

## HRNSW APPROVAL CONDITIONS – 2016/2017

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### 1 Race Fields Publication Approval

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- 1.1 In accordance with *section 33A* of the *Racing Administration Act*, HRNSW grants to the Approval Holder approval to Use NSW Harness Race Field Information in Australia for the Duration of Approval subject to these conditions or any Special Conditions.
- 1.2 For the purpose of these conditions, 'Use NSW Harness Race Field Information in Australia' includes:
- (a) use in the course of the wagering operations of the Approval Holder which are conducted under its Australian Wagering Licence; and
  - (b) use on or in connection with any websites or other internet technology including Wi-Fi services maintained and hosted in Australia by the Approval Holder and conducted under its Australian Wagering Licence even if that website or other internet technology is accessible by persons outside Australia, provided that the website or other internet technology only relates to wagering operations conducted under Australian Wagering Licences and not to any other wagering operations (including any wagering operation conducted under a licence or approval granted under the laws of any jurisdiction other than an Australian State or Territory),
- subject to, and on the terms set out in, these conditions and any Special Conditions.

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### 2 Duration of Approval

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The Duration of Approval is for the period specified in the Approval Notice unless cancelled earlier in accordance with these conditions.

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### 3 Fees – Monthly Payments

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- 3.1 The Approval Holder must pay to HRNSW a monthly fee of an amount equal to:
- (i) 2.5% of the Approval Holder's Net Harness Turnover for all races held at a Premium Race Meeting (other than Turnover of wagers made at Totalizator Derived Odds) and any amount of GST payable; and
  - (ii) 1.5% of the Approval Holder's Net Harness Turnover for all races held at a Standard Race Meeting (other than Turnover of wagers made at Totalizator Derived Odds) and any amount of GST payable; and
  - (iii) 3.0% of the Approval Holder's Net Harness Turnover of wagers made at Totalizator Derived Odds for all races held at a Premium Race Meeting and any amount of GST payable; and
  - (iv) 2.5% of the Approval Holder's Net Harness Turnover of wagers made at Totalizator Derived Odds for all races held at a Standard Race Meeting and any amount of GST payable.

within 15 days of the beginning of each calendar month (**Monthly Fee Payments**) (ie- payment for the calendar month of July 2016 is due on 15 August 2016).

### **Bet Back Credits**

- 3.2 For the purpose of determining amounts payable by the Approval Holder under clause 3.1, the Approval Holder is entitled to a credit of an amount equal to the amount staked by the Approval Holder in any Bet Back made during the period to which the relevant payment relates if:
- (a) the Bet Back is made through an account with an Australian Wagering Operator to whom HRNSW has, prior to the Bet Back being made, granted an Approval; and
  - (b) the Approval Holder pays fees in a sum greater than zero to HRNSW under the Approval in the Financial Year in which the Bet Back was made.
- 3.3 The Approval Holder is not entitled to a credit of an amount equal to the amount staked by the Approval Holder in any Bet Back during the period to which the relevant payment relates if the Bet Back is made in cash rather than through an account unless the Approval Holder can prove with documentary evidence that the Approval Holder is entitled to that credit under clause 3.2.
- 3.4 The Bet Back Credit is to be applied as follows:
- (a) Firstly against Turnover of wagers made on the same wagering type (Fixed Odds or Totalizator Derived Odds) in relation to the NSW Harness Race as the approval Holder has staked in the Bet Back;
  - (b) If, and only if, any part of the Bet Back remains after allocation pursuant to clause 3.4 (a); it is then to be allocated against Turnover on wagers made on the same wagering type (Fixed Odds or Totalizator Derived Odds) which attracts the fee pursuant to clause 3.1 closest to the wagering type (Fixed Odds or Totalizator Derived Odds) in relation to the NSW Harness Race as the approval holder has staked in the Bet Back, provided that the Approval holder is required to pay a fee representing the difference between the fee on the wagering type of the Bet Back and the fee on the wager accepted by the Approval Holder.

