

CORNWALL PARK STUD
AGISTMENT & SALES PREPARATION AGREEMENT

Agreement

Cornwall Park Stud agrees to provide the Services to the Owner's Horse from time to time in exchange for the applicable fee as set out in Schedule 2 and subject to the following terms and conditions.

The Owner, or other person delivering the Horse to the Property, agrees that they have passed the Horse to the Property subject to the following terms and conditions. Accordingly, the Owner grants to Cornwall Park Stud a PPS security interest over the Horse and any progeny to secure payment of its obligations under this Agreement.

Accordingly, the Owner consents to Cornwall Park Stud registering its interest on the PPSR to secure the Owner's obligations.

Owner

This Agreement shall not be assigned or transferred by the Owner.

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 undersigned guarantees that:

he/she has the authority of the Owner to enter into the Agreement;

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;

the undersigned warrants full disclosure to the Owner of the terms of this Agreement and any commission paid by Cornwall Park Stud to the undersigned in connection with this or any other contract; and

the warranty shall remain in effect regardless of whether the agent or representative retains his or her status following the execution of this Agreement.

Fees and Charges

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 2% per month from the expiry of that period calculated daily plus collection costs charged including indemnity legal costs on a solicitor/client basis will be applied to all late payments.

The fees will be reviewed by 1 August every year. Cornwall Park Stud sets its fees each Breeding Season. The fees for the current season are identified in Schedule 2 to this Agreement and are available by facsimile or email upon request. Cornwall Park Stud may vary the fees from time to time and will advise the Owner in writing of any changes.

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

transport costs of the Horse to and from the Property. The Owner hereby acknowledges that Cornwall Park Stud may from time to time utilise its own means of transport for the Horse, the costs of which shall be assessed and billed to the Owner at the time of service;

all treatments, drenching, examinations, procedures, operations, swabs and medicines, DNA testing, micro chipping and branding administered to the Horse while at the Property, including Extraordinary Veterinary Treatment, whether administered by Cornwall Park Stud, its agents or independent contractors whilst the Horse remains on the Property and any other costs incurred;

services and supplies including but not limited to services of farrier, horse dentist, chiropractor, veterinarian or other person thought by Cornwall Park Stud to be necessary or advisable to attend the Horse;

all costs of or incidental to entering the Horse in any sale including but not limited to sales commission, passed in commission, agents commission, entry fees, inspection fees, promotional fees, and transport costs. The Owner agrees to pay to Cornwall Park Stud a commission on the sale of each Horse of 2.50% plus all reasonable costs incurred and charged by Cornwall Park Stud in relation to the sale of the Horse, whether sold by public auction or private sale.

Cornwall Park Stud shall have no liability to the Owner for any loss, expense, liability, matter or thing incurred or suffered by the Owner (including indirect or consequential loss) in respect to any of the Services provided or authorised by Cornwall Park Stud pursuant to clause 4.3.

The Owner authorises Cornwall Park Stud to obtain these Services on its behalf. There is no warranty given by Cornwall Park Stud as to the competence or judgement of a person employed by or in contract with Cornwall Park Stud in connection with these Services. The Owner shall be solely responsible for the payment of these Services whether charged directly to the Owner by Cornwall Park Stud or otherwise.

All monies due to Cornwall Park Stud 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 Property, whether charged directly to the Owner by Cornwall Park Stud or otherwise.

Cornwall Park Stud 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 collection or legal costs referred to in clauses 4.1 and 4.3.

Security Interest - Personal Property Securities Act 2009

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.

As security for any money owing, the Owner grants to Cornwall Park Stud a Charge over the Horse AND any proceeds realised from either the sale thereof or any insurance policy relating thereto;

consents to the registration of the security interest created by this Agreement on the PPSR; and
consents to Cornwall Park Stud registering a financing statement and/or financing change statement with the PPSR.

The Owner undertakes to:

promptly sign any further documents and/or provide any further information requested by Cornwall Park Stud to complete and register any financing statement or any financing change statement with the PPSR;
indemnify and, upon demand, reimburse Cornwall Park 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 in relation to such security interests; and

not grant any Encumbrance to any other person in the Horse without first obtaining the consent in writing of Cornwall Park Stud. Cornwall Park Stud will be entitled, at its sole discretion, to withhold consent without providing a reason.

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.

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.

Cornwall Park Stud will discharge the registration of security interests on the PPSR when all of the secured obligations of the Owner under this Agreement are satisfied.

