

DYNAMIC SYNDICATIONS

RACING SYNDICATE DEED

HORSE: UNNAMED THOROUGHBRED

Bay Colt foaled 12/9/2011

By : EXCEED AND EXCEL

FROM : YOU SMARTY PANTS (USA)(by Smarty Jones)

DYNAMIC SYNDICATIONS

Promoter and Syndicate Manager

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Dynamic Syndications Racing Syndicate

THIS DEED is made on the date specified in the Schedule

BETWEEN: **The Owners**

AND: **The Syndicate Manager**

AND: **The Racing Manager**

RECITALS:

- A. The Owners have agreed to the terms and conditions of this Deed to enable the Owners to obtain the benefit of the Horse from racing.
- B. The Syndicate Manager has agreed to manage the Syndicate, and to act as custodian of the Syndicate Property on behalf of the Owners, on the terms and conditions of this Deed and in accordance with the conditions of the Syndicate Manager's AFSL.
- C. The Racing Manager has agreed to manage the racing career of the Horse on the terms and conditions of this Deed.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPETATIONS

1.1 The following words have these meanings in this agreement unless the contrary intention appears:

- (1) **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 Termination Date to the Termination Date; or
 - (c) the period from 1 July immediately preceding the Termination Date to the Termination Date

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

- (2) **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.
- (3) **AFSL** means the Australian Financial Service Licence of the Syndicate Manager.
- (4) **Applicant** means any original owner of a Share and each other person who, in accordance with this Deed, is entitled to acquire a Share.

- (5) **Application Deed** means an application for Shares in the form of Schedule 2.
- (6) **Application Price** means the amount specified in Schedule 1 at which Shares were offered under the PDS or otherwise as permitted under the Corporations Act.
- (7) **ASIC** means the Australian Securities & Investments Commission.
- (8) **Associate** has the meaning ascribed to that word in the Corporations Act.
- (9) **Australian Rules of Racing** means the rules regulating thoroughbred horse racing in each state and territory throughout Australia, as administered by the Lead Regulator.
- (10) **Breeders Bonus or Incentive Scheme** means any Breeders Bonus or Incentive Scheme for which the Horse is eligible.
- (11) **Business Day** means a day that is not a Saturday, Sunday or bank holiday or a public holiday in the state specified in Schedule 1.
- (12) **CO 02/319** means Class Order 02/319 issued by ASIC on 15th February, 2002.
- (13) **Commencement Date** means the date specified in Schedule 1.
- (14) **Corporations Act** means the Corporations Act for the Australian jurisdiction.
- (15) **Encumbrance** means, in relation to any asset including but not limited to the Shares in the Horse and the Syndicate Property:
- (a) a mortgage, charge, lien, pledge, hypothecation or other encumbrance over the asset;
 - (b) a profit a prendre, easement or restrictive covenant affecting the asset;
 - (c) a caveat, garnishee order, writ of execution, right of set-off, assignment by way of security, deposit of money by way of security or monetary claim affecting the asset;
 - (d) a preferential interest, trust, title retention arrangement (other than in the ordinary course of business), or other estate, interest, claim or arrangement affecting the asset;
 - (e) a right, including a contractual right, an option, a right of first refusal, a right of pre-emption or other right, to acquire the property or to restrain any person from acquiring the asset;
 - (f) a right, including a lease, licence or other right, to occupy or use the asset;
 - (g) a Security Interest; or
 - (h) an agreement to grant, create or register any of the above or to allow any of them to exist;

and whether the Encumbrance is registered or unregistered, statutory, legal or equitable.

- (16) **External Dispute Body** means the Financial Ombudsman Service Limited (ABN 67 131 124 448. The Syndicate Manager's membership number is specified in Schedule 1.
- (17) **Extraordinary Resolution** means a Resolution:
- (i) of which notice has been given; and
 - (ii) that has been passed by at least 50% of the votes cast by Owners entitled to vote on the Resolution.
- (18) **Financing Statement** has the meaning ascribed to it in the PPSA.
- (19) **Financing Change Statement** has the meaning ascribed to it in the PPSA.
- (20) **Horse** means the thoroughbred horse described in Schedule 1.
- (21) **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.
- (22) **Lead Regulator** means one of the following bodies with whom the Syndicate Manager is registered as an approved promoter of horse racing syndicates and with whom the Syndicate is or is proposed to be registered: Racing NSW, Racing Victoria, Tasmanian Thoroughbred Racing Council, Thoroughbred Racing NA, Thoroughbred Racing SA, Queensland Racing, Racing and Wagering WA.
- (23) **Managed Investment Scheme** has the meaning ascribed to that term by the Corporations Act
- (24) **Month** means calendar month.
- (25) **Owner** means each person or entity from time to time bound by this Deed as an Owner by completing and executing an Application Deed.
- (26) **PDS** means either the original Product Disclosure Statement issued by the Promoter for the sale of Shares, or any Product Disclosure Statement issued by the Syndicate Manager pursuant to clause 4.12.
- (27) **PPSA** means the Personal Property Securities Act 2009 (Cth), as amended.
- (28) **PPSR** means the Personal Property Securities Register under the PPSA.
- (29) **Prize money** means money earned from racing the Horse.
- (30) **Racing Manager** means the person or entity named in Schedule 1 or subsequently appointed by the Syndicate Manager and the Owners as the Racing Manager in accordance with this Deed.
- (31) **Registrar of Racehorses** means the registrar under the Australian Rules of Racing.
- (32) **Resolution** (subject to further qualification where specified in this Deed) means

- (a) a resolution passed at a meeting of Owners;
 - (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) where the law allows, a resolution in writing signed by Owners holding the required majority of the Shares.
- (33) **Secretary** means the Secretary referred to in clause 4.5 of this Deed.
- (34) **Secured Party** means the party or parties which are granted a Security Interest under the terms of this Deed and Secured Parties has a corresponding meaning.
- (35) **Security Interest** has the meaning ascribed to it in the PPSA.
- (36) **Share** means one (1) of the number of Shares described in Schedule 1.
- (37) **Share Transfer** means a share transfer in the form of Schedule 3.
- (38) **Special Resolution** means a Resolution:
- (i) of which notice has been given; and
 - (ii) that has been passed by at least 75% of the votes cast by Owners entitled to vote on the Resolution.
- (39) **Syndicate** means the business undertaking evidenced by this Deed known as the Syndicate described in Schedule 1 whereby the Horse will be prepared for racing and raced for the benefit of the Owners.
- (40) **Syndicate Manager** means the person or entity named in Schedule 1 or subsequently appointed by the Owners as the Syndicate Manager in accordance with this Deed.
- (41) **Syndicate Property** means any payments or proceeds received by the Syndicate Manager on behalf of the Owners, including:
- (a) Owners levy payments and/or monies retained on account of costs or expenses either incurred or anticipated;
 - (b) Prize money;
 - (c) Breeders Bonus or Incentive Scheme payments; and
 - (d) proceeds of any insurance claim paid.
- (42) **Termination Date** means the date on which the Syndicate is terminated in accordance with clause 19.
- (43) **Trainer** means the person named in Schedule 1 or subsequently appointed by the Racing Manager to train the Horse, in accordance with this Deed.

- (44) **Trophy** includes any trophy, rug, sash, trinket, prize or benefit, in addition to Prize money and Breeders Bonus or Incentive Scheme payments.

1.2 In this agreement unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to any one gender includes a reference to each other gender;
- (c) a reference to a person includes a reference to a firm, corporation or other corporate body;
- (d) a reference to writing includes a reference to printing, typing and other methods of producing words in a visible form;
- (e) 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;
- (f) headings are for ease of reference and do not affect the construction of this Deed;
- (g) if a party who owns a Share consists of more than one person this Deed binds them jointly and each of them severally;
- (h) this Deed binds in addition to the parties, their respective legal personal representatives and successors;
- (i) the annexed Schedules will form part of this Deed.

