

ARGENTILLE EQUESTRIAN CENTRE AGISTMENT AGREEMENT

283 Wilderness rd Lovedale NSW 2325.

THIS AGREEMENT is between the person or persons named in **item 1** of the schedule (B) 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 4** 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.
- The Agistee is over the age of 18.

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 5** of the schedule until the date in **item 6** of the schedule, unless the right is terminated sooner by the Agistor in accordance with this agreement.
- 2. Fees** 2.1 The Agistee must pay the agistment fee specified in **item 7** of the schedule, weekly, fortnightly or monthly in advance as specified in **item 8** of the schedule, commencing on the date in **item 5** of the schedule.
2.2 The Agistor may change the amount of the fee, as long as the Agistor gives 30 days prior notice to the Agistee.
- 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 9** of the schedule and at any other time in case of emergency (**Licence**).
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 invited or allowed onto the Land by the Agistee; and
c) welfare and safety of the Horse and its rider.
4.2 The Rules will be in writing and bind the Agistee when he or she is given notice of them in writing via letter or email, or as may be posted prominently on any notice board(s) on the Land.
- 5. The Agistor's obligations** 5.1 The Agistor must:
a) provide the agistment services specified in item 10 of the schedule for as long as the Agistee has the right to agist the Horse;
b) not unreasonably 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 obligations** 6.1 The Agistee promises the Agistor:
(a) that the Horse:

- (i) has no vices except for those disclosed in item 11 of the schedule;
 - (ii) has no pre-existing injury except as disclosed in item 12 of the schedule;
 - (iii) has no illness or disease and has not shown any signs of illness or 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; and
- (b) no other person has any right or claim to the Horse, except any person or persons named in item 13 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, or delegate their authority to the Agistor to arrange any such examination or treatment;
- (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) strictly obey the Rules;
- (d) always wear an Australian Standard approved riding helmet while on the Horse and heeled shoes or riding boots when on or around the Horse or in proximity to any other horse on the Land; and
- (e) exercise proper self-care and take all reasonable steps to prevent harm to any other person or horse on the Land.

6.3 Each of these promises and obligations is an essential term of this agreement.

7. Engagement of 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) without notice to the Agistee, 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 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 any personal property kept on the Land belonging to or in the possession of the Agistee (Goods); 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 after receiving the notice.

9. Agistor can detain horse 9.1 The Agistee grants the Agistor a general lien over the Horse and the 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 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 the *Impounding Act 1993* (NSW).

- 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, exchange or otherwise dispose of 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, exchange or disposal of 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 under clause 8; and
 - (b) after 7 days from the date the notice under clause 8 is taken to be received:
 - (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, exchange or disposal of the Horse or Goods in the following order:
- (a) all costs of and incidental to the sale, exchange or disposal of the Horse or the Goods;
 - (b) any money owing to the Agistor;
 - (c) any current liability to indemnify the Agistor or the Agistor's employees, agents or 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 Division 3 of the *Impounding Act 1993 (NSW)*.
- 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 (but for not more than 4 days), 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 Act 1993 (NSW)*.
- 12.2 The Agistor and the Agistor's employees, agents and 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 or on behalf of any person allowed onto the Land by the Agistee for death of or personal injury to him or her.
- 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 *Competition and Consumer Act 2010 (Cth)*.

13.2 The Agistor and the Agistor's employees, agents and 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 or misconduct of the Agistor or the Agistor's employees, agents or 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 New South Wales apply to this agreement.

17. Amendment

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

18. General

18.1 If any term of this agreement is void or unenforceable for any reason, the offending part is to be disregarded and the remainder interpreted and applied without it.

18.2 Wherever in this agreement a right or benefit is conferred on the Agistor and the Agistor's employees, agents or 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.

18.3 If the Agistor's name or otherwise on the owner's behalf to do the acts, matters things set out in clause 10.1 (a) and (b).

18.4 The terms of this agreement continue to apply on a calendar monthly basis after the date in item 6 (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.

18.5 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.

18.6 'Agistor' includes the personal representatives and successors in title of the Agistor.

18.7 'Agistee' includes the personal representatives and successors in title of the Agistee.

19. Meaning of words

The following words have the meanings given alongside them:

19.1 'equine professional' – farrier, dentist, masseur, specialised horse carrier, physiotherapist or chiropractor.

19.2 'schedule' – schedule to this agreement.

19.3 'vice' – a bad habit, which so affects the Horse's temperament or health as to make it potentially injurious to people or other horses.

20. 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.

21. When agreement binds Agistee

21.1 This agreement binds the Agistee when either:

(a) the Agistee signs this agreement; or

(b) after a copy of this agreement is given to the Agistee or the Agistee's agent by whatever means, the Horse is delivered to the Agistor for agistment, whichever event is sooner.

SCHEDULE

Name (*Agistee*) with a copy of your driver license & credit card (*attached to the application*).

Address

Email & telephone

Horses name and microchip number

Agistment start date

Agistment completion if known

Agistment daily fee (ex GST)

Monthly fee paid in advance

Hours of entry onto Land (specify hours)

Agistment services ie: full board, shared, spelling.....

Vices (if none), say nil.....

Pre-existing injuries (if none, say nil).....

The owner of the Horse (if not the Agistee)

SIGNATURES AND DATE

Signed by the Agistor _____

Date _____

Signed by the Agistee _____

Date _____