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

Rights to Seize and Dispose of the Horse If Fees Unpaid

In the event that:

Cornwall Park Stud retains possession of the Horse; and

a fee or monetary obligation is due to Cornwall Park Stud; and

Cornwall Park Stud has made demand in writing to the Owner for payment of the fee or monetary obligation; and

Cornwall Park Stud has not received the fee or monetary obligation in accordance with the timeframe specified in the demand;

then, the Owner agrees that Cornwall Park Stud may exercise any of the following at its discretion:

retain possession of the Horse and have the ownership transferred to Cornwall Park Stud;

Cornwall Park Stud 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;

seize the Horse pursuant to section 138C of the Act.

In the event that:

the Owner has possession of the Horse; and

a fee or monetary obligation is due to Cornwall Park Stud; and

Cornwall Park Stud has made demand in writing to the Owner for payment of the fee or monetary obligation; and

Cornwall Park Stud has not received the fee or monetary obligation in accordance with the timeframe specified in the demand;

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

retain possession of the Horse and have the ownership transferred to Cornwall Park Stud; or

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.

The Owner consents to agents of Cornwall Park Stud entering onto the Owner's property for the purpose of seizing the Horse and consents to indemnify Cornwall Park Stud with respect to any trespass claims should Cornwall Park Stud need to seize the Horse from a third-party premises.

Verification Statement

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

Transfer of Title

The Owner covenants that it will not, nor will it agree to, sell, assign or transfer the Collateral until all obligations owed by the Owner to Cornwall Park Stud under this Agreement have been satisfied.

Caveatable Interest

In the event that the Owner fails to pay the fees and/or monetary obligations in accordance with this Agreement, or otherwise fails to discharge its obligations, then the Owner charges all its rights, title and interest in any land (within the meaning of the Real Property Act 1900 (NSW)) now or in the future owned or partly owned, solely or jointly, in favour of Cornwall Park Stud to secure the fees and/or monetary obligations outstanding and the due and punctual observance and performance of all of the obligations of the Owner contained in this Agreement. The Owner acknowledges that Cornwall Park Stud may, at its discretion, register a caveat on the land in respect of the interest conferred on it under this clause. Further, if Cornwall Park Stud is required to exercise its right under this clause against the Owner, then the Owner grants to Cornwall Park Stud the right to appoint a Receiver and sell the land.

Owners Warranty & Responsibilities

The Owner warrants, covenants and agrees with Cornwall Park Stud:

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;
that the attached Schedule 1 must be completed and returned to Cornwall Park Stud and all registration documents lodged with Cornwall Park Stud;
that the correct Horse is delivered to the Property;
the information provided to Cornwall Park Stud is accurate and current as at the date of providing such information;
that upon delivery to the Property, the Horse is free of disease or infection and is in sound breeding condition and that all vaccinations are up to date;
that upon leaving the Property the Horse shall be deemed to have been delivered to the Owner;
that the Owner will provide at least 48 hours' notice to Cornwall Park Stud before removing the Horse;
the Owner authorises Cornwall Park Stud to pay all creditors who have provided services or supplies to the Owner's Horse. Cornwall Park Stud is authorised to deduct these costs from any sale proceeds, or in the alternative the Owner agrees to reimburse Cornwall Park Stud all such payments before the removal of the Horse from the Property;
the Owner instructs Cornwall Park Stud to have x-rays taken of the Horse at the Owner's expense. Cornwall Park Stud will lodge the x-rays in the repository of the sales company before sale;
if the Owner does not provide its GST status, then the Owner authorises Cornwall Park Stud to instruct the sales company to sell the Horse and add GST to the sale price;
the Owner will remit any GST applicable to the sale of the Horse to the Australian Tax Office; and
that if any Horse is entered for sale in a public auction, that it will be entered by Cornwall Park Stud 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 Cornwall Park Stud.

The Owner acknowledges that if the Horse is sold and exported from Australia the Owner is responsible for payment of GST on the sale if the purchaser of the Horse does not comply with the requirements regarding exports (including that the Horse be exported within the required time period, the Horse not die prior to export and the Horse not be used in any way except as necessary to prepare the Horse for export) and that it is required to have documentary proof of the export as required to be exempt from the payment of GST.

Insurance

Cornwall Park Stud will not undertake responsibility for insuring the Horse, this is entirely the Owner's responsibility.
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.
The Owner acknowledges responsibility for notifying Cornwall Park Stud of any insurance policies affecting the Horse and, if so requested by Cornwall Park Stud, shall produce to Cornwall Park Stud the evidence of such insurance.
The Owner acknowledges that Cornwall Park Stud is not responsible and cannot be held responsible for any incidents which may void any insurance policy that the Owner has for the Horse.