### **Final Fee Adjustment**

- 3.5 If the amount which is 3.0% or 2.5% or 2.5% or 1.5% of the Approval Holder's Net Harness Turnover for the year to 30 June 2017 exceeds the sum of all Monthly Fee Payments paid for the year to 30 June 2017 pursuant to clause 3.1, HRNSW must issue the Approval Holder with a Final Adjustment Notice:
- (a) by 31 July 2017; 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 6, 17, 18 and 19.
- 3.6 The Approval Holder must pay to HRNSW any Final Adjustment Amount within 28 days of receipt of a Final Adjustment Notice.
- 3.7 If the amount which is 3.0% or 2.5% or 2.5% or 1.5% of the Approval Holder's Net Harness Turnover for the year to 30 June 2017 is less than the sum of all Monthly Fee Payments paid for the year to 30 June 2017 pursuant to clause 3.1, HRNSW must issue the Approval Holder with a Final Adjustment Notice:
- (a) by 31 July 2017; 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 6, 17, 18 and 19.
- 3.8 HRNSW must pay to the Approval Holder any Final Adjustment Refund within 28 days of receipt of a Final Adjustment Notice.
- 3.9 Neither the acceptance of a payment from the Approval holder nor the payment of a refund by HRNSW under Clauses 3.4, 3.5, 3.6 or 3.7 constitutes an admission by HRNSW that the amount is correctly determined and HRNSW retains the right to seek adjustments if those amounts are subsequently proven to be incorrect.

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#### **4 Provision of Quarterly Turnover Information**

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- 4.1 Within 10 days of the end of each of the following quarterly periods:
  - (a) 1 July 2016 to 30 September 2016; and
  - (b) 1 October 2016 to 31 December 2016; and
  - (c) 1 January 2017 to 31 March 2017; and
  - (d) 1 April 2017 to 30 June 2017,the Approval Holder must lodge a return in a form approved by HRNSW that contains the Approval Holder's Net Harness Turnover and any other information relevant to the assessment of fees or instalments payable under these conditions as HRNSW may specify from time to time.
- 4.2 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.
- 4.3 The information to be provided will include all information relating to the Approval Holder's Net Harness Turnover (including amounts paid in relation to betting transactions, Bet Backs made on wagers made at Totalizator Derived Odds and Bet Backs made on wagers other than at Totalizator Derived Odds) on a race-by-race, venue-by-venue and day-by-day basis including breakdown of turnover by win, place, Turnover of wagers made at Totalizator Derived Odds, Turnover of wagers made other than at Totalizator Derived Odds and exotics.
- 4.4 HRNSW may request the details of the Australian Wagering Operator with whom any Bet Backs were made during the period.

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#### **5 Provision of Monthly Turnover Information**

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- 5.1 The Approval Holder must also provide the information in clause 4.3 within 10 days of the end of each month.

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#### **6 Final Certification**

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- 6.1 Within 30 days after 30 June 2017, the Approval Holder must lodge a return to HRNSW in a form approved by HRNSW which contains the following information in respect of the period 1 July 2016 to 30 June 2017:
  - (a) the Approval Holder's NSW Harness Turnover (with a breakdown between Turnover of wagers made at Totalizator Derived Odds and wagers other than at Totalizator Derived Odds) at Premium and Standard Race Meetings;
  - (b) the amount of any credits on any Bet Back which the Approval Holder claimed to be entitled to and evidence to support the Approval Holder's entitlement to those

credits (with a breakdown between Bet Backs made at Totalizator Derived Odds and Bet Backs other than at Totalizator Derived Odds);

- (c) the Approval Holder's Net Harness Turnover (with a breakdown between Turnover of wagers made at Totalizator Derived Odds and wagers other than at Totalizator Derived Odds);
  - (d) the Monthly Fee Payments payable in accordance with clause 3.1; and
  - (e) such other information relevant to the assessment of fees payable under these conditions as HRNSW may specify from time to time.
- 6.2 The information in the return referred to in clause 6.1 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 and must be verified by:
- (a) a certificate from a registered auditor to be submitted within 90 days after the end of the period identified in clause 6.1;
  - (b) if the Approval Holder's NSW Harness Turnover in respect of the Financial Year for the period identified in clause 6.1 is less than \$2.5 million, by a statutory declaration duly made by the Approval Holder (or, if the Approval Holder is a body corporate, by a director of that body corporate).
- 6.3 HRNSW may permit the Approval Holder to submit a certificate from a registered auditor for a different twelve month period if the Approval Holder's balance date for financial reporting purposes does not end on 30<sup>th</sup> June in any year. The Approval Holder must seek written permission from HRNSW for such a change.

