DEED OF LEASE

in respect of a horse named (Horses name)



Warning

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This is a binding legal document. The content of this document will not be suitable for all situations, for example if the buyer or seller is ‘in trade’, the horse is high value, the buyer requires robust warranties etc.

If you have any doubts, independent legal advice should be sought prior to signing this document.

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Release Date: 10 November 2017

**DEED** dated this day of 20

PARTIES

1. **[Owner name, location and occupation]** (**Owner**)
2. **[Lessee name, location and occupation]** (**Lessee**)

AGREED AS FOLLOWS

The Owner agrees to lease the horse described in Schedule One (**Horse**) to the Lessee, and the Lessee agrees to take the Horse on lease from the Owner, on the terms and conditions set out in Schedule Two.

**SIGNED**

|  |  |  |
| --- | --- | --- |
| **Signed** by **[Owner]** |  |  |
| in the presence of: |  |  |
|  |  |  |
| Witness signature |  |  |
| Witness name |  |  |
| Occupation |  |  |
| Address |  |  |

|  |  |  |
| --- | --- | --- |
| **Signed** by**[Lessee]** |  |  |
| in the presence of: |  |  |
|  |  |  |
| Witness signature |  |  |
| Witness name |  |  |
| Occupation |  |  |
| Address |  |  |

**SCHEDULE ONE**

**HORSE INFORMATION**

|  |  |
| --- | --- |
| **Registered Name of Horse:** |   |
| **ESNZ/thoroughbred/standardbred Registration number:** |   |
| **Breed Registration number:** |   |
| **Brands:** |   |
| **Height:** (Height certificate to be attached) |   |
| **Sex:** |   |
| **Breed:** |   |
| **Breeding:** | Sire: Dam: Dam sire:  |
| **Colour:** |   |
| **Date of Birth:** |   |
| **Microchip:** |   |
| **FEI Passport Number:** |   |
| **Performance History:** | (Records to be attached) |
| **Vaccination history:** | (Records to be attached) |
| **Prior Use** | Eventing/Showjumping/Leisure/Other:\_\_\_\_\_\_\_\_\_\_\_(circle one or complete) |
| **Permitted Use:** | Eventing/Showjumping/Leisure/Other:\_\_\_\_\_\_\_\_\_\_\_(circle one or complete) |

**RENTAL AND LEASE DATES**

|  |  |
| --- | --- |
| **Rental:**  | $ (including GST, if any) |
| **Reference Details:** |   |
| **Rental Payment Frequency:** | Monthly/Fortnightly/Weekly/Other:\_\_\_\_\_\_\_\_\_\_\_ |
| **Default Interest Rate:** | \_\_% per annum |
| **Commencement Date:** | Date of this Deed/Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(circle or complete) |
| **Expiry Date:** |  |

**OWNER INFORMATION**

|  |  |
| --- | --- |
| **Owner legal name:** |   |
| **Owner address:** |   |
|  |   |
|  |   |
| **Owner phone number:** |   |
| **Owner email address:** |   |
| **Owner’s Account:**  | Account number: Account name:  |
| **Collection Location:** |   |

**LESSEE INFORMATION**

|  |  |
| --- | --- |
| **Lessee legal name:** |   |
| **Lessee address:** |   |
|  |   |
|  |   |
| **Lessee phone number:** |   |
| **Lessee email address:** |   |
| **Horse Location:** |   |

**SCHEDULE TWO**

**TERMS OF DEED**

# DEFINITIONS AND INTERPRETATION

## **Definitions:** In this Deed, the following definitions shall apply:

## **Deed** means this agreement.

## **Horse** means the horse described in Schedule One.

**Insolvency Event** means any of the following events occurring to a person:

#### being a natural person, committing any act of bankruptcy, being adjudicated bankrupt, having a receiver, manager or official assignee appointed;

#### being an incorporated entity (including without limitation a company, limited partnership, incorporated society and incorporated trust board), entering liquidation, having a receiver, liquidator, statutory manager or administrator appointed, being wound up otherwise than for the purpose of a solvent reconstruction, or being struck off;

#### being an unincorporated entity (including without limitation a partnership, unincorporated society or group of people), committing any act of bankruptcy, being adjudicated bankrupt, having a receiver, manager or official assignee appointed, over all or any part of their property; or

#### being a trust, being wound up by the trustees, in accordance with its trust deed or an order of the Court, going into liquidation, having a liquidator, receiver, statutory manager or administrator appointed, or being wound up otherwise than for the purpose of a solvent reconstruction.

