



OWNERS DEED OF AGREEMENT
SCHEDULE 1 – REFERENCE SCHEDULE

Important notice: This Co-ownership arrangement (“Syndicate”) is subject to regulation by the Corporations Act. The Offer of Shares in this Syndicate is the subject of a Product Disclosure Statement (“PDS”) that has been approved by a Lead Regulator pursuant to the terms of ASIC Corporations (Horse Schemes) Instrument 2016/790. Participation as an Owner is available to investors who receive a PDS from the Promoter and complete the Application Form attached to the PDS. The Promoter must hold an Australian Financial Services Licence (“AFSL”) or be an Authorised Representative of an AFS Licensee.

Item 1

Date | This Deed is made the 15th day of January, 2018.

Item 2

Promoter/Manager | DYNAMIC SYNDICATIONS (DEAN WATT THOROUGHBREDS PTY LTD T/AS)
(ABN 64 134 481 539)
Address | Suite 37/3 Box Road, TAREN POINT, NSW, 2229
Postal address | PO Box 2324, TAREN POINT, NSW, 2229
Telephone | 02 9540 1511
Facsimile | 02 9540 1522
Contact Person(s) | Adam Watt: Mobile: 0409 464 378: Email: adam@dynamicssyndications.com.au
Licence Details | AFSL 336808

Item 3

Horse | UNNAMED Bay Filly foaled 12 November 2016, by EXCELEBRATION
From POLITE (USA) [by ELUSIVE QUALITY]
Life Number | AUS01139724
Microchip Number | 985100012115456

Item 4

Syndicate Name, if any
(Optional) |

Item 5

Number of Shares | Twenty (20)

Item 6

Application Price | \$7,000.00

Item 7

Commencement Date | 15 January 2018

Item 8

Racing Colours | Set 1 – White, Dynamic Syndications logo, red cap
Set 2 – White, Dynamic Syndications logo, white cap
Set 3 – White, Dynamic Syndications logo, yellow cap
Sets 2 and 3 will only be used in races where the Manager has multiple horses entered.

Item 9

Trainer | GAI WATERHOUSE RACING (Gai Waterhouse and Adrian Bott (Co-Trainers))

This document is comprised of 19 pages, including this page.

Item 10

Manager’s Remuneration

Management Fee:

- Payable by Owner – \$910.80 annually per Share – payable by monthly instalments in advance of \$75.90 (including GST) [\$18,216 including GST annually for the Syndicate]. If an Owner holds 3 or more Shares, this fee will be capped a multiple of 2 [\$151.80 including GST per month]. If a Share is held by 2 or more persons as tenants-in-common, **each** joint holder must pay this fee.
- Payable by Trainer – 7.5% of the base advertised daily training fee charged by the Trainer to each Owner proportionately. This fee is currently estimated at \$8.25 (including GST) per day, based on a daily training fee of \$110.00 (including GST). This fee is borne and paid solely by the Trainer.
- Percentage of Prize money and bonuses – 2% when the value of the prizemoney won on any individual race is higher than \$17,000 increasing to 5% once the total value of gross Prize money and bonuses earned exceeds the total value of the Shares offered under this PDS.
- Percentage of Sale Price – 5% of the gross Sale Price (excluding GST), the Manager’s discretion.
- Lifetime Service Right(s) – 2 [this only applies if the Horse is an Entire (male horse that has not been gelded) and is retired to stud.

Manager’s Additional Remuneration and Gratuities

Item 11

External Dispute Body

FINANCIAL OMBUDSMAN SERVICE LIMITED (ABN 67 131 124 448).
- member number: 11316

Item 12

Governing law (state/territory)

New South Wales

EXECUTED BY THE PARTIES AS A DEED

Executed by)
DEAN WATT THOROUGHBREDS PTY LTD)
(ABN 64134481 539))
in accordance with section 127 of the *Corporations Act*)
2001:

DEAN WARREN WATT

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



.....
Sole Director/Sole Company Secretary

This document is comprised of 19 pages, including this page.