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## **7 Payment Method**

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

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## **8 Late Payment of Fees – Interest and Penalty Fees**

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- 8.1 HRNSW may charge interest on overdue fees. Interest charges will be based on a 90 day bank bill rate published by the Reserve Bank of Australia plus 2% and will be payable from the date the fees were due to HRNSW until the date the fees are paid in full.
- 8.2 Interest may be capitalised by HRNSW at monthly intervals.
- 8.3 Failure to pay fees within the required time frame in clause 3.1 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 Use NSW Harness Race Field Information in Australia being cancelled or revoked.

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## **9 GST**

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- 9.1 The Approval Holder represents and warrants that it is registered for the purposes of the GST Law.
- 9.2 Unless expressly included, the consideration for any supply under or in connection with these conditions or the race field approval does not include GST.
- 9.3 Both parties will enter into an agreement to issue Recipient Created Tax Invoices for the express purpose of payment for the supply.

- 9.4 To the extent that any supply made under or in connection with these conditions or the 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 the 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.
- 9.5 If either party is entitled under these conditions or the Approval to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with these conditions, 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.
- 9.6 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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## **10 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.

The Approval Holder warrants that it has advised HRNSW of any Notifiable Events during the Approval Period.

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## **11 Approval Application**

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- 11.1 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 Approval;
  - (b) the information contained in the Approval Holder's application for 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 Approval was appropriately authorised and executed by or on behalf of the Approval Holder.

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## **12 Cancellation or Variation**

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- 12.1 HRNSW may cancel the Approval or vary the conditions of the Approval in a manner specified by HRNSW if:
- (a) the Approval Holder has breached a condition of the Approval; or
  - (b) if, in the opinion of HRNSW, the actions of the Approval Holder are materially detrimental to NSW harness racing; or
  - (c) 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
  - (d) the Approval Holder or a Key Employee of the Approval Holder is the subject of disciplinary action or incurs a fine under the Rules of Racing or under any legislation, whether in New South Wales or elsewhere, or
  - (e) 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

- (f) there is a change in the persons that have Control of the Approval Holder; or
  - (g) an Insolvency Event occurs in relation to the Approval Holder; or
  - (h) any grounds for cancellation or variation prescribed by the Regulations at any time.
- 12.2 Without limiting clause 12.1 HRNSW may, by written notice to the Approval Holder, cancel or vary the terms of the Approval on any grounds prescribed by the *Racing Administration Regulations*.
- 12.3 Without limiting clause 12.1, HRNSW may, by written notice to the Approval holder, vary the conditions of the Approval Notice in a manner specified by HRNSW if there is a change in the financial circumstances of the Approval Holder.
- 12.4 If HRNSW cancels or varies the Approval, HRNSW must provide the Approval Holder with written notice including reasons which indicate why the Approval was cancelled or varied.
- 12.5 The expiration, cancellation or variation of the Approval in accordance with these conditions does not prejudice any rights accrued to HRNSW prior to the expiration, cancellation or variation.
- 12.6 For the purposes of clauses 12.2 and 12.3, a cancellation or variation of the Approval takes effect on the date specified in the written notice provided by HRNSW.
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### **13 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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### **14 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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### **15 Group Members**

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The Approval Holder must procure no member of the Group to Use NSW Harness Race Field Information in breach of section 33 of the *Racing Administration Act*.

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### **16 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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### **17 Access to information**

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- 17.1 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;
  - (b) provide HRNSW with full access to any accounts and records referred to in clause 17.1(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 17.1(a); and
  - (c) maintain all accounts, financial and wagering records for a period of five (5) years after the Duration of Approval.

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## **18 Information and Assistance with Inquiries and Investigations**

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- 18.1 The Approval Holder must provide HRNSW or its nominee with:
- (a) 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 any Document or information; and
  - (b) access to the Approval Holder's wagering information and analyses in relation to NSW Harness Races and NSW Harness Turnover at such times, in such manner and locations as requested by HRNSW; and
  - (c) any other assistance, requested in writing by HRNSW in connection with any investigation or inquiry specified by HRNSW.