Hold Blameless Acknowledgement – Release & Indemnity

The Owner:

Acknowledges and agrees that they have been given the opportunity to inspect the Property and its facilities and that they meet the standard applicable to the thoroughbred breeding industry and that Cornwall Park Stud shall endeavour to provide all care good husbandry and attention to the Horse. Cornwall Park Stud will be held blameless by the Owner in respect to any infection, disease, death or Claims in respect to the Horse.

Releases Cornwall Park Stud, its owners, directors and shareholders, employees, servants and agents from any Claims.

Agrees to indemnify and keep indemnified Cornwall Park Stud 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.

Further, Cornwall Park Stud 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 Cornwall Park Stud or its employees and agents. Cornwall Park Stud 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 Cornwall Park Stud, its servants or agents or any other person in whose care or control Cornwall Park Stud may place the Horse.

In offering any Horse for sale, Cornwall Park Stud will act only as agent for the Owner. Cornwall Park Stud will have no obligation to become involved, directly or indirectly, in any dispute or litigation between the Owner and any third party arising out of the sale of the Horse.

The Owner releases Cornwall Park Stud from any loss which the Owner may incur for any errors in relation to the collection of GST or collection of any proceeds from either a sales company or a third party or by the failure of the sales company or third party to pay to the Owner any of the sale proceeds including GST whether or not pursuant to any vendor finance agreement following the sale of the Horse.

The Owner authorises Cornwall Park Stud to disclose all information in respect to the Horse to potential purchasers and agrees to release and indemnify Cornwall Park Stud for against any liability or loss from such disclosures.

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.

The Owner acknowledges that any advice to it in respect to the general state of the thoroughbred market, any financial advice or investment advice or advice in relation to the health, wellbeing or value of the Horse given by Cornwall Park Stud is of general nature only and it does not take into account the individual circumstances, objectives, financial situation or needs of the Owner. The Owner must consult with its own independent financial and/or investment advisor prior to the sale.

Lien and Power of Attorney

The Owner grants Cornwall Park Stud a lien in the Horse, all insurance policies and proceeds of any insurance claim relating to the Horse, all Stud Book returns, all mare and foal cards and replacement mare and foal cards and the proceeds realised from the sale of the Horse relating to any fee or any other monetary obligation pursuant to this Agreement or any other agreement the Owner has entered into with Cornwall Park Stud.

For good and valuable consideration, the Owner irrevocably appoints and authorised Cornwall Park Stud as its Attorney: To execute and file any forms, 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 Cornwall Park Stud, whether arising by the owing of fees or monetary obligations or otherwise to better secure the entitlements of Cornwall Park Stud.

To, 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 Cornwall Park Stud shall credit the proceeds of the sale, after expenses of sale and maintaining the Horse, to the Owner's obligation to Cornwall Park Stud. This right is in addition to all other rights to which Cornwall Park Stud is entitled under law.

The Owner hereby releases Cornwall Park Stud from any Claims that may arise as a result of any act or omission that may be caused by Cornwall Park Stud as a result of Cornwall Park Stud acting in its capacity as an attorney pursuant to this clause 14.

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 Cornwall Park Stud, without requiring further notification to the Owner. The acceptance of such proceeds by Cornwall Park Stud will be without prejudice as to Cornwall Park Stud's rights to pursue the Owner for any shortfall, or other damages without restriction. The provision of a certified copy of this document to the sales company or insurance company shall be good and sufficient evidence of this authority.

Possession

The Owner acknowledges that at the time the security interest created by this Agreement is made:

it is granted for value;

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

the Horse was held by the Owner;

and, as a result, the security interest is a "priority interest" in livestock pursuant to section 86 of the Act.

Notice

- Any notice required or permitted to be given by either party to this 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 in the Schedule/s or such other contact details as notified in writing to the other party.
- Any notice given pursuant to clause 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 notwithstanding that such notice may not have been received by that party.

Amendments

Cornwall Park Stud 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 Cornwall Park Stud notifies the Owner of such change.

Entire Agreement

This Agreement sets out the whole of the agreement and understanding between the parties to the exclusion of all or any formal or informal discussions, arrangements or agreements between the parties. Save as expressly set out in this Agreement, all other terms, warranties, representations and conditions implied by custom, statute, equity or common law are expressly excluded to the maximum extent permitted by law.

General

This Agreement is assignable by Cornwall Park Stud for purposes of enforcement.

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

This Agreement is governed by and construed in accordance with the laws applicable in the State of Victoria. The parties will not object to the exercise of jurisdiction by those courts on any basis.

Acceptance

This Agreement may be executed by way of electronic signature and, if so, shall be taken to be an original.

The Owner's acceptance of these terms is signified by signing this Agreement or delivery of the Horse, or horses, to the Property.