

## HRNSW APPROVAL CONDITIONS

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### 1 Race Fields Publication Approval

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Approval is provided for publication of NSW Harness Race Field information that is made in Australia where the primary means of production and/or distribution is based, maintained and utilised in Australia, and in the case of Internet technologies including Wi-Fi services is maintained and hosted in Australia, and the race field information is used exclusively for the Approval Holder's wagering operations that are conducted under its Australian Wagering Licence for the Duration of Approval.

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### 2 Duration of Approval

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The Duration of Approval is two calendar years with a commencement date of 1 September 2010 and conclusion date of 31 August 2012. HRNSW may cancel approval to publish NSW harness race fields information at any time between the commencement date and conclusion date in the event that the Approval Holder breaches any of the Approval Conditions and/or provisions of the *Racing Administration Act 1998 (NSW)* as amended.

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### 3 Fees

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- 3.1 The Approval Holder must pay to HRNSW a fee of an amount equal to 1.5% of the Approval Holder's NSW Harness Turnover for the Duration of Approval.
- 3.2 The Approval Holder must pay the fee referred to in clause 3.1 by paying all instalments and adjustments in accordance with clauses 3.3, 3.7 and 3.11.

#### Quarterly Instalment Payments

- 3.3 The Approval Holder must pay to HRNSW in respect of each Quarter an amount equal to the Quarterly Instalment Amount, and must pay each of those amounts:
- (a) every Quarter in arrears; and
  - (b) within [14] days after the end of the Quarter to which the payment relates.
- 3.4 The Approval Holder may apply at the conclusion of each Quarter to HRNSW to decrease the Quarterly Instalment Amount.
- 3.5 On receipt of an application pursuant to clause 3.4, HRNSW may determine, in its absolute discretion, whether to decrease the Quarterly Instalment Amount and, if so, to what amount.

#### Annual Adjustment Instalment

- 3.6 If the amount which is 1.5% of the Approval Holder's NSW Harness Turnover for the period 1 September 2010 to 31 August 2011 exceeds the sum of all instalments paid under clause 3.3 in respect of this period, HRNSW must issue the Approval Holder with an Annual Adjustment Notice:
- (a) by 30 September 2011; or
  - (b) by such other date as determined by HRNSW, in its absolute discretion, where HRNSW considers it is reasonably necessary for HRNSW to obtain information in accordance with clauses 4, 15, 16 and 17.
- 3.7 The Approval Holder must also pay to HRNSW any Adjustment Instalment within 28 days of receipt of an Annual Adjustment Notice.

#### Annual Adjustment Refund

- 3.8 If the amount which is 1.5% of the Approval Holder's NSW Harness Turnover for the period of 1 September 2010 to 31 August 2011 is less than the sum of all instalments paid under clause 3.3 in respect of this period, HRNSW must issue the Approval Holder with an Annual Adjustment Notice:
- (a) by 30 September 2011; or

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**(b) Fees (Cont)**

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- (c) by such other date as determined by HRNSW, in its absolute discretion, where HRNSW considers it is reasonably necessary for HRNSW to obtain information in accordance with clauses 4, 15, 16 and 17.

3.9 HRNSW must pay to the Approval Holder any Adjustment Refund within 28 days of receipt of an Annual Adjustment Notice.

**Final Fee Adjustment**

3.10 If the amount which is 1.5% of the Approval Holder's NSW Harness Turnover for the Duration of the Approval exceeds the sum of all instalments and adjustments paid under clauses 3.3, 3.5, 3.7 and 3.9, HRNSW must issue the Approval Holder with a Final Adjustment Notice:

- (a) by 30 September 2012; or
- (b) by such other date as determined by HRNSW, in its absolute discretion, where HRNSW considers it is reasonably necessary for HRNSW to obtain information in accordance with clauses 4, 15, 16 and 17.

3.11 The Approval Holder must also pay to HRNSW any Final Adjustment Amount within 28 days of receipt of an Final Adjustment Notice.

