

Copyright Licence

Wagering Operator: _____

Racing NSW

Copyright Licence -
New South Wales Thoroughbred Race Fields

Racing NSW
Level 7
51 Drutt St
Sydney NSW 2000

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Date	2009
Parties	
1.	Wagering Operator: _____ (ACN/ABN: _____) of Address: _____ (the Licensee)
2.	Racing NSW (NSW BN97793260) registered in New South Wales of Level 7, 51 Druitt St, Sydney NSW 2000 (Racing NSW)
Recitals	
A	RISA has as its primary object the encouragement and promotion of horse races by, among other things, establishing and conducting a national consolidated racing information services business to service the Australian horse racing industry and other users of horse racing information.
B	RISA, and others working with it including Racing NSW, by their employees and agents: (a) employ significant labour at considerable expense in collecting, compiling, verifying, managing and recording in the form of compilations certain information relating to thoroughbred horses, races and race meetings; and (b) exercise skill, judgment and knowledge in selecting, handicapping, ordering, compiling, finalising and recording in the form of compilations certain information relating to thoroughbred horses, races and race meetings.
C	By reason of the skill, judgment and knowledge in selecting, handicapping, ordering, compiling, finalising and recording in the form of compilations racing information and other information, copyright subsists in relation those compilations as literary works, and such literary works include (among other works) progressive versions of the NSW Thoroughbred Race Fields.
D	RISA and Racing NSW, by reason of their employees' and agents' creation of the NSW Thoroughbred Race Fields, are initially co-owners of the copyright in the NSW Thoroughbred Race Fields. However, under the RISA Participation Agreement, RISA assigned to Racing NSW free of all encumbrances all of its right, title and interest in the NSW Thoroughbred Race Fields including any copyright subsisting in the NSW Thoroughbred Race Fields.
E	The Licensee is an Australian Wagering Operator.
F	The Licensee wishes to Display the NSW Thoroughbred Race Fields, and has sought the approval of Racing NSW, as the copyright owner, to do so.

G	Racing NSW has agreed to permit the Licensee to Display the NSW Thoroughbred Race Fields during the Term. The Licensee acknowledges that RISA and Racing NSW may enter into an agreement for RISA to deliver the NSW Thoroughbred Race Fields to the Licensee on behalf of Racing NSW.
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It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply.

Agreement means this copyright licence agreement.

Australian Wagering Licence means a licence, permit, approval or authority (however described) under the laws of any Australian State or Territory to conduct any form of wagering including totalisator wagering, bookmaking, a betting exchange or any other form of wagering whether now existing or subsequently designed or developed.

Australian Wagering Operator means a Wagering Operator who holds an Australian Wagering Licence.

Bet Back means a wager which is made by the Licensee on the “backers” side of a wagering transaction in relation to NSW Thoroughbred Races (or contingencies related to NSW Thoroughbred Races):

- (a) for the purpose of genuinely reducing or laying-off the Licensee's liability on a fixed-odds wager which has already been accepted by the Licensee and on which the Licensee has taken risk on the “layers” side of the wagering transaction;
- (b) on the same contingency in relation to the NSW Thoroughbred Race as the Licensee has already accepted risk on the “layers” side of the wagering transaction referred to in paragraph (a); and
- (c) in respect of which the amount which the Licensee stands to win does not exceed the amount that the Licensee stands to lose on the same contingency on the “layers” side of the wagering transaction referred to in paragraph (a).

Bet Back Credit means a credit of an amount equal to the amount staked by the Licensee in any Bet Back made during the period in respect of which the relevant payment relates if, but only if, the Bet Back is made through an account with an Australian Wagering Operator.

Business Day means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.

Claim means, in relation to a party, a demand, claim, action or proceeding threatened, made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

Commencement Date means 1 October 2009.

Confidential Information means confidential information in relation to the Licensee (including confidential financial information and confidential information in relation to the wagering operations of the Licensee, trade secrets, confidential know-how or confidential technical or product information) disclosed by the Licensee to Racing NSW but does not include information which:

- (a) generated by Racing NSW independently of data or information provided by the Licensee;
- (b) is or has become part of the public domain other than as a result of a breach of an obligation of confidentiality;
- (c) was in the possession of Racing NSW at the time of disclosure and was not subject to an obligation of confidentiality;
- (d) has been independently received by Racing NSW from a third party who Racing NSW is not aware (to the best of its knowledge and belief) is subject to an obligation of confidentiality in respect of that information; or
- (e) is provided to Racing NSW by the Licensee other than in connection with this Agreement in circumstances where Racing NSW is not subject to obligations of confidentiality in respect of that information.

