



## Department of Agriculture and Water Resources

Collection agreement for the thoroughbred levy

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Commonwealth of Australia (**Commonwealth**)

Racing Australia Limited (**Racing Australia**)

# Deed of Agreement

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## Parties

Name The Commonwealth of Australia as represented by the Department of Agriculture and Water Resources [ABN 24 113 085 695]

Short form name **Commonwealth**

Name Racing Australia Limited [ABN 89 105 994 330]

Short form name **Racing Australia**

## Overview

- A This Deed is an agreement under section 11 of the *Primary Industries Levies Charges and Collection Act 1991* (Cth) (**Collection Act**) between the Commonwealth of Australia, as represented by the Secretary of the Department of Agriculture and Water Resources, and Racing Australia.
- B The Agreement provides for the collection of the thoroughbred horse levy and levy returns and other information from thoroughbred horse breeders by Racing Australia, on behalf of the Commonwealth of Australia.
- C The levy is imposed on thoroughbred horses in accordance with Part 12 of Schedule 27 to the *Primary Industries (Excise) Levies Regulations 1999* (Cth) and is payable by Thoroughbred Horse Breeders in accordance with Part 14 of Schedule 37 to *Primary Industries Levies and Charges Collection Regulations 1991* (Cth).

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# Agreed Terms

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## Part 1 – Collection

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

<b>Agreement</b>	this Deed of Agreement as between the Commonwealth and Racing Australia, amended from time to time in accordance with clause 15.2, and includes any schedules or attachments to it.
<b>Agreement Period</b>	the Agreement Period specified in clause 2.1.
<b>APP</b>	the Australian Privacy Principles, as defined in the Privacy Act as amended from time to time.
<b>Bank Account</b>	means an account in Racing Australia's name, and which Racing Australia solely controls, with an authorised deposit-taking institution authorised under the <i>Banking Act 1959</i> (Cth) to carry on banking business in Australia.
<b>Collection Act</b>	the <i>Primary Industries Levies and Charges Collection Act 1991</i> (Cth), as amended from time to time.
<b>Collection Legislation</b>	the Collection Act and Collection Regulations, as amended from time to time.
<b>Collection Regulations</b>	the <i>Primary Industries Levies and Charges Collection Regulations 1991</i> (Cth), as amended from time to time.
<b>Commencement Date</b>	the date on which this Agreement commences, being the date of execution by both parties, or where the parties execute the Agreement on different dates, the later of those dates.
<b>Commonwealth</b>	the Commonwealth of Australia as represented by the Department.
<b>Commonwealth Contact Officer</b>	the person specified at sub-paragraph 17(b)(ii).
<b>Confidential Information</b>	information that is by its nature confidential and: <ol style="list-style-type: none"> <li>(a) is designated by a party as confidential; or</li> <li>(b) a party knows or ought to know is confidential, but does not include</li> <li>(c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.</li> </ol>

<b>Declaration of Service</b>	has the same meaning as in Part 14 of Schedule 37 to the Collection Regulations.
<b>Department</b>	the Department of Agriculture and Water Resources and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Agreement on behalf of the Commonwealth.
<b>Late Payment Penalty</b>	a penalty payable under subsection 15(1) of the Collection Act.
<b>LEADR</b>	the dispute resolution association with that name or any other similar body agreed between the parties from time to time.
<b>Levy Return</b>	has the same meaning as in clause 3.3(b) of this Agreement and is the information a Thoroughbred Horse Breeder is required by the Collection Legislation to lodge with Racing Australia.
<b>Levy Year</b>	has the same meaning as in Part 14 of Schedule 37 to the Collection Regulations.
<b>Mare Return</b>	has the same meaning as in Part 14 of Schedule 37 to the Collection Regulations.
<b>Personal Information</b>	has the same meaning as in the Privacy Act as amended from time to time.
<b>Personnel</b>	in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party, and in the case of Racing Australia, of any subcontractor.
<b>Privacy Act</b>	the <i>Privacy Act 1988</i> (Cth) as amended from time to time.
<b>Racing Australia Contact Officer</b>	the person specified at sub-paragraph 17(b)(i).
<b>Racing Australia Website</b>	means the website accessed through the web address <a href="http://www.racingaustralia.horse/">www.racingaustralia.horse/</a>
<b>Thoroughbred Horse Breeder</b>	the person who lodges a Mare Return for a mare or a Declaration of Service for a stallion.
<b>Thoroughbred Horse Levy</b>	the levy imposed on thoroughbred horses in Australia in accordance with Part 12 of Schedule 27 to the <i>Primary Industries (Excise) Levies Regulations 1999</i> (Cth).