2. OWNERSHIP

2.1 (1) The Owners agree to the legal and equitable title to the Horse being dealt with in accordance with the terms and conditions of this Deed. Furthermore, the Owners acknowledge that the Syndicate is relieved, by the provisions of CO 02/319, from the requirements of Chapter 5C of the Corporations Act, which would otherwise require that the Syndicate be established and operated as an ASIC registered Managed Investment Scheme.

(2) This document and its provisions will be legally enforceable by each Owner, the Syndicate Manager and the Racing Manager against each other Owner, the Syndicate Manager and the Racing Manager respectively, and against all persons claiming through an Owner, the Syndicate Manager or the Racing Manager as if they were parties to this document.

2.2 As and from the Commencement Date until the Termination Date:

- (a) the Owners will own the whole of the legal and equitable title to the Horse divided into the number of equal undivided Shares specified in Schedule 1, as tenants in common, free of encumbrances;
- (b) the Syndicate Manager will hold the Syndicate Property upon trust for the Owners in the number of equal undivided Shares specified in Schedule 1, free of encumbrances, but subject always to the provisions of this Deed; and

- (c) None of the Owners will partition for the sale of the Horse
- 2.3 Each Share will entitle the Owner, for so long as the Horse continues to race, to a pro-rata proportion of net Prize money and Breeders Bonus or Incentive Scheme payments earned by the Horse. In the event the Horse wins a Trophy, the entitlements of the Owners thereto will be determined by application by the Syndicate Manager of the following procedure:
- (a) the Syndicate Manager will take possession of the original Trophy;
 - (b) the Syndicate Manager will ascertain from the race club which presented the Trophy the monetary value thereof and advise the Owners accordingly;
 - (c) the first named Owner as appears in the race book will pay to the Syndicate Manager the ascertained monetary value of the original Trophy, reduced by the same percentage as that Owner's pro rata proportionate ownership interest in the Syndicate;
 - (d) the Syndicate Manager will also ascertain from the race club which presented the Trophy the name and contact details of the supplier of the Trophy, and contact the supplier to obtain a per unit cost for supplying any number of replicas of the Trophy ;
 - (e) the Syndicate Manager will then advise all Owners of the cost of obtaining a replica Trophy and request that each Owner confirm to the Syndicate Manager whether or not he or she is desirous of purchasing a replica Trophy;
 - (f) Each Owner desirous of purchasing a replica Trophy will then confirm same to the Syndicate Manager, subsequent to which the Syndicate Manager will proceed to arrange for the purchase of the requisite number of replica Trophies, and will apply towards the cost thereof the same percentage share of the monies received by the Syndicate pursuant to sub-clause (c) of this clause as that Owner's pro rata proportionate ownership interest in the Syndicate; and
 - (g) Each Owner who is not desirous of purchasing a replica Trophy will be entitled to receive the same percentage share of the monies received by the Syndicate Manager pursuant to sub-clause (c) of this clause as that Owner's pro rata proportionate ownership interest in the Syndicate.
- 2.4 The Syndicate Manager and the Racing Manager may each beneficially hold any number of Shares, and will have the same rights and powers in respect of those Shares as if they were not also acting in another capacity under this Deed.
- 2.5 Each Owner of not less than 5% of the Horse will be entitled to have his or her name appear in the race book as a co-owner of the Horse. If a Share is owned by 2 or more persons jointly, the Syndicate Manager will be entitled to require those persons to, at their own cost, register a syndicate and to own the Share in the name of that syndicate. The registered Syndicate Manager of any such syndicate will represent the other owners of that syndicate in all dealings relating to the ownership of the Horse and will be responsible for ensuring that those persons comprising such syndicate (collectively) comply with their obligations as the Owner of a Share under this Deed.
- 2.6 The Horse will carry the racing colours nominated by the Syndicate Manager and which are currently the colours specified in Schedule 1.
- 2.7 This Deed will relate to the Horse only and not to any other horse or investment.

- 2.8 Each Owner does hereby authorise the Syndicate Manager to do all things required to be done by an Owner in order to comply with the provisions of this Deed and the Rules of Racing, including without limitation, authority to sign on behalf of the Owner any and all documentation required to be signed by the Owner and lodged with the Registrar of Racehorses and/or Lead Regulator to give effect to any application for registration of the Horse and/or transfer of ownership. In the event the Syndicate Manager is a corporation comprised of one director, this authority will vest in the director of the Syndicate Manager, or if the board of the Syndicate Manager is comprised of more than one director, this authority will vest in the director duly authorised by the board of directors to so act.

3. TRAINING AND RACING COSTS

- 3.1 The costs of maintaining, training and racing the Horse will be paid by each Owner proportionately to the number of Shares held by that Owner to the total number of Shares.
- 3.2 In the event that the Syndicate Manager at any time and from time to time agrees with either the trainer or the jockey of the Horse, to pay either or both of them an additional gratuity from wins in group races (usually an amount equal to 5% of prize money in addition to the obligatory percentages under the Rules of Racing), such expense will constitute a racing expense payable by the Owners in accordance with the provisions of clause 3.1.
- 3.3 In the event that the Horse is to race interstate or overseas, requiring the trainer and/or jockey to travel interstate or overseas, each of them will be entitled to be reimbursed for their reasonable travel (business class) and accommodation expenses.

4. SYNDICATE MANAGER

- 4.1 The Owners appoint the Syndicate Manager, and the Syndicate Manager accepts the appointment, to manage and operate the Syndicate, and to act as custodian of the Syndicate Property, for the benefit of the Owners in accordance with the provisions of this Deed, the conditions of its AFSL, the requirements of CO 02/319, and any rules, regulations or guidelines made from time to time by the Lead Regulator.
- 4.2 The Syndicate Manager must at all times during the life of the Syndicate:
- (a) hold an AFSL, or authorisation of a licensee, covering the financial services to be provided by the Syndicate Manager to the Syndicate;
 - (b) be on the Lead Regulator's register of approved promoters;
 - (c) diligently strive to carry on and conduct the Syndicate in a proper and efficient manner and to perform the functions and exercise the powers of the Syndicate Manager in the best interests of the Owners as a whole and to treat each Owner fairly and impartially; and
 - (d) ensure that no Syndicate Property is applied other than for the purpose of the Syndicate.
- 4.3 The Syndicate Property must be clearly identified as property of the Syndicate and must be held separately from the assets of the Syndicate Manager and any other person to the extent the law requires.

- 4.4 The Syndicate Manager will provide, or arrange for the provision of, accounting, secretarial and legal advice to the Syndicate, the cost of which will be borne by the Owners on the basis provided by clause 13.4.
- 4.5 The Syndicate Manager will appoint a person to be Secretary to the Syndicate who will keep the Accounts and such other records of the Syndicate as the Syndicate Manager considers necessary.
- 4.6 The Syndicate Manager will at its discretion either:
- (a) use its best endeavours to have:
 - (i) the relevant racing authority pay each Owner directly his or her proportionate share of Prize money and/or Breeders Bonus or Incentive Scheme payments; and
 - (ii) all service providers invoice each Owner directly for his or her proportionate share of costs and expenses; or alternatively
 - (b) maintain a trust account or other designated account with a bank or other Australian authorised deposit taking institution, into which all Syndicate Property and any other monies received by the Syndicate Manager on behalf of the Owners will be deposited and from which all Owners costs and expenses, and Owners distributions, will be paid.
- 4.7 The Syndicate Manager will keep a register of Owners which contains their names and addresses and the number of Shares held by each Owner, the date on which the Owner was entered in the register and the date on which any person ceased to be an Owner. The Syndicate 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. The Syndicate Manager will not be obliged to enter on the register notice of any trust whether express or implied to the intent and affect that the person so entered will be the only party who may vote or otherwise exercise the rights of an Owner pursuant to this Deed. The Syndicate Manager will not be obliged to disclose to an Owner the personal and contact details of any other Owner without the other Owner's express consent freely given.
- 4.8 If an Owner proposes to sell a Share and is required by the Corporations Act to provide the purchaser of the Share with a PDS, the Syndicate Manager will, upon being requested by an Owner to do so, provide a PDS for the purpose of enabling the Owner to undertake the sale of the Share. The Syndicate Manager will be entitled to charge the Owner requesting the PDS a reasonable fee for compiling and providing the PDS.
- 4.9 The Syndicate Manager will:
- (a) allow ASIC and or Lead Regulator access to inspect all the records of the Syndicate, including but not limited to the Accounts, secretarial records, share register and transfer journal;
 - (b) provide to ASIC and or Lead Regulator all information requested in relation to the Syndicate; and
 - (c) if required to do so, lodge with ASIC and or Lead Regulator a copy of all documentation forwarded to Owners relating to the financial position and

performance of the Syndicate at the same time such documentation is forwarded to the Owners.