Control means control within the meaning of that term in either:

- (f) section 50AA of the Corporations Act; or
- (g) generally accepted accounting standards required under the Corporations Act, by the Australian Accounting Standards Board and other mandatory professional financial reporting requirements applicable in Australia.

Corporations Act means the *Corporations Act 2001* (Cth) and the Corporations Regulations.

Display (in relation to the NSW Thoroughbred Race Fields) means to reproduce in material form in any medium (including, without limitation, on an Internet website), publish, communicate to the public or make an adaptation of one or more NSW Thoroughbred Race Fields, or a substantial part of a NSW Thoroughbred Race Field.

Exempt Turnover Amount means, in respect of a period:

- (a) if the relevant period is a full financial year, an amount of \$5 million; or
- (b) if the relevant period is other than a full financial year, an amount of \$5 million adjusted pro-rata in the proportion that the relevant period bears to a full financial year.

Financial Year means a period of 12 months commencing on 1 July in any year and ending on 30 June in the following calendar year.

Group means the Licensee and any Australian Wagering Operator who is Related to the Licensee from time to time.

Insolvency Event means:

- (a) a receiver, receiver and manager, official manager, trustee, administrator or similar official is appointed, or steps are taken for such an appointment, over any of the assets or undertaking of a person;
- (b) an application or order is made or petition presented seeking winding up, dissolution or deregistration of a body that is not discharged or withdrawn within 10 Business Days of its presentation;
- (c) a person suspends payment of its debts generally;
- (d) a person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, the Bankruptcy Act 1966 (Cth) or other applicable legislation or is presumed to be insolvent under the Corporations Act, the Bankruptcy Act 1966 (Cth) or other applicable legislation;
- (e) a person enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (f) an order is made for the winding-up or dissolution of a company or a resolution is passed otherwise than for the purpose of an amalgamation or reconstruction while solvent;
- (g) a resolution is passed to liquidate the body or any steps are taken to pass a resolution for the liquidation of the body;
- (h) a company becomes an “externally administered body corporate”, as that term is defined in the Corporations Act, or that company’s assets otherwise becomes subject to a law relating to insolvency; or
- (i) a person appointed under a power of attorney or other arrangement with a company’s financiers becomes entitled to manage the business or affairs of a company or to perform obligations of the company.

Interest Rate means the interest rate applicable from time to time on judgment debts arising from orders of the Supreme Court of NSW.

Key Employee has the meaning given to that term in the Racing Administration Regulations.

Liabilities means debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Licence Fee means the fee payable by the Licensee in consideration for the licence to Display the NSW Thoroughbred Race Field granted pursuant to this Agreement, calculated in accordance with clause 3.

Monthly Instalment Amount means the amount set out in clause 3.2(c).

Net Assessable Turnover for a period means the NSW Thoroughbred Turnover for that period less the Exempt Turnover Amount and the Bet Back Credit for that period.

NSW Thoroughbred Race means a thoroughbred or other horse race (other than a harness race) held or to be held at a race meeting on a licensed racecourse in New South Wales.

NSW Thoroughbred Race Field means a work which records the names of the horses, or other information relating to the horses, that have been nominated for, are otherwise intended to take part in, or have taken part in, a NSW Thoroughbred Race, including all versions of that work created prior to or after the commencement of that NSW Thoroughbred Race.

NSW Thoroughbred Turnover means Turnover in respect of wagering transactions in relation to NSW Thoroughbred Races (or contingencies related to NSW Thoroughbred Races) made with the Licensee during the Term. Without limiting the generality of this definition, where:

- (a) the result of a single wagering transaction depends on the combined outcome of a number of events (for example: “doubles” bets); and
- (b) a NSW Thoroughbred Race is at least one of the events on which the outcome of that wagering transaction depends,

NSW Thoroughbred Turnover will include the same proportion of the amount of the wagers made on the “backers” side of the wagering transaction as the number of NSW Thoroughbred Races on which the outcome of the wagering transaction depends bears to the total number of events on which the outcome of the wagering transaction depends, irrespective of the order in which those events are conducted or determined or the outcome of those events.

Quarter means a period of 3 months ending on the last day of the third month in each period during the Term, namely 31 December, 31 March, 30 June and 30 September.

Race Meeting means any thoroughbred horse race meeting conducted by or on behalf of any racing club physically located in Australia and includes all races, events and activities before, after, during and between races.

Racing Administration Regulations means the *Racing Administration Regulations 2005* (NSW).