## **PPSA** means thePersonal Property Securities Act 1999.

## **Term** means the term of this Deed, which shall, subject to earlier termination or expiry, commence on the Commencement Date and end on the Expiry Date.

## **Schedule One Definitions:** Whenever words appear in this Deed that also appear in Schedule One, then those words shall mean and include the details supplied after them in Schedule One.

## **References:** In this Deed, unless the context requires otherwise, or specifically stated, reference to:

* + - 1. the plural includes reference to the singular, and vice versa;
			2. any law, legislation, or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision whether before or after the date of this Deed; and
			3. reference to a party, person(s) or entity includes without limitation:

##### means a reference to any natural or artificial person and includes an individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state, or other entity, in each case whether or not having separate legal personality; and

##### an employee, agent, successor, permitted assigns, executor, administrator and other representative of such party, person or entity.

* 1. **Headings:** Headings inserted in this Deed are for convenience of reference only and do not affect the interpretation of this Deed.

## **Schedules:** All schedules, annexures or other attachments to this Deed form part of this Deed.

* 1. **Payment:** Any reference to, or obligation in this Deed which requires payment of money will be a reference to, or deemed to be an obligation requiring payment of money in immediately available cleared funds, without deduction or set off.
	2. **GST:** All amounts payable pursuant to this Deed include GST, if any.

## **Conflict:** If any provision in Schedule One (**Other Provision**) conflicts with the provisions of this Schedule Two, the Other Provision shall prevail.

# TERM AND COLLECTION

## **Term:** This Deed shall remain in effect for the Term.

## **Extend:** The parties may agree to extend the Term by signing a written agreement recording the terms and conditions of such extension.

## **Holding over:** If, other than under a renewal of this lease or the grant of a new lease, the Owner permits the Lessee to remain in possession of the Horse after the expiry or earlier termination of the Term, the Lessee will possess the Horse pursuant to a periodic tenancy that may be terminated on 14 days’ notice (**Holding Over Period**). The terms and conditions of this Deed shall continue to apply during the Holding Over Period.

## **Horse collection:** At 12pm on theCommencement Date or such other time as mutually agreed by the parties, the Owner shall make the Horse available for collection by the Lessee at the Collection Location, and the Lessee shall, at the Lessee’s cost, collect and remove the Horse from the Collection Location.

## **Horse Transporter:** The Lessee may engage a third party (**Horse Transporter**) to collect the Horse from the Collection Location provided that the Lessee has notified the Owner in writing at least 2 Working Days’ prior to the Commencement Date.

# USE AND CARE OF THE HORSE

## **Use:** The Lessee shall only use the Horse for the Permitted Use.

## **Location:** Unless otherwise agreed by the Owner, the Lessee shall keep the Horse at the Horse Location, unless the Horse is reasonably required to be temporarily moved in order to comply with the requirements of this Deed, or as reasonably required for the Permitted Use. If the Horse is required to be taken out of New Zealand to be reasonably used for the Permitted Use, the Lessee shall obtain the Owner’s prior written consent.

## **Lessee Warranties:** The Lessee shall, at the Lessee’s cost, during the Term:

#### care for the Horse in accordance with standards of animal husbandry generally accepted for a horse used for the Permitted Use;

#### use its best endeavours to keep the Horse in good health during the term of the Lease;

#### pay all vet, farrier, training, feed, grazing, insurance (if specified in Schedule One) and other costs and outgoings arising in relation to the Horse;

#### keep the Horse in its possession and control at all times;

#### ensure that the Horse does not stray onto any land owned by a third party or any Crown owned land or any public road or reserve;

#### be liable for any damage or personal injury caused by the Horse; and

#### comply with all applicable laws that relate to this Deed, and the care and possession of the Horse.

## **Notice:** If during the Term the Horse:

#### dies; or

#### becomes injured or sick, so that it is incapacitated to the extent that it is, or is reasonably unlikely to be, unable to be reasonably used for the Permitted Use for a period of one month or more,

#### then the Lessee shall immediately notify the Owner.

## **Euthanasia:** Subject to clause 3.6, the Lessee is not authorised or otherwise permitted to euthanase the Horse without the Owner’s prior written consent. If consented to by the Owner, euthanasia of the Horse shall be at the Lessee’s cost.