3.12 If the amount which is 1.5% of the Approval Holder's NSW Harness Turnover for the Duration of the Approval is less than the sum of all instalments and adjustments paid under clauses 3.3, 3.5, 3.7 and 3.9, HRNSW must issue the Approval Holder with a Final Adjustment Notice:

- (a) by 30 September 2012; or
- (b) by such other date as determined by HRNSW, in its absolute discretion, where HRNSW considers it is reasonably necessary for HRNSW to obtain information in accordance with clauses 4, 15, 16 and 17.

3.13 HRNSW must pay to the Approval Holder any Final Adjustment Refund within 28 days of receipt of an Final Adjustment Notice.

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**4 Provision of Turnover Information**

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Within 15 days of the end of each Quarter, the Approval Holder must lodge a return in a form approved by HRNSW that contains the Approval Holder's NSW Harness Turnover during the relevant period and from the start of the Financial Year to the end of the relevant period and any other information relevant to the assessment of fees or instalments payable under these conditions as HRNSW may specify from time to time.

The information in the return to be provided to HRNSW must be certified by the Approval Holder or, if the Approval Holder is a body corporate, by a director of that body corporate, as being true and correct.

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**5 Payment Method**

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Amounts payable under these conditions are to be remitted to HRNSW by Electronic Funds Transfer (EFT) unless otherwise agreed in writing with HRNSW and must include the provision of a Recipient Created Tax Invoice.

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**6 Late payment of fees**

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HRNSW may charge interest on overdue fees. Failure to pay fees within the required time frame (15 days after relevant payment period referred to in clause 3.3) will incur a late payment fee of \$500 for each month that the fees are unpaid after falling due and may also result in the approval to publish race fields being cancelled or revoked. Interest charges will be based on 90 day bank bill rates plus 2%.

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## **7 GST**

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The Approval Holder represents and warrants that it is registered for the purposes of the GST Law.

Unless expressly included, the consideration for any supply under or in connection with these conditions or the race field approval does not include GST.

Both parties will enter into an agreement to issue Recipient Created Tax Invoices for the express purpose of payment for the supply.

To the extent that any supply made under or in connection with these conditions or the Race Field Approval is a taxable supply and GST is not expressly included in the consideration, the recipient must pay in addition to the consideration provided under this Race Field Approval for that supply an amount (additional amount) equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.

If either party is entitled under these conditions or the Race Field Approval to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or by its representative member.

Words and expressions used in this clause which have a defined meaning in the GST Law have the same meaning in this clause as in the GST Law unless the context indicates otherwise.

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## **8 Australian Wagering Licence**

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The Approval Holder warrants that as at the Approval Date it holds, and must at all times during the Duration of Approval hold and maintain, an Australian Wagering Licence which authorises the wagering operations conducted by the Approval Holder in Australia and through any of the means referred to in clause 1.

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## **9 Approval Application**

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The Approval Holder warrants that as at the Approval Date:

- (a) the Approval Holder has made all reasonable enquiries of the Approval Holder's Key Employees and Close Associates in connection with matters disclosed in the Approval Holder's application for a Race Fields Publication Approval;
- (b) the information contained in the Approval Holder's application for a Race Fields Publication Approval is complete, true, correct and not misleading (in either its content or by omission) except to the extent that Approval Holder has on or before the Approval Date given HRNSW notice in writing specifically correcting or updating that information;
- (c) the Approval Holder's application for a Race Fields Publication Approval was appropriately authorised and executed by or on behalf of the Approval Holder.

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## **10 Cancellation or Variation**

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HRNSW may cancel the Race Fields Publication Approval or vary the conditions of the Race Fields Publication Approval in a manner specified by HRNSW if:

- (a) the Approval Holder has breached a condition of the Race Fields Publication Approval; or
- (b) the Approval Holder or a Key Employee of the Approval Holder has been convicted of an offence, whether in New South Wales or elsewhere; or
- (c) the Approval Holder or a Key Employee of the Approval Holder is the subject of disciplinary action under the Rules of Racing or under any legislation, whether in New South Wales or elsewhere, or
- (d) the Approval Holder has employed or engaged a person as a Key Employee who has a criminal record or who has been subject to disciplinary action under the Rules of Racing or under any legislation whether in New South Wales or elsewhere, or
- (e) there is a change in the persons that have Control of the Approval Holder; or

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## 10 Cancellation or Variation (cont)

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- (f) an Insolvency Event occurs in relation to the Approval Holder.