CO-OWNERSHIP OF A RACEHORSE

THIS OWNERS DEED OF AGREEMENT 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 (1) The Owners:
- (a) agree to the ownership of the Horse, together with the Syndicate Property, being governed by the provisions (including all covenants, terms and conditions) of this Deed;
 - (b) acknowledge that the Syndicate is established and will be operated as a Lead Regulator-approved Syndicate in accordance with the terms of the relief set out in ASIC Corporations (Horse Schemes) Instrument 2016/790 ("ASIC Instrument"), except for which it would be necessary to establish and operate the Syndicate as a registered scheme in accordance with the requirements of Chapter 5C of the Corporations Act; and
 - (c) may at any time determine (evidenced by an Extraordinary Resolution) that the Syndicate be registered. If such a determination is made, then the Manager will facilitate registration.
- (2) This document and its provisions 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.
- 1.2 Subject to each initial Applicant being approved as the Owner of a Share, paying the Application Price and providing a completed Application Deed, for the Term:
- (a) the Owners:
- (i) will hold the whole of the legal and beneficial title to the Horse, divided into the number of equal undivided Shares specified in Schedule 1, as tenants-in-common, free of any Encumbrance, except for any Security Interest granted or permitted by this Deed;
 - (ii) will contribute the right to use their respective ownership interests in the Horse to the Syndicate to facilitate the Horse as a whole being used in the Common Enterprise for their mutual benefit;
 - (iii) will participate in the Common Enterprise; and
 - (iv) will, in consideration of the provisions of clauses 10 and 21, waive any right to apply for an order for sale of the Horse and partition of the Proceeds; and
- (b) the Manager will hold the Syndicate Property upon trust for the Owners, in the number of equal undivided Shares specified in Schedule 1, free of any Encumbrance, except for any Security Interest granted or permitted by this Deed .
- 1.3 **PRIZE MONEY**
Subject to the clauses 12.4 and 20.1, each Owner will be entitled to a proportion of net Prize money, Owners Bonus or Incentive Scheme payments and other bonuses earned by the

Horse, in the same proportion as the number of Shares held bears to the total number of Shares.

1.4 TROPHIES

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

- (a) The Manager will receive the Original Trophy on behalf of the Owners in accordance with AR.57(2)(c) and will be entitled to retain it, subject to paragraph (b);
- (b) if the Original Trophy is determined to have a significant monetary value, the Manager will compensate the Owners by paying to them an equivalent sum, in the same proportion as the number of Shares held bears to the total number of Shares; and
- (c) if any Owner wishes to acquire a replica of the Original Trophy, the Manager will endeavour to either procure same at the best possible price, which will be invoiced to and paid by such Owner prior to order, or procure and provide to such Owner details of the supplier of the Original Trophy.

1.5 RACEBOOK

- (1) The Owner of each Share (representing no less than a 5% ownership interest in the Horse) will be entitled to have one's name appear in the racebook as a co-owner of the Horse.
- (2) If a Share is held by 2 or more persons jointly, the Manager will 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:
 - (a) will hold the Share as trustee for the other members of that syndicate;
 - (b) will represent them in all dealings relating to the ownership of the Horse; and
 - (c) will 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 of the Shares must be no more than 50.

1.6 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.

1.7 REGISTRATION OF OWNERSHIP

Each Owner authorises the Manager to do anything required to be done by an Owner in order to comply with this Deed and the Rules of Racing, including (without limitation) authority to sign on one'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 transfer of ownership. If the Manager is a corporation, this authority will vest in the duly authorised officer of such entity.

1.8 SYNDICATE RECORDS

All books, records and other documents relating to this Deed will be kept by the Manager but will 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 or copy same.

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

1.10 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.