Related means, in relation to the Licensee and another Australian Wagering Operator, that:

- (a) they are “related bodies corporate” within the meaning of the Corporations Act;
- (b) one Controls the other;
- (c) they are both Controlled by the same person or group of people;
- (d) one is a Key Employee, a director or an “associate” (within the meaning of the Corporations Act) of the other (for example: if a company has an Australian Wagering Licence and a director or key employee of that company also has an

Australian Wagering Licence, then the company and the director/key employee are considered “Related”);

- (e) they have a common Key Employee or a common director (for example: if a person is a director or key employee of two companies both of which have Australian Wagering Licences, then those two companies are considered “Related”);
- (f) one is a partner in another wagering operation that is conducted as a partnership;
- (g) a Key Employee or a director of one is a partner of the other;
- (h) they are acting in concert with each other in relation to activities conducted under their respective Australian Wagering Licences or the taking of wagers on NSW Thoroughbred Racing; or
- (i) they are “Related” to a common person under paragraphs (a)-(h) (for example: “Company A” and its subsidiary “Company B” are related. If “Mr X” is a director of Company B, he would be “Related” to both Company B and to Company A),

and, if the Licensee is Related to another Australian Wagering Operator, then they are deemed for the purpose of these conditions to continue to be Related until the later of:

- (j) the Licensee ceasing to be “Related” to the other Australian Wagering Operator under any of paragraphs (a)-(i); or
- (k) the Licensee giving written notice to Racing NSW that it has ceased to be “Related” to the other Australian Wagering Operator.

RISA means Racing Information Services Australia Pty Ltd (ACN 105 994 330) of 400 Epsom Road, Flemington, Victoria.

Rules of Racing includes:

- (a) the Australian Rules of Racing;
- (b) the local rules of racing applicable in any Australian State or Territory (including the Rules of Racing NSW); and
- (c) the rules of betting applicable under the laws of an Australian State or Territory to the extent that those rules of betting apply to the wagering activities conducted by an Australian Wagering Operator.

Term means the term of this Agreement, as set out in clause 4.

Turnover means, in relation to a race or class of races, the total amount of wagers made on the “backers” side of wagering transactions made in connection with that race or class of races. For the avoidance of doubt, in the case of a person who holds an Australian Wagering Licence to operate a betting exchange, the “backers” side of wagering transactions made through the operation of that betting exchange is regarded as that person’s “Turnover” even if that person is not a party to the contract which constitutes the wagering transaction.

Wagering Operator means a bookmaker, a person who operates a totalisator or a person who operates a betting exchange.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (d) A reference to a clause or schedule is a reference to a clause or schedule to this Agreement.
- (e) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals and schedules to that agreement or document.
- (f) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (i) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (j) A reference to *dollars* and \$ is to Australian currency.
- (k) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (l) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

2. Licence

Racing NSW grants to the Licensee a non-exclusive and non-transferable licence to Display the NSW Thoroughbred Race Fields under the terms of this Agreement for the duration of the Term.

3. Licence Fee

3.1 Licence Fee

The Licensee must pay to Racing NSW the Licence Fee, calculated as an amount equal to 3% of the Licensee's Net Assessable Turnover during the Term, by paying, in the manner provided in clause 3.2(f):

- (a) all instalments in accordance with clauses 3.2(c) and 3.2(d) having regard to the calculation of the Exempt Turnover Amount in clause 3.2(a) and Bet Back Credit in clause 3.2(b); and
- (b) any amount payable by the Licensee in accordance with clause 3.2(e).

3.2 Payment

(a) Exempt Turnover Amount

- (i) The Licensee's Exempt Turnover Amount in respect of a period is:
 - (A) if the Licensee is not Related to any other Australian Wagering Operator at any time during the relevant period, the Exempt Turnover Amount in respect of that period;
 - (B) if the Licensee is not Related to any other Australian Wagering Operator for only part of the relevant period:
 - (1) in respect of that part of the relevant period in which the Licensee was not Related to any other Australian Wagering Operator, the Exempt Turnover Amount for that part of the relevant period; and
 - (2) in respect of the remainder of the relevant period, the amount, if any, of the Exempt Turnover Amount for that part of the relevant period that Racing NSW allocates to the Licensee under clause 3.2(a)(ii); or
 - (C) if the Licensee is Related to any other Australian Wagering Operator during the whole of the relevant period, the amount, if any, of the Exempt Turnover Amount for that period that Racing NSW allocates to the Licensee under clause 3.2(a)(ii).
- (ii) If the Licensee is Related to any other Australian Wagering Operator during the Term, Racing NSW will allocate the Exempt Turnover Amount amongst the members of the Group with the intent that, in determining the Licence Fees payable to Racing NSW, the Australian Wagering Operators in the Group:

