



AGISTMENT/ SPELLING FARM AGREEMENT – TERMS AND CONDITIONS (02/09/2024)

BETWEEN

1. TPRC PTY LTD trading as Rushton Park ABN. 37 613 191 370 (“the Service Provider”)

AND

1. The Owner as defined in this agreement (“the Owner”)

WHEREAS

The Owner as registered with the Stud Book and with full power and authority from each (if any) other owner to enter into this Agreement hereby agrees to send the Horse to the Stud, and the Service Provider hereby agrees to accept the Horse for the provision of the Services upon the following terms.

OPERATIVE PART

2. Definitions

“Breeding Season” means 1 August to 31 December in each calendar year.

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

“Claims” means all claims, investigations, demands, actions, proceedings, suits, causes of action, damages, debts, costs, verdicts and judgments including but not limited to all claims arising from or out of damage to the Horse which relate to any incident or matter occurring as a result of the Horse being exposed to disease, injury or death whilst on the Stud, or as a result of moving the Horse from the Stud for the purpose of service, foaling or treatment, and whether at common law, equity or under statutory provision.

“Collateral” means the personal property offered up as security for the debt or other obligation owed to the Service Provider by the Owner. The Collateral for the purposes of this agreement means all of the owner’s horses including without limitation the horse/s set out in Schedule 1 and any progeny.

“Encumbrance” means:

- a) Any Security Interest;
- b) Any right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors, including any right of set-off;
- c) Any third party right or interest in property, or any right arising as a consequence of the enforcement of a judgement.
- d) or any agreement to create any of them or allow them to exist.

“Financing Statement” means a statement of the data registered pursuant to an application for a registration on the PPSR.

“Grantor” has the meaning given to it under section 10 of the Act. The Grantor for the purposes of this Agreement is the Owner.

“Horse” means all of the Owner’s horses as set out in Schedule 1 and all other stallions, geldings, mares, colts, fillies and their progeny both current and future. For the purposes of this Agreement, the term Horse is both singular and plural, male and female and includes any progeny which is deemed to have come into existence, for the purposes of 86 of the Act, from the last date of cover.

“Horse Registration Form (HRF)” means the registration form that must be lodged with Racing Australia to register the Horse (or a Share in the Horse) for racing or any other relevant Racing Australia registration form substantially carrying out the same purposes (as amended and updated from time to time).

“Owner” for the purposes of this Agreement, means each person or entity who is legally recognised as an owner, part owner, lessee, partner, syndicate member, syndicate manager, company, corporate trustee or other person who is legally recognised as an owner, joint and severally of the Horse and/or is registered or is intended to be registered with Racing Australia as an owner, part owner, lessee, partner, syndicate member, syndicate manager, company, corporate trustee or other person who is legally recognised as an owner, joint and severally of the Horse including but not limited to the persons or entities set out in the HRF.

“PPSR” means the Personal Property Securities Register under the Act.

“Price List” means the Price List, Schedule of Fees, Fees List or any agreement, written or oral, between the Service Provider and the Owner.

“Secured Party” has the meaning given to it under section 10 of the Act. The Secured Party for the purposes of this Agreement is the Service Provider.

“Security Interest” means:

- a) In relation to any personal property (as defined in the Act), has the same meaning given to it as defined in section 12 of the Act; and
- b) In relation to any other property, means any charge, mortgage, pledge, bill of sale, hypothecation, lien, arrangement concerning the deposit of documents evidencing title, trust, power, 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

“Services” means agistment, spelling farm and animal husbandry.

“The Act” means the Personal Property Securities Act 2009.

“The Stud” means the property operating at, and any other properties owned, operated, leased or used by the Service Provider from time to time.

3. Agreement

- 3.1 The Service Provider agrees to provide the Services to the Owner’s Horse from time to time in exchange for the applicable fee/s as set out in the Price List and subject to the following terms and conditions.
- 3.2 The Owner, or other person passing the Horse to the Stud, agrees that they have passed the Horse to the Stud subject to the following terms and conditions. Accordingly, the Owner grants to the Service Provider a PPS Security Interest over the Horse and any progeny to secure payment of its obligations under this Agreement.
- 3.3 Accordingly, the Owner consents to the Service Provider registering its interest on the PPSR to secure the Owner’s obligations.
- 3.4 The Owner acknowledges that the Service Provider has given value for its Security Interest to enable the Horse and any progeny to be fed and/or developed.
- 3.5 The Horse is held by the Owner.

