

# WVS TERMS AND CONDITIONS

All treatment conducted by Willinga Vet Services Pty Limited (**WVS**) is subject to the following Terms and Conditions which bind every Owner of an animal jointly and severally.

The Owner providing instructions and obtaining treatment warrants that they have the full power and authority to accept these Terms and Conditions.

## 1. PAYMENT TERMS

1.1 The Owner acknowledges that, unless otherwise agreed with WVS, the Owner will be provided with monthly or progress invoices for the provision of service/s and the supply of goods and payment must be made within 15 days of the date of the invoice.

1.2 Notwithstanding clause 1.1 all monies payable to WVS must be paid in full prior to the Horse being discharged by WVS. The Owner will be liable for additional costs incurred in holding the Horse in accordance with this clause.

1.3 Interest on late payment will accrue at the rate of 1.5% per month from the due date for payment, calculated daily until the date payment is made. An administrative fee of \$15 will be applied to each reminder notice issued for unpaid invoices. The payment of interest by the Owner on late payment under this clause 1 is in addition to any other remedies that WVS may have in respect of such late payment.

1.4 All services are charged inclusive of GST.

## 2. SECURITY INTEREST – PERSONAL PROPERTY SECURITIES ACT 2009

2.1 This agreement constitutes a Security Agreement for the purposes of the Act and where the context requires the words used in this agreement should be given the same meaning as in the Act.

2.2 As security for any outstanding fees or other monetary obligations incurred in treating the Horse, the Owner:

- a. grants to WVS a Security Interest, being a charge over the Horse and any proceeds realised from the sale of the Horse or any insurance policy relating to the Horse;
- b. consents to the registration of the Security Interest created by this agreement on the Personal Properties Security Register (**PPSR**),
- c. consents to WVS registering a financing statement and/or financing change statement with the PPSR.

2.3 The Owner undertakes to:

- a. promptly sign any further documents and/or provide any further information requested by WVS to complete and register any financing statement or any financing change statement with the PPSR; and
- b. indemnify, and upon demand reimburse, WVS 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 in relation to such Security Interests; and
- c. not grant any Encumbrance to any other person in the Horse without first obtaining the consent in writing of WVS. WVS will be entitled, at its sole discretion, to withhold consent without providing a reason.

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

2.5 The Owner declares that, to the extent permitted under the Act, sections 142 and 143 of the Act will not apply to this agreement and the Security Interests granted under clause 8.2.

2.6 WVS will discharge the registration of the Security Interests on the PPSR when all of the secured obligations of the Owner under this agreement are satisfied.

2.7 The Owner warrants that the Horse is not subject to an existing Encumbrance at the time of entering into this agreement.

2.8 In the event that:

- a. the Owner or a third party has possession of the Horse; and
- b. fees or other monetary obligations are due but unpaid to WVS by the Owner; and
- c. WVS has made demand in writing to the Owner for payment of those monies; and
- d. WVS has not received such payment within the timeframe specified in the demand;

then, the Owner acknowledges and agrees that WVS is entitled to seize the Horse pursuant to section 138C of the Act and once the Horse is in WVS's possession the Owner agrees that WVS may at its discretion either:

- e. retain possession of the Horse and have the ownership transferred to WVS; or

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- f. (ii) dispose of the Horse and retain all or part of the proceeds of the disposal in or towards payment of the fees or other monetary obligations.
- 2.9 The Owner consents to agents of WVS entering onto the Owner's property for the purpose of seizing the Horse and consents to indemnify WVS with respect to any trespass claims should WVS need to seize the Horse from any third-party premises.
- 2.10 The Owner waives its rights under section 157 of the Act to receive a verification statement due to the Horse being "commercial property" pursuant to the Act.
- 2.11 The Owner covenants that it will not, nor will it agree to, sell, assign or transfer the Horse until full payment has been made of any fees and all other monetary obligations to WVS.
- 2.12 The Owner acknowledges that at the time the Security Interest granted by clause 2 of this agreement is made:
- a. the Security Interest is granted for value;
  - b. the Security Interest is granted to enable amongst other things the Horse to be fed and developed; and
  - c. the Horse was held by the Owner;
- and, as a result, the Security Interest is a Priority Interest in livestock pursuant to section 86 of the Act.

### 3. LIEN, POWER OF ATTORNEY & IRREVOCABLE AUTHORITY

- 3.1 The Owner grants WVS a security interest in the Horse, all insurance policies relating to the Horse. The Owner appoints WVS as its attorney to execute and file any and all financing statements and agricultural liens and irrevocable authorities to pay in any jurisdiction or to execute any documents with any entity believed to be appropriate to secure any obligation of the Owner. In the event that any fees or charges are not promptly paid, WVS may, 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 WVS will credit the proceeds of the sale, after expenses of sale and maintaining the Horse and discharging any fees or charges owing to WVS to the Owner. This right is in addition to all other rights to which WVS is entitled under law.
- 3.2 WVS is entitled to a lien over any Horse in respect of any monies due to WVS (whether or not such monies relate to the Horse) and has the power to sell the Horse over which such lien is taken to recover such

monies (including any interest there on). The Owner absolutely appoints WVS as their power of attorney to sell the Horse including entering any Horse for sale at a public sale or auction, to instruct the auctioneers in relation thereto and to apply the proceeds of its sale to any monies due to WVS, whether or not such monies relate to the Horse and including all costs incurred in respect of the sale of the Horse.