- 1.11 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. OWNERS LIABILITY FOR COSTS**
- 2.1 (1) The Owners will be severally liable for all costs of operating the Syndicate in accordance with this Deed, including (without limitation):
- (a) all fees and expenses of caring for, training and racing the Horse, including (without limitation) agistment, pre-training and training fees, race entry fees (nomination, acceptance and scratching) chiropractic, dentistry, farriery and veterinary fees, and transportation costs; and
 - (b) all other costs, including fees payable to the Manager and compliance expenses.
- (2) Subject to paragraph (1), all such costs will be borne and paid by the Owners in accordance with clause 12.4.
- 2.2 (1) Any arrangement to pay to or bestow upon the Trainer or the jockey any additional remuneration or gratuity must either:
- (a) be in accordance with the terms of the Training Agreement and Fees Notice; or
 - (b) be approved by the Owners (evidenced by an Extraordinary Resolution);
- and such additional remuneration or gratuity will constitute a racing expense payable by the Owners pursuant to clause 2.1.
- (2) The Manager may, on behalf of the Owners, accept terms that require payment to the jockey of an additional success fee of 5% of gross Prize money for riding the Horse in any sales series race or group or listed race, subject to the provision of a Tax Invoice.
- 3. MANAGER**
- 3.1 **APPOINTMENT**
- The Owners appoint the Manager for the Term (subject to clauses 3.9 and 3.10) and the Manager accepts the appointment:
- (a) to operate the Syndicate on behalf of the Owners; and
 - (b) to 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 (evidenced by an Extraordinary Resolution), delegate any of the Manager's duties under this Deed to a third party, including (without limitation) the Trainer.
- 3.3 **OBLIGATIONS**
- The Manager must at all times during the Term, exercising reasonable care, skill and diligence:
- (a) operate the Syndicate in a proper and efficient manner in accordance with the normal standards applied, provided and maintained in connection with the management of thoroughbred racehorses;
 - (b) exercise the Manager's powers and perform the Manager's duties in the best interests of all of the Owners collectively;
 - (c) treat each Owner fairly and impartially;
 - (d) ensure that no Syndicate Property is applied other than for the purpose of the Syndicate;
 - (e) comply with the terms of the ASIC Instrument; and
 - (f) be an AFS Licensee with the necessary licence authorisations for the services to be provided by the Manager under this Deed, including an authorised representative of such licensee, or other person as permitted by the ASIC Instrument and Lead Regulator's Promoter's Policy.
- 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 moneys 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, 16 and 20, if requested by the Owners, apportion and account to them for such moneys.
- 3.6 **DUTIES**
- The Manager's duties include (without limitation):
- (a) (i) obtaining the Owners approval prior to the appointment of any change of Trainer (evidenced by an Extraordinary Resolution);
 - (ii) providing to the Owners a copy of the Training Agreement and Fees Notice; and
 - (iii) 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).
 - (b) 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 one's proportion of such fees and charges;
 - (c) arranging for the Principal Racing Authority to distribute Prize money due to the Owners either:
 - (i) to the Syndicate's designated bank account maintained by the Manager; or
 - (ii) to each Owner directly one's proportion of such Prize money;
 - (d) establishing and maintaining a trust account, or other designated bank account, into which all moneys received on behalf of the Owners must be deposited and from which all fees and expenses payable by the Owners and distributions of Income payable to the Owners must be paid, except for when direct invoicing and distribution arrangements contemplated by paragraphs (b)(ii) and (c)(ii) are in place;
 - (e) appointing a person to be Secretary to the Syndicate and keep the Accounts and such other records of the Syndicate as the Manager considers necessary;
 - (f) providing or arranging for the provision of all necessary accounting, taxation and legal advice to the Syndicate;
 - (g) 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;
 - (h) administering race day Owners privileges, including the allocation of ticketing and mounting yards passes on

each day that the Horse is racing and 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 of the Owners; and

(i) If required by ASIC or the Lead Regulator:

- (i) making available all the records of the Syndicate, including the Accounts, secretarial records, share register and transfer journal;
- (ii) providing all information requested in relation to the Syndicate; and
- (iii) lodging a copy of the Accounts and all other documentation relating to the performance of the Syndicate forwarded to Owners at the same time as the Accounts and such other documentation is forwarded to the Owners.

3.7 The Manager is not obliged:

- (a) to 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) to 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 under this Deed, the Manager will be entitled:

- (a) to 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) to 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) to receive or have bestowed the following additional remuneration or other entitlements:
 - (i) if 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) if 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) if 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). Furthermore, the Owners must ensure that any buyer of a Share, or the Horse, is made aware of and agrees to novate these provisions.

3.9 RETIREMENT

Subject to the requirements of the ASIC Instrument, 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 (evidenced by an Extraordinary Resolution). If the Manager retires voluntarily, clause 3.8(c) will no longer apply.

3.10 REMOVAL

The Owners may at any time agree (evidenced by an Extraordinary Resolution) to remove the Manager and appoint a new Manager.

3.11 (1) The outgoing Manager:

- (a) must deliver up to the new Manager all books, records and other documents relating to this Deed, but retains a right of access to inspect or 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 the performance of the Manager's duties prior to retirement or removal.

3.12 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 (evidenced by an Extraordinary Resolution).