If HRNSW cancels or varies the Race Fields Publication Approval, HRNSW must provide the Approval Holder with prior written notice including reasons which indicate why the Race Fields Publication Approval was cancelled or varied.

The expiration, cancellation or variation of the Race Fields Publication Approval in accordance with these conditions does not prejudice any rights accrued to HRNSW prior to the expiration, cancellation or variation.

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## 11 Personal rights

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This approval may not be assigned, sub-licensed or delegated and the Approval Holder may not authorise any other person to publish a NSW Harness Race Field.

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## 12 Relationship between parties

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The Approval Holder does not have (and nothing in these conditions confers) any authority to bind to HRNSW or to enter into any agreement or commitment for or on behalf of HRNSW or to incur any liability or obligation on behalf of HRNSW. These conditions do not create a relationship of employer and employee, principal and agent, partnership or joint venture between the Approval Holder and HRNSW.

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## 13 Group members

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The Approval Holder must procure that no member of the Group publishes a NSW Harness Race Field in breach of Section 33 of the *Racing Administration Act*.

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## 14 Notifiable events

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The Approval Holder must immediately notify Harness Racing NSW in writing if any Notifiable Event occurs.

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## 15 Access to information

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The Approval Holder must:

- (a) maintain all accounts, financial and wagering records as may reasonably be required to enable HRNSW to monitor or verify compliance with these conditions and all amounts payable to HRNSW in accordance with these conditions; and
- (b) provide HRNSW with full access to any accounts and records referred to in clause 15 (a) at such times and locations as reasonably requested by HRNSW and allow HRNSW to take copies of any accounts and records referred to in clause 15 (a)

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## 16 Information and assistance with inquiries and investigations

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Without limiting clause 15, the Approval Holder must:

- (a) provide HRNSW or its nominee with any Document or information including details of any betting accounts in the Approval Holder's power, possession or control, at such times and locations specified by HRNSW and allow HRNSW or its nominee to take copies of these Document or information; and
- (b) provide HRNSW or its nominee with any other assistance, requested in writing by HRNSW in connection with any investigation or inquiry specified by HRNSW.

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## 17 Audit

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HRNSW will have the right to require that any accounts and records referred to in clause 15 (a) be audited by a registered auditor nominated by HRNSW to confirm amounts payable to HRNSW in accordance with these conditions.

HRNSW must give written notice to the Approval Holder that it requires an audit under this clause. Notice under this clause may be given after the end of the Duration of Approval.

A registered auditor conducting an audit under this clause will be subject to the same confidentiality obligations as apply to HRNSW under clause 22.

The Approval Holder must provide the registered auditor nominated by HRNSW under this clause with:

- (a) full access to any accounts and records referred to in clause 15 and any other documents in the Approval Holder's power, possession or control and allow the auditor to take copies for those accounts, records or documents for the purpose of the audit; and
- (b) access to the Approval Holder's premises; or wherever the appropriate records are maintained; 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. 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 HRNSW under this clause.

HRNSW must notify the Approval Holder in writing within 14 days of HRNSW receiving the final written report in respect of an audit conducted under this clause, whether the audit identified any increase in the amounts payable to HRNSW in accordance with these conditions compared to the amounts which the Approval Holder has previously notified HRNSW that the Approval Holder calculates as being the amount payable.

The Approval Holder must reimburse HRNSW for all costs and expenses of an audit under this clause if, following that audit, the amount payable to HRNSW in accordance with these conditions is found to be greater than the amounts which the Approval Holder has previously notified HRNSW.

