest:

- (a) in relation to any personal property (as defined in the PPSA), has the meaning given to it in the PPSA; and
- (b) in relation to any other property, means any charge, mortgage, pledge, bill of sale, hypothecation, lien, arrangement concerning the deposit of documents evidencing title, trust, power or title retention arrangement, or any other covenant or arrangement of any nature made to secure the payment of money or the observance of an obligation.

Share means one (1) of the equal undivided ownership interests in the Horse specified in Schedule 1.

Share Transfer means a Share Transfer in the form of Schedule 3.

Special Resolution means a resolution:

- (a) of which notice in accordance with clause 6.1 has been given; and
- (b) that has been passed by at least 75% of the votes that are capable of being cast by Owners entitled to vote on the resolution (including Owners who are not present in person or by attorney, proxy or representative).

Syndicate means the arrangement evidenced by this Deed pursuant to which the Owners agree to participate in a "Common

Enterprise" the purpose of which is to care for, train and race the Horse (as a whole) for the benefit of the Owners as a group.

Syndicate Name means the syndicate name, if any, specified in Schedule 1 and registered with the Registrar of Racehorses by the Manager on behalf of the Owners.

Syndicate Property means any contributions to or Income of the Syndicate, including (without limitation):

- (a) Owners' contributions to operating expenses (regardless of whether they are paid to the Syndicate's designated bank account maintained by the Manager, or by each Owner directly to the Trainer and other Third-Party Service Providers that Owner's proportion of such costs);
- (b) Prize money (regardless of whether it is paid by the Principal Racing Authority to the Syndicate's designated bank account maintained by the Manager, or to each Owner directly that Owner's proportion of such Prize money); and
- (c) Owners' Bonus or Incentive Scheme payments and other bonuses.

The Horse does not comprise Syndicate Property as it is owned by the Owners as tenants-in-common.

Tax Invoice has the meaning given to it in the GST Act.

Taxable Supply has the meaning given to it in the GST Act.

Term means the period from the Commencement Date until the End Date.

Third-Party Service Provider means any external service provider contracted by either the Manager, or the Trainer, to provide services in relation to the Horse, including, but not limited to agistment, pre-training, training and racing, dentistry, farriery, veterinary, and transportation.

TOR Rules means those rules set out in Schedule 2 of the Rules of Racing.

Trainer means the appropriately licensed person named in Schedule 1, or subsequently appointed by the Manager as the Trainer under this Deed.

Training Agreement means the agreement between the Trainer and the Owner upon which the Trainer agrees to provide training and ancillary services in relation to the Horse.

Training Fees Disputes Resolution Procedures means the procedures for the determination of disputes between the trainers and owner relating to the payment of training fees set out in the TOR Rules.

Transfer of Ownership is a prescribed form of the Registrar of Racehorses or Principal Racing Authority.

Trophy includes any trophy, rug, sash, trinket, prize or other non-cash benefit.

WI means *William Inglis & Son Ltd (ABN 75 000 011 307)*.

27.2

In this Deed unless the contrary intention appears:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a reference to any one gender includes a reference to each other gender;
- (iii) a reference to a person includes a reference to a firm, corporation or other corporate body;
- (iv) a reference to writing includes a reference to printing, typing and other methods of producing words in a visible form;
- (v) a reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (vi) a reference to any regulatory policy, legislative instrument, or similar, includes that policy, legislative instrument, or similar, as modified or replaced;
- (vii) where a word or expression is given a specific meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (viii) headings are for ease of reference and do not affect the construction of this Deed;
- (ix) if a party consists of more than one person this Deed binds them jointly and each of them severally;
- (x) this Deed binds in addition to the parties, their respective legal personal representatives and successors; and
- (xi) any schedule or annexure will form part of this Deed.

SCHEDULE 2

SHARE APPLICATION – TO BE COMPLETED AND EXECUTED BY OWNER

THIS DEED OF AGREEMENT is made on the _____ day of _____, _____.

Applicant (1) – Surname:		
Given name(s):		Date of birth:
Applicant (2) – Surname:		
Given name(s):		Date of birth:
Company name:		ACN:
Syndicate/trading name, if any:		
Street address:		
PO Box, if preferred mailing address:		
Suburb:	State:	Postcode:
Telephone: (Bus)	Home:	Mobile:
Email:		
Tax file number (voluntary):		
Australian Business Number (ABN), if applicable:		
If you have an ABN number, are you registered for GST (if applicable):		
Where ABN is not supplied, please confirm that you are a hobby owner:		
If you are a Foreign Company, you must provide a Foreign Company – Australian Registered Body Number (ARBN):		

BANK ACCOUNT DETAILS FOR PAYMENT OF DISTRIBUTIONS, IF ANY, BY EFT

ACCOUNT NAME	BANK NAME	BSB NUMBER	ACCOUNT NUMBER

[ALL DETAILS specified in the above table MUST be provided as the information is required by the Registrar of Racehorses when registering the ownership].