4. CARE OF HORSE

4.1 MANAGER

For so long as the Horse continues to race for the benefit of the Owners during the Term, the Manager will manage the Horse, including (without limitation) appointing the Trainer:

- (a) to take possession and day-to-day control of the Horse on behalf of the Owners for the purpose of training and racing it to best advantage;
- (b) to care for and maintain 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 agistment, pre-training and transportation;
- (c) as the agent of the Owners, to procure the services of such Third-Party Service Providers as the Trainer considers necessary to provide services in relation to the Horse, including (without limitation) chiropractic care, dentistry, farriery and veterinary care;
- (d) to determine in consultation with the Manager the racing program of the Horse and also the jockey who will ride the Horse in each of its races; and
- (e) as the representative of the Manager, to enter (including nominate and accept) the Horse for or scratch the Horse 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 Third Party Service Providers 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 (evidenced by an Extraordinary Resolution).
- 4.4 Except in circumstances that do not afford the Manager the opportunity to obtain veterinary advice and the Owners approval (evidenced by an Extraordinary Resolution), the Manager will not permit the Horse to be euthanized as a consequence of accident, illness, injury, or other cause, unless such action is recommended on humane grounds and certified by a qualified equine veterinarian retained at the discretion of the Manager or relevant race club.
- 5. RULES OF RACING**
- The Owners and the Manager must at all times 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. Furthermore, each Owner and the Manager must at all times be eligible to be an Owner under the Rules of Racing.
- 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 manner in which it will be convened.
- (2) Subject to clause 20.1, an Owner or Owners with at least 5% of the votes that may be cast on any Extraordinary Resolution or Special Resolution may either request the Manager to call an Owners meeting, or 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:
- (a) must set out an intention to propose the Extraordinary Resolution or Special Resolution and state the resolution; and
- (b) must contain a statement setting out the following information:
- (i) that the Owner has the right to appoint a proxy;
- (ii) that the proxy does not need to be an Owner; and
- (iii) that if the Owner appoints 2 proxies the Owner must specify the proportion or number of votes each proxy is appointed to exercise.
- (5) Subject to clause 20.1, 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 20.2, 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 or not they are present at the meeting. 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 one'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 proxy, attorney 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. PROXY ATTORNEY OR REPRESENTATIVE**
- 7.1 An Owner may appoint another person as one's proxy, attorney 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 one'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 a proxy, attorney 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 proxy or attorney) 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 proxy, attorney or representative; and
- (b) at such ballot an Owner will be entitled to one ballot paper (marked with such 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 receiving a PDS;
- (b) the transferee being capable of being registered as an owner under the Rules of Racing;
- (c) the transferee entering into 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;
- (d) the transferee and the transferor executing a Share Transfer; and
- (e) the transferee and the transferor, or the Manager on behalf of each of them, executing a form of 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) to another person known to the transferor who is already an Owner or otherwise party to this Deed;
- (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) for the purpose of transmitting 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, such 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 one's discretion.
- (2) Upon receipt of a transfer notice the Manager must 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 such Owner wishes 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 the Share to the buyer (subject to clause 10.1) and will execute any instruments 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 such 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 person on the sale terms;
 - (b) publicly advertise or promote the Share for sale on the sale terms; or
 - (c) offer the Share for sale by public auction or tender. 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 Syndicate Manager must communicate to the Owners.
- 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) If the proposing transferor is required by the Corporations Act, or the ASIC Instrument, to provide a prospective buyer with a PDS, the Manager will, upon being requested to do so, provide a PDS for the purpose of enabling the proposing transferor to publicly offer the Share for sale.
- 10.6 The costs and disbursements 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 or not the Share is sold.
- 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 one'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 such time as the Caveat Certificate is surrendered to the Manager by the Grantee no further transactions in respect of that 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 Unless the Manager has any reason to believe that the information provided in relation to a Security Interest is not genuine, the Manager may at all times 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 either the Owner, or the Grantee of a Security Interest, unless ordered 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 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 Grantee in relation to all acts properly carried out 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. OWNERS COSTS**
- 12.1 INSURANCE**
- (1) Each Owner is responsible for procuring insurance cover for mortality and other insurable risks in relation to one'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:
- (a) for payment of that proportion of the insurance premium as relates to one's own Share; and
- (b) for 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.
- (2) The Manager may procure such public liability cover in relation to the Horse as the Manager considers is desirable and able to secure the cost of which will be borne and paid by the Owners.
- 12.2 SALE RACE SERIES AND 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 and 20.1, if the Manager receives any significant Owners Bonus or Incentive Scheme payments, those moneys will be payable to the Owners noted in the register of Owners at the time they are earned and must be paid to them by the Manager within 30 days of receipt.
- 12.3 COMPLIANCE EXPENSES**
- The Owners must 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 15;
- (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 thereof will be made by the Manager, whose determination will be final and binding upon the Owners, and may be invoiced proportionately to the Owners by the Manager in accordance with clause 12.4.
- 12.4 LIABILITY FOR COSTS**
- (1) Subject to clause 2.1, all costs of operating the syndicate will be borne and paid by each Owner proportionately, in the same proportion 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 Syndicate, including the Trainer and all other Third-Party Service Providers, 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 who provide services to the Syndicate, including the Trainer and other Third Party Service Providers.