## 1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement, and a reference to this Agreement includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

### 1.3 Priority of documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;
- (b) Schedules;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Agreement.

## 2. Duration of Agreement

### 2.1 Agreement Period

This Agreement begins on the Commencement Date and continues unless terminated in accordance with clause 13.

## 3. Collection of Thoroughbred Horse Levy

### 3.1 Commencement of levy collection

Racing Australia must commence the collection of the Thoroughbred Horse Levy and Levy Returns from the next date the Thoroughbred Horse Levy and Levy Returns are required to be lodged on or after 1 August 2017.

### 3.2 Obligation to collect levies

Racing Australia must collect the Thoroughbred Horse Levy:

- (a) from Thoroughbred Horse Breeders;
- (b) in all States and Territories;
- (c) in accordance with all applicable laws, including but not limited to the Collection Act and the Collection Regulations;
- (d) in accordance with lawful and reasonable Commonwealth policies and specific requirements as reasonably notified by the Commonwealth from time to time;
- (e) in accordance with any lawful and reasonable directions in relation to the collection given by the Commonwealth from time to time;
- (f) so as to keep accurate and auditable records relating to the collection; and
- (g) otherwise in accordance with the provisions of this Agreement.

### 3.3 Levy Returns

- (a) Racing Australia must explain on the Racing Australia Website that Levy Returns must be lodged with Racing Australia, and outline how those returns can be lodged with Racing Australia.
- (b) Each Levy Return lodged by a Thoroughbred Horse Breeder must contain the following information in accordance with the Collections Regulations:
  - (i) a declaration, signed by the person lodging the return, that the particulars set out in the return are correct in every essential detail; and
  - (ii) the full name and business address or residential address of the Thoroughbred Horse Breeder; and
  - (iii) the post office box or post office bag address of the Thoroughbred Horse Breeder (if the Thoroughbred Horse Breeder has a post office box or a post office bag address); and
  - (iv) the Australian Business Number (ABN) of the Thoroughbred Horse Breeder or, if the Thoroughbred Horse Breeder is a company and does not have an ABN, the Australian Company Number (ACN) of the Thoroughbred Horse Breeder company; and
  - (v) if the Thoroughbred Horse Breeder is lodging a Levy Return in respect of a mare:

- (A) the number of mares listed in the Mare Return; and
  - (B) the amount of Thoroughbred Horse Levy payable by the Thoroughbred Horse Breeder; and
  - (C) the total amount of the Thoroughbred Horse Levy paid by the Thoroughbred Horse Breeder; and
- (vi) if the Thoroughbred Horse Breeder is lodging a Levy Return in respect of a stallion:
- (A) the number of mares covered by a stallion, as listed in the Declaration of Service; and
  - (B) the amount of Thoroughbred Horse Levy payable by the Thoroughbred Horse Breeder; and
  - (C) the total amount of Thoroughbred Horse Levy paid by the Thoroughbred Horse Breeder.
- (c) Racing Australia must ensure that its Mare Return, Declaration of Service and Levy Return each contain a statement to the effect that the information collected in each of those returns is collected for the purposes of:
- (i) Racing Australia administering the Australian Stud Book; and
  - (ii) collecting information relating to the payment of the Thoroughbred Horse Levy in accordance with the requirements of the Collection Legislation,
- and that the provision of information by a Thoroughbred Horse Breeder is taken to be consent to the:
- (iii) collection of the information for both purposes; and
  - (iv) disclosure of the information to the Commonwealth (if required under this Agreement).
- (d) Racing Australia must ensure that it has a record of the date that each Levy Return lodged by a Thoroughbred Horse Breeder is submitted to Racing Australia by the Thoroughbred Horse Breeder.
- (e) Racing Australia and the Department must agree on the terms of the statement to be included in the Mare Return, Declaration of Service and Levy Return referred to in clause 3.3(c).