- (A) will collectively be entitled to the benefit of the Exempt Turnover Amount; but
- (B) will not collectively be entitled to deductions from their NSW Thoroughbred Turnover (other than Bet Back Credits for members of a Group) of more than the Exempt Turnover Amount.
- (iii) Racing NSW may change the allocation of the Exempt Turnover Amount under clause 3.2(a)(i)(B) if there is a change in the Australian Wagering Operators to whom the Licensee is Related.
- (iv) In allocating the Exempt Turnover Amount amongst the members of the Group under clause 3.2(a)(i)(B), Racing NSW will seek to allocate that Exempt Turnover Amount:
 - (A) where the members of the Group were Related at the start of the Financial Year and all members of the Group specify the same proposed allocation of the Exempt Turnover Amount, in accordance with the proposed allocation specified; or
 - (B) otherwise, to the member of the Group with the highest anticipated NSW Thoroughbred Turnover for the Financial Year and then, to the extent that the Exempt Turnover Amount is not fully allocated, to the member of the Group with the next highest anticipated NSW Thoroughbred Turnover and so on,

but Racing NSW will not be liable to any person, on any basis whatsoever, as a result of the manner in which the Exempt Turnover Amount is allocated amongst members of the Group, including if the allocation is not conducted in accordance with this clause 3.2(a)(iv).

(b) **Bet Back Credits**

- (i) For the purpose of determining amounts payable by the Licensee under clauses 3.1, 3.2(d), or 3.2(e), the Licensee is entitled to a credit (that is, a "Bet Back Credit") of an amount equal to the amount staked by the Licensee in any Bet Back made during the period in respect of which the relevant payment relates if, but only if, the Bet Back is made through an account with an Australian Wagering Operator under an arrangement evidenced in writing with a NSW thoroughbred racing club registered by Racing NSW, and pays that racing club a licence fee which is calculated by reference to that Australian Wagering Operator's turnover or revenue in relation to the Bet Back.
- (ii) For the avoidance of doubt, the Licensee is not entitled to any Bet Back Credit for a Bet Back which is made in cash rather than through an account unless the Licensee can prove through documentary evidence that the Licensee is entitled to that credit under clause 3.2(b)(i).

(c) **Monthly Instalment Payments**

- (i) The Licensee must pay to Racing NSW in respect of each month an amount equal to:
 - (A) 3% of the Licensee's Net Assessable Turnover for the Term;
 - (B) equally divided into 12 amounts,
with each of these 12 amounts being the **Monthly Instalment Amount**, and must pay each of the Monthly Instalment Amounts:
 - (C) monthly in arrears; and
 - (D) within 7 days after the end of the calendar month to which the payment relates.
- (ii) If the Commencement Date is not the first day of a month, then the amount of the payment under clause 3.2(c)(i) for the month which includes the Commencement Date is reduced pro-rata in proportion to the number of days in the month which occur on or after the Commencement Date.
- (iii) Payments under this clause 3.2(c) are instalment payments in respect of the Licence Fee referred to in clause 3.1.
- (iv) The Licensee may apply to Racing NSW at the conclusion of the quarter ending 31 December to decrease the Monthly Instalment Amount.
- (v) On receipt of an application pursuant to clause 3.2(c)(iv), Racing NSW may determine, in its absolute discretion, whether to decrease the Monthly Instalment Amount and, if so, to what amount.

(d) **Supplementary Quarterly Instalment Payments and Refunds**

- (i) If, as at the end of a Quarter, the amount which is 3.0% of the Licensee's Net Assessable Turnover for the period from the Commencement Date until the end of the relevant Quarter exceeds the sum of:
 - (A) all Monthly Instalment Amounts paid under clause 3.2(c) in respect of months up to and including the end of the relevant Quarter (which amounts shall include any amount payable under clause 3.2(c) in respect of the last month of the Quarter even though that amount is not paid until the 7th day of the month);
 - (B) any amounts paid under this clause 3.2(d) in respect of previous Quarters,

the Licensee must, within 28 days after the end of the relevant Quarter, pay to Racing NSW an amount equal to that excess.

(For example: if a Licensee's Net Assessable Turnover for the period from the Commencement Date to the end of a relevant Quarter was \$10 million, and the Licensee had made payments under clause 3.2(c) totalling \$120,000, then the Licensee would be required to make a payment under

this clause 3.2(d) of \$30,000 (i.e. 1.5% x \$10 million - \$120,000) within 28 days of the end of the relevant Quarter.)

