



**SERVICE RIGHT AND PURCHASE AGREEMENT 2022 STUD SEASON**

**ALL FIELDS IN THIS SECTION NAMED AS SECTION 1 AND THE RELEVANT ATTACHED FORMS THERE AFTER, MUST BE COMPLETED. THE MARE OWNER MUST SIGN THE AGREEMENT. THE AGENT FOR THE MARE OWNER OR THE MARE OWNER MUST RETURN PRIOR TO THE STUD FARM/STUDMASTER PROVIDING A SERVICE TO THE NOMINATED MARE.**

***This agreement is dated:***

***For the stud season 2022.***

**Stallions: SCORPZ (NZ) & LAST TYPHOON**

**STALLION:** \_\_\_\_\_

**Mare:** \_\_\_\_\_

Mares pregnancy status: (Circle)                      In foal                      empty                      maiden

**Service Fee and payment terms:**

***Advertised service fee: SCORPZ \$5,500 inc GST***

***LAST TYPHOON \$3,300 inc GST***

Walk on fees: \$100 (only applicable to re breeds and "free" services.

Any applicable discounts:

**Total agreed service fee:** \_\_\_\_\_

**Payable upon 45 day positive pregnancy scan.**

Free Return: Yes (see terms and conditions attached) \$100 walk on fee applies

Stud Farm/ Studmaster:

Platinum Thoroughbreds Victoria

ABN: 84 871 496 510

Street Address: 215 Sungarrin Road, Hilldene

Postal Address: PO Box 193 Seymour Vic 3660

Contact person: Rene Hoefchen or Sarah Pfeiffer

Phone: 0417573661

Email: [info@platinumthoroughbredsvictoria.com](mailto:info@platinumthoroughbredsvictoria.com) or

[sarah@platinumthoroughbredsvictoria.com](mailto:sarah@platinumthoroughbredsvictoria.com)

**MARE DETAILS:**

Name of mare: \_\_\_\_\_ Year foaled: \_\_\_\_\_

Life No: \_\_\_\_\_ ASB Microchip No. \_\_\_\_\_

Sire: \_\_\_\_\_ Dam: \_\_\_\_\_

Encumbrance: (definition in terms and conditions attached)

Please provide PPSR number if applicable:

Details of previous stud and service used last season (or last service where applicable):

Name of current insurer: (of mare and or foal where applicable) \_\_\_\_\_

Mare manager or Owner name and phone number: \_\_\_\_\_

**Mare or Managing owner (for Multiple owners) Details**

Full name: (if individual) \_\_\_\_\_

DOB: \_\_\_\_\_

Company Name: \_\_\_\_\_

ACN: \_\_\_\_\_ GST Registered: (circle) YES NO

Residential Address of managing owner: \_\_\_\_\_

\_\_\_\_\_

Postal Address of managing owner: \_\_\_\_\_

\_\_\_\_\_

Preferred contact name: \_\_\_\_\_

Phone number: \_\_\_\_\_ Alternative Phone number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Please state all mare owners names and percentage of ownership obtained below:*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agent details: \_\_\_\_\_

Full name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Postal address: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Email: \_\_\_\_\_

Contact number: \_\_\_\_\_

**EXECUTED AS AN AGREEMENT**

\_\_\_\_\_ *Signature of stud master or studs authorised person*

PRINT NAME HERE \_\_\_\_\_

Signed by witness \_\_\_\_\_

Name: \_\_\_\_\_

**SIGNED BY MARE OWNER (Or authorised manager or managing owner)**

\_\_\_\_\_ *Signature of Mare owner or authorised person named above*

Signed by witness \_\_\_\_\_ Name: \_\_\_\_\_



**Platinum Thoroughbreds Victoria Walk- On Booking and information sheet.**

**When Booking mares for a walk-on cover, please ensure adequate notice is provided to the stud via phone.**

**No mare shall be permitted to walk on the farm or to be covered until all forms are completed in full and returned to the stud manager, via email, or post with the details of the stud mentioned on page 1 of the service contract attached.**

**The studmaster will negotiate an appropriate cover time with you upon returning forms and booking the mare in.**

**Recent Clitoral swabs showing negative results for PSEUDOMONAS and KLEBSIELLA prior to initial cover of mare and prior to each cover there after if a mare is covered by a different stallion in the same season.**

**The mare will not be permitted to be covered by stallion without these results being received by the office, these can be emailed directly to [info@platinumthoroughbredsvictoria.com](mailto:info@platinumthoroughbredsvictoria.com)**

**Mare identification must be available on the Australian Studbook and all other requirements met before mare is to 'walk-on'**

**Duration on farm**

**If you require long term agistment and care for your mare, please contact the stud on [sarah@platinumthoroughbredsvictoria.com](mailto:sarah@platinumthoroughbredsvictoria.com) to book an appropriate agistment package. We offer long term broodmare management and can assist in all of the conception and birthing process as well as assisting in other farm walk ons.**