- 3.3 For good and valuable consideration, the Owner hereby provides an irrevocable instruction, direction and authority to any sales company who sells any Horse to pay any proceeds of sale of the Horse and to any insurance company to pay any proceeds of an insurance policy for the Horse to WVS to secure any obligation of the Owner to WVS without requiring further notification to the Owner. The acceptance of such proceeds by WVS will be without prejudice to WVS' rights to pursue the Owner for any shortfall of money owing, or other damages. The provision of a certified copy of this document to the sales company or insurance company will be good and sufficient evidence of this authority.

### 4. RECOVERY

- 4.1 WVS is entitled to sue for and recover against the Owner any fee on the Owner's account as liquidated demand and the Owner agrees that in the event of default the Owner will pay all reasonable costs, charges, legal expenses, and any other collection agents costs necessary and incidental to recovering monies recovered under this agreement.

### 5. HOLD BLAMELESS ACKNOWLEDGEMENT – RELEASE AND INDEMNITY

- 5.1 The Owner acknowledges that the provision of veterinary treatment to horses and other animals is a high-risk activity and that the Owner is able to insure against any losses that may occur as a result of such activity.
- 5.2 The Owner acknowledges and agrees that they have been given the opportunity to inspect WVS and confirm that its facilities meet the standard applicable to the equine veterinary facilities of the industry.
- 5.3 The Owner agrees that WVS will be held blameless in respect to any injury, infection, disease or death of any Horse in its care.
- 5.4 The Owner releases WVS, its owners, partners, employees and agents of it from any Claims and agrees to indemnify and keep indemnified WVS against any liability or loss arising from, and any costs, charges, expenses and liabilities incurred in relation to any

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Claims relating to a Horse and in each case, including but not limited to, solicitor client, legal costs and expenses on a full indemnity basis.

- 5.5 WVS is not liable for any loss, damage or Claims of whatsoever nature or howsoever arising from injury, sickness, disease or death caused to or sustained by a Horse whilst under the care or control of WVS or its employees and agents.
- 5.6 WVS is not be liable to the Owner for any Claims, loss, damage, costs or expense and arising out of any injury, damage or death which may arise or be caused and notwithstanding the same may be attributable to or is in part attributable to recklessness, negligence, forbearance or neglect by WVS or any servant or agent of WVS or any other person in whose care or control WVS may place a Horse.

## 6. RETENTION

- 6.1 Without limiting WVS' rights in respect of a Lien or Power of Attorney WVS is entitled to retain possession of a Horse until all monies collection costs and Solicitor client interest costs due and owing for all services have been received from the Owner.

## 7. ACKNOWLEDGEMENTS

### 7.1 The Owner:

- a. understands and acknowledges that the Owner is not entitled to raise a set off or counter claim in respect of any amount it owes to WVS and all amounts to be paid by the Owner under this agreement will be paid in full without deduction or withholding; and
- b. acknowledges if WVS fails to do, or delays in doing, something WVS is entitled to do under this agreement that failure does not amount to a waiver.

### 7.2 With respect to the performance of veterinary treatment and services, the Owner:

- a. warrants that the correct Horse is delivered or presented to WVS;
- b. consents for the Horse to have the procedure for which it is admitted and authorises WVS to administer veterinary treatment including the administration of anaesthetic, sedatives and relaxants and performance of surgery, nursing care and all diagnostic tests associated in the care of the Horse as deemed necessary by the attending veterinarian;
- c. acknowledges that the Horse may be placed in a crush and examined internally on multiple

occasions and that this carries risk of injury, infertility, or death;

- d. if applicable, acknowledges and agrees to the use of reproductive hormones on the Horse at the discretion of the attending veterinarian;
- e. acknowledges that no surgical, anaesthetic procedure or diagnostic procedure is without some risk to the Horse and acknowledges that there is potential for complications following any surgical procedure. The Owner accepts all potential risks including any complications that may develop as a result of any procedure performed and accepts that such complications may incur additional fees. The Owner acknowledges that post-operative care 24-hour intensive veterinary treatment, veterinary nursing care, hospitalisation and transportation may be required and instructs WVS to undertake it as WVS deems necessary;
- f. acknowledges and agrees to pay all costs incurred in relation to the Horse including all costs associated with the procedure, any complications and any pre or post operative agistment;
- g. acknowledges and understands that a perfect result or outcome cannot be guaranteed or warranted;
- h. understands treatment of the Horse may involve the use of drugs that are not specifically registered for horses, accepts the attending veterinarian has the legal authority for off-label use of these drugs and authorises them to use these drugs if deemed appropriate; and
- i. understands that de-identified veterinary data, obtained while the Horse is under veterinary care may be used for future scientific publications.