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## 18 Audit and Systems trail

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The Approval Holder must:

- (a) maintain accurate, complete and proper records:
  - i.) of all wagering accounts of the Approval Holder's customers;
  - ii.) of all wagering transactions of the wagering operation conducted under the Approval Holder's Australian Wagering Licence, including an audit trail of those transactions;
  - iii.) as required under the Approval Holder's Australian Wagering Licence, the laws of the Commonwealth or any Australian State or Territory or the Rules of Racing; or
  - iv.) as may reasonably be required to enable the Approval Holder's compliance with these conditions or any Special Conditions to be reviewed, monitored or verified; and
- (b) uphold appropriate internal systems, controls and measures to enable the Approval Holder to comply with these conditions and any Special Conditions; and
- (c) uphold and implement appropriate and reasonable internal systems, controls and measures for identifying suspect betting transactions or other matters which may impact on the reputation or integrity of NSW Harness Racing; and
- (d) ensure that any computer systems used for the Approval Holder's wagering operations comply with all specifications (including security and integrity requirements) required under the Approval Holder's Australian Wagering Licence; and
- (e) ensure that all records and systems are appropriately secure and protected from unauthorised access.

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## 19 Integrity

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The Approval Holder must:

- (a) allow HRNSW or its nominee, at such times and in such manner as may be specified by HRNSW, to monitor wagering transactions and activity in relation to NSW Harness Races which transactions and activity are effected in the course of the wagering operations conducted by the Approval Holder under its Australian Wagering Licence;
- (b) report to HRNSW any matter of which the Approval Holder becomes aware which the Approval Holder reasonably considers may materially and adversely impact on the integrity or reputation of the NSW harness racing industry or warrant disciplinary action under the Rules of Racing against a person licensed by HRNSW.

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## 20 Wagering accounts

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The Approval Holder must:

- (a) not open wagering account for any person under a false or misleading name;
- (b) require any person who opens a wagering account with the Approval Holder to prove their identity in accordance with any Rules of Racing applicable to the Approval Holder and standards sufficient to comply with the prescribed verification procedure pursuant to the *Financial Transactions Reports Act 1988 (Cth)* or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* as applicable;
- (c) not, without prior approval, open an account for a person who is warned off a racecourse or who is a disqualified person under the Rules of Racing and immediately notify HRNSW in writing if any person who is warned off a racecourse or who is a disqualified person under the Rules of Racing attempts to open an account with the Approval Holder;
- (d) not enter or permit to be entered in his or her wagering records (including any betting sheets) any false, misleading or fictitious entries or information;

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## 22 Confidentiality

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HRNSW must keep confidential all Confidential Information of the Approval Holder and may only disclose that Confidential Information:

- (a) to other persons with the consent of the Approval Holder; or
- (b) in any proceedings arising out of, or in connection with, this Race Fields Publication Approval or any other legal or dispute resolution proceedings involving HRNSW and the Approval Holder (whether those other proceedings relate to an approval under Section 33 of the *Racing Administration Act*, any Intellectual Property or any other matter); or
- (c) to the extent required by lawful requirement of any Government Agency or if required under any law, or administrative directive or the Rules of Racing; or
- (d) 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); or
- (e) 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; or
- (f) as HRNSW considers appropriate in the exercise of HRNSW's statutory functions and powers under NSW legislation or the Rules of Racing, including in connection with an investigation or inquiry specified by HRNSW.

Notwithstanding anything in these conditions, HRNSW 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 Approval Holder's Confidential Information and attribute that Confidential Information to the Approval Holder.

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## 23 Communications

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Any communication or notice in relation to matters provided for in these conditions must be in legible writing and in English.

Any communication or notice addressed to the Approval Holder, must be sent to the address set out in the Approval Notice or such other address as the Approval Holder may nominate in writing to HRNSW provided that the other address includes a postal address, an office address and an e-mail address to be used for notices to the Approval Holder.

Any communication or notice addressed to HRNSW, must be sent to the address stated on the HRNSW website (hrnsw.com.au) from time to time for the provision of such notices in connection with approvals under Section 33A of the *Racing Administration Act*.

Any communication or notice can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

Any communication is regarded as being given by the sender and received by the addressee:

- (a) if by post, on delivery to the addressee; or
- (b) if by e-mail, on delivery to the addressee; or
- (c) if by delivery in person, when delivered to the addressee; or
- (d) if by facsimile transmission, whether or not legibly received, when legibly received by the addressee, but if the delivery or receipt is on a day which is not a Business Day or is after 5pm (addressee's time) it is regarded as received at 9am on the following Business Day. A fax transmission is regarded as legibly received unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received and informs the sender that it is not legible.