- 4.10 The fee to be charged by the Syndicate Manager for services provided pursuant to clauses 4.1, 4.5, 4.6 and 4.7 of this Deed will be the fee specified in Schedule 1 for the first year of the Syndicate and, for subsequent years, as adjusted in accordance with the consumer price index for Sydney. The fee will be borne by the Owners on the basis provided by clause 13.4. The Syndicate Manager will also be entitled to be reimbursed for the cost of accounting, administration, bookkeeping, legal and secretarial services provided, and for travel and accommodation expenses incurred, in relation to the Syndicate business.
- 4.11 In the event the Horse wins any metropolitan, provincial, country or sales series race of the advertised value to the winner (including Prize money and Breeders Bonus or Incentive Scheme payments) of not less than \$12,000, or is placed first, second, third, fourth or fifth in any group or listed race and by so doing earns Prize money of not less than \$12,000, the first appointee only of the Owners as Syndicate Manager will, in addition to the remuneration provided by clause 4.10, be entitled to receive a proportion of Prize money and Breeders Bonus or Incentive Scheme payments earned by the Horse equal to the percentage specified in Schedule 1.
- 4.12 In the event of either the sale of the Horse or any ownership interest in the Horse (including any allotment and sale of additional shares), or the sale of Shares by any of the Owners, the first appointee only of the Owners as Syndicate Manager will, in addition to the remuneration provided by clause 4.10 of this Deed, be entitled to receive as Commission a proportion of the sale price equal to the percentage specified in Schedule 1.
- 4.13 In the event the Horse (being an entire) is retired from racing to perform stud duties at a stud, the first appointee only of the Owners as Syndicate Manager will, for so long as the Horse is capable of performing stud duties, be entitled to receive the number of service rights specified in Schedule 1 each stud season free of any service fee. This clause and the benefits bestowed by it will survive the termination of the Syndicate and this Deed and will bind any future purchaser of the Horse, or ownership interest in the Horse, as if he or she had executed this Deed and was a party hereto. Furthermore, the Owners undertake to ensure that any purchaser of the Horse, or an ownership interest in the Horse, is made aware of and agrees to be bound by the provisions of this clause.
- 4.14 The Syndicate Manager will remunerate the Racing Manager for services provided by the Racing Manager pursuant to and in accordance with the provisions of this Deed.
- 4.15 The Syndicate Manager must retire as Syndicate Manager as required by law, or in the event of the Owners agreeing by Special Resolution to remove the Syndicate Manager and appoint a new Syndicate Manager.
- 4.16 The Syndicate Manager may retire as Syndicate Manager as permitted by law, or by giving 3 months notice in writing to the Owners of the Syndicate Manager's intention to resign as Syndicate Manager.
- 4.17 The retiring Syndicate Manager will, to the extent permitted by law and with effect from the date of retirement, be released from any further obligations under this Deed. The retirement of the Syndicate Manager will not affect any right of indemnity that the Syndicate Manager may have in relation to the performance and exercise of the Syndicate Manager's obligations and powers as Syndicate Manager.

- 4.18 In the event the first appointee of the Owners as Syndicate Manager is removed as Syndicate Manager, but subject to the proper performance by the Syndicate Manager of the duties and obligations of Syndicate Manager prior to being removed, the first appointee only of the Owners as Syndicate Manager will continue to be entitled to the benefit of the provisions of clauses 4.11, 4.12 and 14.13 post removal and until such time as the Syndicate and this Deed are terminated in accordance with the provisions of clause 19. Furthermore, the provisions of clause 4.12 will also apply to any sale proceeds realised in the event of the sale of the Horse pursuant to clause 19 upon the termination of the Syndicate and this Deed. Furthermore, the provisions of clause 4.13 will survive the termination of this Deed.
- 4.19 The Syndicate Manager will not accept any payment, gratuity or benefit for ceasing to act as Syndicate Manager unless such payment, gratuity or benefit is approved by an Extraordinary Resolution of Shareholders.

5. RACING MANAGER

- 5.1 (1) The Syndicate Manager on behalf of the Owners and with their authority and consent appoints the Racing Manager, and the Racing Manager accepts the appointment, to manage all aspects of the racing career of the Horse upon the terms and conditions of this Deed.
- (2) The Syndicate Manager with the authority and consent of the Owners hereby delegates to the Racing Manager, and the Racing Manager hereby accepts being delegated, the responsibilities and obligations of the Syndicate Manager to operate the Syndicate for so long as the Horse will continue to race.
- (3) Despite the appointment of the Racing Manager, the Syndicate Manager may overrule and decisions or actions of the Racing Manager. In the event of any inconsistency between the actions and instructions of the Syndicate Manager and the actions and instructions of the Racing Manager, those of the Syndicate Manager will prevail to the extent of the inconsistency.
- 5.2 If the Racing Manager receives any Syndicate Property or other monies for or on behalf of the Syndicate, the Racing Manager will immediately pay same to the Syndicate Manager.
- 5.3 The Syndicate Manager will reimburse the Racing Manager for any cost or expense properly incurred by the Racing Manager on behalf of the Syndicate. Where possible, the Racing Manager will obtain the prior approval of the Syndicate Manager before incurring any cost or expense on behalf of the Syndicate.
- 5.4 The Racing Manager may at any time give the Syndicate Manager and the Owners not less than 3 months notice in writing of his intention to retire as Racing Manager.
- 5.5 The Syndicate Manager with the authority and consent of the Owners determined by Resolution may at any time remove the Racing Manager and either appoint another person to act in that capacity or retire the Horse from racing.
- 5.6 Upon the expiry of the notice referred to in Clause 5.4 or when the Racing Manager is removed by Clause 5.5 (whichever occurs first), the Racing Manager will cease to have the rights and obligations of the Racing Manager under this Deed. The Racing Manager will, however, remain liable to the Syndicate Manager and the Owners for any breach of the Racing Manager's obligations under this Deed, which occurred prior to the expiry of such notice or prior to the Racing Manager being removed.

- 5.7 The Racing Manager will not accept any payment, gratuity or benefit for acting as Racing Manager other than that agreed to be paid by the Syndicate Manager pursuant to clause 4.14.
- 5.8 The Racing Manager will not accept any payment, gratuity or benefit for ceasing to act as Racing Manager unless such payment, gratuity or benefit is approved by the Syndicate Manager.