## **Emergency euthanasia:** If during the Term the Horse becomes injured or sick, to the extent that it is inhumane not to immediately euthanase the Horse, then the Lessee shall immediately make reasonable attempts to contact the Owner by phone, explain the situation and condition of the Horse, and obtain verbal consent from the Owner to the Horse’s euthanasia. The Owner of the Horse may request, and the Lessee shall permit, the Owner to inspect the Horse prior to giving such consent. If the Lessee is unable to contact the Owner after making reasonable attempts, then the Lessee shall, at its cost, engage an appropriately qualified and experienced vet (**Vet**) to assess the Horse, and if the Vet agrees, in their professional opinion, with the Lessee’s assessment of the Horse’s condition, then the Vet may euthanase the Horse. Within two Working Days after such euthanasia, the Vet shall prepare a report recording its assessment, and provide a copy to the Owner.

## **Termination:** This Deed shall immediately terminate on the death of the Horse. Termination, and the rights and remedies set out in this clause 3, shall be without prejudice to each party’s rights and remedies pursuant to this Deed.

## **Quiet enjoyment:** If the Lessee pays the Rental and performs the Lessee’s obligations in this Deed, the Lessee will be entitled to quiet enjoyment of the Horse without interruption by the Owner.

# INSURANCE

## **Insurance:** If Schedule One indicates thatthe Horse will beinsured, the party that is described as being required to insure the Horse (**Insuring Party**) will obtain and maintain the insurance described in Schedule One in relation to the Horse, and where no sum insured or specific terms are specified, with a reasonable sum insured and on reasonable terms and conditions. If the Lessee is the Insuring Party, then the Lessee shall record the Owner as a co-insured. The Insuring Party shall provide evidence of insurance to the other party on request. If Schedule One does not indicate that insurance is required, then insurance is optional by either the Owner or Lessee. If the Owner insures, the cost of such insurance shall not be on charged to the Lessee.

## **Insurance costs:** If the Owner is the Insuring Party, the Lessee shall reimburse the Owner for all premiums payable by the Owner to the extent that they relate to the Horse during the Term.

## **Benefit:** If the Lessee is the Insuring Party, the Owner shall have the benefit of the Owner’s insurance. If the Horse becomes injured, sick, or dies, then the Lessee shall make a claim on the applicable insurance policy, and pay all of the net proceeds of the claim to the Owner’s Account immediately on the Lessee’s receipt of such insurance proceeds.

# OWNER WARRANTIES AND RIGHTS

## **Representations:** The Owner warrants to the best of the Owner’s knowledge and belief, as at the Commencement Date, that the:

#### Horse is in a condition that is materially sound for the Permitted Use;

#### Horse has not presented or exhibited any material vice or behavioural issue that would reasonably affect its suitability for the Permitted Use;

#### Horse Information set out in Schedule One is true and correct;

#### Owner is not ‘in trade’, and the Horse is not supplied ‘in trade’ as defined in Consumer Guarantees Act 1993; and

#### Horse is solely or jointly owned by the Owner, and where the Horse is jointly owned by the Owner, the Owner has the authority from all other Owners to enter into this Deed.

## **No implied warranties:** Except as expressly set out in this Deed, to the extent permitted by law, the Horse is provided “as is”, without any other guarantees, warranties, conditions or representations (whether express, implied by law, statute, trade custom or otherwise) including without limitation in relation to title, quality, merchantability, suitability or fitness for purpose, compliance with description, or otherwise.

## **Inspection:** The Owner may, on providing 7 days’ notice in writing to the Tenant, inspect the Horse at the Horse Location, for the purpose of ensuring that the Lessee is complying with the terms and conditions of this Deed. If the Horse is not located at the Horse Location, the Lessee shall notify the Owner of the Horse’s location, and make arrangements to allow the Owner to inspect the Horse at the alternate location at the time and date set out in the Owner’s notice.

# RENTAL, RISK AND TITLE

## **Payment**: The parties agree that the Lessee will pay the Rental to the Owner. Rental will be paid in accordance with the following:

#### the first Rental payment shall be paid on or prior to the Commencement Date;

#### all subsequent Rental payments shall be made in accordance with the Rental Payment Frequency during the Term; and

#### all Rental payments shall be made to the Owner’s Account, by way of electronic funds transfer, and include the Reference Details.