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## 24 Non-exclusive

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This Race Field Publications Approval is non-exclusive. Neither the granting of the Race Field Publications Approval or the conditions of the Race Fields Publication Approval in any way restricts HRNSW from exploiting any Intellectual Property or in granting to any person approvals under Section 33A of the *Racing Administration Act* or the conditions imposed by HRNSW on any such approval.

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## 25 No Intellectual Property Rights

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Neither the granting of the Race Field Publications Approval or the conditions of the Race Fields Publication Approval confers on the Approval Holder any right, title, interest or licence in relation to any Intellectual Property in any NSW Harness Race Field, any other racing information or any wagering information (including the Australian Prices Network).

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## 26 Prohibition and enforceability

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Any provision of, or the application of any provision of, these conditions or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

Any provision of, or the application of any provision of, these conditions which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

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## 27 Waivers

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Waiver of any right under these conditions or arising from a breach of these conditions or of any right, power, authority, discretion or remedy under these conditions or arising upon default under these conditions must be in writing and signed by the party granting the waiver.

A failure or delay in exercise, or partial exercise, of:

- (a) a right under these conditions or arising from a breach of these conditions; or

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**27 Waivers (cont)**

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- (b) a right, power, authority, discretion or remedy under these conditions or created or arising upon default under these conditions, does not result in a waiver of that right, power, authority, discretion or remedy.

The Approval Holder is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy of HRNSW arising under these conditions or from a breach of these conditions or on a default under these conditions as constituting a waiver of that right, power, authority, discretion or remedy.

The Approval Holder may not rely on any conduct of HRNSW as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

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**28 Survival**

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Without limiting the survival of any other clauses which would be construed as surviving the expiration or cancellation of the Race Fields Publication Approval:

- (a) HRNSW's rights to receive amounts payable to HRNSW under these conditions and any Special Conditions survive the expiration or cancellation of the Race Fields Publication Approval.
- (b) the rights of HRNSW and the obligations of the Approval Holder as described in this Approval survive the expiration or cancellation of the Race Fields Publication Approval

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**29 Cumulative rights**

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The rights, powers, authorities, discretions and remedies of HRNSW arising out of or under these conditions are cumulative and do not exclude any other right, power, authority, discretion or remedy.

## Definitions

In these conditions:

**Adjustment Instalment** means any amount greater than zero calculated in accordance with the formula:

**A less B**

Where:

**A** is 1.5% of the Approval Holder's NSW Harness Turnover for the period 1 September 2010 to 31 August 2011;

**B** is the sum of all instalments paid under clause 3.3 for the period 1 September 2010 to 31 August 2011.

**Adjustment Refund** means any amount greater than zero calculated in accordance with the formula:

**B less A**

Where:

**A** is 1.5% of the Approval Holder's NSW Harness Turnover for the period 1 September 2010 to 31 August 2011;

**B** is the sum of all instalments paid under clause 3.3 for the period 1 September 2010 to 31 August 2011.

**Annual Adjustment Notice** means a written notice issued to an Approval Holder by HRNSW which:

- (a) states that it is an Annual Adjustment Notice issued in accordance with clause 3.6 or 3.8; and
- (b) identifies an Adjustment Instalment pursuant to clause 3.7 or an Adjustment Refund pursuant to clause 3.9.

**Approval Holder** means the person to whom the Race Fields Publication Approval is granted by Harness Racing NSW as named in the Approval Notice;

**Approval Notice** means the notice issued by HRNSW to an Australian Wagering Operator who has applied for a Race Field Publication Approval.