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## **19 Audit**

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- 19.1 HRNSW will have the right to require that any accounts, records, Documents or information provided to HRNSW pursuant to clauses 17 and/or 18, or maintained by the Approval Holder pursuant to clause 20 be audited by a registered auditor nominated by HRNSW to confirm amounts payable to HRNSW in accordance with these conditions.
- 19.2 HRNSW must give written notice to the Approval Holder that it requires an audit under this clause.
- 19.3 A registered auditor conducting an audit under this clause will be subject to the same confidentiality obligations as apply to HRNSW under clause 25.
- 19.4 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 17 and/or 18 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; 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 in confidence is not a basis for declining to provide that information to a registered auditor nominated by HRNSW under this clause.
- 19.5 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.
- 19.6 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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## **20 Audit and Systems Trail**

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- 20.1 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;
- (b) uphold appropriate internal systems, controls and measures to enable the Approval Holder to comply with these conditions and any Special Conditions;
  - (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;
  - (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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## **21 Integrity**

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### **21.1 The Approval Holder must:**

- (a) provide to HRNSW or its nominee at such times and locations as requested by HRNSW any Document or information in the Approval Holder's power, possession or control as specified by HRNSW in connection with the performance of HRNSW's functions or responsibilities regarding the integrity and reputation of NSW Harness Racing;
- (b) provide to HRNSW or its nominee, at such times, in such manner and locations as requested by HRNSW, access to the Approval Holder's wagering information and analyses in relation to NSW Harness Racing and NSW Harness Turnover;
- (c) allow HRNSW or its nominee to take copies of any information referred to in clauses 21.1(a) and (b);
- (d) 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; and
- (e) 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 NSW Harness Racing or warrant disciplinary action under the Rules of Racing against a person licensed by HRNSW.

### **21.2 Without limiting clause 21.1, in relation to information and assistance with inquiries and investigations, the Approval Holder must:**

- (a) provide HRNSW or its nominee, any Document or information in the Approval Holder's power, possession or control (including details of any betting accounts);
- (b) allow HRNSW or its nominee to take copies of any Document or information referred to in paragraph 21.2 (a); and



- (c) provide HRNSW or its nominee any Documents, information or other assistance requested by HRNSW in connection with any investigation or inquiry specified by HRNSW.

The Approval Holder must provide any Documents, information or other assistance required by HRNSW under clause 21.2 at such times and locations as specified by HRNSW.

- 21.3 The Approval Holder will not disclose to its Customer the fact that the Customer is or may be the subject of an inquiry or investigation conducted by HRNSW or any other authority, without the prior approval of HRNSW.
- 21.4 The Approval Holder will take all reasonable steps to obtain its Customer's cooperation with a request from HRNSW in relation to an inquiry or investigation conducted by HRNSW.

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## **22 Wagering Accounts**

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- 22.1 The Approval Holder must:
  - (a) not open a 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 a wagering account for a person, or on behalf of 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 a wagering 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; and
  - (e) 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 a wagering account, transacts on an account with the Approval Holder or a bet is accepted by the Approval Holder.
- 22.2 HRNSW may from time to time supply the Approval Holder with the name(s) and other relevant details of those persons who are prohibited from betting on NSW Harness Races for the purpose of the Approval Holder complying with clause 22.1.
- 22.3 The Approval Holder will take all reasonable steps to identify all natural persons who are directors or material shareholders (persons who own or control 25% or more of the issued shares of the relevant company) of non listed company corporate Customers.
- 22.4 Where:
  - (a) a Customer is warned off, disqualified or otherwise excluded from racecourses under the Rules of Racing, or equivalent rules of other racing codes or jurisdictions; and
  - (b) HRNSW has notified the Approval Holder of the identity of the Customer

The Approval Holder will, where the warning-off, disqualification or exclusion relates to an integrity or probity issue, take all necessary measures to prevent the said Customer entering into a wagering transaction in relation to NSW Harness Races after the Notification Date.

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## **23 Online Wagering Monitoring System**

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- 23.1 If HRNSW gives the Approval Holder written notice requiring it to do so, the Approval Holder must:

- (a) participate in an Online Wagering Monitoring System specified by HRNSW; and
- (b) take such action as required (including systems development) to enable computer systems used by the Approval Holder in its wagering operations to interface with an Online Wagering Monitoring System in accordance with the specifications determined by HRNSW.

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**24 Bet Types**

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- 24.1 If HRNSW considers that there are reasonable concerns that any bet types offered by the Approval Holder may be conducive to, or the subject of, corrupt practice in the conduct of NSW Harness Racing, it shall give notice in writing to the Approval Holder to cease such bet types.
- 24.2 If the Approval Holder received a notice referred to in clause 24.1, the Approval Holder will cease such bet types identified in the notice within 7 days of receiving the notice.
- 24.3 The Approval Holder's failure to comply with clause 24.2 will constitute a breach of a condition of the Approval for the purposes of clause 12.1(a).

