

TERMS OF TRADE AND AGISTMENT AGREEMENT

BETWEEN

1. **WATERSHED PARTNERSHIP** (ABN: 47 289 906 143) of P O Box 1569, Moppity Road, Young, in the State of New South Wales ("Watershed")

AND

2. _____ (owner)

Of _____ (owner address
not PO Box)

The Owner and with full power and authority from each (if any) other Owner to enter into this Agreement HEREBY AGREES to send the Horse to Watershed and Watershed HEREBY AGREES to accept the Horse for provision of the Services **UPON THE FOLLOWING TERMS:-**

1. Definitions

"Act" means the Personal Property Securities Act 2009 as amended and in force from time to time.

"Claims" means all loss, injury, damages, economic loss, consequential loss, demands, proceedings, debts, judgments, legal costs arising from or out of injury, sickness, disease, quarantine restriction, embargo or death whilst in Watershed's care or whilst moving to or from any property operated by Watershed or its partners or whilst a Horse is at or moving to or from a sales venue, together with all claims for personal injury or for damage to property whilst on any property operated by Watershed or its partners or inspecting a Horse elsewhere whether arising at common law, in equity or by statute.

"Horse" means all of the Owner's horses at any property operated by Watershed or its partners from time to time including without limitation, those set out in the Schedule.

"Owner" means the abovenamed and includes each (if any) other owner, part owner, lessee, partner, syndicate member, syndicate manager, company, corporate trustee or other person who is legally recognised as an owner of a Horse, jointly and severally.

"Schedule" means the schedule to this Agreement.

"Services" means agistment and animal husbandry.

"Stud" means **WATERSHED PARTNERSHIP** (ABN: 47 289 906 143) and includes its partners, servants, agents and contractors.

"Watershed" or "Bowness" means the thoroughbred stud properties owned, operated or used by the Stud from time to time.

2. Owner

2.1. This Agreement will not be assigned or transferred by the Owner.

2.2. If this Agreement is signed by one of several owners or by an agent or representative for the Owner, or if the Owner is a company, the undersigned:

a. warrants that:

i. he/she/it will perform all obligations of the Owner under this Agreement;

ii. he/she/it has the authority of all the Owners to enter into the Agreement;

iii. he/she/it will fully disclose to the Owner the terms of this Agreement and any commission paid or payable by the Stud to the undersigned in connection with this or any other relevant dealing; and

b. guarantees the full and prompt payment of all the monies owed in respect to the Horse as well as the full and prompt performance of obligations by the Owner;

2.3. The warranty will remain in effect regardless of whether the agent or representative retains his or her status after signing this Agreement.

3. Charges

3.1. The fees for the season are set out in the Schedule and are available in hard copy upon request. The Stud may prospectively vary the fees from time to time and will notify the Owner in writing or by submission of tax invoice.

3.2. The Owner appoints the Stud as its agent to make all decisions with respect to the care and well being of the Horse and is solely responsible for the payment of:

a. transport costs for the Horse to and from the Stud;

b. all treatments, drenching, examinations, procedures, operations, swabs and medicines, DNA testing, micro chipping and branding administered to the Horse whilst at the Stud and in the absolute discretion of the Stud. Its employees, contractors servants and agents. The Owner authorises the Stud to obtain these services on its behalf as and when the Stud sees fit. There is no warranty given by the Stud as to the competence or judgment of any third party employed by it to perform such services;

c. services and supplies including but not limited to those of farrier, horse dentist, chiropractor, veterinarian. There is no warranty given by the Stud as to the competence or judgment of any third party engaged by it to perform such services.

d. all costs of or incidental to entering the Horse in any sale including any commission, promotional fee, passed in commission and the Owner further agrees to pay to the Stud all sales accommodation, sales entertainment, sales costs, advertising, marketing and any other costs incurred by the Stud and referable pro rata to the Owner's horse(s).