IN FAVOUR

OF: The Manager

AND: The Racing Manager

AND: Each person who from time to time is bound as an Owner by the deed dated the _____ day of _____, _____, ("Owners Deed") governing the ownership of the thoroughbred horse

Name of Horse:		
Colour:	Sex:	Year foaled:
Sire:	Dam:	
Life number:	ASB Microchip number:	

by reason of executing a deed in the form of this deed (each separately called an "Owner" and collectively the "Owners").

RECITALS

- A. The Applicant has been accepted by the Manager as an Owner, subject to the Owners Deed.
- B. The Applicant has agreed to execute this deed for the benefit of each other party to the Owners Deed.

NOW BY THIS DEED OF AGREEMENT it is agreed as follows:

- 1. The Applicant hereby covenants and agrees with the Manager and the Owners from time to time of Shares in the Horse and the Syndicate that the Applicant will be bound by the Owners Deed and will comply with all the obligations imposed on each Owner as if the Applicant had executed the Owners Deed and was an original party to it.
- 2. Words and expressions used in this deed will have the same meaning as they have in the Owners Deed.

EXECUTED BY THE PARTIES AS A DEED

[Applicant - if an individual]

Signed, Sealed and Delivered by)
)
in the presence of:)

.....
Signature of witness

.....
Signature of Applicant

.....
Name of witness (BLOCK LETTERS)

[Applicant - if a company]

Executed by)
)
ACN/ABN #)
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director (BLOCK LETTERS)

Executed by)
PTY LTD)
ABN)
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Name of Sole Director/Sole Company secretary
(BLOCK LETTERS)

.....
Sole Director/Sole Company Secretary



SCHEDULE 3

SHARE TRANSFER – TO BE COMPLETED AND EXECUTED BY BOTH TRANSFEROR AND TRANSFEREE

THIS TRANSFER is dated the _____ day of _____, _____ ('Transferor')
BETWEEN: _____ ('Transferee')
AND: _____
The Transferor in consideration of \$ _____ paid by the Transferee
HEREBY TRANSFERS to the Transferee Share Number () of the Shares in the thoroughbred horse

Name of Horse:		
Colour:	Sex:	Year foaled:
Sire:	Dam:	
Life number:	ASB Microchip number:	

and the () Syndicate constituted by deed dated the _____ day of _____
("Owners Deed") and made between the parties to hold the same unto the Transferee subject to the Owners Deed.

[Transferor - if an individual]

Signed _____)
_____)
in the presence of: _____)

..... Signature of witness Signature of Transferor

.....
Name of witness (BLOCK LETTERS)

[Transferor - if a company]

Executed by _____)
_____)
ACN/ABN _____)
in accordance with section 127 of the _____)
Corporations Act 2001: _____)

..... Director/Company Secretary Director

..... Name of Director/Company Secretary (BLOCK LETTERS) Name of Director (BLOCK LETTERS)

Executed by _____)
PTY LTD _____)
ABN _____)
in accordance with section 127 of the _____)
Corporations Act 2001: _____)

..... Name of Sole Director/Sole Company secretary (BLOCK LETTERS) Sole Director/Sole Company Secretary

[Transferee - if an individual]

Signed)
)
in the presence of:)

.....
Signature of witness

.....
Signature of Transferee

.....
Name of witness (BLOCK LETTERS)

[Transferee - if a company]

Executed by)
)
ACN/ABN)
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director (BLOCK LETTERS)

Executed by)
PTY LTD)
ABN)
in accordance with section 127 of the)
Corporations Act 2001:)

.....
Name of Sole Director/Sole Company secretary
(BLOCK LETTERS)

.....
Sole Director/Sole Company Secretary

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ATTACHMENT

WARNING – IMPORTANT INFORMATION

The ownership and racing of thoroughbred horses involves risks, including Inherent Risks and other risks that may be insignificant or not reasonably foreseeable. Be aware that:

- The value of the Horse may be diminished or lost through:
 - market forces;
 - the failure of the Horse to compete in or win any races or Prize money;
 - the death of the Horse; or
 - the materialisation of an Inherent Risk, including (without limitation) accident, illness, injury, infertility or subfertility, or natural cause.
- The Horse may have no residual value as a stallion or broodmare.
- Racing stables, racecourses, agistment farms and other places where the Horse and other horses may be located from time to time can be dangerous places, including because horses do not always behave as expected. Entering onto those places involves the risk of injury, accident and loss or damage to person or property for all persons who enter.

PAYMENT OBLIGATIONS

The Owners should be aware that the failure of any Owner to comply with the Owner's payment obligations may result in:

- the Trainer stopping or suspending training of the Horse until all outstanding accounts of the Trainer and Third-Party Service Providers are paid; and
- the Syndicate Property being insufficient to pay all costs of operating the Syndicate, necessitating the sale of the Horse and the winding up of the Syndicate.

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