6. CARE OF HORSE BY RACING MANAGER

- 6.1 For so long as the Horse continues to race, the Racing Manager will ensure proper and skilful management and control of the Horse for racing purposes in accordance with the normal standards applied, provided and maintained in connection with the racing of thoroughbred horses.
- 6.2 The Racing Manager will arrange for the Trainer to train the Horse and prepare the Horse for racing. The Racing Manager may at any time, with the authority and consent of the Syndicate Manager and the Owners (evidenced by a Resolution of the Owners), remove the Trainer and either engage the services of another appropriately licensed person to act in that capacity or retire the Horse from racing.
- 6.3 The Racing Manager will allow the Syndicate Manager access to the Horse at all reasonable times. The Racing Manager will also, at the request of the Syndicate Manager, make the Horse available for veterinary examination by a qualified veterinary surgeon nominated by either of them.
- 6.4 The Racing Manager will fully and promptly report to the Syndicate Manager and the Owners any facts and circumstances known to the Racing Manager which may have a material effect on the health or well being of the Horse or which may give rise to a claim under any insurance policy.
- 6.5 The Racing Manager will, either as soon as practicable after the end of each quarter ending on the last day of March, June, September, and December each year, or as otherwise required by and agreed with the Syndicate Manager, report to the Syndicate Manager by such means and in such form as the Syndicate Manager requires:
- (a) details of the performance of the Racing Manager in relation to the Racing Manager's duties and obligations under this Deed, including certification that the Racing Manager has complied with the provisions of this Deed during the reporting period (and, if any breaches, full details thereof);
 - (b) details of the condition of the Horse including the results of any surgery, extraordinary veterinary examinations or treatments during the reporting period;
 - (c) details of any payments made to Owners during the reporting period as a consequence of the Horse earning Prize money and/or Breeders Bonus or Incentive Scheme payments; and
 - (d) such other details as the Syndicate Manager will from time to time reasonably request.
- 6.6 Each Owner does hereby acknowledge that investment in thoroughbred racehorses is speculative and that there are inherent risks associated with the ownership of the Horse. Consequently neither the Syndicate Manager nor the Racing Manager will be liable to the Owners in the event of either the death of the Horse or its value being diminished as a consequence of accident (including injury, howsoever caused),

contraction of disease; or by the failure of the Horse to either compete in or win races. Furthermore, each Owner does hereby also acknowledge that it will be the responsibility of the Trainer to nominate and enter the Horse for races and that neither the Syndicate Manager nor the Racing Manager will be responsible for any act or omission on the part of the Trainer resulting in the Horse not being entered for any specific race or series of races that may be preferred by the Owners, or any of them.

- 6.7 In the case of the Horse being an entire, the Racing Manager will ensure that the Horse is not gelded without the Racing Manager having first obtained the authority and consent of the Syndicate Manager and the Owners by Extraordinary Resolution.

7. COMPLIANCE WITH RULES OF RACING

- 7.1 The Racing Manager, the Syndicate Manager and the Owners will at all times comply with the Australian Rules of Racing relevant to the state or territory in which the Horse is racing. Furthermore, the Syndicate Manager, the Racing Manager and each Owner must at all times be eligible to be an Owner under the Australian Rules of Racing.

8. OWNERS MEETINGS

- 8.1 (1) The Syndicate Manager or the Racing Manager may upon giving at least 21 days written notice to the other of them and the Owners, call a meeting of Owners.
- (2) An Owner or Owners who own not less than 30% of the Shares may either call a meeting of Owners, or request the Syndicate Manager to call a meeting of Owners, upon giving at least 21 days written notice to the other Owners, the Syndicate Manager and the Racing Manager. In the event the Syndicate Manager receives such a request, the Syndicate Manager must within 14 days of receipt thereof, call a meeting of Owners, which must be held within 1 months of receipt of the request.
- (3) The notice will state the date, place and time for the meeting and the nature of the business to be transacted. Any meeting of Owners must be held in the state or territory specified in Schedule 1 on a reasonable date, at a reasonable place and time and, in the event of any dispute, the date, place and time for the meeting will be determined by the Syndicate Manager.
- (4) A notice of meeting at which either an Extraordinary Resolution or 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 a 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 may specify the proportion or number of votes the proxy is appointed to exercise.
- (5) Each Owner, the Syndicate Manager and the Racing Manager will be entitled to attend and be heard at any meeting of Owners.

- 8.2 (1) A quorum for a meeting of Owners will be 3 Owners who between them hold not less than 50% of the Shares on issue present in person or by proxy.
- (2) No business will be transacted at any meeting of Owners unless a quorum is present and if a quorum is not present within 30 minutes of the time for commencement of the meeting, the meeting:
- (a) if convened by or on the requisition of an Owner, will be dissolved, and
- (b) in any other case, will as far as practicable adjourn to such place and time as the Syndicate Manager decides, and at that meeting the Owners present in person or by proxy attorney or representative will constitute a quorum.
- (3) The Syndicate Manager will be entitled to appoint a person to be Chairman of any meeting of Owners called by the Syndicate Manager.
- (4) When a meeting is adjourned for one month or more, notice of the adjourned meeting will be given to the Owners as in the case of any original meeting.
- 8.3 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.
- 8.4 The Syndicate Manager will ensure that minutes are kept of all Owners meetings which will be signed by the Chairman as a true record of the proceedings when those resolutions are reduced to writing.

9. PROXY AND POWER OF ATTORNEY

- 9.1 An Owner may appoint another person (including the Syndicate Manager or Racing Manager) as his or her proxy, attorney or representative for any question to be considered at an Owners' meeting and must give notice to the Syndicate Manager of that appointment in the manner and no later than such period as is advised in the notice of an Owners' meeting.
- 9.2 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 goes into liquidation, unless the Syndicate Manager has received written notice of that fact before the relevant Owners' meeting.
- 9.3 A proxy will be in such form as the Syndicate Manager determines.
- 9.4 The Syndicate Manager is not obliged to enquire whether the appointment of a proxy, attorney or representative has been validly made.

10. JOINT HOLDERS

- 10.1 Where a Share is held by 2 or more persons jointly and whether in unequal shares or not:

- (a) at a meeting of Owners the vote of the senior who tends a vote (whether in person or by proxy) will be accepted to the exclusion of the vote of the other joint holders;
- (b) any notice, demand, consent or other document may be given to all joint holders by giving it to the senior joint holder;
- (c) any 1 of the joint holders may give an effectual receipt for any money payable to joint holders pursuant to this Deed; and
- (d) this Deed will bind the joint holders of a Share jointly and each of them severally.

11. TRANSFER OF SHARES

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

- (a) if required by law, the transferee receiving a PDS from the Syndicate Manager;
- (b) the transferee being capable of being, or being, registered as an owner under the Australian Rules of Racing;
- (c) the transferee entering into an Application Deed as specified by the Syndicate Manager and which may be in the form or to the effect of the Application Deed set forth in Schedule 2;
- (d) the transferee and transferor executing a form of transfer as specified by the Syndicate Manager which may be in the form or to the effect of the Share Transfer set forth in Schedule 3; and
- (e) the transferee and the transferor executing a form of transfer of ownership as required by the Registrar of Racehorse.

11.2 Subject to clauses 11.1, 11.3 and 11.4, all Shares will be capable of sale, transfer or other disposal by the Owner thereof to any person with the approval of the Syndicate Manager and such approval will not be unreasonably withheld.

11.3 Notwithstanding anything contained in clause 11.2, but subject to clause 11.1, the approval of the Syndicate Manager will not be required for the sale, transfer or other disposal of a share:

- (a) to another person who is already the Owner of a Share or otherwise party to this Deed;
- (b) for the purpose of transmitting the Share to a legal personal representative of a deceased Owner;
- (c) by the legal personal representative of a deceased Owner to the heir or beneficiary of the estate of a deceased Owner;
- (d) to the spouse or child (conditional upon the child being 18 years of age or over) of the Owner, or family trust or company controlled by the Owner, spouse or child;
- (e) to any person who has previously been approved as an Owner; and