- (ii) Payments under this clause 3.2(d) are instalment payments in respect of the Licence Fee referred to in clause 3.1.
- (iii) If, as at the end of a Quarter, the amount which is 3.0% of the Licensee's Net Assessable Turnover for that Quarter is less than the instalments paid under clause 3.2(c) (which amounts shall include any amount payable under clause 3.2(c) in respect of the last month of the Quarter even though that amount is not paid until the 7th day of the month), then:
 - (A) Racing NSW may, in its absolute discretion, refund the amount of the excess instalments; and
 - (B) any decision by Racing NSW to refund an amount pursuant to clause 3.2(d)(iii)(A) does not affect the liability of the Licensee to pay the Monthly Instalment Amount pursuant to clause 3.2(c) in respect of any following months.
- (e) **Final Licence Fee Adjustment**
 - (i) If, at the end of the Term, the amount of the Licence Fee referred to in clause 3.1:
 - (A) exceeds the sum of all instalment payments and quarterly adjustments in respect of that Licence Fee under clauses 3.2(c) and 3.2(d), the Licensee must pay to Racing NSW an amount equal to that excess;
 - (B) is less than the sum of all instalment payments, quarterly adjustments and refunds in respect of that Licence Fee under clauses 3.2(c) and 3.2(d), Racing NSW must refund to the Licensee an amount equal to the amount by which the sum of all instalment payments in respect of that Licence Fee under clauses 3.2(c) and 3.2(d) exceeds the amount of the Licence Fee referred to in clause 3.1.
 - (ii) The Licensee must pay any amount payable by the Licensee under clause 3.2(e)(i) within 6 weeks after the end of the Term.
 - (iii) Racing NSW must pay the amount of any refund payable by Racing NSW under clause 3.2(e)(i):
 - (A) if, by the date which is 6 weeks after the end of the Term, Racing NSW has given written notice to the Licensee that it requires an audit under clause 3.3(d), within 14 days after Racing NSW gives notice under clause 3.3(d)(v) in respect of that audit; or
 - (B) otherwise, within 104 days (3 months and 2 weeks) after the end of the Term.

- (iv) For the avoidance of doubt, neither the acceptance of a payment from the Licensee nor the payment of a refund by Racing NSW under clause 3.2(e) constitutes an admission by Racing NSW that the amount is correctly determined and Racing NSW retains the right to seek adjustments if those amounts are subsequently proven to be incorrect.
- (f) **Payment method**
 - (i) The Licensee must pay amounts payable under these conditions (including the Licence Fee referred to in clause 3.1 and amounts payable under clauses 3.2(c), 3.2(d) or 3.2(e)) by:
 - (A) authorising Racing NSW to make a direct deduction from a bank account maintained by the Licensee and identified in writing by the Licensee to Racing NSW; or
 - (B) in accordance with such other arrangements as may be agreed between Racing NSW and the Licensee from time to time for the payment of amounts payable under these conditions,

and do all things reasonably requested by Racing NSW to facilitate the implementation of those arrangements including, in the case of arrangements referred to in clause 3.2(f)(i)(A) providing such written authorities and consents (including from the Licensee's bank) as may be required by Racing NSW and Racing NSW's bank to enable Racing NSW to access the Licensee's relevant bank account or accounts for the purpose of deducting the amounts payable under these conditions.
 - (ii) For the avoidance of doubt nothing in this clause 3.2(f) prohibits the Licensee cancelling a debit authority in relation to its bank account provided the Licensee otherwise maintains arrangements to which Racing NSW has agreed in advance for the payment of amounts payable under these conditions and reimburses Racing NSW for any additional cost or expense that Racing NSW may incur as a result of the adoption of an alternative agreed payment arrangement.
 - (iii) In addition to any other remedy provided for under these conditions, including without limitation clause 3.2(g), if:
 - (A) the Licensee does not do all things necessary to facilitate the payment of any amount payable under these conditions by the due date and in accordance with arrangements provided for in accordance with clause 3.2(f)(i) (including having sufficient funds available in the relevant account); or
 - (B) the Licensee's bank declines to facilitate those arrangements other than due to the act or omission of Racing NSW or Racing NSW's bank,

Racing NSW may charge the Licensee an administration fee on account of the costs and expenses incurred by Racing NSW in seeking payment.

(g) **Interest**

- (i) Subject to clause 3.2(g)(ii), the Licensee must pay Racing NSW interest at the Interest Rate on any amount (including interest) payable under these conditions which is not paid by the due date (**Interest**).
- (ii) Interest is not payable under clause 3.2(g)(i) if:
 - (A) the failure to pay the relevant amount by the due date resulted from the failure of Racing NSW or Racing NSW's bank to give effect to the arrangements provided for in these conditions for payment of those amounts; and
 - (B) the Licensee and the Licensee's bank had done all things necessary on their part to facilitate the payment (including having sufficient funds available in the relevant account).
- (iii) Interest payable under these conditions:
 - (A) accrues from day to day on the basis of a 365 day year from and including the due date for payment to the actual date of payment;
 - (B) accrues before and, as an additional obligation, after any judgment, decree or order into which the liability to pay any amount under these conditions becomes merged; and
 - (C) may be capitalised by Racing NSW at monthly intervals.