**Please notify us if your mare and or foal is exposed to any disease or infections, including (but not limited to) strangles, scours, rotavirus, EVH. We have procedures that ensure the minimisation of spreadable diseases, viruses and infections to reduce the possible risk of further spread and contamination between stud farms.**

**ALL mares coming from NSW and QLD must be actively vaccinated before coming to Platinum Thoroughbreds. Mares must have received the 2 initial vaccines prior to arrival on farm, and they must be visible on the HENDRA register.**



**INVOICING DETAILS:**

Mare: \_\_\_\_\_

Invoice name: \_\_\_\_\_

\_\_\_\_\_

Company Name *(if applicable)* \_\_\_\_\_

GST: \_\_\_\_\_

Residential address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postal address: \_\_\_\_\_

\_\_\_\_\_

***Please fill out a form for each owner required for invoicing with the percentage clearly marked. 100% of the invoicing must be accounted for prior to mare being covered.***

Percentage or value *(in AUD)* of service fee covered by this owner. \_\_\_\_\_

Signed: \_\_\_\_\_

**Please advise the stud office of an early 15/16-day scan and the final 45 day scan. If the mare is not in foal at the end of the 2022 season, we require a negative pregnancy test to be sent to the office if the mare owner fails to provide this we will assume the mare is in foal and will invoice accordingly.**

## SERVICE RIGHT SALE AND PURCHASE AGREEMENT - TERMS AND CONDITIONS

This Agreement will operate from the Effective Date.  
**BETWEEN: The Studmaster**  
**AND: The Mare Owner**

### WHEREAS:

A. The Studmaster and the Mare Owner have agreed to the sale and purchase of the Service Right and to the Studmaster providing the Mare with a Stud Service in accordance with this Agreement.

### BY THIS AGREEMENT it is agreed as follows: 1. SALE AND PURCHASE OF SERVICE RIGHT

1. 1.1 The Studmaster agrees to sell and the Mare Owner agrees to buy the Service Right.
2. 1.2 This Agreement is irrevocable and legally binding upon the parties from the Effective Date.
3. 1.3 Despite any provision to the contrary set out in this Agreement, if the Studmaster is selling the Service Right as the authorized agent of the Stallion Owner, then the Studmaster, the Stallion Owner, or nominee, may invoice and will be entitled to be paid the Service Fee. Furthermore, the provisions limiting the Mare Owner's right of indemnity by the Studmaster and securing the performance by the Mare Owner of the Mare Owner's payment obligations will also apply for the benefit of the Stallion Owner.
4. 1.4 MULTI PARTY OWNERSHIP ARRANGEMENTS If multiple parties own the Mare:
  1. (a) this Agreement binds them both individually and collectively; and
  2. (b) they are jointly and severally liable for the Service Fee, together with all other fees and charges, payable by the Mare Owner under this Agreement;

REGARDLESS of whether they are named in Schedule 1 or have signed this Agreement, UNLESS otherwise agreed in writing by the Studmaster.

5. 1.5 DIRECTOR(S) GUARANTEE

If the Mare Owner is a company the director(s) of the company must personally guarantee the performance by the company of its material obligations, including payment obligations, under this Agreement, by completing and signing the guarantee set out on page 8.

### 2. MARE OWNER'S OBLIGATIONS

1. 2.1 MARE OWNER TO DELIVER MARE TO THE STUD The Mare Owner must:
  1. (a) complete all procedures and documentation required by the Studmaster prior to delivering the Mare to the Stud; and
  2. (b) deliver the Mare to the Stud on the day and at the time specified by the Studmaster for the purpose of the Mare being provided with a Stud Service by the Stallion; and
2. 2.2 The Studmaster will then either:
  1. (a) permit the Mare and any Progeny to remain on agistment at the Stud; or
  2. (b) require the Mare Owner to remove the Mare and any Progeny from the Stud. The Mare Owner must strictly and promptly comply with any

direction of the Studmaster at any time to remove the Mare and any Progeny from the Stud.

3. 2.3 If the Mare Owner removes the Mare and any Progeny from the Stud after the Mare has been provided with a Stud Service, but prior to its pregnancy status being determined by the Studmaster's attending veterinarian, the Mare Owner must, on or about 45 days after the date of the Stud Service, have the Mare pregnancy tested by a veterinarian acceptable to the Studmaster and provide to the Studmaster a copy of the veterinary report certifying the Mare's pregnancy status.
4. 2.4 The Mare will be deemed to be pregnant at 45 days, if either:
  1. (a) the Mare returns a positive (in-foal) pregnancy test when tested by the Studmaster's attending veterinarian on or about 45 days after being provided with a Stud Service; or
  2. (b) the Mare Owner fails to provide a veterinary report in accordance with the provisions of clause 2.3 certifying that the Mare has tested negative (not in-foal).