3.3. The Owner agrees to pay to the Stud all amounts due to it and/or third parties who have provided services or supplies to the Horse prior to the removal of the Horse from the Stud. The Owner authorises the Stud to deduct such amounts due to it or third parties from any sale proceeds or insurance proceeds for the Horse.

3.4. If payments due to the Stud are not made within 30 days of the due date, interest will be charged from the due date of invoice to date of receipt of payment at the rate of 2% per month. All costs and expenses incurred by the Stud in connection with debt recovery action will be payable by the Owner including indemnity legal costs on a solicitor/client basis.

3.5. The Stud will be entitled to retain possession of any mare return, document of description and all foal cards, or replacement foal cards until all monies (including interest) and any collection or legal costs are paid pursuant to this Agreement.

4. Security Agreement – Personal Property Securities Act 2009

4.1. This Agreement constitutes a security agreement for the purposes of the Act and where the context requires the words used in this Agreement should be given the same meaning as in the Act.

4.2. As security for fees or any other monetary obligations, the Owner grants to the Stud a security interest in the Horse.

4.3. The Stud will be entitled to register a financing statement with the Personal Property Securities Register ("PPSR") and the Owner undertakes to:

a. promptly sign any further documents and/or provide any further information requested by the Stud to complete and register any financing statement or any financing change statement with the PPSR; and

b. indemnify, and upon demand reimburse, the Stud for all expenses incurred in searching, registering and/or discharging a financing statement or any other document with the PPSR and any reasonable enforcement fees and expenses of the security agreement;

4.4. The Owner covenants that it will not grant another security interest in the Horse to another person or entity without first providing 14 days written notice to the Stud.

4.5. The Owner waives its rights as a debtor or Grantor under sections 95, 120, 121(4), 123(2), 129(2)(a), 130, 132(3)(d), 132(4), 135 and 137(2) of the Act.

5. Study Rights To Dispose Of the Horse If Fees Unpaid

5.1. If:

a. the Stud retains possession of the Horse; and

b. Fees or other monetary obligations are due but unpaid to the Stud; and

c. the Stud has made demand in writing to the Owner for payment of those monies; and

d. the Stud has not received such payment within the timeframe specified in the demand;

then, the Owner agrees that the Stud may at its discretion either:

i. retain possession of the Horse and have the ownership transferred to the Stud; or

ii. dispose of the Horse and retain all or part of the proceeds of the disposal in or towards payment of the fees or other monetary obligations.

5.2. If:

a. the Owner retains possession of the Horse; and

b. Fees or other monetary obligations are due but unpaid to the Stud; and

c. the Stud has made demand in writing to the Owner for payment of those monies; and

d. the Stud has not received such payment within the timeframe specified in the demand;

then, the Owner acknowledges and agrees that the Stud is entitled to seize the Horse pursuant to section 138C of the Act and once the Horse is in the Stud's possession the Owner agrees that the Stud may at its discretion either:

i. retain possession of the Horse and have the ownership transferred to the Stud; or

ii. dispose of the Horse and retain all or part of the proceeds of the disposal in or towards payment of the fees or other monetary obligations.

6. Verification Statement

The Owner waives its rights under section 157 to receive a verification statement due to the Horse being "commercial property" pursuant to the Act.

7. Transfer of Title

The Owner covenants, and agrees that it will not, nor will it agree to sell, assign or transfer the Horse until he/she/it has made full payment of any fees and all other monetary obligations to the Stud.

8. Possession

The Owner acknowledges pursuant to section 86(1) of the Act that at the time the security interest is made:

a. it is granted for value;

b. it is granted to enable amongst other things the Horse to be fed and developed; and

c. the Horse was held by the Stud.

9. Owners Warranty & Responsibilities

The Owner covenants with the Stud that:-

- a. The Owner is the owner of the Horse with full power and authority from every (if any) other Owner to enter into the Agreement.
- b. The information set out in the Schedule is and will remain true and correct.
- c. The Owner must correctly identify the Horse on delivery to or collection from the Stud and provide the Stud with Stud Book identification document for the Horse.
- d. the Horse is not fractious, is free from disease or infection, that all vaccinations are up to date and, the Horse, if a mare, is in sound breeding condition.
- e. Inspection of the Horse by the Owner must be by appointment on reasonable notice.
- f. The Owner will provide at least 48 hours notice to the Stud before removing the Horse.
- g. Upon leaving the Stud the Horse will be deemed to have been delivered to the Owner.
- h. The Stud will not be responsible for any problems arising out of delivery of a wrong Horse to or from the Stud.