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**25 Confidentiality**

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- 25.1 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, the 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 otherwise); 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 New South Wales or any other State who has a legitimate interest in the Confidential Information in connection with the exercise of their powers or functions as a controlling body; or
  - (e) as HRNSW considers appropriate in the exercise of HRNSW's statutory functions and powers under legislation or the Rules of Racing, including in connection with an investigation or inquiry conducted by HRNSW.
- 25.2 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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**26 Communications**

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- 26.1 Any communication or notice in relation to matters provided for in these conditions must be in legible writing and in English.
- 26.2 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.

- 26.3 Any communication or notice addressed to HRNSW must be sent to the address stated on the HRNSW website ([www.harnessmediacentre.com.au](http://www.harnessmediacentre.com.au)) from time to time for the provision of such notices in connection with Approval(s) under section 33A of the *Racing Administration Act*.
- 26.4 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.
- 26.5 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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## **27 Non-Exclusive**

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The Approval is non-exclusive. Neither the granting of the Approval nor the conditions of the 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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## **28 No Intellectual Property Rights**

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Neither the granting of the Approval nor the conditions of the 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 which provides the official Australian oncourse bookmakers' prices between racecourses ).

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## **29 Prohibition and Enforceability**

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- 29.1 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.
- 29.2 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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## **30 Waivers**

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- 30.1 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.
- 30.2 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
  - (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.

30.3 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.

30.4 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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### **30 Survival**

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

- (a) HRNSW's rights to receive amounts payable to HRNSW under these conditions and any Special Conditions; and
- (b) the rights of HRNSW and the obligations of the Approval Holder as described in the Approval

survive the expiration or cancellation of the Approval.

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### **32 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.

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### **33 Governing Law**

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These conditions and the Approval are governed by the laws of New South Wales.

## DEFINITIONS

In these conditions:

**Approval** means the approval granted by HRNSW to the Approval Holder in accordance with Section 33A of the *Racing Administration Act* and subject to, and on the terms set out in, these conditions;

**Approval Date** means the date on which the Approval is granted to the Approval Holder by HRNSW;

**Approval Holder** means the person or entity to whom the Approval is granted by HRNSW as named in the Approval Notice;

**Approval Notice** means a written notice issued by HRNSW to an Australian Wagering Operator who has applied for Approval.

**Approvals to Group Members** means the Approval granted by HRNSW 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, the Northern Territory or Norfolk Island;

**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 totalizator wagering, bookmaking, a betting exchange (as defined in the 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 Act* or Regulations) who holds an Australian Wagering Licence;

**Bet Back** means a wager which is made by the Approval Holder on the backers side of the wagering transaction in relation to NSW Harness Races (or contingencies related to NSW Harness Races):

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

**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 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 HRNSW in the Approval Holder's application for or pursuant to the Approval but does not include information which:

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

- (c) is received independently by HRNSW from a third party who HRNSW is not aware is subject to an obligation of confidentiality in respect of that information;
- (d) is provided to HRNSW by the Approval Holder other than in the Approval Holder's application or pursuant to the Approval in circumstances where HRNSW is not subject to obligations of confidentiality in respect of that information; and/or
- (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);

**Customer** means a person or entity who entered a wagering transaction in relation to NSW Harness Races.

**Document** has the meaning given to that term in the *Evidence Act 1995* (NSW);

**Duration of Approval** means the duration of the 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 3.0% of the Approval Holder's Net Harness Turnover of wagers made at Totalizator Derived Odds for all races held at a Premium Race Meeting or 2.5% of the Approval Holder's Net Harness Turnover of wagers made at Totalizator Derived Odds for all races held at a Standard Race Meeting or 2.5% of the Approval Holder's Net Harness Turnover of wagers made other than at Totalizator Derived Odds for all races held at a Premium Race Meeting or 1.5% of the Approval Holder's Net Harness Turnover of wagers made other than at Totalizator Derived Odds for all races held at a Standard Race Meeting for the Duration of the Approval.

**D** is the sum of all Monthly Fee Payments paid under clause 3.1 and the sum of all adjustments paid under clause 3.4 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 3.5 or 3.7;
- (b) identifies a Final Adjustment Amount pursuant to clause 3.4 or a Final Adjustment Refund pursuant to clause 3.6.