### 3. STUDMASTER'S OBLIGATIONS

STUDMASTER'S ACCEPTANCE OF MARE AT THE STUD The Studmaster will:

1. (a) take possession and control of the Mare for the purpose of providing the Mare with a Stud Service by the Stallion; and
2. (b) exercising reasonable care, skill and diligence, manage and carry out those activities associated with providing the Mare with a Stud Service in relation to the breeding of thoroughbred horses commercially; and (c) provide, [or as the agent of the Mare Owner procure the services of such Third-Party Service Providers as the Studmaster may consider necessary to provide], services in relation to the Mare and any Progeny, including (without limitation) dentistry, farriery, veterinary care and transportation.

### 4. SERVICE FEE, OTHER FEES AND CHARGES AND ADDITIONAL TERMS

#### 4.1 SERVICE FEE

If the Mare is pregnant at 45 days after being provided with a Stud Service by the Stallion, the Studmaster will be entitled to render a Tax Invoice for the Service Fee, which the Mare Owner must pay by the date specified in Schedule 1.

#### 4.2 OTHER FEES AND CHARGES

The Mare Owner must pay or reimburse to the Studmaster, or Third Party Service Provider, in accordance with such party's normal trading terms, all fees and charges incurred in transporting the Mare or Progeny to and from the Stud and in caring for and maintaining the Mare or Progeny while at the Stud, including (without limitation) agistment, dentistry, farriery and veterinary care.

#### 4.3 FORFEITURE OF SERVICE RIGHT

If either the Studmaster refuses to provide the Mare with a Stud Service for any of the reasons specified in clause 12.1(d) and (e), or the Stallion is for any reason not available or unable to provide the initial Stud Service, the Service Right will be forfeited by the Mare Owner, in which case, if the Service Fee has already been paid to the Studmaster by the Mare Owner, it will immediately be refunded.

#### 4.4 FREE RETURN

The following provisions will apply if the terms of the Stud Service specified in Schedule 1 include a Free Return:  
(a) if the Mare does not produce a viable Foal [a foal that lives for 24 hours] from the Stud Service, as certified by a veterinarian acceptable to the Studmaster, the Studmaster will make available to the Mare Owner a Stud Service free of any Service Fee ("Free Return") during the Stud Season of the year immediately following the initial Stud Service;

(b) the Free Return must be utilised by the Mare Owner during that Stud Season or will otherwise be forfeited;

(c) the Mare Owner may either return the Mare, or nominate a substitute mare, for the Free Return, provided that such substitute Mare is acceptable to the Studmaster, at the Studmaster's discretion;

(d) if the Mare is sold or otherwise disposed of while retaining the pregnancy resulting from the initial Stud Service, as certified by a veterinarian acceptable to the Studmaster at the time of such sale or disposition, the entitlement to a Free Return will transfer with the Mare to the purchaser or acquirer thereof; and

(e) any entitlement to a Free Return will be conditional upon the Mare Owner paying to the Studmaster and any Third Party Service Provider, as and when due, the Service Fee and all other fees and charges payable by the Mare Owner, and will otherwise be forfeited.

**4.5 STALLION NOT AVAILABLE OR UNABLE TO PROVIDE FREE RETURN**  
If the Stallion is for any reason either not available or unable to provide a Free Return, then the Mare Owner will forego the entitlement to a Free Return.

#### 4.6 STUDMASTER MAY WEAN PROGENY

1. (1) The Studmaster may at any time wean any Progeny and undertake any ASB identification and parentage validation procedures, including branding. However, the Studmaster may refuse to do so while the Mare Owner is in breach of any payment obligation to the Studmaster or Third-Party Service Provider under this Agreement.
2. (2) The Studmaster's normal agistment terms and conditions will apply to any Progeny which the Studmaster permits to remain on agistment at the Stud after weaning

#### 4.7 RELOCATION OF MARE OR PROGENY

If the Studmaster at any time arranges for the Mare or Progeny to be relocated to another property which is not operated by the Studmaster, such arrangement will be made by the Studmaster as the Mare Owner's agent and the Studmaster will no longer be responsible to the Mare Owner either for the care and well-being of the Mare or Progeny, or for fees and charges incurred.

Stud Service in accordance with normal standards

#### 4.8 ASB REGISTRATION AND DECLARATION OF PATERNITY

The Studmaster may [and is expressly and irrevocably authorized by the Mare Owner] to block the registration of paternity of the Resultant Progeny and the issuing of a Declaration of Paternity by the ASB until all of the Mare Owner's payment obligations under this Agreement are satisfied.