10. Insurance

- 10.1. The Owner will arrange such insurance as he/she/it deems necessary for and in respect of the Horse.
- 10.2. The Owner must notify the Stud of the existence and terms of any insurance policies and will provide copies if requested by the Stud.
- 10.3. The Stud is not responsible for any incident or any actions which might void or diminish the liability of the insurer under any insurance policy.

11. Irrevocable Authority

For good and valuable consideration the Owner hereby provides an irrevocable instruction, direction and authority to any sales company who sells a Horse to pay any proceeds of sale of the Horse and to any insurance company to pay any proceeds of any insurance policy for the Horse to the Stud, without requiring further notification to the Owner. The acceptance of such proceeds by the Stud will be without prejudice as to the Stud's rights to pursue the Owner for any shortfall or monies owed, or other damages. The provision of a certified copy of this document to the sales company or insurance company will be good and sufficient evidence of this authority.

12. Hold Blameless Acknowledgement – Release & Indemnity

- 12.1. The Owner acknowledges that the breeding and rearing of thoroughbred horses is a high-risk activity and that thoroughbred horses are prone to injury.
- 12.2. The Owner agrees that he/she/it has been provided with the opportunity to inspect the Stud and that The Stud is in a fit and proper condition for the purpose of all functions to be performed by the Stud under this Agreement. The Stud will endeavour to provide all care, good husbandry and attention to the Horse but will not be liable for any negligent act or Claims.
- 12.3. The Horse will be and remain under the Stud's care, custody and/or control entirely at the Owner's risk. The Owner and the Owner's invitees will attend the Stud entirely at their own risk. The Owner agrees to indemnify and keep indemnified the Stud and its invitees and release them from all Claims of whatsoever nature or howsoever caused, whether caused by misconduct, fault, recklessness or negligence of the Stud or invitees.
- 12.4. The only conditions and warranties which are binding on the Stud in respect of the Services are those imposed by statute (including the Competition and Consumer Act 2010).
- 12.5. To the extent permitted by statute, the liability (if any) of the Stud arising from the breach of the conditions or warranties referred to in clause 12.4 are, at the Stud's option, limited to and completely discharged by the re-supply of the Services, or if the Services cannot be resupplied for any reason, to the cost of having the Services or equivalent Services supplied again.

13. Lien and Power of Attorney

- 13.1. The Owner grants the Stud a lien in the Horse, all insurance policies relating to the Horse, all stud book returns, all mare and foal cards and replacement mare and foal cards and the proceeds from the sale of the Horse.
- 13.2. For good and valuable consideration, the Owner appoints the Stud as its Attorney:
 - a. to execute and file any liens, irrevocable authorities, all and any notices and documents under the Act or to the Stud Book, in any jurisdiction or to any entity believed to be appropriate to secure any obligation of the Owner to the Stud, whether arising by the owing of fees or monetary obligations or otherwise.
 - b. without notice to the Owner, take possession of the Horse and either retain the Horse in lieu of the obligation, or re-sell the Horse privately or publicly in a manner in its sole discretion the Stud thinks fit, in which event the Stud will credit the net proceeds of the sale, after first deducting expenses of sale and of maintaining the Horse, against the Owner's monetary obligations to the Stud. This right is in addition to all other rights to which the Stud is entitled under law.