### 3.4 Failure to Lodge

- (a) Where Racing Australia becomes aware that a Thoroughbred Horse Breeder has failed to lodge a Levy Return in accordance with the requirements of the Collection Legislation, Racing Australia must notify the Commonwealth as soon as reasonably practicable and by submitting an email to the following address: [levies.management@agriculture.gov.au](mailto:levies.management@agriculture.gov.au) (or such other email address as notified by the Commonwealth from time to time) with the following information:
- (i) the Thoroughbred Horse Breeder's full name and ABN or ACN, as applicable; and
  - (ii) any other information the Commonwealth reasonably requests of Racing Australia, in connection with the above, from time to time.

### 3.5 Late Payment Penalties

- (a) Racing Australia is not permitted to, and otherwise must not, collect or remit Late Payment Penalties from Thoroughbred Horse Breeders.



- (b) Where Racing Australia considers that Late Payment Penalties may apply, Racing Australia must provide to the Commonwealth by email to the address listed in clause 3.4(a):
  - (i) details of the amount of Thoroughbred Horse Levy payable;
  - (ii) sufficient information to allow the Commonwealth to calculate and collect the Late Payment Penalty, including but not limited to, the name and contact details of the relevant person and the basis on which Racing Australia considers that a Late Payment Penalty may apply;
  - (iii) the relevant Levy Return(s) to which the late payment relates; and
  - (iv) any other information reasonably requested by the Commonwealth.

### **3.6 General obligations**

Racing Australia must, in relation to the collection of the Thoroughbred Horse Levy:

- (a) fully cooperate with the Commonwealth's Personnel (including Personnel from other Commonwealth agencies), including contractors; and
- (b) use its best efforts to coordinate its activities so as to support and facilitate the timely and efficient completion of the collection of the Thoroughbred Horse Levy.

### **3.7 Bank Account**

Racing Australia must:

- (a) ensure that the Thoroughbred Horse Levy collected by Racing Australia is held in the Bank Account within one month of the Thoroughbred Horse Levy being collected by Racing Australia. The Commonwealth agrees that the Thoroughbred Horse Levy collected by Racing Australia may be held in a bank account in the Australian Stud Book's name prior to all Thoroughbred Horse Levy(s) collected by Racing Australia in a calendar month being transferred to the Bank Account at the end of that month;
- (b) ensure that the Bank Account is:
  - (i) established solely for the purposes of collecting, accounting for, and administering, the Thoroughbred Horse Levy; and
  - (ii) separate from Racing Australia's other operational accounts;
- (c) notify the Commonwealth, prior to the receipt of any Thoroughbred Horse Levy, of the identifying details of the Bank Account, and where the Bank Account changes, notify the Commonwealth within 14 days of the new account details;
- (d) on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with an authority for the Commonwealth to obtain any details relating to the use of the Bank Account; and
- (e) identify the collected Thoroughbred Horse Levy separately within Racing Australia's accounting records so that at all times the Thoroughbred Horse Levy is identifiable and ascertainable.

### **3.8 Subcontracting**

- (a) Racing Australia must not subcontract any aspect of the collection of the Thoroughbred Horse Levy without the prior written approval of the Commonwealth, which will not be unreasonably withheld.
- (b) Racing Australia is fully responsible for the collection of the Thoroughbred Horse Levy, even if Racing Australia subcontracts any aspect of the collection.