3.3 Provision of Turnover Information

(a) **Quarterly or Bi-Annual reports**

- (i) If the Licensee's NSW Thoroughbred Turnover for the Term is \$2 million or greater for the Financial Year then within 21 days after the end of each Quarter, the Licensee must lodge a return in a form approved by Racing NSW which contains the following information:
 - (A) the Licensee's NSW Thoroughbred Turnover during the relevant Quarter;
 - (B) the amount of any Bet Back Credits which the Licensee claims to be entitled to in respect of Bet Backs made in the relevant Quarter;
 - (C) the Licensee's Net Assessable Turnover during the relevant Quarter;
 - (D) Any adjustments to the Licensee's previously submitted quarterly reports and an explanation for the variation;
 - (E) if the Term commenced during the relevant Quarter or during the relevant Financial Year, the information referred to in paragraphs (A), (B), and (C) above must distinguish between those amounts which relate to the Term and amounts which relate to periods prior to the Term; and

- (F) such other information relevant to the assessment of Licence Fees or instalments payable under these conditions as Racing NSW may specify from time to time.
 - (ii) If the Licensee's NSW Thoroughbred Turnover for the Term is less than \$2 million (or the *pro rata* equivalent thereof) for the Financial Year then a report is required to be submitted within 21 days after the end of quarter two (2) being 21 January 2010 for the period 1 July 2009 to 31 December 2009. The Licensee must lodge a return approved by Racing NSW which contains the following information:
 - (A) the Licensee's NSW Thoroughbred Turnover during the relevant six (6) months;
 - (B) the amount of any Bet Back Credits which the Licensee claims to be entitled to in respect of Bet Backs made in the relevant six(6) months; and
 - (C) the Licensee's Net Assessable Turnover during the relevant Quarter.
 - (iii) The information in the return referred to in clause 3.3(a)(i) or 3.3(a)(ii) must be certified by the Licensee (or, if the Licensee is a body corporate, by a director of that body corporate) as being true and correct.
- (b) **Final Certification**
- (i) Within one month after the end of the Term, the Licensee must lodge a return in a form approved by Racing NSW which contains the following information:
 - (A) the Licensee's NSW Thoroughbred Turnover during the Term;
 - (B) the Licensee's Exempt Turnover Amount in respect of the Term;
 - (C) details of any other Australian Wagering Operator to whom the Licensee was Related during the Term (including the name of the Australian Wagering Operator, the basis on which that Australian Wagering Operator was Related to the Licensee and the times during the Term that the Licensee and the other Australian Wagering Operator were Related) and the amount of Exempt Turnover Amount allocated to each other Australian Wagering Operator in respect of the Term;
 - (D) the amount of any Bet Back Credits which the Licensee claims to be entitled to in respect of the Term and evidence to support the Licensee's entitlement to those credits;
 - (E) the Licensee's Net Assessable Turnover in respect of the Term;
 - (F) the amount which the Licensee calculates as being the amount of the Licence Fee payable in accordance with clause 3.1;

- (G) the amount of any instalments paid under clause 3.2(c) or 3.2(d) in respect of the Term; and
 - (H) such other information relevant to the assessment of Licence Fee payable under these conditions as Racing NSW may specify from time to time.
 - (ii) The information in the return referred to in clause 3.3(b)(i) must be certified by the Licensee (or, if the Licensee is a body corporate, by a director of that body corporate) as being true and correct and must be verified by:
 - (A) a certificate from a registered auditor to be submitted within 90 days after the end of the Term; or
 - (B) if the Licensee's NSW Thoroughbred Turnover in respect of the Financial Year which includes the Term is less than \$4 million, by a statutory declaration duly sworn by the Licensee (or, if the Licensee is a body corporate, by a director of that body corporate) with the submission of the finalisation report.
- (c) **Access to information**
 - (i) The Licensee must maintain all accounts and records (including financial records and wagering records) as may reasonably be required to enable Racing NSW to review, monitor or verify compliance with these conditions and all amounts payable to Racing NSW in accordance with these conditions.
 - (ii) The Licensee must:
 - (A) provide Racing NSW with full access to any accounts and records referred to in clause 3.3(c)(i) at such times and locations as reasonably requested by Racing NSW; and
 - (B) allow Racing NSW to take copies of any accounts and records referred to in clause 3.3(c)(i).
- (d) **Audit**
 - (i) Racing NSW will have the right to require that any accounts and records referred to in clause 3.3(a)(a)(i) be audited by a registered auditor nominated by Racing NSW to verify or confirm amounts payable to Racing NSW in accordance with these conditions.
 - (ii) Racing NSW must give written notice to the Licensee that it requires an audit under this clause 3.3(d). Notice under this clause may be given after the end of the Term.
 - (iii) The Licensee must provide a registered auditor nominated by Racing NSW under this clause 3.3(d) with:
 - (A) full access to any accounts and records referred to in clause 3.3(c)(i) and any other documents in the Licensee's power,