14. Caveatable Interest

In the event that the Owner fails to pay the fees and/or monetary obligations in accordance with this Agreement, or otherwise discharge its obligations, then the undersigned and Owner, charges all its right, title and interest to any property now or in the future owned or partly owned, solely or jointly in favour of the Stud, to better secure the fees and/or monetary obligations outstanding, with the due and punctual observance and performance of all of the obligations of the Owner contained in this Agreement. The Owner acknowledges that the Stud may at its discretion, register a caveat on the property in respect of the interest conferred on it under this clause. In the event that the Stud is required to exercise its right under this clause against the Owner, then the Owner grants to the Stud the right to appoint a Receiver and sell the property.

15. Legal Advice

The Owner represents and warrants that he/she/it has obtained independent legal advice or has been given the opportunity to seek legal advice in relation to the terms and effect of this Agreement.

16. Notice

- 16.1. Any notice required or permitted to be given by either party to the Agreement must be in writing and served by post or by hand delivery or by e-mail or by facsimile to that party's contact details as provided for in the Agreement or such other contact details as notified in writing to the other party.
- 16.2. Any notice given pursuant to clause 16.1 will be deemed served 3 business days after posting or upon a signed acknowledgement of receipt upon being hand delivered or upon receipt of a successful facsimile confirmation or upon receipt of an e-mail delivery receipt notification notwithstanding that such notice may not have been received by that party.

17. Amendments

The Stud reserves the right to prospectively amend the Agreement at any time by notice in writing to the Owner and that change will take effect from the date on which the Stud gives notice to the Owner.

18. General

- 18.1. This Agreement is assignable by the Stud for purposes of enforcement.
- 18.2. If any provision of this Agreement is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 18.3. The failure by the Stud to enforce any provision of this Agreement will not be treated as a waiver of that provision, nor will it affect the Stud's right to subsequently enforce that provision.
- 18.4. This Agreement is governed by and construed in accordance with the laws applicable in New South Wales. The parties submit to the exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Privacy Act 1988

- 19.1. The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.
- 19.2. The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
 - a. to assess an application by the Customer; and/or
 - b. to notify other credit providers of a default by the Customer; and/or
 - c. to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - d. to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 19.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
 - a. the provision of Goods; and/or
 - b. analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - c. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - d. enabling the collection of amounts outstanding in relation to the Goods.
- 19.5. The Supplier may give information about the Customer to a CRB for the following purposes:
 - a. to obtain a consumer credit report;
 - b. allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.6. The information given to the CRB may include:
 - a. personal information as outlined in 19.1 above;
 - b. name of the credit provider and that the Supplier is a current credit provider to the Customer;
 - c. whether the credit provider is a licensee;
 - d. type of consumer credit;
 - e. details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - f. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - g. information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;
 - h. advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7. The Customer shall have the right to request (by e-mail) from the Supplier:
 - a. a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and

- b. that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8. The Supplier will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9. The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Acceptance

The Owner's acceptance of these terms which the Owner hereby acknowledges he/she/it has read on or before signing this Agreement either in hard copy or as posted on the Stud's website is signified by signing this Agreement or by delivering the Horse to the Stud, or to the sale or inspection venue, or by permitting the Horse to be and remain at the Stud], or under the control and custody of the Stud, in any case after the date of this Agreement.

Dated this _____ day of _____ 20__ __

Signed by or for and on behalf of the Owner

Signed by the Stud

Print Full Name

Print Full Name

Please return this Agreement to:

Bowness Stud

Phone:

0428821390

PO Box 1569

Fax:

02 6386 7323

YOUNG NSW 2594

Email:

office@bownessstud.com.au

SCHEDULE

HORSES

ASB REGISTERED NAME:		YEAR OF BIRTH:	
If the Horse is a mare, is she in foal?			

ASB REGISTERED NAME:		YEAR OF BIRTH:	
If the Horse is a mare, is she in foal?			

ASB REGISTERED NAME:		YEAR OF BIRTH:	
If the Horse is a mare, is she in foal?			

ASB REGISTERED NAME:		YEAR OF BIRTH:	
If the Horse is a mare, is she in foal?			