4. Owner

- 4.1 This Agreement shall not be assigned or transferred by the Owner.
- 4.2 In the event that this Agreement is executed by an agent or representative on behalf of the Owner, or if the Owner is an organisation, the agent or representative guarantees that:
 - (a) he/she has the authority of the Owner to enter into the Agreement;
 - (b) he/she unconditionally and personally 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;
 - (c) the agent or representative warrants full disclosure to the Owner of the terms of this Agreement and any commission paid by the Service Provider to the agent or representative in connection with this or any other contract; and
 - (d) the warranty shall remain in effect regardless of whether the agent or representative retains his or her status following the execution of this Agreement.
- 4.3 Where there are multiple Owners of the Horse:
 - (a) a reference to the Owner throughout this Agreement shall include a reference to each Owner of the Horse as set out in clause 1 (Definitions) and binds each of them joint and severally;
 - (b) subject to the giving of notices, the Service Provider will be entitled to deal exclusively with the Managing Owner on the basis that the Managing Owner has full authority to deal with and make decisions in respect of the Horse on behalf of all of the Owners.

5. Fees and Charges

- 5.1 The Owner agrees to pay all accounts within 14 days of the invoice date. The Owner agrees to pay each monthly account in full prior to receipt of the following month’s account. Interest of 1.5% per month from the expiry of that period calculated daily plus any debt collection costs, commissions and expenses charged including indemnity legal costs on a Solicitor/Client basis will be applied to all late payments.



- 5.2 The Owner appoints the Service Provider 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 of 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 while at the Stud, whether administered by the Service Provider, its Agents, employees or independent contractor whilst the Horse remains on the Stud and any other costs incurred. The Owner authorises the Service Provider to obtain these services on its behalf;
 - (c) services and supplies including but not limited to services of farrier, horse dentist, chiropractor, veterinarian or other person thought by the Service Provider to be necessary or advisable to attend the Horse. The Owner authorises the Service Provider to obtain these services and supplies on its behalf. There is no warranty given by the Service Provider as to the competence or judgment of a person employed by or in contract with the Service Provider in connection with the Horse;
- 5.3 All monies due to the Service Provider and incurred by third parties in respect to the Horse shall be paid by the Owner on or before the departure of the Horse from the Stud.
- 5.4 The Service Provider shall be entitled to retain possession of any mare return, document of description and all foal cards, or replacement foal cards until payment of all monies (including interest) and any debt recovery, collection or legal costs referred to in 5.1 and 5.2.
- 5.5 The Owner hereby provides an irrevocable instruction, direction and authority to any sales company to pay any monies that are due at the time of sale to the Service Provider, from the sale proceeds of the Horse without requiring further notification to the Owner. The acceptance of such funds or any sale by the Service Provider pursuant to this Agreement shall be without prejudice as to the Service Provider's rights to pursue the Owner for any shortfall, or other damages without restriction.

- 6.8 The Owner warrants that the Horse is not subject to an existing Encumbrance at the time of entering into this Agreement.

7. Studs Rights to Dispose of the Horse If Fees Unpaid

- 7.1 In the event that:
- (a) the Service Provider retains possession of the Horse; and
 - (b) a fee or monetary obligation is due to the Service Provider; and
 - (c) the Service Provider has made demand in writing to the Owner for payment of the fee or monetary obligation; and
 - (d) the Service Provider has not received the fee or monetary obligation in accordance with the timeframe specified in the demand;
- then, the Owner agrees that the Service Provider may exercise any of the following at its discretion:
- (i) retain possession of the Horse and have the ownership transferred to the Service Provider;
 - (ii) the Service Provider may dispose of the Horse and may retain all or part of the proceeds of the disposal in payment of the fee or monetary obligation.
- 7.2 In the event that:
- (a) the Owner has possession of the Horse; and
 - (b) a fee or monetary obligation is due to the Service Provider; and
 - (c) the Service Provider has made demand in writing to the Owner for payment of the fee or monetary obligation; and
 - (d) the Service Provider has not received the fee or monetary obligation in accordance with the timeframe specified in the demand;
- then, the Owner acknowledges and agrees that the Service Provider is entitled to seize the Horse pursuant to section 138C of the Act.
- 7.3 The Owner consents to agents of the Service Provider entering onto the Owner's property for the purpose of seizing the Horse and consents to indemnify the Service Provider with respect to any trespass claims should the Service Provider need to seize the Horse from a third-party premises.

8. Verification Statement

- 8.1 The Owner waives its rights under s157 to receive a verification statement due to the Horse being "commercial property" pursuant to the Act.

9. Transfer of Title

- 9.1 The Owner agrees not to enter into a sale, assignment or transfer of the Horse without the consent of the Service Provider. Any such purported transfer will be in default of this Agreement. The Service Provider agrees that it will not unreasonably withhold its consent upon full payment of any fee or monetary obligation.