possession or control and allow the auditor to take copies for those accounts, records or documents for the purpose of the audit;

- (B) access to the Licensee's premises; and
- (C) such other assistance, including making staff available to provide information, explanations or answers to questions,

as the registered auditor may request for the purpose of an audit under this clause 3.3(d). For the avoidance of doubt, the fact that information may be commercial confidential is not a basis for declining to provide that information to a registered auditor nominated by Racing NSW under this clause 3.3(d).

- (iv) A registered auditor conducting an audit under this clause 3.3(d) will be subject to the same confidentiality obligations as apply to Racing NSW under clause 11.
- (v) Within 14 days of Racing NSW receiving the final written report in respect of an audit conducted under this clause 3.3(d), Racing NSW must notify the Licensee in writing whether the audit identified any increase in the amounts payable to Racing NSW in accordance with this Agreement compared to the amounts which the Licensee has previously notified Racing NSW that the Licensee calculates as being the amount payable.
- (vi) The Licensee must reimburse Racing NSW for all costs and expenses of an audit under this clause 3.3(d) if, following that audit, the amount payable to Racing NSW in accordance with this Agreement is found to be greater than the amounts which the Licensee has previously notified Racing NSW that the Licensee calculates as being the amount payable, by more than the lesser of:
 - (A) \$20,000; or
 - (B) 10% of the amount of the Licence Fee referred to in clause 3.1.

4. Term

This Agreement shall commence on the Commencement Date and continue for an initial period of one year (the **Term**) unless otherwise terminated in accordance with the terms of this Agreement (in which case the lesser period will be considered to be the **Term** for the purposes of this Agreement). Following the expiry of the Term, the Agreement shall continue unless and until terminated on 60 days' notice by either party.

5. Warranties and Undertakings

Racing NSW undertakes and warrants to the Licensee that:

- (a) Racing NSW is the absolute and unencumbered legal and beneficial owner of all rights (save only for moral rights or similar personal rights which by law are non-assignable) in the NSW Thoroughbred Race Fields free and clear of any

restrictions, liens, charges, encumbrances or other rights and is free to grant the licence in clause 2 without any such restriction.

- (b) the Display by the Licensee of the NSW Thoroughbred Race Fields will not infringe the rights (including copyright, moral rights and similar rights) of any other person nor give rise to a right entitling any person to make a Claim against the Licensee, whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgment or rectification in relation to the NSW Thoroughbred Race Fields; and
- (c) in procuring any consent necessary for the purpose of paragraph (b) above, Racing NSW has not and will not (and will ensure and has ensured that no one else does or did) apply any duress to any person or make a statement to any person knowing that the statement is or was false or misleading in a material particular, or knowing that a matter or thing is or was omitted from the statement without which the statement is or was false or misleading in a material particular.

6. Indemnity

The Licensee indemnifies Racing NSW against any claim, loss, damage, liability, cost, legal cost (on a solicitor and own client basis) or expense that may be incurred or sustained by Racing NSW arising out of any breach of this Agreement in relation to:

- (a) any breach of this Agreement by the Licensee;
- (b) any unauthorised use of the NSW Thoroughbred Race Fields; or
- (c) any act or omission by an employee or agent of the Licensee not authorised by Racing NSW.

7. Termination

7.1 Termination by Racing NSW

- (a) Racing NSW will be entitled to terminate this Agreement and any licence granted under it immediately by Notice to the Licensee if:
 - (i) the Licensee breaches a term of this Agreement and has failed to remedy that breach within 14 days of receiving a Notice to do so from Racing NSW;
 - (ii) there is a change in the persons that have Control of the Licensee;
 - (iii) the Licensee or a Key Employee of the Licensee has been convicted of an offence, whether in New South Wales or elsewhere;
 - (iv) disciplinary action is taken against the Licensee or a Key Employee of the Licensee under any legislation, whether in New South Wales or elsewhere, or under the Rules of Racing;
 - (v) the Licensee has employed or engaged a person as a Key Employee who has a criminal record or who has been subject to disciplinary action under

any legislation, whether in New South Wales or elsewhere, or under the Rules of Racing; or

- (vi) an Insolvency Event occurs in relation to the Licensee.
- (b) Termination of this Agreement takes effect on the date specified in the Notice from Racing NSW issued under clause 7.1(a).