FEES (AS OF 1ST AUGUST 2017)
(exclusive of GST)

Dry Mare	\$	18	per day
Wet Mare	\$	22	per day
Yearling	\$	22	per day
Weanling	\$	20	per day
Speller	\$	23	per day
Stabled & Extra Care	\$	35	per day
Yard fed	\$	28	
Yearling Sale Preparation	\$	65 + sale expenses	per day
Weanling Sale Preparation	\$	50 + sale expenses	per day
Mare or Racehorse Sale Preparation	\$	35 + sale expenses	per day
Foaling Fee	\$	440	
Weaning Fee	\$	550	

SALE EXPENSES - \$2,500+ PER HORSE PER SALE

OWNER DETAILS FOR INSERT HORSE NAME:

Registered Owner/s (and percentages) and address

<input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust				
First Name: _____		Middle Name: _____		Last Name: _____
Date of Birth: _____		Drivers Licence Number: _____		
Company / Business / Trust Name: _____				
ASB Contact Breeder Number: _____				
Street Address: _____				
		State: _____	Postcode: _____	
Telephone: _____		Mobile: _____		
Fax: _____		Email: _____		

Your preferred method of contact: _____ Mail: _____ Fax: _____ Email: _____

Bank Account Name: _____

Bank: _____ BSB: _____ Account Number: _____

Ownership Percentage of Horse % _____ Invoice % _____

Individual **Company** **Partnership** **Sole Trader** **Trust**

First Name: _____ Middle Name: _____ Last Name: _____

Date of Birth: _____ Drivers Licence Number: _____

Company / Business / Trust Name: _____

ASB Contact Breeder Number: _____

Street Address: _____

State: _____ Postcode: _____

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Your preferred method of contact: _____ Mail: _____ Fax: _____ Email: _____

Bank Account Name: _____

Bank: _____ BSB: _____ Account Number: _____

Ownership Percentage of Horse % _____ Invoice % _____

Individual **Company** **Partnership** **Sole Trader** **Trust**

First Name: _____ Middle Name: _____ Last Name: _____

Date of Birth: _____ Drivers Licence Number: _____

Company / Business / Trust Name: _____

ASB Contact Breeder Number: _____

Street Address: _____

State: _____ Postcode: _____

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Your preferred method of contact: _____ Mail: _____ Fax: _____ Email: _____

Bank Account Name: _____

Bank: _____ BSB: _____ Account Number: _____

Ownership Percentage of Horse % _____ Invoice % _____

Individual **Company** **Partnership** **Sole Trader** **Trust**

First Name: _____ Middle Name: _____ Last Name: _____

Date of Birth: _____ Drivers Licence Number: _____

Company / Business / Trust Name: _____

ASB Contact Breeder Number: _____

Street Address: _____

State: _____ Postcode: _____

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Your preferred method of contact: _____ Mail: _____ Fax: _____ Email: _____

Bank Account Name: _____

Bank: _____ BSB: _____ Account Number: _____

Ownership Percentage of Horse % _____ Invoice % _____

Individual **Company** **Partnership** **Sole Trader** **Trust**

First Name: _____ Middle Name: _____ Last Name: _____

Date of Birth: _____ Drivers Licence Number: _____

Company / Business / Trust Name: _____

ASB Contact Breeder Number: _____

Street Address: _____

State: _____ Postcode: _____

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Your preferred method of contact: Mail: Fax: Email:

Bank Account Name: _____

Bank: _____ BSB: _____ Account Number: _____

Ownership Percentage of Horse % _____ Invoice % _____

Individual **Company** **Partnership** **Sole Trader** **Trust**

First Name: _____ Middle Name: _____ Last Name: _____

Date of Birth: _____ Drivers Licence Number: _____

Company / Business / Trust Name: _____

ASB Contact Breeder Number: _____

Street Address: _____

State: _____ Postcode: _____

Telephone: _____ Mobile: _____

Fax: _____ Email: _____

Your preferred method of contact: Mail: Fax: Email:

Bank Account Name: _____

Bank: _____ BSB: _____ Account Number: _____

Ownership Percentage of Horse % _____ Invoice % _____