

ASHFORD PARK PREMIUM AGISTMENT

THIS AGREEMENT is between the person or persons named in **item 1** of the schedule on page 6 (**Agistor**) and the person or persons named in **item 2** of the schedule (**Agistee**).

BACKGROUND

- The Agistor owns or occupies the land described in **item 3** of the schedule (**Land**).
- The Agistee owns or is lawfully entitled to possession of the horse and foal (if any) named and identified in **item 5** of the schedule (**Horse**).
- The Agistor has agreed to agist the Horse on the Land, at the Agistee's request, on the terms of this agreement.
- If the Agistee is under 18 years of age, a parent of the Agistee has agreed to guarantee the Agistee's obligations under this agreement.

THE AGISTOR AND THE AGISTEE AGREE:

1. Right to agist

- 1.1 The Agistee has the right to agist the Horse on the Land commencing on the date in **item 10** of the schedule until the date in **item 11** of the schedule, unless the right is terminated sooner by the Agistor in accordance with this agreement.
- 1.2 Nothing expressed in or implied by this agreement creates or is intended to create a lease to the Agistee, or an exclusive right to possession of the Land or any part of it by the Agistee.

2. Agistment fee

- 2.1 The Agistee must pay the agistment fee specified in **item 9** of the schedule, weekly, fortnightly or monthly in advance as specified in **item 9** of the schedule, commencing on the date in **item 10** of the schedule.
- 2.2 The Agistor may change the amount of the fee, as long as the Agistor gives 14 days prior notice to the Agistee.
- 2.3 The Agistee must pay interest on all money or liabilities owing or due under this agreement at the rate prescribed by the *Penalty Interest Rates Act 1983* (Vic).

3. Entry onto Land

- 3.1 The Agistor grants a licence to the Agistee to enter and remain on the Land between the hours specified in **item 12** of the schedule and at any other time in case of emergency (**Licence**) or with the permission of the Agistor.
- 3.2 The Licence terminates automatically if the Agistee's right to agist the Horse is terminated by the Agistor.

4. Rules of conduct

- 4.1 The Agistor may make rules (**Rules**) and alter them, at any time, relating to:
 - (a) use of any facilities on the Land;
 - (b) conduct of the Agistee and any person allowed onto the Land by the Agistee; and
 - (c) welfare and safety of the Horse and its rider.
- 4.2 The Rules must be in writing and bind the Agistee when he or she is given notice of them.
- 4.3 Any of the Rules which purports to exclude, restrict or modify any right or obligation expressed in this agreement is void.

5. The Agistor's promises and obligations

- 5.1 The Agistor must:
 - (a) provide the agistment services specified in **item 8** of the schedule for as long as the Agistee has the right to agist the Horse;
 - (b) not adversely change the nature, quality, quantity or timing of the services without the Agistee's prior written consent;

- (c) ensure all barriers confining the Horse are maintained in good order and condition and repaired when necessary;
- (d) provide an adequate supply of drinking water to the Horse at all times; and
- (e) notify the Agistee promptly if the Horse suffers any apparent illness, injury or disease.

6. The Agistee's promises and obligations

- 6.1 The Agistee promises the Agistor:
- (a) that the Horse:
 - (i) has no vices except for those disclosed in **item 6** of the schedule;
 - (ii) has no pre-existing injury except as disclosed in **item 7** of the schedule;
 - (iii) has no disease and has not shown any signs of disease within the 30 days preceding this agreement;
 - (iv) is effectively vaccinated for tetanus and strangles and to produce proof of vaccination to the Agistor promptly on request;
 - (b) no other person has any right or claim to the Horse, except any person or persons named in **item 3** of the schedule, who is or are the owners of the Horse.
- 6.2. The Agistee must:
- (a) on being notified by the Agistor that the Horse is suffering from any apparent illness, injury or disease, immediately arrange for a veterinarian or equine professional to examine the Horse;
 - (b) pay on request, all fees, costs, charges and expenses incurred by the Agistor, or for which the Agistor may become liable, relating to any examination or treatment of the Horse arranged by the Agistor in the circumstances set out in clause 7;
 - (c) always obey the Rules;
 - (d) always wear an Australian Standards approved riding helmet and heeled shoes or riding boots on or around the Horse or in proximity to any other horse on the Land; and
 - (e) exercise proper self-care.
- 6.3 Each of these promises and obligations is an essential term of this agreement.

7. Agistor can engage a vet

- 7.1 The Agistor may arrange any necessary examination and treatment of the Horse by a veterinarian or equine professional:
- (a) if a veterinarian or equine professional does not attend the Land to examine the Horse, within 24 hours after the Agistor gives notice to the Agistee that the Horse is apparently suffering any illness, injury or disease; or
 - (b) in the case of an emergency concerning the welfare of the Horse.

