

# AGISTMENT AGREEMENT

## BETWEEN

1. **G H BROWN, S K BROWN AND J L CAMPBELL** trading as **KITCHWIN HILLS** Waverley Road, Scone NSW 2337 ("the Stud")

## AND

2. \_\_\_\_\_ ("the Owner")

Of \_\_\_\_\_ (Owner's street address Not PO Box)

The Owner as registered in the Stud Book with full power and authority to enter into this Agreement HEREBY AGREES to send the Horse to the Stud for the Services **UPON THE FOLLOWING TERMS:**

## WHEREAS

### 1. Definitions

"**Claims**" means all claims, investigations, demands, actions, proceedings, suits causes of action, damages, debts, costs, verdicts and judgments including but not limited to all claims arising from or out of damage to the Horse which relate to any incident or matter occurring as a result of the Horse being exposed to disease, injury or death whilst on the Stud, or as a result of moving the Horse from the Stud for the purpose of service, foaling or treatment, and whether at common law, equity or under statutory provision.

"**Horse**" means all of the Owner's horses as set out in Schedule 1 and all other stallions, geldings, mares, colts, fillies and their progeny both current and future. For the purposes of this Agreement, the term Horse is both singular and plural, male and female,

"**Owner**" means the abovenamed and includes each owner, part owner, lessee, partner, syndicate member, syndicate manager, company, corporate trustee or other person who is legally recognised as an owner, joint and severally.

"**The Act**" means the Personal Property Securities Act 2009.

"**Services**" means agistment and animal husbandry.

### 2. Owner

2.1 The Stud has agreed to provide Services to the Owner's Horse from time to time and shall be subject to the following terms and conditions and the Owner, or other person on behalf of the Owner passing the Horse to the Stud, shall be deemed to have done so subject to these terms and conditions.

2.2 This Agreement shall not be assigned or transferred by the Owner.

2.3 In the event that this Agreement is executed by an agent or representative on behalf of the Owner, or if the Owner is an organisation, the undersigned guarantees that:

- he/she has the authority of the Owner to enter into the Agreement;
- he/she unconditionally and personally guarantees the full and prompt payment of all the monies owed in respect to the Horse as well as the full and prompt performance of obligations by the Owner;
- the undersigned warrants full disclosure to the Owner of the terms of this Agreement and any commission paid by the Stud to the undersigned in connection with this or any other contract; and
- the warranty shall remain in effect regardless of whether the agent or representative retains his or her status following the execution of this Agreement.

### 3. Caveatable Interest

In the event that the Owner fails to pay the fees and/or monetary obligations in accordance with this Agreement, or otherwise discharge its obligations, then the undersigned and Owner, charges all it's right, title and interest to any property now or in the future owned or partly owned, solely or jointly in favour of the Stud, to better secure the fees and/or monetary obligations outstanding, with the due and punctual observance and performance of all of the obligations of the Owner contained in this Agreement. The Owner acknowledges that the Stud may at its discretion, register a caveat on the property in respect of the interest conferred on it under this clause. In the event that the Stud is required to exercise its right under this clause against the Owner, then the Owner grants to the Stud the right to appoint a Receiver and sell the property.

### 4. Fees and Charges

4.1 The Owner agrees to pay all accounts within 21 days of invoice date. The Owner agrees to pay each monthly account in full prior to receipt of the following months account. Interest of 1.5% per month from the expiry of that period calculated daily plus collection costs charged including indemnity legal costs on a Solicitor/Client basis will be applied to all late payments. The fees will be reviewed by 1 August every year. The Stud sets its fees each breeding season. The fees for the current season are identified in Schedule 2 to this Agreement and are available at [www.kitchwin.com.au](http://www.kitchwin.com.au). The Stud may vary the fees from time to time and will advise the Owner in writing of any changes.

4.2 The Owner appoints the Stud as its Agent to make all decisions with respect to the care and well being of the Horse and is solely responsible for the payment of:-

- transport costs of the Horse to and from the Stud;
- all treatments, drenching, examinations, procedures, operations, swabs and medicines, DNA testing, micro chipping and branding administered to the Horse while at the Stud, whether administered by the Stud, its Agents or independent contractor whilst the Horse remains on the Stud and any other costs incurred. The Owner authorises the Stud to obtain these services on its behalf;
- services and supplies including but not limited to services of farrier, horse dentist, chiropractor, veterinarian or other person thought by the Stud to be necessary or advisable to attend the Horse. The Owner authorises the

Stud to obtain these services and supplies on its behalf. There is no warranty given by the Stud as to the competence or judgment of a person employed by or in contract with the Stud in connection with the Horse;

d. all costs or any associated costs of entering the Horse in any auction and pay to the Stud a commission 2.5% of all gross sales of the Owner's Horse, whether by public auction or private sale.