**Approvals to Group Members** means this Race Fields Publication Approval and race fields publication approval granted by Harness Racing NSW in accordance with Section 33A of the *Racing Administration Act* to the Australian Wagering Operators in the Group other than the Approval Holder;

**Associate** has the meaning given to that term in the *Corporations Act*;

**Australian State or Territory** means New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory or the Northern Territory;

**Australian Wagering Licence** means 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 (as defined in the Racing Administration Regulations) or any other form of wagering whether now existing or subsequently designed or developed;

**Australian Wagering Operator** means a wagering operator (as defined in the *Racing Administration Regulations*) who holds an Australian Wagering Licence;

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

**Close Associate** has the meaning given to that term in the *Racing Administration Regulations*;

**Confidential Information** means confidential information in relation to the Approval Holder (including confidential financial information and confidential information in relation to the wagering operations of the Approval Holder, trade secrets, confidential know-how or confidential technical or product information) disclosed by the Approval Holder to Harness Racing NSW in the Approval Holder's approval application or pursuant to this Race Fields Publication Approval but does not include information which:

- (a) was in the possession of Harness Racing NSW at the time of disclosure and was not subject to an obligation of confidentiality;
- (b) is generated by Harness Racing NSW independently of data or information provided by the Approval Holder under the Racing Fields Publication Approval;

- (c) is received independently by Harness Racing NSW from a third party who Harness Racing NSW is not aware is subject to an obligation of confidentiality in respect of that information;
- (d) is provided to Harness Racing NSW by the Approval Holder other than in the Approval Holder's approval application or pursuant to this Race Fields Publication Approval in circumstances where Harness Racing NSW is not subject to obligations of confidentiality in respect of that information;
- (e) is or has become part of the public domain other than as a result of a breach of an obligation of confidentiality;

**Control** means control within the meaning of that term in either Section 50AA of the *Corporations Act* or 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)*;

**Document**, when used in clause 19, has the meaning given to that term in the *Evidence Act 1995 (NSW)*;

**Duration of Approval** means the duration of the Race Fields Publication Approval as determined in accordance with clause 2;

**Final Adjustment Amount** means any amount greater than zero calculated in accordance with the formula:

**C less D**

Where:

**C** is 1.5% of the Approval Holder's NSW Harness Turnover for the Duration of the Approval;

**D** is the sum of all instalments and adjustments paid under clause 3 for the Duration of the Approval.

**Final Adjustment Notice** means a written notice issued to an Approval holder by HRNSW which:

- (a) states that it is a Final Adjustment Notice issued in accordance with clause 3.10 or 3.12;
- (b) identifies an Final Adjustment Amount pursuant to clause 3.11 or an Final Adjustment Refund pursuant to clause 3.13.

**Final Adjustment Refund** means any amount greater than zero calculated in accordance with the formula:

**D less C**

Where:

**C** is 1.5% of the Approval Holder's NSW Harness Turnover for the Duration of the Approval;

**D** is the sum of all instalments and adjustments paid under clause 3 for the Duration of the Approval.

**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;

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

**Group** means the Approval Holder and any Australian Wagering Operator who is Related to the Approval Holder from time to time;

**GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**GST Law** has the same meaning as in the *GST Act*;

**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 or other applicable legislation or is presumed to be insolvent under the Corporations Act, the Bankruptcy Act 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 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;

**Intellectual Property** means all intellectual and industrial property rights and interests in Australia and throughout the world (whether registered or unregistered), including any copyright or analogous rights, trade or service mark, design, patent, semiconductor or circuit layout right, trade business or company name or other proprietary right; and any right registration of any of those rights.

**Interest Rate** means the interest rate applicable from time to time on judgement debts arising from orders of the Supreme Court of NSW;

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

**month** means a calendar month;

**Notifiable Event** means:

- (a) an Insolvency Event occurs in relation to the Approval Holder;
- (b) the Approval Holder becomes Related to an Australian Wagering Operator during the Duration of Approval;
- (c) the Approval Holder ceases to be Related to an Australian Wagering Operator within paragraphs (a)-(i) of the definition of "Related" during the Duration of Approval;
- (d) there is a change in the persons that have a Controlling interest in the Approval Holder;
- (e) a prosecution is commenced against the Approval Holder, any of its Key Employees or another member of the Group;
- (f) a verdict is delivered in respect of a prosecution against the Approval Holder, any of its Key Employees or another member of the Group or such a prosecution is dismissed or discontinued;
- (g) disciplinary action is taken under the Rules of Racing against the Approval Holder, any of its Key Employees or another member of the Group or formal notice is given of an investigation or inquiry to determine whether to take such disciplinary action;
- (h) the Approval Holder is aware that any person who is a Key Employee of the Approval Holder has a criminal record or has been subject to disciplinary action under any legislation, whether in New South Wales or elsewhere, or under the Rules of Racing;
- (i) there is a material change in the events on which the Approval Holder conducts wagering or in the mechanisms which the Approval Holder uses to facilitate the receipt of wagers (for example, if during the

period, the Approval Holder commences using the internet to facilitate the receipt of wagers, that would be a "Notifiable Event");