- (f) to the purchaser of that Share pursuant to clause 11.4(4) or (5).
- 11.4 (1) If at any time an Owner wishes to transfer any of his or her Shares ("the proposing transferor") to any person other than a person referred to in paragraphs (a) to (e) both inclusive of clause 11.3, the Owner or the Owner's agent will give notice in writing to the Syndicate Manager ("the transfer notice") that the Owner desires to transfer the same and at the price (which must be supported by an assessment of value either provide by the Owner, or procured by the Syndicate Manager at the Owner's expense, from a recognised bloodstock agent) and on the terms specified in the transfer notice. Such transfer notice will constitute the Syndicate Manager the Owner's agent for the sale of the Shares specified therein to another Owner or Owners at the price and on the terms specified in the transfer notice. A transfer notice may include several Shares in which case it will operate as if it were a separate transfer notice in relation to each Share. A transfer notice will not be revocable except with the sanction of the Syndicate Manager.
- (2) On receipt of the transfer notice, and subject to the Syndicate Manager obtaining the assessment of value referred to in sub-clause (1) of this Clause, the Syndicate Manager will forthwith offer all the Shares specified in the transfer notice for sale at the price and on the terms specified in the transfer notice to the Owners allowing each of them 14 days within which to notify the Syndicate Manager in writing of whether any of the Owners are desirous of purchasing all or some of the Shares offered.
- (3) If the number of acceptances for the Shares comprised in the transfer notice and offered to the Owners in accordance with clause 11.4(2) exceeds the number of Shares offered for sale and in the absolute opinion of the Syndicate Manager (whose decision will be final) no agreement can be reached between the Owners, the Syndicate Manager will make such provision as the Syndicate Manager thinks fit for the settlement of any difficulties which may arise in regard to the transfer of the Shares to an intending purchaser or purchasers and may conduct a ballot in such manner as the Syndicate Manager determines, to decide who will be the successful purchaser or purchasers.
- (4) If no purchaser for the Shares specified in a transfer notice is found within 1 month of the Syndicate Manager being served with the transfer notice, the proposing transferor may at any time within the next 3 months:
- (a) sell and transfer the Shares to any person or persons (subject to clause 11.1) at the same price and on the same terms as those specified in the transfer notice; or
- (b) offer the Shares for sale by public auction or public tender provided that the Syndicate Manager has given the Owners at least 7 days prior notice of the time and place of the auction or tender, as the case may be.
- (5) If the Syndicate Manager within 1 month after being served with a transfer notice finds a purchaser or purchasers for all or some of the Shares specified in a transfer notice and gives notice thereof to the proposing transferor, such proposing transferor will be bound upon payment of the price referred to in the transfer notice to transfer (subject to clause 11.1) all those Shares to the purchaser or purchasers and will execute and do all such matters, acts and things as will be necessary to transfer such Share or Shares.

- (6) This clause 11.4 will not apply to a sale, transfer or other disposal of a Share to any of the persons referred to in paragraphs (a) to (e) both inclusive of clause 11.3.
- 11.5 The costs and disbursements incurred by the Syndicate Manager in complying with the procedure referred to in clause 11.4 will be paid and borne by the proposing transferor irrespective of whether or not the Shares are sold.
- 11.6 A transferor of a Share will remain liable for all obligations and liabilities attributable to that Share to the effective date of the transfer from the transferor to the transferee, which will be either the date of registration of the transferee as the Owner of the Share, or such other date as may be determined by the Syndicate Manager in the Syndicate Manager's absolute discretion, and a transferee, as the Owner of the Share, will be liable for all obligations and liabilities attributable to the Share whether arising before or after the effective date of the transfer..
- 11.7 Neither the Syndicate Manager nor the Racing Manager will be obliged to sell a Share on behalf of an Owner. In the event either the Syndicate Manager or the Racing Manager does sell a Share on behalf of an Owner, such party will be entitled to charge a reasonable commission in consideration for arranging the sale.

12. DIVESTING OF INTERESTS

- 12.1 An Owner of a Share will be entitled to create any lease, mortgage, charge, lien or other encumbrance ("Divested Interest") in relation to the Share, subject to giving 7 days prior notice to the Syndicate Manager. Such notice will include the name, address and description of the grantee of the Divested Interest ("Grantee"), the identity of the party entitled to receive prize money during the term of the Divested Interest and any other information which may reasonably be required by the Syndicate Manager to enable the Syndicate Manager to make the appropriate recording of the Divested Interest in the register of Owners.
- 12.2 Upon entering the name of the Grantee in the register of Owners in relation to a Share the Syndicate Manager will issue the Grantee with a certificate (the "Caveat Certificate") and until such time as the Caveat Certificate is surrendered to the Syndicate Manager by the Grantee no further transactions in respect of that Share will be registered.
- 12.3 While a person is recorded on the register of Owners as holding a Divested Interest, that person in lieu of the Owner will be entitled to the rights attaching to the relevant Share. If there is more than one Grantee recorded in respect of a Share the voting and attendance rights will belong to the Grantee first recorded in the register of Owners.
- 12.4 Unless they have reason to believe the information they are relying on is not genuine, the Owners, the Syndicate Manager and the Racing Manager will at all times be entitled to rely upon and act upon the matters recorded in the register of Owners in respect of any Divested Interest. None of them will be obliged to take account of any claim or any other matter alleged by either the Grantee or the Owner of the Divested Interest unless ordered to do so by a court of competent jurisdiction.
- 12.5 (1) Registration of a Divested Interest notwithstanding, the Owner will at all times comply with the Owner's obligations under this Deed.
- (2) All invoices and/or levy notices will be rendered to and be payable by the Owner, notwithstanding the registration of a Divested Interest.

- (3) At all times, the rights of a Grantee will be subject to the due performance and observance of the provisions of this Deed on the part of the Owner.

12.6 The Syndicate Manager will be entitled to professional fees from the Owner and Grantee in relation to all acts carried out under this clause 12 and the Syndicate Manager will not be obliged to record any entries in the register of Owners prior to receipt of such fees.

13. OWNERS COSTS

13.1 Insurance

- (1) Each Owner will be responsible for arranging insurance cover as relates to his own individual Share or Shares. The Syndicate Manager will, at the request of the Owner or Owners requiring same, arrange for a suitably qualified veterinarian to examine the Horse and provide a veterinary certificate for insurance purposes. Furthermore, the Syndicate Manager will also compile and provide to the Owner or Owners requiring same, a Declaration of Health in relation to the Horse.
- (2) The Owners agree to pay for such public liability insurance to cover any party to this Deed as the Syndicate Manager determines is desirable and is able to secure, if any.
- (3) The cost of any insurance cover arranged by the Syndicate Manager pursuant to sub clause (2) of this Clause will be borne by the Owners on the basis provided by clause 13.4.

13.2 Breeders Incentive Schemes

- (1) The Syndicate Manager may from time to time pay a sum of money ("Qualifying Fee") to any person, company or entity conducting or organising a Breeders Bonus or Incentive Scheme.
- (2) In the event that the Syndicate Manager elects to pay a Qualifying Fee to any such person, company or entity, each Owner will within 14 days of receiving a notice from the Syndicate Manager requiring payment thereof pay his or her pro rata share of such Qualifying Fee to the Syndicate Manager. If an Owner fails to pay his or her share of the Qualifying Fee the provisions of clause 18.1 will apply.
- (3) In the event that the Horse earns a Breeders Bonus or Incentive Scheme payment, those Owners noted in the register of Owners on the date the Horse earns the Breeders Bonus or Incentive Scheme payment will be entitled to receive their pro rata proportion thereof..

13.3 Compliance Expenses

The Owners will be responsible for reimbursing the Syndicate Manager for all expenses of compliance by the Syndicate with the requirements of the Syndicate, including (without limitation):

- (a) any audit of the records of the Syndicate;
- (b) the fees of the Syndicate Manager and any other expenses incurred by him in relation to the Syndicate;
- (c) any professional indemnity insurance premiums of the Syndicate Manager incurred in relation to the Syndicate;

- (d) costs of assisting either ASIC and or Lead Regulator with any investigation of the Syndicate and costs of meeting any ASIC and or Lead Regulator requirements resulting from such investigation;
- (e) cost of reviewing and amending, as necessary, this Deed;
- (f) legal costs for advice in relation to this Deed;
- (g) costs of reviewing the reports and assessing the performance of the Racing Manager; and
- (h) costs of administering the complaints handling procedures under clause 16.

The bona fide determination as to whether any expenses are compliance costs within the terms of this clause and the amount of such expenses will be made by the Syndicate Manager and will be final and binding on the Owners and may be invoiced to the Owners by the Syndicate Manager on the basis provided by clause 13.6.