## **Broken periods:** If Rental is payable during any period, but the period is less than the Rental Payment Frequency, then the Rental shall be calculated on a pro-rata basis.

## **Nil rental:** If Schedule One indicates that no Rental is payable, then the parties acknowledge that the exchange of obligations in this Deed comprises sufficient consideration.

## **Invoice:** The Owner shall provide an invoice to the Lessee for the payment of Rental pursuant to clause 6.1, on the Lessee’s request. Such invoice may be a single invoice for each payment of Rental, or be a continuous invoice for more than one Rental payment, as determined by the Owner.

## **Interest:** If the Lessee fails to make any payment on or prior to the applicable due date for payment specified in clause 6.1 (**Interest Date**), the Owner may, on demand, charge the Lessee interest at the Default Interest Rate, calculated on a daily basis from the Interest Date until the date that payment is received by the Owner.

## **Risk:** Risk in the Horse shall transfer from the Owner to the Lessee upon the Lessee, or the Horse Transporter, taking care and control of the Horse at the Collection Location. Risk in the Horse shall transfer from the Lessee to the Owner upon the Owner, or the Horse Transporter, taking care and control of the Horse at the Horse Location.

## **Title:** Title to the Horse shall at all times remain with the Owner.

## **PPSA:** The parties acknowledge that this Deed may automatically give rise to a security interest (as defined by the PPSA), and if not, the Lessee grants a security interest to the Owner, in respect of the Horse to secure the performance of the Lessee’s obligations pursuant to this Deed. Provided that the requirements of the PPSA have been met, the Lessee acknowledges that the Owner’s security interest will be a ‘purchase money security interest’ (as defined in the PPSA) in respect of the Horse.

## **Registration:** The Lessee agrees to, on the Owner’s request:

#### provide any information, and sign any documentation, reasonably required by the Owner for the registration of a security interest in favour of the Owner on the Personal Property Securities Register; and

#### waive any right to receive a copy of the verification statement, pursuant to section 148 of the New Zealand Personal Property Securities Act 1999.

# TERMINATION

## **Termination with cause:** A partymay terminate this Deed by providing notice in writing to all other parties if another party (**Defaulting Party**):

#### commits, or in its reasonable opinion is likely to commit, a breach of the terms and conditions of this Deed and such breach, if capable of remedy, is not remedied by the Defaulting Party to the satisfaction of the other party within 20 Working Days of receipt by the Breaching Party of written notice of such breach from the other party;

#### commits a breach of the terms and conditions of this Deed that is not capable of remedy; or

#### immediately if the Defaulting Party experiences an Insolvency Event.

* 1. **Failure to pay Rental:** The Owner may terminate this Deed by providing notice in writing to the Lessee if the Lessee fails to pay the Rental within 10 Working Days after the payment due date.
	2. **Rights and obligations:** Termination or expiry of this Deed shall be without prejudice to any rights and/or obligations of the parties existing at the time of termination or expiry.

## **Effect:** On termination or expiry of this Deed:

#### the Lessee shall pay all outstanding monies due and payable to the Owner;

#### the Owner shall, at the Owner’s cost, make arrangements to collect and remove the Horse from the Horse Location, and notify the Lessee within 4 days of the date of termination or expiry of this Deed of the date and time on which the Horse will be collected and removed, with such date being no later than 7 days after the date of termination or expiry of this Deed and such time being between the hours of 9am and 5pm (**Collection Notice**);

#### if the Owner is engaging a Horse Transporter to collect the Horse from the Horse Location then the Collection Notice must specify the name of such third party;

#### the Lessee shall, at the Lessee’s cost, make the Horse available for collection by the Owner at the Horse Location at the time and date specified in the Collection Notice;

#### the Owner shall, at the Owner’s cost, collect and remove the Horse from the Horse Location at the time and date specified in the Collection Notice;

#### the Owner collect the Horse from the Horse Location at the Owner’s cost; and

#### the Lessee shall continue to comply with the terms and conditions of this Deed between the date of termination or expiry of this Deed and the date and time specified in the Collection Notice, as if this Deed had not so terminated or expired.