#### 5. AGENCY

**The Studmaster will not have any obligation to pay commission in relation to this transaction to any third party agent, unless the Studmaster specifically agrees thereto and the name of the agent and the commission are specified in Schedule 1. Any provision of this Agreement requiring the Studmaster to pay commission will be conditional upon the Mare Owner paying the full amount of the Service Fee by the due date specified in Schedule 1, failing which any entitlement to commission will be forfeited.**

#### 6. VISITATION

**The Mare Owner may, by appointment with the Studmaster, attend at the Stud for the purpose of inspecting the Stallion, the Mare, or Progeny. Visitation will be entirely at the Mare Owner's own risk, assumed voluntarily. The Studmaster will not be liable for the materialization of a risk associated with such visitation, howsoever arising, that is either an Inherent Risk, including (without limitation) accident or injury, or any other risk that was either insignificant or not reasonably**

**foreseeable involving or sustained by either the Mare Owner or any other party who may accompany the Mare Owner when visiting the Stud.**

#### 7. LIMITATIONS TO MARE OWNER'S RIGHT OF INDEMNITY

7.1 Neither the Studmaster nor any Third-Party Service Provider will be liable to indemnify the Mare Owner for damages for harm suffered by the loss or diminution in value of the Mare or any Progeny through market forces, or if it dies, or its value is diminished because of:

(a) the materialisation of a risk, howsoever arising, that is either

1. (i) an Inherent Risk, including (without limitation) accident, illness, injury, infertility or sub-fertility, or natural cause; or
2. (ii) any other risk that was insignificant or not reasonably foreseeable;

while the Mare, including any Progeny, was at the Stud for the purpose of the Mare being provided with a Stud Service by the Stallion; or

#### 8. STUDMASTER'S LIEN AND CHARGE

8.1 The Mare Owner grants to the Studmaster a Lien and Charge over the Mare, the Resultant Progeny, and Proceeds, as security for the proper performance of the Mare Owner's obligations under this Agreement, including (without limitation):

(a) to pay the Service Fee and all other fees and charges payable under this Agreement; and

(b) not to transfer, sell or otherwise dispose of, or create any Encumbrance in relation to, the Mare or the Resultant Progeny, other than in accordance with the provisions of this Agreement.

8.2 This Lien or Charge:

1. (a) entitles the Studmaster to:
  1. (i) possession of the Mare or the Resultant Progeny (including the Mare or Progeny ID card or any replacement card) until all amounts due and payable by the Mare Owner under this Agreement are paid; and
  2. (ii) retake possession of the Mare or the Resultant Progeny (including the Mare or Progeny ID card or any replacement card) where the Studmaster does not have such possession at the time when the Mare Owner's breach of this Agreement occurs; and
2. (b) includes the right of the Studmaster to:
  1. (i) give a direction for the payment of proceeds; and
  2. (ii) sell the Mare or the Resultant Progeny or appoint a receiver to do so;
3. when the Mare Owner's breach of this Agreement occurs.

8.3 The rights conferred by this clause 8 are in addition to and not in substitution of any rights of the Studmaster at common law or under any statute.

#### 9. INSURANCE

9.1 Unless otherwise agreed and confirmed in writing by the Studmaster, the Mare Owner will be solely responsible for procuring whatever insurance cover the Mare Owner may require in relation to the Mare or Progeny while at the Stud or otherwise in the care or under the control of the Studmaster.

9.2 If the Mare Owner maintains insurance cover in relation to the Mare or Progeny, the particulars of such cover must be specified in Schedule 1 and the Studmaster will be entitled to be noted on the insurance policy as a Secured Party in relation to the Security Interest set out in clause 15.

#### 10. MARE OWNER'S SALE OR ENCUMBRANCE OF MARE OR PROGENY

If the Mare Owner elects to transfer, sell, or otherwise dispose of, or to create any Encumbrance attaching to the Mare or the Resultant Progeny, while the Service Fee or any other fees and charges are outstanding and payable to the Studmaster or any Third Party Service Provider, the Mare Owner must prior to doing so either:

1. (a) pay to the Studmaster or relevant Third Party Service Providers, the Service Fee and all other outstanding fees or charges; or
2. (b) obtain the Studmaster's written approval either to the proposed sale or other disposal, or to the creating of the Encumbrance. The Studmaster may give approval (with or without conditions), or withhold approval without providing a reason. If the Studmaster does approve, the Mare Owner must comply with any conditions of such approval, and otherwise obligate the proposed transferee, purchaser, acquirer, or the grantee of any Encumbrance, to novate this Agreement. In any event, the Mare Owner will remain liable to the Studmaster, the Stallion Owner, or relevant Third-Party Service Providers, for the Service Fee or any other fees and charges not paid by such purchaser, acquirer, or grantee.

#### 11. ACKNOWLEDGEMENTS UNDERTAKINGS AND WARRANTIES

##### 11.1 The Studmaster:

1. (a) acknowledges that, EXCEPT as specifically set out in this Agreement, the Mare Owner has neither made any representation nor provided any warranty to the Studmaster in relation to the Mare; and
2. (b) warrants that the Studmaster is:
  1. (i) the legal and beneficial owner of the Service Right, or the Stallion Owner's duly authorised agent; and
  2. (ii) not aware of any behavioural, genetic, physical or health problem with the Stallion which will prevent the Stallion from providing a Stud Service to the Mare.