## 4. Payment

### 4.1 Obligation to pay Thoroughbred Horse Levy to Commonwealth

In accordance with the Collection Regulations, Racing Australia must, within 30 days of the end of each quarter in which Racing Australia is required to collect the Thoroughbred Horse Levy, pay to the Commonwealth the full amount of all Thoroughbred Horse Levy(s) it has collected in that quarter, without deduction.

### 4.2 Remittance advice

- (a) Racing Australia must submit a remittance advice to the Commonwealth in accordance with the requirements of this clause 4.2 each time Racing Australia makes the payment referred to in clause 4.1 and on the same day on which any such payment is made.
- (b) The remittance advice which Racing Australia is required by paragraph 4.2(a) to submit must:
  - (i) be submitted by email to the following address: [levies.finance@agriculture.gov.au](mailto:levies.finance@agriculture.gov.au) (or such other email address as notified by the Commonwealth from time to time);
  - (ii) detail the total amount of the Thoroughbred Horse Levy(s) Racing Australia has collected and paid to the Commonwealth; and
  - (iii) include any other information reasonably requested by the Commonwealth.

## 5. Confidentiality and privacy

### 5.1 Prohibition on use for other purposes

- (a) Racing Australia must not use any information, including Confidential Information and Personal Information, of which it becomes aware as a consequence of its performance of the obligations under this Agreement for any purpose other than the performance of the obligations under this Agreement.

### 5.2 Prohibition on disclosure

- (a) Subject to clause 5.5, Racing Australia must not, without the prior written consent of the Commonwealth disclose any Commonwealth Confidential Information to a third party.
- (b) Subject to clause 5.5, the Commonwealth must not, without the prior written consent of Racing Australia disclose any of Racing Australia's Confidential Information to a third party.

### 5.3 Conditions of approval

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. Racing Australia must comply with any term or condition imposed by the Commonwealth under this clause 5.3.

### 5.4 Advisers and third parties

The Commonwealth may at any time require Racing Australia to arrange for:

- (a) its advisers;
- (b) its Personnel and other employees and subcontractors engaged in the performance of the services which are the subject of this Agreement; or
- (c) any other third party, to whom Commonwealth Confidential Information may be disclosed pursuant to clause 5.5(a) or clause 5.5(b),

to give a written undertaking relating to the use and non-disclosure of the Commonwealth's Confidential Information in the form specified by the Commonwealth.

## 5.5 Exceptions to obligations

The obligations on each party under clause 5.2 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Commonwealth within the Department, or with another Agency, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor General, Ombudsman or Information Commissioner;
- (g) is required by law, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this Agreement.

## 5.6 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 5.5(a), (b) or (e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking in the form specified by the Commonwealth; or
- (b) pursuant to clauses 5.5(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

## 5.7 Additional confidential information

- (a) The parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (b) Where the parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both parties have signed this documentation.

## 5.8 Period of confidentiality

The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Agreement:

- (a) in relation to information provided by a Thoroughbred Horse Breeder, including in a Levy Return, indefinitely, and
- (b) in relation to any information which the parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.

## **5.9 No reduction in privacy obligations**

Nothing in this Agreement derogates from any obligation which either party may have under the Privacy Act, in relation to the protection of personal information as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

## **5.10 Return of information**

At the Commonwealth's request or on the expiry or termination of this Agreement, Racing Australia must promptly return all of the Commonwealth's physical and written records containing Commonwealth Confidential Information, and all documentation relating to that Commonwealth Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth.

# **6. Protection of Personal Information**

## **6.1 Application of this clause**

This clause 6 applies only where Racing Australia deals with Personal Information when, and for the purpose of the collection of the Thoroughbred Horse Levy under this Agreement.

## **6.2 Obligations**

Racing Australia agrees that it will not do an act or engage in a practice that would result in a breach of an APP if it were done by an agency.

## **6.3 Subcontracts**

Racing Australia must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as Racing Australia has under this clause 6, including the requirement in relation to subcontracts.