(4) The Manager may from time to time retain out of Income or any other moneys, including Proceeds, received for or on behalf of the Owners, such amount as may be required to satisfy any obligation of the Owners to make a contribution or payment pursuant to this clause 12.4.

(5) The rights of the Manager pursuant to this clause 12.4 are subject to clause 17.2.

13. COSTS

The Owners will bear and pay the costs of and incidental to this Deed.

14. GST

14.1 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.

14.2 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.

14.3 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.

15. COMPLAINTS

15.1 The Owners and the Manager agree that all internal Complaints will be dealt with in accordance with the complaints handling guidelines Australian Standard AS ISO 10002-2014.

15.2 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 complaint as far as possible without adversely affecting the rights of third parties;
- (d) may provide any of the following remedies:
 - (i) an explanation of the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) such other 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 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.

16. LIEN AND CHARGE

16.1 Each Owner grants to the other Owners collectively and the Manager a Lien over one's Share and a Charge over one's Share, Prize money and Proceeds, as security for the proper performance of one's obligations under this Deed, including (without limitation):

- (a) to pay one's proportion of all costs of operating the Syndicate as and when due; and
- (b) not to transfer, sell or otherwise dispose of, or create any Encumbrance in relation to, the Share, other than in accordance with this Deed.

16.2 This Lien or Charge:

- (a) entitles the Manager to possession of the Owner's Share; and
- (b) includes the right of the Manager:
 - (i) to give a direction in accordance with clause 20.3 for the payment of Prizemoney and Proceeds; and
 - (ii) to sell and transfer the Owner's Share in accordance with clause 20.4;

when the Owner's breach of this Deed occurs.

16.3 The rights conferred by this clause 16 are in addition to and not in substitution of any rights of the parties at common law or under any statute.

17. INDEMNITIES

17.1 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 as a result of a particular Owner's breach of a material obligation under this Deed.

17.2 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.

17.3 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.

- 17.4
- (1) The Owners must indemnify the Manager for all liabilities and expenses incurred in the course of performing one's duties under this Deed.
 - (2) The right of the Manager to be paid fees out of Syndicate Property, and to be indemnified for liabilities or expenses incurred in relation to the performance of one's duties, will only arise after the duties have been performed and is subject to the proper performance of those duties.

18. LIMITATIONS TO OWNERS RIGHT OF INDEMNITY

18.1 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 as a consequence 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.

18.2 (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.

18.3 Certain legislation, including the *Competition and Consumer Act 2010 (Cth)*, 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 one'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.

19. OWNERS ACKNOWLEDGEMENTS AND DECLARATIONS

19.1 Each Owner acknowledges entering into this Deed at one's own risk and that, except for what is set out in this document, 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.

19.2 Each Owner further acknowledges:

- (a) that owning and racing the Horse and thoroughbred horses 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 18.1;
- (b) that prior to entering into this Deed, the Owner has been given and has read and understood the attachment marked "WARNING – IMPORTANT INFORMATION";
- (c) that a breach by any Owner of a payment obligation may result in the Syndicate Property being insufficient to pay all costs of operating the Syndicate in accordance with this Deed, necessitating the sale of the Horse and the winding up of the Syndicate;
- (d) that there may be no ready market for the Shares, or the Horse, either at any time during the Term or upon termination of the Syndicate;
- (e) that the Horse, if it is an Entire, may require gelding as a consequence of physical or behavioural considerations in an effort 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.