##### 7.2 (1)

(b) if the Mare either fails to return a positive pregnancy test after being provided with a Stud Service by the Stallion, or aborts or reabsorbs the pregnancy. EXCEPT for any right of indemnity specifically preserved by this Agreement, the Mare Owner expressly surrenders, so far as the law permits, any right which the Mare Owner may have against the Studmaster or any Third-Party Service Provider for loss or damage relating to the Mare or Progeny, howsoever arising, including (without limitation) liability in negligence and the right of the Mare Owner to claim for economic loss or loss of opportunity to earn future income.

(2) Any such right of indemnity either specifically preserved or not capable of surrender will be limited in damages to the fair market value of the Mare or Progeny at the time of the cause of action arising.

7.3 Certain legislation, including the Competition and Consumer Act 2010 (Cth), may impose consumer guarantees or imply warranties or conditions or impose obligations upon the Studmaster which cannot be excluded restricted or modified, or cannot be excluded restricted or modified, EXCEPT to a limited extent. This Agreement must be read subject to these statutory provisions. If these statutory provisions apply,

to the extent to which the Studmaster is entitled to limit its liability, such liability is limited to:

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

##### 11.2 The Mare Owner:

1. (a) acknowledges entering into this Agreement at the Mare Owner's own risk and that, EXCEPT as specifically set out in this Agreement, the Studmaster has neither made any representation nor provided any warranty to the Mare Owner in relation to the Stallion, including the ability of the Stallion to provide any number of Stud Services or otherwise;
2. (b) undertakes not to assign the Mare Owner's rights or obligations under this Agreement to any third party without first obtaining the Studmaster's approval evidenced in writing. The Studmaster will be entitled to withhold approval without providing a reason; and
3. (c) warrants that the Mare Owner is:
  1. (i) the legal and beneficial owner of the Mare and Progeny, free of any Encumbrance, save for the Encumbrance, if any, specified by the Mare Owner in Schedule 1; and
  2. (ii) not aware of any behavioral, genetic, physical or health problem with the Mare which, if known to the Studmaster, would cause the Studmaster to refuse to take delivery thereof, or which will prevent the Mare from being provided with a Stud Service by the Stallion or from becoming pregnant and producing a live foal.

#### 12. MARE OWNER'S FURTHER ACKNOWLEDGMENTS AND DECLARATIONS

##### 1. 12.1 The Mare Owner acknowledges that:

1. (a) there are Inherent Risks associated with owning and breeding thoroughbred horses, including (without limitation) those referred to in clauses 6 and 7.1;
2. (b) prior to entering into this Agreement, the Studmaster provided to

the Mare Owner and the Mare Owner has read and understood the attachments marked:

1. (i) "WARNING - IMPORTANT INFORMATION"; and
2. (ii) "MARE AND WALK-ON INFORMATION SHEET";
3. (c) the Studmaster will roster the Stud Services by the Stallion and determine the order in which mares will be provided with Stud Services, at its discretion;
4. (d) the Studmaster may refuse to provide the Mare with a Stud Service for any good reason, including (without limitation) that the Mare:



1. (i) is neither accepted nor eligible for acceptance for the ASB;
  2. (ii) has some physical defect, illness or disease; or
  3. (iii) is in the opinion of the Studmaster of bad temperament or liable to bad behaviour;
5. (e) the Studmaster will neither be responsible nor liable to the Mare Owner if the Stallion is for any reason either not available or unable to provide the Mare with a Stud Service, or the Mare fails to return a positive pregnancy test after being provided with a Stud Service, or aborts or reabsorbs the pregnancy; and
6. (f) the Studmaster may at any time vary the Studmaster's fees and charges and impose additional fees and charges for additional services, AND may also pass on to the Mare Owner charges from any Third Party Service Providers incurred in relation to the Mare or Progeny while in the care or under the control of the Studmaster.
2. 12.2 The Mare Owner declares that prior to agreeing to be bound by the provisions of this document the Mare Owner has had the opportunity to:

(a) obtain:

- (i) independent legal advice in relation to the Mare Owner's rights and obligations under this Agreement; and
- (i) a schedule of the Studmaster's normal fees and charges; and
- (b) visit the Stud to inspect the Stallion and the Stud facilities to satisfy oneself as to their fitness for purpose; and has either done so, or freely declined the opportunity to do so.

#### 13. GST

1. 13.1 The parties acknowledge that, to the extent specified in Schedule 1, this Agreement will constitute a taxable supply under the GST Act.
2. 13.2 Unless the Service Fee, or any other fees and charges, payable by the Mare Owner under this Agreement are specifically stated as being inclusive of GST, then GST will be additional.