- 13.4 Unless otherwise expressly provided, Management Fee costs and expenses payable by the Owners will be borne and paid by each Owner that holds any equity share. An owner with a share less than 10% will pay the same fee as an owner with a 10% share. No pro rata reduction or discount will apply to any owner with an equity share less than 10%. Whilst any Owner with greater than the equivalent of two shares (20%) or higher will have their fee capped at the equivalent fee for 20%.
- 13.5 If either the Syndicate Manager or the Racing Manager receives Syndicate Property, it will be held by the Syndicate Manager as Syndicate Property and the Syndicate Manager will, subject to clauses 13.6, 13.7 and 13.8, account to each Owner in respect of each Owner's pro rata share thereof.
- 13.6 The Syndicate Manager will be entitled from time to time by notice in writing to require the Owners to make contributions in proportion to the Shares held by them to cover costs and expenses which the Syndicate Manager anticipates the Syndicate Manager and the Racing Manager will incur in relation to the Syndicate, the Horse or under this Deed and those contributions will be payable by the Owners to the Syndicate Manager within 30 days after the notice is served.
- 13.7 The Owners will in proportion to the Shares held by them reimburse (within 30 days after being given notice requiring payment thereof by the Syndicate Manager) all costs and expenses which the Syndicate Manager and/or the Racing Manager incur in relation to the Syndicate, the Horse or under this Deed.
- 13.8 The Syndicate Manager will be entitled:
- (a) to retain as Syndicate Property, such amount as may be required to either reimburse the Syndicate Manager and/or the Racing Manager for all costs and expenses incurred by them in relation to the Syndicate, the Horse or under this Deed, including the amount of any outstanding levy, or amount to be levied, in accordance with the provisions of clause 13.6; and
 - (b) in the event an Owner defaults in the payment of his or her proportionate share of such costs and expenses (including costs and expenses invoiced directly to the Defaulting Owner by a third party service provider and not paid in accordance with the service provider's specified terms) and/or levy, to apply the Defaulting Owner's proportionate share of any Syndicate Property, and/or any proceeds of sale of the

Horse to which the Defaulting Owner would otherwise be entitled to receive under clause 19, in payment thereof.

14. INTEREST

- 14.1 If an Owner fails to pay any sum payable by him under this Deed then the Owner will pay to the Syndicate Manager interest on such sum at the rate of 12% per annum compounding weekly from the expiration of 30 days after notice that the amount due was served on the Owner until date of payment.
- 14.2 The right conferred by clause 14.1 will not prejudice any other rights which the Syndicate Manager may have against the Owner referred to therein.

15. GST

- 15.1 The parties acknowledge that the terms of a new tax system (the Goods and Services Tax Act 1999) has application and accordingly any charge hereunder will increase by the amount of the charge payable under that Act for providing a supply within the meaning of that Act. Further the Owners acknowledge and accept that they are carrying on an "enterprise" within the meaning of the Act when racing the Horse and endeavouring to win prize money.
- 15.2 Each party warrants that if required by relevant GST legislation, it is or 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.
- 15.3 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 (as that term is defined under the relevant legislation).

16. COMPLAINTS

- 16.1 The Syndicate Manager, Racing Manager and Owners agree that all internal complaints will be dealt with in accordance with the complaints handling guidelines Australian Standard AS ISO 10002-2006.
- 16.2 If a complaint regarding either the operation of the Syndicate, the conduct of the Syndicate Manager or the Racing Manager, including the amount of any fees, expenses or levies charged under this Deed, is received from an Owner then the Syndicate Manager:
- (a) must acknowledge the complaint in writing within thirty (30) days of receiving the complaint;
 - (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) apology; or

- (iii) compensation for any loss suffered by the complainant (The Syndicate Manager need only consider the possibility of offering compensation in circumstances where it is established by the complainant that the loss suffered by the complainant is directly as a result of either the professional misconduct or illegal act of the Syndicate Manager or Racing Manager).
- (e) must communicate with the complainant within ninety (90) 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.

16.3 If a complaint regarding the operation of the Syndicate by the Syndicate Manager is received from an Owner, then the Syndicate Manager will inform the complainant that the complainant may be entitled to have the matter determined by conciliation or arbitration by an External Dispute Body of which the Syndicate Manager is a member.

17. ASSESSMENT

- 17.1 The Syndicate Manager will be entitled at any time to appoint a person to review the performance by the Racing Manager of his or her obligations under this Deed and the Racing Manager will allow such person access to the appropriate Syndicate records.
- 17.2 All books, records and other documents relating to this Deed remain the property of the Owners provided that the Syndicate Manager will have full and unfettered right of access, inspection and copying of the same.

18. DEFAULT

- 18.1 If an Owner ("Defaulting Party"):
- (a) defaults in the performance of his or her obligations under this Deed and such default is not remedied within 14 days of being given written notice of such default by the Syndicate Manager;
 - (b) is declared by a Lead Regulator to be in-eligible to be an Owner under the Australian Rules of Racing; or
 - (c) is an insolvent under administration as defined in the Corporations Act or if a corporate goes into liquidation, receivership or has an administrator or a controller appointed;

then the Defaulting Party will not until such time as the default is rectified be entitled to exercise any of the rights conferred on the Owner by this Deed (including without limiting the generality of the foregoing the rights specified in clause 2.3 and the right to attend or vote at the Owners' meetings) and the Syndicate Manager may, at its discretion and without further notice, require the Defaulting Party in relation to his or her Shares, to sell all such Shares either to a current Owner or Owners, or other purchaser not currently an Owner, at the direction of the Syndicate Manager.

- 18.2 The purchase price for the Shares of the Defaulting Party will be the value of the Defaulting Party's Shares as determined by a recognised bloodstock agent nominated by the Syndicate Manager.
- 18.3 The purchase and sale of the Shares of the Defaulting Party will be effected as soon as practicable after the price has been determined and the Syndicate Manager will execute as trustee of the Defaulting Party all such documents and do all things as are necessary to complete such sale and purchase. For the purpose only of effecting a sale in consequence of default, the Owner in default in consideration of these presents hereby nominates, constitutes and appoints the Syndicate Manager his or her attorney under power of attorney to execute and do all such instruments and things as will be necessary to sell, convey and assure a buyer the Share or Shares so sold.
- 18.4 The rights conferred by clause 18.1 will not prejudice any other rights which the Syndicate Manager or a party to this Deed may have against the Defaulting Party.
- 18.5 The Defaulting Party will be entitled to receive any proceeds from the sale of Shares by the Syndicate Manager not required to be applied by the Syndicate Manager in rectifying the default of the Defaulting Party under the terms of this Deed.

19. TERMINATION

- 19.1 This Deed (as it may be amended from time to time) will have full force and effect until the first to occur of the following:
- (a) the Horse dies or is either retired from racing or sold in accordance with clause 19.2;
 - (b) the Owners by Extraordinary Resolution agree to terminate this Deed and bring the rights, powers and authorities therein to an end; or
 - (c) the Syndicate Manager applies to and obtains a direction by order of the court for the winding-up of the Syndicate.
- 19.2 The Horse will only be retired from racing, sold, or otherwise disposed of pursuant to and in accordance with the terms of an Extraordinary Resolution of the Owners. In the absence of an Extraordinary Resolution to the contrary, any sale other than by public auction must be at arms length and at a price not less than a valuation of a recognised bloodstock agent appointed by the Syndicate Manager. Subject to clause 13.8, upon the sale of the Horse, each Owner will thereafter be entitled to receive a share of the net proceeds determined by reference to the proportion that the number of Shares held by that Owner bears to the total number of Shares on issue.
- 19.3 Notwithstanding any recommendation of the Racing Manager (save in the event of emergency and to prevent the Horse from suffering) the Syndicate Manager will not permit the Horse to be destroyed by reason of its sickness, infection or injury or otherwise unless the destruction of the Horse will be certified in writing by a qualified veterinary surgeon as being a proper and necessary course to adopt in the circumstances.
- 19.4 All rights and obligations which have accrued prior to the date of termination will not be affected or prejudiced by termination.
- 9.5 Upon the termination of this Deed and the winding-up of the Syndicate, the Syndicate Manager will arrange for:

- (a) the Owners to each be paid their pro-rata share of the Syndicate Property;
- (b) the Accounts for the Accounting Period to be prepared (only required in the event of Syndicate Property being received and held by the Syndicate Manager); and
- (c) a copy of the Accounts to be forwarded to the Owners (only required in the event of Syndicate Property being received and held by the Syndicate Manager).