## **6.4 Indemnity**

Racing Australia agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of Racing Australia under this clause 6, or a subcontractor under the subcontract provisions referred to in clause 6.3.

# **7. Conflict of interest**

## **7.1 Warranty that there is no conflict of interest**

Racing Australia warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

## **7.2 Notification of a conflict of interest**

If, during the performance of its obligations under this Agreement a conflict of interest arises, or appears likely to arise, Racing Australia must:

- (a) notify the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

## 8. Books and records

### 8.1 Racing Australia to keep books and records

Racing Australia must keep adequate books and records detailing its provision of the services which are the subject of this Agreement, which includes:

- (a) keeping and requiring any of its subcontractors to keep adequate books and records in sufficient detail to enable the amount and person from whom the Thoroughbred Horse Levy is payable, to be determined and clearly identified in any particular case; and
- (b) retaining and requiring its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement all books and records relating to the collection of the Thoroughbred Horse Levy.

### 8.2 Costs

Racing Australia must bear its own costs of complying with this clause 8.

### 8.3 Survival

This clause 8 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

## 9. Audit and access

### 9.1 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of Racing Australia's obligations under this Agreement. Audits may be conducted of:

- (a) Racing Australia's operational practices and procedures as they relate to this Agreement;
- (b) the accuracy of Racing Australia's payments and reports in relation to the collection and payment to the Commonwealth of the Thoroughbred Horse Levy;
- (c) Racing Australia's compliance with its confidentiality and privacy obligations under this Agreement;
- (d) material (including books and records) in the possession of Racing Australia relevant to the collection of the Thoroughbred Horse Levy or this Agreement; and
- (e) any other matters determined by the Commonwealth to be relevant to the collection of the Thoroughbred Horse Levy or this Agreement.

### 9.2 Access by the Commonwealth

- (a) The Commonwealth may, at all reasonable times and on giving reasonable notice to Racing Australia:
  - (i) access the premises of Racing Australia to the extent relevant to the performance of this Agreement;
  - (ii) require the provision by Racing Australia, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of Racing Australia, its employees, agents or subcontractors; and

- (iv) require assistance in respect of any inquiry into or concerning the collection of the Thoroughbred Horse Levy or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) Racing Australia must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 9, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

### **9.3 Conduct of audit and access**

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 9.1; and
  - (b) the exercise of the general rights granted by clause 9.2 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect Racing Australia's performance of its obligations under this Agreement or its business.

### **9.4 Costs**

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

### **9.5 Auditor-General and Information Commissioner**

The rights of the Commonwealth under clause 9.2(a)(i) to 9.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Information Commissioner or a delegate of the Information Commissioner, for the purpose of performing the Auditor-General's or Information Commissioner's statutory functions or powers.

### **9.6 Compliance with Auditor-General's Requirements**

Racing Australia must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Information Commissioner's or his or her delegate's requirements, notified under clause 9.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Information Commissioner, or his or her respective delegate.

### **9.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce Racing Australia's responsibility to perform its obligations in accordance with this Agreement.

### **9.8 Subcontractor requirements**

Racing Australia must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 9.

### **9.9 No restriction**

Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Information Commissioner or a delegate of the Information Commissioner. The rights of the Commonwealth under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Information Commissioner or a delegate of the Information Commissioner.

## 9.10 Access to documents

- (a) In this subclause, ‘document’ and ‘Commonwealth contract’ have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- (b) Racing Australia acknowledges that this Agreement is a Commonwealth contract.
- (c) Where the Commonwealth has received a request for access to a document created by, or in the possession of, Racing Australia or any subcontractor that relates to the performance of this Agreement (and not to the entry into the Agreement), the Commonwealth may at any time by written notice require Racing Australia to provide the document to the Commonwealth and Racing Australia must, at no additional cost to the Commonwealth, promptly comply with the notice.
- (d) Racing Australia must include in any subcontract relating to the performance of this Agreement provisions that will enable Racing Australia to comply with its obligations under this clause 9.10.