13.3 Any invoice rendered by a party to this Agreement in connection with a taxable supply made pursuant to this Agreement which seeks to recover an amount of GST payable by that party must conform to the requirements of a Tax Invoice and must be delivered on or before the date payment is required.

13.4 If a party to this Agreement not currently registered for GST is, at any time, required to be registered and assessed as liable for GST in relation to a taxable supply made under this Agreement, such party will fully indemnify the other party to the extent that the other party may incur any additional GST or penalty arising in relation thereto.

#### 14. MARE OWNER'S DEFAULT

14.1 If the Mare Owner fails to deliver the Mare to the Stud for a Stud Service by the Stallion during the Stud Season, and the Mare is provided with a Stud Service by another Stallion, this will constitute a breach of a material obligation under this Agreement by the Mare Owner, resulting in the Service Fee immediately becoming due and payable to the Studmaster as liquidated damages.

14.2 Subject to clause 14.1, if the Mare Owner breaches a material obligation, including any payment obligation, under this Agreement, the Studmaster may:

- (a) charge interest on any outstanding amount for the period commencing on the due date and ending on the date payment is made at that rate which is the equivalent of 2% above the National Australia Bank Limited benchmark rate (or such other rate as substituted by such

Bank). A letter from such bank will be prima facie evidence of such rate; and

(b) give the Mare Owner a Default Notice requiring that the breach be rectified within 28 days. If the Mare Owner fails to rectify the breach within the period specified in the Default Notice, the Studmaster may proceed to exercise the full range of legal and equitable remedies against the Mare Owner.

#### 14.3 RIGHT TO GIVE A DIRECTION FOR THE PAYMENT OF PROCEEDS

(1) The Studmaster may exercise its right to give a direction for the payment of Proceeds if:

- (a) the Mare or the Resultant Progeny is sold, by notice to the selling agent or buyer (as the case requires); or
- (b) there is a claim under any insurance policy attaching to the Mare or the Resultant Progeny, by notice to the insurer; requiring payment directly to the Studmaster as a first call on the total of net sale proceeds of such amount as is required to fully extinguish and discharge any outstanding payment obligation of the Mare Owner under this Agreement. For the purpose of this clause, production of a statement confirming the outstanding amount and a copy of this Agreement will constitute adequate notice.

(2) The Mare Owner, in consideration of these presents and for good and valuable consideration, expressly and irrevocably directs the third party recipient of a notice served pursuant to paragraph (1) to make payment in accordance with that notice without reference to the Mare Owner and without requiring a court order for payment and attachment of debt.

#### 14.4 POWER OF SALE OF MARE OR RESULTANT PROGENY

1. (1) For the purpose only of the Studmaster exercising the Studmaster's right to sell the Mare or the Resultant Progeny when the Mare Owner's breach of this Agreement occurs, the Mare Owner, in consideration of these presents and for good and valuable consideration, irrevocably appoints the Studmaster as the Mare Owner's duly authorised agent, attorney or representative, as the law permits, to execute any instrument and do any act or thing required to effect the sale and convey to and assure the buyer the Mare or the Resultant Progeny, as sold, including (without limitation) registration of any transfer of ownership of the Mare or the Resultant Progeny with the ASB or Registrar of Racehorses.
2. (2) If a sale by public auction or tender, the Studmaster may offer the Mare or the Resultant Progeny without reserve and sell it to the Highest bidder.
3. (3) If the Studmaster elects to sell the Mare or the Resultant Progeny other than by public auction or tender, such sale must be at arms' length and at a price not less than the fair market value of the Mare or the Resultant Progeny determined by either MM or WI, or if neither of them is able or willing to act, then another member of the FBAA who is able and willing, at the Studmaster's discretion.
4. (4) The Studmaster must give the Mare Owner 14 days' notice of any proposal to sell the Mare or the Resultant Progeny by public auction or tender, and 7 days' notice of any proposal to sell the Mare or the Resultant Progeny other than by public auction or tender.
5. (5) Upon the sale of the Mare or the Resultant Progeny, the Studmaster will be entitled to apply the sale proceeds:
  1. (a) Firstly, in payment of all fees and expenses payable in connection with the sale, including (without limitation) the sale entry fee and commission, transportation and sale attendance;
  2. (b) secondly, in payment to the Studmaster or any Third Party Service Provider of all fees and charges, including any interest and enforcement costs, payable by the Mare Owner under this Agreement; and
  3. (c) thirdly, in payment to the Studmaster of the Service Fee payable by the Mare Owner under this Agreement.

The Studmaster must pay to the Mare Owner any proceeds not required to be applied by the Studmaster either in remedying or as a consequence of the Mare Owner's breach of this Agreement.