10. Owners Warranty & Responsibilities

- 10.1 The Owner warrants, covenants and agrees with the Service Provider:
- (a) that the Owner is the registered Stud Book owner of the Horse with full power and authority to enter into each of the provisions of this Agreement;
 - (b) that the Owner warrants the full disclosure of the provisions of this Agreement to 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 the Horse, and has the authority to enter into this Agreement binding each of them jointly and severally;
 - (c) that the attached Schedule 1 must be completed and returned to the Service Provider and all registration documents lodged with the Service Provider;
 - (d) that the correct Horse is delivered to the Stud;
 - (e) the information provided to the Service Provider is accurate and current as at the date of providing such information;
 - (f) that upon delivery to the Stud, the Horse is free of disease or infection and is in sound breeding condition and that all vaccinations are up to date;
 - (g) that upon leaving the Stud the Horse shall be deemed to have been delivered to the Owner;

6. Security Interest - Personal Property Securities Act 2009 ("the Act")

- 6.1 This Agreement constitutes a Security Interest for the purposes of the Act and where the context requires words used in this Agreement should be given the same meaning as in the Act.
- 6.2 The Owner acknowledges that the Security Interest created by this Agreement, is granted for value and is granted to enable the Horse to be fed and/or developed and at the time of the Agreement the Horse is held by the Owner.
- 6.3 As security for fees and other monetary obligations owing, the Owner:
- (a) grants to the Service Provider a Charge over the Horse and any proceeds realised from either the sale thereof or any insurance policy relating thereto.
 - (b) consents to the registration of the Security Interest created by this Agreement on the PPSR.
 - (c) consents to the Service Provider registering a financing statement and/or financing change statement with the PPSR.
- 6.4 The Owner undertakes to:
- (a) promptly sign any further documents and/or provide any further information requested by the Service Provider to complete and register any financing statement or any financing change statement with the PPSR;
 - (b) indemnify and, upon demand, reimburse the Service Provider 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 in relation to such Security Interests; and
 - (c) not grant any Encumbrance to any other person in the Horse without first obtaining the consent in writing of the Service Provider. The Service Provider will be entitled, at its sole discretion, to withhold consent without providing a reason.
- 6.5 The Owner acknowledges and waives its rights to notice as a debtor or Grantor under sections 95, 121(4), 129(2)(a), 130, 132(3)(d), 132(4), 135 and 137(2) of the Act.
- 6.6 The Owner declares that, to the extent permitted under the Act, sections 142 and 143 of the Act will not apply to this Agreement and the Security Interests granted under this clause.
- 6.7 The Service Provider will discharge the registration of Security Interests on the PPSR when all of the secured obligations of the Owner under this Agreement are satisfied.



- (h) that the Owner will provide at least 48 hours' notice to the Service Provider before removing the Horse;
- (i) the Owner authorises the Service Provider to pay all creditors who have provided services or supplies to the Owner's Horse. the Service Provider is authorised to deduct these costs from any sale proceeds, or in the alternative the Owner agrees to reimburse the Service Provider all such payments before the removal of the Horse from the Stud; and
- (j) that if any Horse is entered for sale in a public auction, that it will be entered by the Service Provider as agent and the Owner provides an irrevocable authority to each and every auction house that the net proceeds of sale are to be paid to the Service Provider.

The Owner represents and warrants that 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.

11. Insurance

- 11.1 The Service Provider will not undertake responsibility for insuring the Horse, this is entirely the Owner's responsibility.
- 11.2 The Owner acknowledges that the breeding and rearing of thoroughbred racehorses is a high-risk activity and that the Owner is required to insure against such losses.
- 11.3 The Owner acknowledges responsibility for notifying the Service Provider of any insurance policies affecting the Horse and, if so requested by the Service Provider, shall produce to the Service Provider the evidence of such insurance.
- 11.4 The Owner acknowledges that the Service Provider is not responsible and cannot be held responsible for any incidents which may void any insurance policy that the Owner has for the Horse.