4.3 All monies due to the Stud and incurred by third parties in respect to the Horse shall be paid by the Owner on or before the departure of the Horse from the Stud.

4.4 The Stud shall be entitled to retain possession of any mare return, document of description and all foal cards, or replacement foal cards until all monies (including interest) and any collection or legal costs referred to in 4.1 and 4.2.

4.5 The Owner hereby provides an irrevocable instruction, direction and authority to any sales company to pay any monies that are due at the time of sale to the Stud, from the sale proceeds of the Horse without requiring further notification to the Owner. The acceptance of such funds or any sale by the Stud pursuant to this Agreement shall be without prejudice as to the Stud's rights to pursue the Owner for any shortfall, or other damages without restriction.

### 5. Security Agreement

#### Subject to Personal Property Securities Act 2009 ("the Act")

5.1 These terms and conditions constitute a Security Agreement for the purposes of the Act.

5.2 As security for fees and other monetary obligations the Owner grants to the Stud a security interest in the Horse.

5.3 The Stud will register a financing statement with the Personal Property Securities Register ("PPSR") and the Owner undertakes to:

- sign any further documents and/or provide any further information requested by the Stud to complete and register any financing statement or any financing change statement with the PPSR; and
- indemnify, and upon demand reimburse, the Stud for all expenses incurred in searching, registering and/or discharging a financing statement or any other document with the PPSR and any reasonable enforcement fees and expenses of the Security Agreement;

5.4 The Owner guarantees that it will not grant another security interest in the Horse to another person or entity without first providing fourteen (14) days written notice to the Stud.

5.5 The Owner waives its rights as a debtor or Grantor under sections 95, 120, 121(4), 123(2), 129(2)(a), 130, 132(3)(d), 132(4), 135 and 137(2) of the Act.

### 6. Studs Rights To Dispose Of the Horse If Fees Unpaid

6.1 In the event that:

- the Stud retains possession of the Horse; and
  - a fee or monetary obligation is due to the Stud; and
  - the Stud has made demand in writing to the Owner for payment of the fee or monetary obligation; and
  - the Stud has not received the fee or monetary obligation in accordance with the timeframe specified in the demand;
- then, the Owner agrees that the Stud may exercise any of the following at its discretion:
- retain possession of the Horse and have the ownership transferred to the Stud;
  - the Stud may dispose of the Horse and may retain all or part of the proceeds of the disposal in payment of the fee or monetary obligation.

6.2 In the event that:

- the Owner has possession of the Horse;
  - a fee or monetary obligation is due to the Stud;
  - the Stud has made demand in writing to the Owner for payment of the fee or monetary obligation; and
  - the Stud has not received the fee or monetary obligation in accordance with the timeframe specified in the demand;
- then, the Owner acknowledges and agrees that the Stud is entitled to seize the Horse pursuant to section 138C of the Act.

### 7. Verification Statement

7.1 The Owner waives its rights under s157 to receive a verification statement due to the Horse being "commercial property" pursuant to the Act.

### 8. Transfer of Title

8.1 The Owner agrees not to enter into a sale, assignment or transfer of the Horse without the consent of the Stud. Any such purported transfer will be in default of this Agreement. The Stud agrees that it will not unreasonably withhold its consent upon full payment of any fee or monetary obligation.

**9. Possession**

- 9.1 The Owner acknowledges pursuant to section 86(1) of the Act that at the time the security interest is made:
  - a. it is granted for value;
  - b. it is granted to enable amongst other things the Horse to be fed and developed; and
  - c. the Horse was held by the Stud.

**10. Owners Warranty & Responsibilities**

- 10.1 The Owner warrants, covenants and agrees with the Stud: -
  - a. that the Owner is the registered Stud Book Owner of the Horse with full power and authority to enter into each of the provisions of this Agreement;
  - b. that the attached Broodmare Information Sheet must be completed and returned to the Stud and all registration documents lodged with the Stud;
  - c. that the correct Horse is delivered to the Stud;
  - d. the information provided to the Stud is accurate and current as at the date of providing such information;
  - e. that upon delivery to the Stud, the Horse is free of disease or infection and is in sound breeding condition and that all vaccinations are up to date;
  - f. that upon leaving the Stud the Horse shall be deemed to have been delivered to the Owner;
  - g. that the Owner will provide at least 48 hours notice to the Stud before removing the Horse;
  - h. the Owner authorises the Stud to pay all creditors who have provided services or supplies to the Owner's Horse. The Stud is authorised to deduct these costs from any sale proceeds, or in the alternative the Owner agrees to reimburse the Stud all such payments before the removal of the Horse from the Stud.