8. Loss of agistment right

- 8.1 If the Agistee breaches clause 2.1 or an essential term of this agreement, the Agistor may give notice to the Agistee terminating the right to agist the Horse.
- 8.2 On giving that notice:
- (a) the Licence is revoked and the Agistee has no right to enter onto the Land;
 - (b) the Horse is, and is taken to be, trespassing on the Land;
 - (c) the Agistor has no liability to the Agistee under this agreement or at law, as bailee or otherwise, in relation to the Horse; and
 - (d) the Agistee must pay the Agistor a charge proportional to the fee in **item 7** of the schedule for each day the Horse remains on the Land.

- 9. Agistor can detain Horse**
- 9.1 The Agistee grants the Agistor a general lien over the Horse and any personal property kept on the Land belonging to or in the possession of the Agistee (**Goods**), as security for:
- (a) any money owing to the Agistor; and
 - (b) any current liability to indemnify the Agistor or the Agistor's employees, agents or independent contractors.
- 9.2 The Agistor may detain the Horse or Goods or both as against the Agistee and, if the Agistee is not the owner, the owner, until all such money and liability are completely paid and discharged, or otherwise dealt with to the Agistor's satisfaction.
- 9.3 The general lien established by clause 9.1 is in addition to and does not affect the Agistor's right to create a lien and to exercise the other rights and powers enjoyed by the Agistor under Part 3A *Impounding and Livestock Act 1994* (Vic).

10. Agistor can sell Horse and Goods

- 10.1 Subject to clause 10.3 the Agistee irrevocably authorises the Agistor as agent for the Agistee and in the Agistee's name or otherwise on the Agistee's behalf:
- (a) to sell, dispose of or otherwise deal with the Horse and the Goods; and
 - (b) to do all acts and things and sign, seal, deliver and execute all deeds, transfers or documents, necessary for, or incidental to any sale, disposal of or dealing with the Horse or Goods.
- 10.2 The Horse or Goods or both may be sold together or separately, by private contract, public tender or public auction, to any person on any terms that the Agistor as agent considers appropriate.
- 10.3 The Agistor's authority as agent may only be exercised if:
- (a) the right to agist is terminated; and
 - (b) after 14 days from the date of termination:
 - (i) any money remains owing to the Agistor; or
 - (ii) any current liability to the Agistor remains undischarged.
- 10.4 The Agistor must apply the proceeds of sale, disposal or dealing with the Horse or Goods in the following order:
- (a) all costs of and incidental to the sale, disposal of or dealing with the Horse or the Goods;
 - (b) any money owing to the Agistor;
 - (c) any current liability to indemnify the Agistor or its, his or her employees, agents or independent contractors; and
 - (d) the residue to the Agistee.
- 10.5 The Agistor as agent may do any act or thing and sign, seal, deliver, and execute any deed, transfer or document even though it involves or might involve a conflict of interest or confers or might confer a benefit on the Agistor and in those circumstances, the agent is not liable to the Agistee or any other person because of the conflict or benefit or for any other reason.

11. Agistor can impound Horse

- 11.1 No sooner than 14 days after the Agistee's right to agist the Horse is terminated, the Agistor may impound the Horse under section 5 of the *Impounding of Livestock Act 1994* (Vic).
- 11.2 The Agistor must notify the Agistee that the Horse is impounded and its whereabouts, within 24 hours of impounding the Horse.
- 11.3 As soon as possible after impounding the Horse, the Agistor must deliver the Horse to the nearest convenient pound.

12. Indemnity

The Agistee indemnifies:

12.1 the Agistor against:

- (a) any breach of this agreement by the Agistee;
- (b) costs and expenses of and incidental to exercising any right, power or authority under this agreement or conferred on the Agistor by law; and
- (c) any charges recoverable from the Agistee relating to the impounding of the Horse under the *Impounding of Livestock Act 1994* (Vic); and

12.2 the Agistor and the Agistor's employees, agents and independent contractors against all expenses, losses, liabilities, damages and legal costs (on an indemnity basis) that any of them sustain or incur as a consequence of, relating to or in any way arising out of:

- (a) any loss of or damage to any property or personal injury or death caused by any negligence or wilful misconduct of the Agistee or any person allowed onto the Land by the Agistee; and
- (b) any claims, causes of action or proceedings, made or brought by any person allowed onto the Land by the Agistee for personal injury to him or herself.

13. Agistor has limited liability

13.1 The provisions of this clause operate subject to any law that restricts or prohibits the exclusion of liability, including the *Trade Practices Act 1974* (Cth) and any similar State legislation.

13.2 The Agistor and the Agistor's employees, agents and independent contractors, whether acting in their own right or as agent of the Agistee will not be liable to the Agistee, any person allowed onto the Land by the Agistee, or any other person, as a consequence of, relating to or in any way arising out of:

- (a) death of, or injury to the Horse;
- (b) any loss of or damage to the Goods, or any personal property in the possession or under the control of any person allowed onto the Land by the Agistee; or
- (c) the death or personal injury of the Agistee or of any person allowed onto the Land by the Agistee,

however caused including, without limitation, the negligence of the Agistor or its, his or her employees, agents or independent contractors.