12. Hold Blameless Acknowledgement – Release & Indemnity

- 12.1 The Owner:
 - (a) acknowledges and agrees that they have been given the opportunity to inspect the Stud and its facilities and that they meet the standard applicable to the thoroughbred breeding industry and that the Service Provider shall endeavour to provide all care good husbandry and attention to the Horse. the Service Provider will be held blameless by the Owner in respect to any infection, disease, death or Claims in respect to the Horse.
 - (b) releases the Service Provider, its owners, directors and shareholders, employees, servants and agents from any Claims.
 - (c) agrees to indemnify and keep indemnified the Service Provider against any liability or loss arising from, and any costs, charges, expenses and liabilities incurred in relation to any Claims relating to the Horse and in each case, including but not limited to, Solicitor/Client legal costs and expenses on a full indemnity basis.
- 12.2 Further, the Service Provider shall not be liable for any negligent act or any loss, damage or Claims of whatsoever nature or howsoever arising out of this Agreement from injury, sickness, disease or death caused to or sustained by the Horse and/or any progeny or to a third party whilst under the care or control of the Service Provider or its employees and agents. the Service Provider shall not be liable to the Owner for any loss, damage, costs or expense arising out of any injury, damage, death or Claims which may arise or be caused and notwithstanding the same be attributable to or is in part attributable to recklessness, negligence, forbearance or neglect by the Service Provider, its servants or agents or any other person in whose care or control the Service Provider may place the Horse.

13. Legal Advice

14. Lien and Power of Attorney

- 14.1 The Owner grants the Service Provider 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.
- 14.2 The Owner appoints the Service Provider as its Attorney:
 - (a) To execute and file any liens, irrevocable authorities, all and any notices and documents under the PPSA 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 Service Provider, 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 it believes to be advisable, in which event the Service Provider shall credit the proceeds of the sale, after expenses of sale and maintaining the Horse, to the Owner's obligation to the Service Provider. This right is in addition to all other rights to which the Service Provider is entitled under law.

15. Notice

- 15.1 Any notice given by the Service Provider to the Owner pursuant to this Agreement shall be deemed to be served on the Owner five working days after the posting of such notice in a pre-paid envelope addressed to the Owner at the Owner's address as set out in the attached Schedule 1 or such other address notified to the Service Provider by the Owner in writing notwithstanding that any such notice may not be received by the Owner.

16. Amendments

- 16.1 the Service Provider reserves the right to review these terms and conditions at any time. If following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Service Provider notifies the Owner of such change.

17. General

- 17.1 If any provision of these terms and conditions are invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 The failure by the Service Provider to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Service Provider's right to subsequently enforce that provision.
- 17.3 This Agreement is governed by and construed in accordance with the laws of NSW. 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

18. Acceptance

- 18.1 This Agreement may be executed by way of electronic signature and, if so, shall be taken to be an original.
- 18.2 The Owner's acceptance of these terms is signified by signing this Agreement/ Spelling Farm Agreement or delivery of the Horse, or horses, to the Stud.



SCHEDULE 1 – Horse and Owner Information

Horse(s) (Please ensure details are provided for each Horse)

HORSE DETAILS				
Name:				
Sire:				
Dam:				
Colour:		Year of Birth:		
Brands	NS:	OS:		
Present Location of Horse?			Has the Horse been in a high-risk area for the Hendra virus?	Yes <input type="checkbox"/>
Known prior operative procedures:				No <input type="checkbox"/>
Is the Horse a 'windsucker'?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Date of last Equine Herpesvirus vaccination:	Has the Horse been vaccinated for the Hendra virus?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the Horse have any behavioural issues the Service Provider should be aware of? (if yes, please give details)			Yes <input type="checkbox"/> No <input type="checkbox"/>	
Is the Horse insured?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Insurance company/broker:	
IF A MARE				
MARE'S BREEDING HISTORY	Is the mare in foal?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Stallion		Last Service Date	Result
Stud Season _____ (year)				
Stud Season _____ (year)				
If the mare was not served in the previous Stud Season please give brief details why.	Maiden <input type="checkbox"/>	Late Foaling <input type="checkbox"/>	Infection <input type="checkbox"/>	Other (please give details)
If the mare is barren, has slipped or if missed please give any known details:				
COVERING STALLION				
Name:				

Owner(s) (Please ensure details are provided for each owner):

Individual <input type="checkbox"/>		Company <input type="checkbox"/>		Partnership <input type="checkbox"/>		Sole Trader <input type="checkbox"/>		Trust <input type="checkbox"/>	
First Name:		Middle Name:		Last Name:					
Date of Birth:									
Company / Business / Trust Name:									
Are you registered for GST?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	ACN:		ABN:				
ASB Contact Breeder Number:									
Street Address:									
City/Town:		State:		Postcode:					
Telephone:				Mobile:					
Fax:				Email:					
Your preferred method of contact:	Mail <input type="checkbox"/>	Fax <input type="checkbox"/>	Email <input type="checkbox"/>						
Bank Account Name:									
Bank:				BSB:		Account Number:			
Ownership Percentage of Horse %					Invoice %				