20. INDEMNITIES

- 20.1 The Owners hereby acknowledge that as between the Owners themselves all expenses and liabilities incurred under or as a consequence of being parties to this Deed are to be borne by them *pari passu* to the number of Shares held. Each Owner covenants with every other Owner to indemnify and keep indemnified such other Owners against all expenses and liabilities to the extent that such expenses and liabilities are borne otherwise than in the proportions stated in this Deed provided nothing in this clause requires any Owner to indemnify any other Owner in respect of expenses and liabilities incurred as a result of a particular Owner's negligence, breach or default under this Deed or contravention of any statute.
- 20.2 No Owner will pledge the credit of the Syndicate or hold himself out as acting on behalf of the other Owners and if an Owner purports to do so, the Owner will be personally liable for any debt so created.
- 20.3 The Racing Manager will indemnify the Syndicate Manager against all liabilities, claims, losses and expenses which may be incurred through the negligence, default, fraud or dishonesty of the Racing Manager, or any of the Racing Manager's employees, servants or agents in respect of the duties and obligations of the Racing Manager under this Deed.
- 20.4 The Syndicate Manager and the Racing Manager agree that:
- (a) the Syndicate Manager will remain liable to the Owners for any act or omission on the part of the Racing Manager, or any of the Racing Manager's employees, servants and agents as if such act or omission was an act or omission of the Syndicate Manager;
 - (b) the Syndicate Manager will indemnify the Racing Manager from and against any liability which the Racing Manager may incur in, or which may arise from the execution of this Deed or from properly carrying out the Racing Manager's duties or exercising the Racing Manager's powers under this Deed or from carrying out any directions given by the Syndicate Manager and from and against all losses which may be incurred through neglect or fraud on the part of the Syndicate Manager, or any of the Syndicate Manager's employees, servants and agents;
 - (c) as between the Syndicate Manager and the Racing Manager, the Syndicate Manager will not be liable for any act or omission on the part of the Racing Manager, or any of the Racing Manager's employees, servants and agents, and the Racing Manager will be liable to indemnify the Syndicate Manager against any loss or damage that the Syndicate Manager suffers, if any such act or omission involved the negligence, default, fraud or dishonesty of the Racing Manager, or any of the Racing Manager's employees, servants or agents.

- 20.5 The Owners acknowledge that expenses, costs and liabilities incurred by the Syndicate Manager and the Racing Manager in the course of complying with the terms of this Deed are to be borne by the Owners and paid accordingly.
- 20.6 Unless specifically contemplated by this Deed, no Owner may bind any other Owner to a transaction with any third party except with a written authority of that Owner enabling the first mentioned Owner to do so.

21. LIMITATION TO OWNERS RIGHT OF INDEMNITY

- 21.1 Save for any right of indemnity specifically preserved by this Deed, the Owners hereby expressly surrender, so far as the law permits, any rights which any of them, either individually or collectively, may have against the Syndicate Manager and/or the Racing Manager for loss or damage relating to the Horse, howsoever arising, including the right of an Owner to claim for economic loss and/or loss of opportunity to earn future income. Any such right not capable of surrender will be limited in damages to the initial cost-price component of the Horse included in the Application Price paid by an Owner in acquiring a Share or Shares under the initial PDS.

22. FURTHER ASSURANCE

- 22.1 Each Owner will at his or her own cost when called from time to time by the Syndicate Manager to do so, execute all such instruments and do all such acts and things as are necessary to give effect to the terms of this Deed.
- 22.2 If an Owner fails for a period of 30 days after notice of such failure has been given by the Syndicate Manager to perform any of his or her obligations under clauses 11.4, 18.3 or 22.1 then the Syndicate Manager will upon the expiration of the 30 days be deemed to be the duly appointed attorney of the person failing to perform his obligations under clauses 11.4, 18.3 or 22.1 with full power to execute such documents and to do such things as may be necessary to fulfil the obligation.

23. PPSA

- 23.1 The provisions of this Deed will constitute a Security Agreement under the PPSA.
- 23.2 Each Owner grants to the other Owners collectively and the Syndicate Manager, a charge over his, her or its Share (in the Horse and the Syndicate Property) to secure his, her or its obligations to not transfer, sell or otherwise dispose of, or create any Encumbrance in relation to, a Share, other than in accordance with the provisions of this Deed and the payment of all fees and costs payable by such Owner in accordance with the provisions of this Deed.
- 23.3 Each Owner consents to each Secured Party registering their Security Interest created under clause 23.2 on the PPSR.
- 23.4 Each Owner agrees that the Syndicate Manager may create a secured party group which includes all Secured Parties and, for the purposes of the registration, maintenance and enforcement of the Security Interests referred to in clause 23.3, may act as agent of each of the Secured Parties.
- 23.5 Each Owner agrees to execute any and all documents required to enable the Syndicate Manager to register a Financing Statement or Financing Change Statement as may be required from time to time on the PPSR, to perfect the Security Interests granted to the Secured Parties under this Deed and all fees and costs

associated therewith, plus any fees and costs incurred by or on behalf of the Syndicate Manager in relation to the maintenance, enforcement and/or discharge of such Security Interest are to be paid by the Owners in equal proportions.

- 23.6 Each Owner acknowledges that the Security Interest granted by the provisions of clause 23.2 is granted for value and to enable the Horse to be fed or developed and, as a result, is a priority interest in livestock pursuant to Section 86 of the PPSA.
- 23.7 Each Owner undertakes not to grant any Encumbrance to any other person in his, her or its Share (in the Horse and the Syndicate Property) without first obtaining the consent in writing of the Syndicate Manager, which consent shall be deemed to be consent of all the Secured Parties.
- 23.8 To the extent permitted under the PPSA each Owner agrees that Sections 142 and 143 of the PPSA will not apply to this contract or the Security Interest granted to the Secured Parties under this Deed and agrees to waive his, her or its rights to any of the following provided for in the PPSA:
- (a) receive notice of an intention to seize collateral under Section 123;
 - (b) receive notice of disposal of collateral under Section 130;
 - (c) receive information under a statement of account under Section 132 (3)(d);
 - (d) receive a statement of account if there is no disposal under Section 132(4);
 - (e) receive a notice of retention of collateral under Section 135; and
 - (f) receive a notice of verification statement under section 157.

24. NOTICES

- 24.1 Any notice, demand, consent or other document 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 transmission or email, in the case of:
- (e) the Syndicate Manager and the Racing Manager, to their respective addresses specified in Schedule 1; and
 - (f) an Owner to the Owner's address set out in the register of Owners.
- 24.2 Notice given in accordance with clause 24.1 will be deemed to have been duly served in the case of posting to an address within Australia at the expiration of 48 hours after the time of posting, or in the case of notice sent by airmail post to an address outside Australia, at the expiration of 7 days after the day of posting and in case of notice sent by facsimile transmission or email on the day after the date of transmission (including delivery of the email to the Owner's mail box on the Syndicate Manager's website).

25. NO REPRESENTATION

- 25.1 Each Owner acknowledges that no representation or warranty has been made by any party to this Deed in respect of either:

- (a) the physical soundness or suitability of the Horse either for racing or for breeding;
- (b) the reliability or adequacy of any insurance cover that may be arranged by the Syndicate Manager on behalf of the Owners; or
- (c) the future value or saleability (at any time during the term of this Deed) of either the Horse or a Share.