5. 14.5 RIGHT TO INDEMNITY COSTS  
If the Studmaster, Third Party Service Provider, or such party's nominee, undertakes any debt recovery action with any agency or legal proceedings against the Mare Owner in relation to the Mare Owner's breach of a material obligation, including (without limitation) any payment obligation, such party may recover from the Mare Owner all fees and expenses, including account management fees, agency commissions, legal fees and other costs, incurred in relation to such action or proceedings on a full indemnity basis.
6. 14.6 The rights conferred by this clause 14 will not prejudice any other rights which the Studmaster may have against the Mare Owner relating to the Mare Owner's breach of this Agreement.

## 15. PPSA

1. 15.1 The provisions of this Agreement constitute a Security Agreement under the PPSA. These provisions are in addition to and not in substitution of any rights of the Studmaster at common law or under any statute.
2. 15.2 The Mare Owner:
  1. (a) grants to the Studmaster and the Stallion Owner Security Interests over the Mare and the Resultant Progeny as livestock (as that term is defined in the PPSA) and Proceeds to secure the proper performance of the Mare Owner's obligations under this Agreement;
  2. (b) consents to the Studmaster, the Stallion Owner, or nominee, registering the Security Interests on the PPSR;
  3. (c) acknowledges that the Security Interests are granted for value and to enable the Mare and the Resultant Progeny to be fed or developed and, as a result, are priority interests in livestock pursuant to Section 86 of the PPSA;
  4. (d) undertakes:
    1. (i) to execute any document required to enable the Studmaster, the Stallion Owner, or nominee, to register a Financing Statement or Financing Change Statement from time-to-time on the PPSR, to perfect the Security Interests;
    2. (ii) to pay or reimburse all fees and expenses incurred by or on behalf of the Studmaster and the Stallion Owner in relation to the maintenance, enforcement or discharge, of the Security Interests; and
    3. (iii) not to grant any Encumbrance attaching to the Mare or the Resultant Progeny to any other person without first obtaining the consent in writing of the Studmaster or the Stallion Owner;
  5. (e) declares that, to the extent permitted under the PPSA, sections 142 and 143 of the PPSA do not apply to this contract and the Security Interests granted to the Studmaster and the Stallion Owner under this Agreement; and
  6. (f) waives any rights as permissible under the PPSA to receive any notices.

15.3 The Studmaster and the Stallion Owner must discharge the Security Interests when all the secured obligations of the Mare Owner under this Agreement are satisfied.

15.4 If there is an existing Encumbrance attaching to the Mare at the time of the parties entering into this Agreement, the Mare Owner must

assure the Studmaster that the grantee of such Encumbrance approves of the Mare Owner entering into this Agreement and consents to the Security Interest granted to the Studmaster under this Agreement having priority over such Encumbrance, REGARDLESS of whether such Encumbrance is a perfected or unperfected Security Interest.

## 16. NOTICES

Notices under this Agreement may be served by ordinary prepaid mail (in which case it will be deemed to have been served 3 days after posting), facsimile or email transmission (in which case it will be deemed to have been served the day after transmission), or by Service in person.

1. (a) For Service of notices upon the Studmaster or the Stallion Owner: either by post to the Studmaster's address of appearing in Schedule 1 or by facsimile or email to the facsimile number or email address appearing in Schedule 1.
2. (b) For Service of notices upon the Mare Owner: either by post to the Mare Owner's address appearing in Schedule 1 or by facsimile or email to the facsimile number or email address appearing in Schedule 1, or to such other postal address, facsimile number or email address that the Studmaster reasonably considers to be the current address or number of the Mare Owner.

## 17. FURTHER ASSURANCES

Each party must at their own cost, execute all such documentation and do all such acts and things as are necessary to give effect to the provisions of this Agreement.

## 18. CONFIDENTIALITY

The Mare Owner will keep this Agreement and its provisions confidential and will not disclose same to any third party except as either required by law, or with the prior written consent of the Studmaster.

## 19. GOVERNING LAW

19.1 The law governing the provisions of this Agreement is the law of the Commonwealth of Australia and of the state or territory where the Stud is located and the forum for all disputes will be either the Federal Court of Australia or the Courts of that place, to the authority of and which, including any appellate jurisdictions thereof, the parties unconditionally submit and confine themselves.

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

## 20. SEVERENCE

If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

## 21. DEFINITIONS AND INTERPRETATIONS

21.1 The following words have these meanings in this Agreement unless the contrary intention appears:

**ASB** means the *Australian Stud Book*.

**Charge** means the right to seize and sell (including power of sale and right to receive and apply proceeds).

**Default Notice** means a notice detailing the default of the defaulting party under this Agreement.

**Effective Date** means that date upon which the rest of the following occurs:

1. (a) both parties sign this Agreement and if on different days, the last of them; or
2. (b) the Mare Owner delivers the Mare to the Stud in accordance with the provisions of clause 2.1.