14. Notices

14.1 Any notice required or permitted to be given by the Agistor under this agreement must be in writing addressed to the Agistee and:

- (a) hand delivered to the Agistee's address in **Item 2** of the schedule, or to any other address directed by the Agistee in writing;
- (b) sent by prepaid mail to that address; or
- (c) sent by fax to the number in **item 2** of the schedule.

14.2 A notice is taken to be received by the Agistee:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid mail, 3 business days after the date of mailing; or
- (c) if sent by fax, when the sender's fax machine produces a confirmation report that all pages of the notice were successfully transmitted.

15. Two or more Agistors or Agistees

If the Agistor or the Agistee comprises two or more persons, the terms of this agreement bind all those persons together and each of them individually.

16. Governing law

The laws of Victoria apply to this agreement.

17. Disputes

The parties:

- 17.1 acknowledge that any claim or dispute between them under this agreement is a 'fair trading dispute' under section 107 *Fair Trading Act* 1999 (Vic); and
- 17.2 submit unconditionally to the non-exclusive jurisdiction of the Victorian Civil and Administrative Tribunal in respect of the claim or dispute.

18. Amendment

No variation, modification or alteration of the terms of this agreement is effective unless signed or initialled by the parties.

19. Prima facie evidence

- 19.1 A certificate signed by the Agistor stating any act, matter, circumstance or thing arising out of or connected with this agreement is prima facie evidence of the accuracy of that act, matter, circumstance or thing.
- 19.2 Unless the contrary is proved, each statement in the certificate must be accepted as conclusive evidence of the accuracy of such act, matter, circumstance or thing embodied in the statement.

20. General

- 20.1 If any term of this agreement is illegal, void or unenforceable for any reason, the offending part is to be disregarded and does not affect the rest of this agreement.
- 20.2 Wherever in this agreement a right or benefit is conferred on the Agistor and the Agistor's employees, agents or independent contractors, the Agistor is deemed to be acting as the agent and trustee on behalf of and for the benefit of those persons and those persons are or are deemed to be parties to this agreement accordingly.
- 20.3 If the Agistee is not the owner of the Horse, the Agistee is authorised by the owner to irrevocably authorise the Agistor as agent for the owner and in the owner's name or otherwise on the owner's behalf to do the acts, matters and things set out in clause 10.1 (a) and (b).
- 20.4 The terms of this agreement continue to apply on a calendar monthly basis after the date in **item 11** (in the absence of any further written agreement between parties), unless one party gives the other notice either before that date or before the end of any succeeding month, of their intention not to further extend the term of this agreement.
- 20.5 A reference in this agreement to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, that legislation or legislative provision.
- 20.6 'Agistor' includes the personal representatives and successors in title of the Agistor; and
- 20.7 'Agistee' includes the personal representatives and successors in title of the Agistee.

21. Meaning of words

The following words have the meanings given alongside them:

- 21.1 'equine professional' - farrier, dentist, masseur, specialised horse carrier, physio-therapist or chiropractor.
- 21.2 'schedule' - schedule to this agreement.
- 21.3 'vice' - a bad habit, which so affects the Horse's temperament or health as to make it potentially injurious to people or other horses.

22. Entire understanding

The terms of this agreement constitute the entire agreement of the parties concerning its subject. The only enforceable obligations and liabilities of the parties in relation to the subject are those expressed in this agreement or necessarily implied into it by statute. Any prior representations, statements or promises in relation to the subject are merged in and superseded by this agreement and the Agistee expressly acknowledges that the Agistee has not relied on them.

ASHFORD PARK AGISTMENT CONTRACT SCHEDULE

AGISTORS

Dr G and Mrs M Tudge
Ashford Park Premium Agistment
225 Split Rock Road
Beaconsfield Upper 3808
Tel: 03) 5944 4886 0414 998 865

AGISTEES

Name: _____
Address: _____ Postcode: _____
Phone: _____ Mobile: _____ email: _____

OWNER OF THE HORSE IF NOT THE AGISTEE

HORSE DETAILS

Name: _____ Breed: _____ Colour: _____
Sex: _____ Age: _____ Brands: _____

VICES

Windsuck Crib bite Kick Bite

AGISTMENT SERVICES REQUIRED

'Private Gold' 'Private Double Gold' 'Shared' Please circle your requirement

AGISTMENT FEE PER CALENDAR MONTH including GST

AGISTMENT BEGINS ON: _____ ENDS ON: _____

HOURS OF ENTRY ONTO ASHFORD PARK: 7.00 am - 9.00 pm every day of the year

SIGNATURES AND DATE

Signed by Agistor: _____ DATE: _____

Signed by Agistee: _____

Signed by Agistees parent if agistee is under 18 years of age _____

Parent agrees to guarantee the Agistee's obligation under this agreement.

Parent name - PRINT: _____