## 8. LAW

- 8.1 The Law of New South Wales governs this agreement and the parties submit to the jurisdiction of that state.

## 9. SEVERANCE

- 9.1 If for any reason any part of these terms and conditions would render this agreement ineffective, void, voidable, illegal or unenforceable, that part will, without in any way affecting the validity of the remainder of the agreement, be severed and the agreement will be read and construed and take effect for all purposes without reference to that part.

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## 10. IMPLIED TERMS

- 10.1 Except as required by statute and including the Competition and Consumer Act 2010 (Cth):
- a. all implied conditions and warranties are excluded; and
  - b. WVS does not accept liability for any direct, indirect or consequential loss or damage caused to the Owner or any other person which arises out of the negligence or carelessness of WVS or any of its employees, servants or agents.
- 10.2 For the purpose of this clause "consequential loss" includes, but is not limited to, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of goods or services.

## 11. NOTICES

- 11.1 All notices between WVS and the Owner will be deemed to have been delivered if:
- a. sent by ordinary mail - five (5) days after mailing to the address provided, or such other address notified to WVS by the Owner in writing, or if the Owner is a company, to the registered office or principal place of business;
  - b. sent by email - on the next business day after the successful transmission of an email addressed to the Owner at the Owner's email address provided or such other address notified to WVS by the Owner in writing even if that notice may not be received by the Owner.

## 12. AGENCY

- 12.1 In the event that services are obtained by an agent on behalf of the Owner, or a representative or principle on behalf of the Owner if the Owner is an organisation or corporation, the agent, representative or principle hereby unconditionally guarantees the full and prompt payment of the charges as well as the full and prompt performance by the Owner of any and all other obligations in these terms and conditions. The agent agrees he or she will be personally liable and jointly and severally liable with the Owner to pay all monies owed to WVS. This guarantee and warranty will remain in effect regardless of whether the agent, representative, or principal retains his or her status as such following the execution of this agreement.

## 13. DEFINITIONS

- 13.1 In these Terms & Conditions:

"**Act**" means the Personal Property Securities Act 2009 (Cth).

"**Claims**" means all claims, investigations, demands, actions, proceedings, suits, causes of action, damages, debts, costs, verdicts and judgments whatsoever whether at law or in equity or under any statute including but not limited to all claims arising from or out of damage to the Horse or as a consequence thereof which relate to any incident or matter which occurred as a result of the Horse being exposed to any disease, injury or death whilst at WVS or as a result of movement of the Horse from WVS for the purpose of service of the horse, foaling or treatment, and whether at common law, in equity or arising out of the provisions of any statute.

"**Encumbrance**" means:

- a. (a) any Security Interest; (as defined in the PPSA);
- b. any right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors, including any right of set-off;
- c. any third party right or interest in property, or any right arising as a consequence of the enforcement of a judgment; or
- d. any agreement to create any of them or allow them to exist.

"**Horse**" means any horse (including any mare) owned by the Owner and includes any Progeny.

"**Owner**" means the person, part owner, lessee, part lessee, syndicate member, syndicate manager, director, shareholder secretary, trustee, beneficiary, company, entity or any person who is recognised as an owner both jointly and severally, where there is more than one person who by definition shares ownership in the horse, or other person passing a horse to WVS that were provided with veterinary services and/or goods.

"**Personal Property Securities Register**" means the register established under section 147 of the Act.

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“**Progeny**” means any foal, or foetus (which is deemed to have come into existence from the time of the 45-day positive pregnancy test) that is the offspring of any Horse owned by the Owner or that comes into existence howsoever as a result of any reproductive services, including surrogacy, directed or instructed by the Owner with the intention that the Owner will become the owner of such offspring on birth.

“**Security Interest**” means:

- a. In relation to any personal property (as defined in the Act), has the same meaning given to it as defined in section 12 of the Act; and
- b. In relation to any other property, means any charge, mortgage, pledge, bill of sale, hypothecation, lien, arrangement concerning the deposit of

documents evidencing title, trust, power, title retention arrangement or any other covenant or arrangement of any nature made to secure the payment of money or the observance of an obligation.

“**Service/s**” means any form of veterinary services including treatment, surgery, diagnostic aid, laboratory test, advice, reproductive or surrogacy service or any other veterinary involvement in the treatment of an equid.

By engaging WVS to undertake any veterinary procedure the Owner acknowledges that they have read and understand the above terms and conditions and agree to abide by them.