**Encumbrance** means any:

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

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

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

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

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

**Foal** means the natural produce of the Mare when born.

**Foal-at-foot** means a suckling foal running with its dam.

**GST** means tax that is payable under the GST law (as prescribed by the GST Act).

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

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

**Lien** means the right to retain.

**Mare** means the thoroughbred Mare named in Schedule 1 and includes, where the context permits, any foal-at-foot).

**Mare Owner** means the person(s) named in Schedule 1 as the owner(s) of the Mare.

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

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

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

**Progeny** means the natural produce of the Mare, including, where the context permits, the Foal produced by the Mare resulting from the Stud Service provided pursuant to this Agreement ("**Resultant Progeny**"), or the Foal produced by the Mare resulting from the Mare being provided with a Stud Service during the previous Stud Season.

**Secured Party** means the party granted a Security Interest under the terms of this Agreement.

**Security Interest** means:

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

**Service Fee** means the fee specified in Schedule 1 as the sale price of the Service Right.

**Service Right** means an entitlement to a Stud Service by the Stallion.

**Stallion** means the thoroughbred Stallion named in Schedule 1.

**Stallion Owner** means the legal and beneficial owner of the Stallion and the Service Right the subject of this Agreement.

21.2

**Stud** means the property specified in Schedule 1 operated by the Studmaster and at which the Stallion resides and is utilized in the provision of Stud Services.

**Studmaster** means the person or entity named in Schedule 1 who is the operator of the Stud at which the Stallion resides and will provide the Stud Service the subject of this Agreement and who is also either the Stallion Owner or the duly authorised agent of the Stallion Owner for the purposes of this Agreement.

**Stud Season** means the stud season for thoroughbred horses in the southern hemisphere commencing on 1 September and ending on or about 31 December of the year specified in Schedule 1.

**Stud Service** means the physical act of the Stallion mounting and attempting to impregnate the Mare.

**Taxable Supply** has the meaning given to it in the GST law.

**Tax Invoice** has the meaning given to it in the GST law.

**Third Party Service Provider** means any third party who may attend to or treat the Mare or Progeny at the Stud.

**Weanling** means a foal that has been weaned from its dam, but is less than 1 year old.

**Weaning** means the act of separating a foal from its dam, which usually takes place between the ages of 3 and 6 months.

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

In this agreement unless the contrary intention appears:

- a) the singular includes the plural and the plural includes the singular;  
a reference to any one gender includes a reference to each other gender;
- b) a reference to a person includes a reference to a firm, corporation or other corporate body;  
a reference to writing includes a reference to printing, typing and other methods of producing words in a visible form;
- c) where a word or expression is given a specific meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings;  
headings are for ease of reference and do not affect the construction of this Agreement;
- d) if a party consists of more than one person this Agreement binds them jointly and each of them severally;  
this Agreement binds in addition to the parties, their respective legal personal representatives and successors; and
- e) any Schedule or annexure will form part of this Agreement.

**SERVICE RIGHT SALE AND PURCHASE AGREEMENT - 2020 STUD SEASON**

**If the Mare Owner is a company each director must complete and sign the below guarantee Director(s) Guarantee for company Mare Owner**

In consideration of the Studmaster contracting with a Mare Owner that is a company, the following persons:

(a) \_\_\_\_\_;

(PRINT FULL NAME - BLOCK LETTERS)

(b) \_\_\_\_\_;and

(PRINT FULL NAME - BLOCK LETTERS)

(c) \_\_\_\_\_; (the **Guarantors**),

(PRINT FULL NAME - BLOCK LETTERS)

guarantee the performance by the Mare Owner of all the Mare Owner's obligations under this Agreement and will indemnify the Studmaster against any expense or loss arising from the Mare Owner's breach of a material obligation, including (without limitation) any payment obligation, under this Agreement, howsoever arising. The Studmaster or nominee may seek to recover any expense or loss from the Guarantors before seeking recovery from the Mare Owner and any settlement or compromise with the Mare Owner will not release the Guarantors from the obligation to pay any outstanding balance that may be owing to the Studmaster by the Mare Owner. This guarantee is binding on the Guarantors, their executors, administrators and assigns, and the benefit of this guarantee is available to any assignee of the Studmaster of the benefit of this Agreement.

\_\_\_\_\_

Signature of Guarantor

\_\_\_\_\_

Signature of Guarantor

\_\_\_\_\_

Signature of Guarantor

**WARNING - IMPORTANT INFORMATION**

The ownership and breeding of thoroughbred horses involves risks, including Inherent Risks. Be aware that: The value of your Mare (including any Foal-at-foot) or Progeny may be diminished or lost through:

- market forces;
- the death of the horse;
- the materialisation of an Inherent Risk, including without limitation accident, illness, injury, natural causes, infertility or subfertility.

Stud farms and other places where your Mare (including any Foal-at-foot) or Progeny may be located from time to time can be dangerous places, including because horses do not always behave as expected. Entering onto those places involves the risk of injury, accident and loss or damage to person or property for all persons who enter.