26. GOVERNING LAW

- 26.1 The law governing the terms of this Deed is the law of the Commonwealth of Australia and of the applicable state or territory specified in Schedule 1 and the forum for all disputes will be either the Federal Court of Australia or the Supreme Court of that place to the authority of and which, including any appellate jurisdiction thereof, the parties unconditionally submit and confine themselves.
- 26.2 The parties submit themselves to the jurisdiction of the Courts of the Commonwealth of Australia and that place for all proceedings arising from this Deed.

27. AMENDMENT

- 27.1 The Syndicate Manager may amend, vary, add to or delete from, this document by amending deed provided that where, in the opinion of the Syndicate Manager, the rights of the Owners may be adversely affected by any amendment, variation, addition or deletion, the Syndicate Manager may only make the amendment, variation, addition or deletion if the Owners by Special Resolution consent to the amendment, variation, addition or deletion.

28. EXECUTION

- 28.1 An Owner can apply to become a party to this Deed by executing an Application Deed in the form of Schedule 2 and forwarding it to the Syndicate Manager and becomes bound by the provisions of this Deed upon being registered as an Owner.

29. ADDITIONAL CONDITIONS

EXECUTED AS A DEED

SYNDICATE MANAGER

Executed by)

DEAN WATT THOROUGHBREDS PTY)
LTD T/AS DYNAMIC SYNDICATIONS)

ABN 64 134 481 539

in accordance with section 127 of the
Corporations Act 2001:



.....
Sole Director/ Sole Company Secretary

DEAN WARREN WATT

.....
Name of director/company secretary
(BLOCK LETTERS)

RACING MANAGER

Signed by)

DEAN WARREN WATT)

in the presence of:



.....
Signature of witness

PETER MICHAEL WAGSTAFF
JP178978

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



SCHEDULE 1 – REFERENCE SCHEDULE

- Item 1** Date: This Deed is dated the **Eighteenth day of April, 2013.**
-
- Item 2** Horse (Colt/Gelding/Filly/Mare): **COLT**
Sire: **EXCEED AND EXCEL**
Dam: **YOU SMARTY PANTS (USA)**
Foaled: **12/9/2011**
Colour: **BAY**
-
- Item 3** [clause 4] – Syndicate Manager:
DYNAMIC SYNDICATIONS (DEAN WATT THOROUGHBREDS PTY LTD T/AS) –
AFSL 336808
Postal Address: PO Box 2324 TAREN POINT NSW 2229
Attention: Dean Watt; Email: info@dynamicssyndications.com.au
Facsimile:02 9587 1522
-
- Item 4** [clause 5] – Racing Manager
DEAN WARREN WATT
Suite 1, 15-17 Forest Road HURSTVILLE NSW 2220
Postal Address: PO Box 2324 TAREN POINT NSW 2229
Attention: Dean Watt; Email: info@dynamicssyndications.com.au
Facsimile:02 9587 1522
-
- Item 5** [clauses 1.1 and 2.1] – Number of Shares: TWENTY (20)
-
- Item 6** [clauses 1.1 and 2.1] Commencement Date:
-
- Item 7** [clause 1.1] – Application Price – per Share: **\$7,650.00** (inclusive of GST)
-
- Item 8** [clauses 1.1 and 2.5] – Syndicate name: Dynamic Syndications #[insert name of
Horse when registered] Racing Syndicate
-
- Item 9** [clause 2.6] – Racing colours:
Set 1: White, Dynamic Syndications Logo, Red Cap
Set 2: White, Dynamic Syndications Logo, White Cap
Set 3 : Pale Blue, Red Sash, White Sleeves, Red Cap
Note: Sets 2 and 3 will only be applicable where two or three horses managed by
the Syndicate Manager are to compete in the same race. The horse which is
allocated the highest saddlecloth number by the Handicapper will carry Set 1 and
the next runner Set 2 and where applicable the third runner carries Set 3.
-
- Item 10** [clause 6.2] – Trainer: **PETER MOODY- CAULFIELD & ROSEHILL.**
-
- Item 11** [clause 4.10, 4.11, 4.12 and 4.13] – Remuneration of Syndicate Manager:
Clause 4.10:
(a) *Amount payable by each Owner of a 10% or 5% or 2.5% equity share
directly to the Syndicate Manager: \$720 plus GST per annum, by monthly
instalments in advance of \$60 plus GST. Owners of multiple shares of 20%
or higher will have the Fee capped at the equivalent of the 20% Fee.*

(b) *Amount payable by the Trainer directly to the Syndicate Manager (as a
rebate from training fees paid to the Trainer by each Owner, for services
provided by the Syndicate Manager to the Trainer in relation to the Horse):*

A fee equal to 7.5% of the flat advertised daily rate charged by the Trainer to each Owner pro rata for training the Horse. [This fee is currently estimated at approximately \$8.02 plus GST per day based on a base daily training rate of \$107].

Clause 4.11: 2% of Prizemoney – This % figure will increase to 5% of Prizemoney when the total gross value of Prizemoney, Breeders Bonus or Incentive Scheme payments and Trophies won by the Horse exceeds an amount equal to the total value of the Shares in the Horse sold under the original PDS.

Clause 4.12: 5% of Sale Price

Clause 4.13: 2 Lifetime Service Rights

Item 12	<u>[clause 16.3] – Syndicate Manager FOS Membership number: 11316</u>
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Item 13	<u>[clause 25] – Governing Law [state/territory]: New South Wales</u>
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SCHEDULE 2

DYNAMIC SYNDICATIONS RACING SYNDICATE

THOROUGHBRED Bay Colt 12/9/2011

By EXCEED AND EXCEL From YOU SMARTY PANTS (By Smarty Jones)

APPLICATION DEED – TO BE COMPLETED BY EACH APPLICANT FOR A SHARE

THIS DEED is made on 201 .

BY:

Applicant – Surname (or Company):		
Given name(s):	Date of birth:	
Street Address:		
Suburb:	State:	Postcode:
Telephone: (Bus)	Home:	Mobile:
Email:		
Tax file number:		
Australian Business Number (ABN), if applicable:		
If you have an ABN number, are you registered for GST (if applicable):		
Where ABN is not supplied, are you a hobby owner? Please indicate: Yes or No		

[All details specified in the above table must be provided]

IN FAVOUR OF: The Owners

AND: The Syndicate Manager

AND: The Racing Manager

RECITALS

- A. The Applicant has been accepted by the Owners and the Syndicate Manager to be an Owner of Shares under the Syndicate Deed.
- A. The Applicant has agreed to enter into this Deed for the benefit of each other party to the Syndicate Deed.

OPERATIVE PROVISIONS

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

EXECUTED AS A DEED

[APPLICANT - if an individual]

Signed by)
)
in the presence of:)

.....
Signature of witness

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

[APPLICANT - if a company with more than 1 director]

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)

[APPLICANT – if a company with only 1 director]

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

.....
Name of Sole Director/Sole Company
Secretary

.....
Sole Director/Sole Company Secretary

SCHEDULE 3

DYNAMIC SYNDICATIONS RACING SYNDICATE

THOROUGHBRED Bay Colt 12/9/2011

By EXCEED AND EXCEL From YOU SMARTY PANTS (By Smarty Jones)

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

THIS TRANSFER is made on 201 .

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 *Dynamic Syndications # [insert name of Horse when available] Racing Syndicate* constituted by the *Dynamic Syndications # [insert name of Horse when available] Racing Syndicate Deed* dated # [insert date] and made between the parties thereto to hold the same unto the Transferee subject to the conditions of the Syndicate Deed.

[See following pages for attestation clauses].

[Transferor - if an individual]

Signed)
)
in the presence of:)

.....
Signature of witness

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

[Transferor - if a company with more than 1 director]

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)

[Transferor – if a company with only 1 director]

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

.....
Name of Sole Director/Sole Company
Secretary

.....
Sole Director/Sole Company Secretary

[Transferee - if an individual]

Signed)
)
in the presence of:)

.....
Signature of witness

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

[Transferee - if a company with more than 1 director]

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)

[Transferee – if a company with only 1 director]

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

.....
Name of Sole Director/Sole Company
Secretary

.....
Sole Director/Sole Company Secretary