**11. Insurance**

- 11.1 The Stud will not undertake responsibility for insuring the Horse, this is entirely the Owner's responsibility.
- 11.2 The Owner acknowledges that the breeding and rearing of thoroughbred racehorses is a high-risk activity and that the Owner is required to insure against such losses.
- 11.3 The Owner acknowledges responsibility for notifying the Stud of any insurance policies affecting the Horse and, if so requested by the Stud, shall produce to the Stud the evidence of such insurance.
- 11.4 The Owner acknowledges that the Stud is not responsible and cannot be held responsible for any incidents which may void any insurance policy that the Owner has for the Horse.

**12. Hold Blameless Acknowledgement – Release & Indemnity**

- 12.1 The Owner:-
  - a. Acknowledges and agrees that they have been given the opportunity to inspect the Stud and its facilities and that they meet the standard applicable to the thoroughbred breeding industry and that the Stud shall endeavour to provide all care good husbandry and attention to the Horse. The Stud will be held blameless by the Owner in respect to any infection, disease, death or Claims in respect to the Horse.
  - b. Releases the Stud, its owners, directors and shareholders, employees, servants and agents from any Claims.
  - c. Agrees to indemnify and keep indemnified the Stud against any liability or loss arising from, and any costs, charges, expenses and liabilities incurred in relation to any Claims relating to the Horse and in each case, including but not limited to, Solicitor/Client legal costs and expenses on a full indemnity basis.
  - d. Further the Stud shall not be liable for any negligent act or any loss, damage or Claims of whatsoever nature or howsoever arising out of this Agreement from injury, sickness, disease or death caused to or sustained

by the Horse and/or any progeny whilst under the care or control of the Stud or its employees and agents. The Stud shall not be liable to the Owner for any loss, damage, costs or expense arising out of any injury, damage or death or Claims which may arise or be caused and notwithstanding the same is attributable to or is in part attributable to recklessness, negligence, forbearance or neglect by the Stud, its servants or agents or any other person in whose care or control the Stud may place the Horse.

**13. Legal Advice**

- 13.1 The Owner represents and warrants that it has obtained independent legal advice or has been given the opportunity to seek legal advice in relation to the terms and effect of this Agreement.

**14. Lien and Power of Attorney**

- 14.1 The Owner grants the Stud a lien in the Horse, all insurance policies relating to the Horse, all stud book returns, all mare and foal cards and replacement mare and foal cards and the proceeds from the sale of the Horse.
- 14.2 The Owner appoints the Stud as its Attorney:
  - a. To execute and file any liens, irrevocable authorities, all and any notices and documents under the PPSA or to the Stud Book, in any jurisdiction or to any entity believed to be appropriate to secure any obligation of the Owner to the Stud, whether arising by the owing of fees or monetary obligations or otherwise.
  - b. Without notice to the Owner, take possession of the Horse and either retain the Horse in lieu of the obligation, or re-sell the Horse privately or publicly in a manner in its sole discretion it believes to be advisable, in which event the Stud shall credit the proceeds of the sale, after expenses of sale and maintaining the Horse, to the Owner's obligation to the Stud. This right is in addition to all other rights to which the Stud is entitled under law.

**15. Notice**

- 15.1 Any notice given by the Stud to the Owner pursuant to this Agreement shall be deemed to be served on the Owner five working days after the posting of such notice in a pre-paid envelope addressed to the Owner at the Owner's address as set out in this Agreement or such other address notified to the Stud by the Owner in writing notwithstanding that any such notice may not be received by the Owner.

**16. Amendments**

- 16.1 The Stud reserves the right to review these terms and conditions at any time. If following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Stud notifies the Owner of such change.

**17. General**

- 17.1 If any provision of these terms and conditions are invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 The failure by the Stud to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Stud's right to subsequently enforce that provision.
- 17.3 This Agreement is governed by and construed in accordance with the laws of New South Wales. The parties submit to the exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

**18. Acceptance**

- 18.1 The Owner's acceptance of these terms is signified by signing this Agreement or delivery of the Horse to the Stud Horse to the Stud, or by permitting the Horse to remain at the Stud after the date of this Agreement.

DATED this \_\_\_\_\_ day of 2011

Signed by or for and on behalf of the Owner:

\_\_\_\_\_

Print Full Name

Witness' signature

Print Full Name

Signed by or for an on behalf of the Stud:

\_\_\_\_\_

Print Full Name

Witness' signature

Print Full Name

Please return this agreement to:

**Kitchwin Hills,  
Waverley Road  
SCONE NSW 2337**

**Telephone:  
Facsimile:  
E-mail:**

**(02) 6545-8065  
(02) 6545-8038  
[kitchwin@bigpond.com](mailto:kitchwin@bigpond.com)**