19.3 Each Owner declares that such Owner has had the opportunity to obtain:

- (a) independent legal advice in relation to one's individual and collective rights and obligations 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 has either done so or freely declined the opportunity to do so.

20. DEFAULT

20.1 (1) If an Owner is in breach of a payment obligation and does not remedy such breach within 14 days after being given a notice by the Manager requiring that it be remedied, the Manager may charge such Owner compound interest at the rate of 1% per month on the outstanding amount for the period commencing on the due date and ending on the date payment is received.

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

20.2 If an Owner:

- (a) breaches a material obligation under this Deed, including (without limitation) a 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 one's assets having passed to a trustee in bankruptcy or similar administrator;

then such Owner ("Defaulting Party") will not until such time as 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 remedies against the Defaulting Party.

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

(1) The Manager may exercise one's right to give a direction for the payment of Prize money and Proceeds:

- (a) if the Horse is racing, by notice to the Principal Racing Authority;
- (b) if the Defaulting Party's Share or the Horse is sold, by notice to the selling agent or buyer, as the case requires; and
- (c) if 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 under this Deed as a first call on the Defaulting Party's proportion of any net Prize money or Proceeds.

- (2) The Defaulting Party expressly and irrevocably directs the third-party 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 court order for payment and attachment of debt.

20.4 POWER OF SALE

- (1) If an Owner is in breach of a material obligation under this Deed, including any payment obligation, for more than 60 days, the Manager may require the Defaulting Party to sell one's Share either:
 - (a) to the other Owners (in the same proportion as the number of Shares held, or on such other basis as the Manager determines); or
 - (b) to such other person and by such means as the Manager requires;by giving written notice to the Defaulting Party and without requiring a court order for sale and attachment of debt.
- (2) For the purpose only of the Manager exercising one's right to sell the Defaulting Party's Share when the Defaulting Party's breach of this Deed occurs, the Defaulting Party:
 - (a) in consideration of these presents and for good and valuable consideration, irrevocably appoints and directs the Manager, as the Defaulting Party's agent, attorney or representative, as the law permits, 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 without reference to the Defaulting Party and without requiring a court order for registration.
- (3) Any sale of the Defaulting Party's Share, other than at public auction, must be at a price not less than the fair market value of such 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, at the Manager's discretion. For the purpose of this Deed, 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 to the Manager of all fees and expenses, including (without limitation) those referred to in clause 20.5, that are outstanding and payable by the Defaulting Party under this Deed.

The Manager must pay to the Defaulting Party any Proceeds not required to be applied by the Manager either in remedying or as a consequence of the Defaulting Party's breach of this Deed.

20.5 RIGHT TO INDEMNITY COSTS

If the Manager or nominee undertakes any debt recovery action with any agency or legal proceedings against the Defaulting Party in relation to the breach of a material obligation, including (without limitation) any payment obligation, under this Deed, the Manager may recover from the Defaulting Party all fees and expenses, including agency commissions, legal fees and other costs, incurred in relation to such action or proceedings on a full indemnity basis.

20.6 OTHER RIGHTS

The rights conferred by clauses 20.1 to 20.5 inclusive will not prejudice any other rights which the Manager or other party to this Deed may have against the Defaulting Party.

20.7 INSOLVENCY

- (1) If the Manager is unable either:
 - (a) to secure the Defaulting Party's compliance with one's payment obligations; or
 - (b) to effect the sale of the Defaulting Party's Share to the other Owners or an outside party;then the Manager may declare, by giving written notice to the Owners, that the Syndicate's purpose cannot be accomplished as a consequence of the Syndicate Property being insufficient to pay all costs of operating the Syndicate in accordance with this Deed, and an intention to sell the Horse and wind-up the Syndicate.
- (2) If the situation which caused the Manager to give the notice referred to in paragraph (1) is rectified within 28 days after notice is given, the Manager will not take any further action. However, if the situation remains unrectified, The Manager may then proceed to sell the Horse by private treaty or public auction and wind up the Syndicate, or appoint a receiver to do so, without requiring a court order for such action.
- (3) Upon the sale of the Horse pursuant to this clause 20.7, the Manager or receiver, as the case requires, will apply the Defaulting Party's proportion of the net Proceeds in accordance with clause 20.4(5).