- (j) the Approval Holder breaches or fails to comply with any of the conditions of the Race Field Publication Approval;
- (k) the Approval Holder is aware that any other member of the Group publishes a NSW Harness Race Field in breach of Section 33 of the *Racing Administration Act*;
- (l) the Approval Holder is aware that any other member of the Group has breached or failed to comply with the conditions imposed on race fields publication approvals granted by Harness Racing NSW in accordance with Section 33A of the *Racing Administration Act* to that member of the Group;

**NSW Race Field** has the meaning given to that term in the *Racing Administration Act*;

**NSW Harness Race** means a harness horse race held, or to be held, at any race meeting on a licensed racecourse in New South Wales;

**NSW Harness Race Field** means a NSW Race Field in relation to a NSW Harness Race;

**NSW Harness Turnover** means Turnover in respect of wagering transactions in relation to NSW Harness Races (or contingencies related to NSW Harness Races). 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 Harness Race is at least one of the events on which the outcome of that wagering transaction depends, NSW Wagering 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 Harness 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.

*For example:*

- •if a "doubles bet" requires the selection of the winner of a NSW Harness Race and the winner of a harness race conducted in Melbourne, then ½ of the amount of the wager on the "backers" side of the wagering transaction would be included as NSW Harness Turnover even if the race in Melbourne was held first and irrespective of the outcome of the Melbourne race;

- •if a "doubles bet" requires the selection of the winner of two NSW Harness Races, then the whole amount of the wager on the "backers" side of the wagering transaction would be included as NSW Harness Turnover;

- •if a bet was placed on the combined outcome of a NSW Harness Race, a rugby league match and a greyhound race, then 1/3 of the amount of the wager on the "backers" side of the wagering transaction would be included as NSW Harness Turnover; and

- •by contrast, if a bet was placed on the outcome of a NSW Harness Race and the "layer" directed that any winnings on that bet be applied in a wager on another event (e.g. an "All-up" bet) so that each was a separate wagering transaction, then the entire amount of the wager on the "backers" side of the first wagering transaction would be included as NSW Harness Turnover and the second transaction would be assessed as an independent wagering transaction).

**Quarter** means a period of 3 months ending on 30 November 2010, 28 February 2011, 31 May 2011, 31 August 2011, 30 November 2011, 28 February 2012, 31 May 2012, 31 August 2012.

**Quarterly Instalment Amount** means the amount set out in the Approval Notice.

**Racing Administration Act** means the *Racing Administration Act 1998 (NSW)*;

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

**Race Field Publication Approval** means the race fields publication approval in accordance with Section 33A of the *Racing Administration Act* granted by Harness Racing NSW to the Approval Holder subject to, and on the terms set out in, these conditions;

**Related** means, in relation to the Approval Holder 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 Approval Holder is Related to another Wagering Operator, then they are deemed for the purpose of these conditions to continue to be Related until the later of:
  - a. the Approval Holder ceasing to be “Related” to the other Australian Wagering Operator under any of paragraphs (a)-(i); or
  - b. the Approval Holder giving written notice to Harness Racing NSW that it has ceased to be “Related” to the other Australian Wagering Operator.

**Rules of Racing** includes:

- (a) the Australian Rules of Racing (Harness);
- (b) the local rules of racing applicable in any Australian State or Territory (including the Rules of Racing); and
- (c) the rules of betting applicable under the laws of an Australian State or Territory or the local rules of racing 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.

**Special Conditions** means any conditions other than standard conditions set out in the Approval Notice.

**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.