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

**D less C**

Where:

**C** is 3.0% of the Approval Holder's Net Harness Turnover of wagers made at Totalizator Derived Odds for all races held at a Premium Race Meeting or 2.5% of the Approval Holder's Net Harness Turnover of wagers made at Totalizator Derived Odds for all races held at a Standard Race Meeting or 2.5% of the Approval Holder's Net Harness Turnover of wagers made other than at Totalizator Derived Odds for all races held at a Premium Race Meeting or 1.5% of the Approval Holder's Net Harness Turnover of wagers made other than at Totalizator Derived Odds for all races held at a Standard Race Meeting for the Duration of the Approval.

**D** is the sum of all Monthly Fee Payments paid under clause 3.1 and the sum of all adjustments paid under clause 3.6 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 year;

**Free Bet** means the amount of any wagering transaction in relation to NSW Harness Races where the Customer does not make or does not agree to make a financial contribution at the time the wagering transaction is made.

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

**HRNSW** means Harness Racing New South Wales;

**HRNSW Account** means the account name 'HRNSW – Race Field Revenue' at Commonwealth Bank, Bankstown branch, New South Wales, BSB number 062 111 and account number 10702361.

**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 2001 (Cth), the Bankruptcy Act 1996 (Cth) or other applicable legislation or is presumed to be insolvent under the Corporations Act 2001 (Cth), the Bankruptcy Act 1996 (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; or
- (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, company name or internet domain names or other proprietary right; and any right of 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 Regulations;

**Month** means a calendar month;

**Net Harness Turnover** means any amount greater than zero calculated in accordance with the formula:

HRT - BBC

Where:

HRT is the Approval Holder's NSW Harness Turnover during the periods identified in clause 4.1;

BBC is the amount of credit for Bet Backs to which the Approval Holder is entitled.

**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 and/or a fine is imposed 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 or under any legislation whether in New South Wales or elsewhere 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 Approval(s) granted by HRNSW in accordance with section 33A of the Racing Administration Act to that member of the Group;
- (m) the Approval Holder's Australian Wagering Licence is withdrawn or changes are made to the terms and conditions of the Licence; or
- (n) any other change in circumstances relating to matters that were advised to HRNSW by the Approval Holder in its application.



**Notification Date** means the date HRNSW advises the Approval Holder to initiate some form of action;

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

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

**NSW Harness Racing** means the New South Wales Harness racing industry;

**NSW Harness Race Field** means a New South Wales Race Field in relation to a NSW Harness Race;

**NSW Harness Race Field Information** means the same as 'NSW Race Field Information' in section 27 of the *Racing Administration Act* as if the words in that section 'NSW Race Field Information' were replaced with the words 'NSW Harness Race Field Information'.

**NSW Harness Turnover** means Turnover in respect of wagering transactions in relation to NSW Harness Races (or contingencies related to NSW Harness Races) where, without limiting the generality of this definition:

- (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 "doubles bet" requires the selection of a winner of a race conducted at a NSW Harness Premium Race Meeting and the winner of a race at a NSW Harness Standard Race Meeting, then one half (1/2) of the amount on the wager on the "backers" side of the wagering transaction would be included in the NSW Harness Premium Turnover even if the race at the Standard Race Meeting was held first and irrespective of the outcome of that race.*

*-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).*

- (c) the face value of any Free Bets is included.

**Online Wagering Monitoring System** means a system with specifications determined by Harness Racing NSW which provides remote, real-time online access and monitoring of wagering transactions in relation to NSW Harness Races and such other functionality as determined by Harness Racing NSW in the specifications of the system.

**Premium Race** means a NSW Harness Race offering prizemoney of \$30,000 or more.

**Premium Race Meeting** means a race meeting at which at least one race offering prizemoney of \$30,000 or more is held. The list of such race meetings will be supplied by HRNSW.

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

**Recipient Created Tax Invoice** means a written record sent by the Approval Holder to HRNSW recording the amount paid by the Approval Holder to HRNSW in accordance with these conditions;

**Regulations** means the *Racing Administration Regulations 2012* (NSW);

**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 has Control over the other;
- (c) they are both under the Control of 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 Harness Races; 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 HRNSW 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.

**Standard Race Meeting** means any race meeting other than a Premium Race Meeting.

Totalizator Derived Odds has the meaning given to that term in clause 16(3) of the Regulations.

**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;

**Use NSW Harness Race Field Information** means the same as ‘use NSW race field information’ in section 32A of the *Racing Administration Act* as if the words in that section ‘NSW race field information’ were replaced with the words ‘NSW Harness Race Field Information’.