21. TERMINATION

21.1 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:

- (a) the Horse either dies, or is retired from racing, sold or otherwise disposed of in accordance with this Deed;
- (b) the Owners agree (evidenced by an Extraordinary Resolution) to end the Syndicate and terminate the rights, powers and authorities conferred by this Deed;
- (c) the Manager exercises one's right under clause 20.7 and requires that the Horse be sold and the Syndicate wound up; or
- (d) a direction is given by order of the court requiring the winding up of the Syndicate.

21.2 RETIREMENT FROM RACING

- (1) If the Horse is to be retired from racing and is suitable for breeding purposes, the Horse must be sold in accordance with clause 21.3, unless:
 - (a) the Owners agree (evidenced by an Extraordinary Resolution) to modify or replace this Deed with terms that provide for the continuing ongoing operation of the Common Enterprise as a breeding enterprise; and
 - (b) any Owner who wishes to sell one's Share is able to achieve a sale via the process set out in clause 10.4.
- (2) If the Horse is a gelding or otherwise unsuitable for breeding purposes, the Horse must be sold in accordance with clause 21.3, unless all of the Owners agree (evidenced by a Resolution at a meeting of Owners with all Owners who vote on the Resolution casting votes to pass the Resolution):
 - (a) to the Horse being transferred to an Owner or other appropriate person for its retirement; or
 - (b) to it being 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.

21.3 SALE

- (1) Unless otherwise expressly authorised by this Deed or 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 at arms' length 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, at the Manager's discretion.
- (2) The Manager will be deemed to be the Owners duly appointed agent, attorney or representative, as the law permits, to undertake the sale of the Horse and to execute any instrument and do any act or thing required to effect the sale. Upon the sale of the Horse, each Owner will thereafter be entitled (subject to clause 12.4) to receive a proportion of the net Proceeds, in the same proportion as the number of Shares held bears to the total number of Shares.

21.4 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 20.2, may submit an offer to purchase or bid at auction without reference to the other Owners. A Defaulting Party under clause 20.2 will not be entitled to submit an offer to purchase or bid at auction.

21.5 All rights and obligations accruing prior to the End Date will not be affected or prejudiced by the Syndicate ending.

21.6 Upon the termination of this Deed and the completion of the winding up of the Syndicate, the Manager:

- (a) must distribute to each Owner one's proportion of the Syndicate Property;
- (b) must prepare the Accounts for the Accounting Period; and
- (c) must forward to each Owner a copy of the Accounts.

22. PPSA

22.1 SECURITY AGREEMENT

The provisions of this Deed constitute a Security Agreement under the PPSA. These provisions are in addition to and not in substitution of any rights of the parties at common law or under any statute.

22.2 GRANT OF SECURITY INTEREST AND CONSENT TO REGISTRATION

Each Owner:

- (a) grants to the other Owners collectively and the Manager (each a "Secured Party") a Security Interest over one's Share in the Horse as livestock (as that term is defined in the PPSA) and Proceeds to secure the proper performance of the Owner'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 of 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 in one'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 contract, or the Security Interests; and
- (f) waives any right as permissible under the PPSA to receive a notice.

23. NOTICES

23.1 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.

23.2 Notice given in accordance with clause 23.1 will be deemed to have been duly served, in the case of:

- (a) prepaid mail to an address within Australia, upon the expiration of 3 days after the day of posting;
- (b) prepaid airmail post to an address outside Australia, at the expiration of 10 days after the day of posting; and
- (c) facsimile or email transmission, on the day after the date of transmission.

24. FURTHER ASSURANCES

24.1 Each Owner will at one's own cost, 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.

24.2 If an Owner fails for a period of 21 days after notice of such failure has been given by the Manager to perform any obligations under clauses 10.1, 10.4, or 24.1, then the Manager will, upon the expiration of the 21 days, be deemed to be the Owner's duly appointed agent, attorney or representative, as the law permits, to execute any instrument and do any act or thing required to fulfil the obligation.

25. GOVERNING LAW

25.1 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.

25.2 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.

26. AMENDMENT

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

26.2 No amendment will be made to this Deed that adversely affects the rights of each Owner to receive one's proportion of Prize money, Owners Bonus or Incentive Scheme payments, other bonuses and Proceeds.

27. 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.

28. DEFINITIONS AND INTERPRETATION

28.1 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.