## 9.11 Survival

This clause 9 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

# 10. Indemnity

## 10.1 Indemnity

- (a) Racing Australia will at all times indemnify, hold harmless and defend the Commonwealth, its officers and employees (referred to in this clause 10.1 as those indemnified) from and against any loss or liability, including:
  - (i) loss of, or damage to, property of the Commonwealth;
  - (ii) claims by any person in respect of personal injury or death;
  - (iii) claims by any person in respect of loss of, or damage to, any property; and
  - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 10.1(a)(ii) or clause 10.1(a)(iii), arising out of or as a consequence of:
    - (v) any actual, likely or threatened breach of the obligations of Racing Australia or its subcontractors relating to Confidential Information or Personal Information; or
    - (vi) without limiting the preceding paragraphs, any breach of this Agreement by Racing Australia, or negligence on the part of Racing Australia, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of Racing Australia, its Personnel or subcontractors.
- (b) Racing Australia’s liability to indemnify those indemnified under clause 10.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

# 11. Insurance

## 11.1 Obligation to maintain insurance

In connection with the performance of its obligations under this Agreement, Racing Australia must have and maintain:

- (a) for the Agreement Period, valid and enforceable insurance policies for:
  - (i) public liability;
  - (ii) either professional indemnity or errors or omissions; and
  - (iii) workers' compensation as required by law; and
- (b) for seven years following the expiry or termination of this Agreement, valid and enforceable insurance policies for either professional indemnity or errors or omissions, unless otherwise notified by the Commonwealth,

## **11.2 Certificates of currency**

Racing Australia must, on request by the Commonwealth, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 11.1.

## **12. Dispute resolution**

### **12.1 No arbitration or court proceedings**

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 12 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 12.

### **12.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### **12.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 12.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Racing Australia's Chief Executive Officer and the Secretary of the Department (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

### **12.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 12.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

### **12.5 Role of mediator and obligations of parties**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 12.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### **12.6 Confidentiality**

Any information or documents disclosed by a party under this clause 12:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.



## **12.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 12. The parties to the Dispute must equally pay the costs of any mediator.

## **12.8 Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 12.1 to 12.5. Clauses 12.6 and 12.7 survive termination of the dispute resolution process.

## **12.9 Breach of this clause**

If a party to a Dispute breaches clauses 12.1 to 12.8, the other party does not have to comply with those clauses in relation to the Dispute.

# **13. Termination**

## **13.1 Termination for default**

Without limiting any other rights the Commonwealth may have under this Agreement or at law, the Commonwealth may immediately terminate this Agreement in whole or in part, and by giving notice to Racing Australia, if any of the following events or matters raise:

- (a) Racing Australia fails to fulfil, or is in breach of, any of its obligations under this Agreement that are not capable of being rectified (as determined by the Commonwealth);
- (b) Racing Australia is in breach of any of its obligations under this Agreement that are capable of being rectified, and does not rectify the omission or breach within 20 business days or such other period (which is to be in excess of 20 business days) specified by the Commonwealth, of receiving notice from the Commonwealth to do so; or
- (c) the Commonwealth is satisfied that Racing Australia has become insolvent or otherwise unable to pay all of its debts as and when they become due and payable.

## **13.2 Termination or reduction in scope**

Without limiting any other rights the Commonwealth may have under this Agreement or at law, the Commonwealth may at any time, by notice, terminate this Agreement in whole or in part, or reduce the scope of any part of this Agreement, including to reflect a machinery of government change, a change in Commonwealth policy, or a change in Commonwealth legislation.

## **13.3 On receipt of a notice of termination**

- (a) On receipt of a notice of termination Racing Australia must:
  - (i) cease collecting the Thoroughbred Horse Levy as specified in the notice;
  - (ii) take all available steps to minimise loss resulting from that termination; and
  - (iii) take any other lawful and reasonable action specified in the notice of termination.
- (b) Racing Australia is not entitled to compensation as a result of termination of this Agreement by the Commonwealth.