7.2 Termination by the Licensee

The Licensee may terminate this Agreement by notice to Racing NSW at any time, without needing to have or give a reason for doing so, on giving 90 days' notice to Racing NSW.

7.3 Clauses surviving termination

Clauses 3.2(g), 3.3(b), 3.3(c), 3.3(d), 6, 10, 11 and 18 survive termination of this Agreement.

8. Assignment

8.1 Assignment

The Licensee cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of Racing NSW.

8.2 No sub-licence

The licence granted to the Licensee under this Agreement does not include the right to grant sub-licences of the Licensee's rights under this Agreement.

9. Supply by Racing NSW / RISA

- (a) If requested by the Licensee, Racing NSW, by its agent RISA, will provide the NSW Thoroughbred Race Fields to the Licensee during the Term in a format and a frequency to be agreed.
- (b) If, during the Term, and at the request of the Licensee, Racing NSW, by its agent RISA agrees to vary the previously agreed format or frequency of the NSW Thoroughbred Race Fields, any reasonable costs incurred by Racing NSW, by its agent RISA, in designing and/or implementing such variation are to be paid for by the Licensee upon request by Racing NSW, by its agent RISA, within 7 days of the request.
- (c) The Licensee must, at its own expense, put in place and maintain for the duration of this Agreement all hardware, software and communication infrastructure as required to receive delivery of, and have access to, the NSW Thoroughbred Race Fields in the format agreed. Racing NSW, by its agent RISA, accepts no liability for a failure in the receipt of NSW Thoroughbred Race Fields by the Licensee caused in whole or part by the failure of the Licensee to have in place such hardware, software and/or communication infrastructure.

10. Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number last notified by the intended recipient to the sender;
- (c) will be taken to be duly given or made
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4pm (local time) it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

11. Confidentiality

11.1 Confidentiality

Racing NSW must keep confidential all Confidential Information of the Licensee and only disclose that Confidential Information to other persons as permitted under clauses 11.2 or 11.3 or with the consent of the Licensee.

11.2 Permitted Disclosure

Notwithstanding clause 11.1, Racing NSW may disclose Confidential Information:

- (a) in any proceedings arising out of, or in connection with, this Agreement or any other legal or dispute resolution proceedings involving Racing NSW and the Licensee;
- (b) on a confidential basis, to its directors, officers, employees, advisers, agents, consultants or financiers (including any registered auditor appointed to conduct an audit under these conditions);
- (c) to the extent required by lawful requirement of any government agency;
- (d) to the controlling body of any racing code in any other State who has a legitimate interest in that information in connection with the exercise of their powers or functions as a controlling body on the basis;

- (e) as Racing NSW considers appropriate in the exercise of Racing NSW's statutory functions and powers under NSW legislation or the Rules of Racing, including in connection with an investigation or inquiry specified by Racing NSW; or
- (f) if required under any law, or administrative directive or the Rules of Racing.

11.3 Aggregated Data

Notwithstanding anything in these conditions, Racing NSW may disclose aggregated information which includes Confidential Information provided that a reasonable person to whom the aggregated information is disclosed could not readily identify the Licensee's Confidential Information and attribute that Confidential Information to the Licensee.

12. Entire agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

13. Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

14. GST

- (a) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the amount of GST payable in respect of that supply must be paid as additional Consideration. This clause does not apply to the extent that the Consideration for the supply is expressly stated to be GST inclusive.
- (b) Any reference in the calculation of any amount payable under this Agreement to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit in relation to that cost, expense or other liability.
- (c) No additional amount is payable under paragraph (a) of this clause until the Recipient of the supply has received a Tax Invoice or Adjustment Note.
- (d) Terms with an initial capital letter which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* shall have that meaning in this clause except that Taxable Supply excludes the reference to section 84-5 of the GST Act.

15. Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest)

payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Licensee.

16. Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of that prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

17. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

18. Governing law and jurisdiction

This Agreement is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

Signed for **Racing New South Wales** by its authorised representative in the presence of:

Authorised Representative Signature

Witness Signature

Print Name

Print Name

Position

Executed in accordance with section 127 of the *Corporations Act 2001* by **Licensee**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

or

Signed by the **Licensee** in the presence of:

Witness Signature

Licensee Signature

Print Name

Print Name