## **Owner default:** If the Owner fails to provide a Collection Notice within the period prescribed in clause 7.3(b), or issues a Collection Notice within the period prescribed in clause 7.3(b) but fails to collect the Horse as specified in the Collection Notice (**Owner Default Date**), then:

#### the Lessee shall from the Owner Default Date continue to comply with clause 3 (disregarding any reference to the Term in that clause) of this Deed from the date of expiry or termination of this Deed until the Owner collects the Horse;

#### except where the Owner has terminated this Deed as a result of a breach of the Lessee, or where the Horse has died, the Owner shall, on the Lessee’s demand, reimburse the Lessee for all reasonable costs and expenses incurred by the Lessee, including without limitation grazing fees, in complying with clause 7.4(a) from the Owner Default Date (**Post Termination Costs**); and

#### subject to applicable law, the Lessee may claim a lien over the Horse to secure payment of the Post Termination Costs. If the Owner consents in writing, or if the Owner has not collected the Horse within three months after the date of termination or expiry of this Deed, the Lessee may sell the Horse for reasonable market value to recover the Post Termination Costs. The balance of the Horse sale proceeds, after deduction of the Post Termination Costs and costs of sale, shall be paid to the Owner’s Account by the Lessee, and a statement recording the sale price, calculation and deduction of the Post Termination Costs and the surplus (if any) paid to the Owner’s Account, shall be provided by the Lessee to the Owner in writing.

# DISPUTE RESOLUTION

* 1. **Dispute resolution:** In the event of any dispute under this Deed, the parties will:
		+ 1. promptly give full written particulars of this dispute to the other; and
			2. cooperatively enter into discussions to try and resolve the dispute.
	2. **No Resolution:** If the dispute is not resolved within 10 Working Days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to the disputes tribunal or the Courts, as applicable.
	3. **Exception:** This clause does not apply to:
		+ 1. any dispute arising in connection with any attempted re-negotiation of this Deed; or
			2. an application by either party for urgent interlocutory relief.

# MISCELLANEOUS

* 1. **Governing law:** This Deed is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
	2. **Force majeure:** No failure or omission by any party to carry out or observe any of the terms or conditions of this Deed will, except as expressly provided to the contrary in this Deed, give rise to any claim against the party in question or be deemed a breach of this Deed if such failure or omission arises from any cause reasonably beyond the control of such party, provided that this clause will not extend to excuse the consequences of insolvency, financial difficulty, or the non-payment of monies due.

## **Relationship:** This Deed does not create a joint venture, partnership, agency, or employer/employee relationship between the parties.

## **Notices:** Notices, communications, documents or demands required to be made or served pursuant to this Deed shall be in writing and signed by the party giving the notice. Notices shall be sent to the applicable party’s registered address, address set out this Deed, which may be updated from time to time by a party by sending written notice to the other parties. Any notice or document shall be deemed to be duly given or made if delivered by hand, when so delivered; if sent by post, on the fifth working day following posting; if communicated by facsimile or email, when transmitted to the recipient's last known facsimile number and/or email address, provided that the sender does not receive any indication of incomplete transmission.

## **Deed costs:** Each party shall pay their own costs arising from the drafting, negotiation and execution of this Deed.

## **Default costs:** A party that is in default of this Deed shall pay the other party’s reasonable legal costs (as between solicitor and client) of and incidental to the enforcement of the other party’s rights, remedies and powers under this Deed.

## **Severance:** If any provision of this Deed is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

## **Survivorship:** Termination or expiry of this Deed for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the parties that are intended to survive such termination, and any other provision to the extent required in order to give effect to such provisions.

* 1. **No waiver:** No delay, neglect or forbearance by either party in enforcing against the other party any provision of this Deed will be a waiver, or in any way prejudice any right, of that party.

## **Variation:** Any modification to or variation of this Deed must be in writing and signed by each party.

## **Non-circumvent:** The parties will not circumvent or attempt to circumvent the provisions and/or intent of this Deed.

## **Assignment:** Neither party shall sublet, assign or otherwise transfer the rights or benefits of this Deed to any third party without the prior written consent of the other party.

## **Short form:** The parties acknowledge that this is a short form Deed. It may not deal with, or adequately deal with, some matters that may arise. Because of this the parties will work with each other co-operatively to determine how this Deed is to apply to such matters on a case by case basis, having regard to the broad intentions of the parties in entering into this Deed.

## **Entire Deed:** This Deed constitutes the entire Deed and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of this Deed.

## **Counterparts:** This Deed may be executed in counterparts (which may be electronic or facsimile copies) and all of which, when taken together constitute the one document.