AFSL means *Australian Financial Services Licence*.

AFS Licensee means a person or entity that holds an AFSL.

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.

ASIC means the *Australian Securities & Investments Commission*.

Associate has the meaning ascribed to that word by 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:

- (a) any Security Interest;
- (b) any 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) any third party right or interest in property, or any right arising as a consequence of 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 21.

Entire means a male horse that has not been gelded.

External Dispute Body means the external dispute body of which the Manager is a member specified in Schedule 1.

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 may be cast by Owners entitled to vote on the resolution (including Owners who are not present in person or by proxy).

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 ascribed to it in the PPSA.

Financing Change Statement has the meaning ascribed 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.

Lead Regulator Authorities means one of the following **Principal Racing Authorities** with whom the Manager is registered as an approved promoter of horse racing syndicates: *Racing NSW, Racing Victoria Limited, Racing & Wagering WA, Thoroughbred Racing NT, Thoroughbred Racing SA Limited, Queensland Racing Limited* and *Tasmanian Racing Board*.

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)*.

Managed Investment Scheme has the meaning ascribed to that term by the Corporations Act.

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 who holds an interest in the Syndicate. For the purpose of this Deed joint holders of an interest 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.

PDS means either the Lead Regulator-approved Product Disclosure Statement issued by the Promoter for the initial offering of the Shares, or any Product Disclosure Statement subsequently issued by the Manager pursuant to clause 10.6.

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 or of any insurance claim paid in relation to a Share or the Horse, as the context requires.

Promoter means the AFS Licensee named as the Promoter in Schedule 1.

Racing Colours means the racing colours referred to in clause 1.6 and 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 required majority of Owners present in person or by proxy, representative or attorney; or
 - (ii) if a poll is demanded, by the required majority of numbers of Shares held by Owners present in person or by proxy, representative or attorney voting on the poll; or
- (b) a resolution in writing signed by Owners holding the required majority of the Shares.

Rules of Racing means the rules of racing applying in the place where the Horse is racing or may race. The Australian Rules of Racing ("**AR**") are published by Racing Australia Limited and supplemented by 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 under this Deed.

Security Interest means:

- (a) in relation to any personal property (as defined in the PPSA), has the same meaning as under 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 number of 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 cast by Owners entitled to vote on the resolution (including Owners who are not present in person or by proxy).

Syndicate means the arrangement evidenced by this Deed pursuant to which the Owners agree to participate in the undertaking ("**Common Enterprise**") of caring for, training and racing the Horse as a whole for their mutual benefit.

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 the costs of operating the Syndicate (regardless of whether the Trainer and other Third Party Service Providers invoice the Owners directly, or via the Manager, for their proportion of such costs);
- (b) Prize money (regardless of whether net Prize money is paid by the Principal Racing Authority to the Syndicate's designated bank account maintained by the Manager, or to each Owner directly one'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 in equal undivided Shares.

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

Taxable Supply has the meaning ascribed 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 1 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 (including all covenants, terms and conditions) 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.

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

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

28.2 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 particular 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.

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SCHEDULE 2

SHARE APPLICATION – TO BE COMPLETED AND EXECUTED BY OWNER

THIS DEED OF AGREEMENT is made on the _____ day of _____, 2018.

BY:

Applicant (1) – Surname:		
Given name(s):	Date of birth:	
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:		

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

Name of Horse: UNNAMED		
Colour: BAY	Sex: FILLY	Year foaled: 2016
Sire: EXCELEBRATION	Dam: POLITE (USA)	
Life number: AUS01139724	ASB Microchip number: 985100012115456	

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 of Agreement.
- B. The Applicant has agreed to enter into this deed for the benefit of each other party to the Owners Deed of Agreement.

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 of Agreement and will comply with all the obligations imposed on each Owner as if the Applicant had executed the Owners Deed of Agreement 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 of Agreement.

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 _____, _____.

BETWEEN: _____ ("Transferor")

AND: _____ ("Transferee")

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 # [INSERT NAME OF HORSE (#)] Syndicate constituted by Owners Deed of Agreement deed dated the _____ day of _____, _____, and made between the parties to hold the same unto the Transferee subject to that document.

[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

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 into 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 one'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
- may render the Syndicate Property insufficient to pay all costs of operating the Syndicate, necessitating the sale of the Horse and the winding up of the Syndicate.