## **13.4 After termination**

On termination of this Agreement Racing Australia must:

- (a) deal with any amounts of the Thoroughbred Horse Levy collected, as directed by the Commonwealth;

- (b) provide any information to the Commonwealth which it requests regarding the collection of the Thoroughbred Horse Levy; and
- (c) provide such other assistance as reasonably requested by the Commonwealth.

## 14. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) Clause 5 (Confidentiality and privacy);
- (b) Clause 8 (Books and records);
- (c) Clause 9 (Audit and access);
- (d) Clause 14 (Survival); and
- (e) Clause 16 (Transition Out).

## 15. Miscellaneous

### 15.1 Ownership of Agreement

All copyright and other intellectual property rights contained in this Agreement remain the property of the Commonwealth.

### 15.2 Variation

No agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

### 15.3 Assignment and novation

Racing Australia may not assign its rights or novate its rights and obligations under this Agreement.

### 15.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

### 15.5 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

### 15.6 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### 15.7 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

### 15.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

### 15.9 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

### 15.10 Waiver

Waiver of any provision or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### 15.11 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

### 15.12 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## 16. Transition Out

- (a) Where this Agreement expires, or is otherwise terminated early, Racing Australia must provide sufficient assistance and cooperation to the Commonwealth to enable the smooth transition of the collection of the Thoroughbred Horse Levy from Racing Australia to the Commonwealth or such other party as is notified by the Commonwealth.
- (b) The sufficient assistance and cooperation Racing Australia must provide under clause 16(a) may include the provision of a report by Racing Australia to the Commonwealth which includes:
  - (i) details of all Thoroughbred Horse Breeders from whom Racing Australia has collected the Thoroughbred Horse Levy in the previous twelve months, including the relevant Thoroughbred Horse Breeder's full name and ABN or ACN (if applicable); and
  - (ii) details of any outstanding Thoroughbred Horse Levy amounts as at the expiry date or early termination date; and
  - (iii) any other information which Racing Australia considers may be relevant to enable the Commonwealth or any other party to collect the Thoroughbred Horse Levy .

## 17. Parties' representatives

- (a) Unless otherwise specified in this Agreement, the parties representatives listed in this clause 17 are the respective contact officers for all matters arising in relation to this Agreement.
- (b) Unless otherwise notified in writing by either party:
  - (i) Racing Australia's Contact Officer is Ms Jacqueline Stewart and can be contacted as follows:  
Keeper of the Australian Stud Book

Racing Australia

Level 11, 51 Druitt Street

Sydney NSW 2000

(02) 8072 1900

[jacqueline.stewart@racingaustralia.horse](mailto:jacqueline.stewart@racingaustralia.horse)

- (ii) The Commonwealth's Contact Officer is Mr Matthew Ryan and can be contacted as follows:

Assistant Secretary

Industry Support Branch, Finance and Business Support Division, Department of  
Agriculture and Water Resources

GPO Box 858

Canberra ACT 2601

(02) 6272 4598

[Matthew.Ryan@agriculture.gov.au](mailto:Matthew.Ryan@agriculture.gov.au)

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# Signing page

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**EXECUTED** as a Deed.

**Signed, sealed and delivered** for and on behalf of the **Commonwealth of Australia as represented by the Department of Agriculture and Water Resources [ABN 24 113 085 695]** by its duly authorised delegate in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of delegate



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

Date executed by the Commonwealth

28 / 07 / 2017

**Signed, sealed and delivered** by **Racing Australia Limited [ABN 89 105 994 330]** by its authorised representative in the presence of

\_\_\_\_\_  
Chief Executive Officer  
Racing Australia



\_\_\_\_\_  
Witness



\_\_\_\_\_  
Name of Chief Executive Officer (print)

\_\_\_\_\_  
Name of witness (print)

Date executed by Racing Australia Limited

11 / 07 / 2017