



SYNDICATE AGREEMENT

THE FORTUNA SYNDICATE NO 125



"ZOI"

The Yearling Filly by MERCHANT NAVY out of PINDARA

THE FORTUNA SYNDICATE #125

THIS SYNDICATE AGREEMENT is made in New Zealand on the
10th MARCH 2022

The Manager: **Fortuna Limited**

The Members: The people named in the Second Schedule (together the
“Syndicate” or “the Members”)

BACKGROUND

- A. The Manager has agreed to manage the Bloodstock described in the Third Schedule which forms part of this Agreement.
- B. Each of the Members has contributed or agreed to contribute funds to the Syndicate for the purchase of the Bloodstock.
- C. The total initial financial contributions of the Members to the Syndicate will be equal to the purchase price of the Bloodstock including GST plus other specified initial expenses including GST as described in the Fourth Schedule of this Agreement.
- D. Each financial contribution will be made in direct proportion to the shares held by each Member.
- E. The Members have agreed to form the Syndicate to utilise the financial contributions to the Syndicate Fund, on the terms and conditions in this Agreement.

TERMS OF THIS AGREEMENT

1. Objects

- 1.1 The objects of the Syndicate are:
 - A. To acquire, train and race the Bloodstock, and any other Bloodstock acquired by the Syndicate, with the objective of winning stakes money.
 - B. To share in the fun and camaraderie associated with owning and racing a racehorse that is in shared ownership.
 - C. To carry on any other activity associated with the racing industry that the Manager, with the approval of the Members, sees fit.

2. Jurisdiction and Applicable Law

- 2.1 This Agreement will be governed by the laws of New Zealand and any dispute will, subject to clause 22, be referred to the non-exclusive jurisdiction of the New Zealand Courts, irrespective of where any of the Syndicate assets are situated.

3. Name of Syndicate

- 3.1 The name of the Syndicate is **Fortuna Syndicate #125** - The Manager reserves the right to rename this Syndicate to reflect the racing name of any bloodstock acquired by the Syndicate.

4. Definitions and Interpretation

- 4.1 In this Agreement, unless the context otherwise requires otherwise, the following terms have the following definitions:

Term	Meaning
Members	The people named in the Second Schedule and any person(s) who alone or jointly become a Member of the Syndicate in accordance with this Agreement.
Balance Date (clause 19.1.5)	31 st March, or such other date acceptable to the Department of Inland Revenue and approved by the Members.
Distribution Date (clause 13)	The 31 st March 2042 or any earlier date chosen by the Members.
Management Committee (clause 16)	John Eric Galvin, (to be entered) and (to be entered)
Racing Manager (clause 16)	John Eric Galvin
Alternate Racing Manager (clause 16)	David Charles Ellis
Share	The meaning given to that term in clause 5.3, and except where the context requires otherwise includes an interest in a Share.
Syndicate Fund (clause 5)	The meaning given to that term in clause 5.2

- 4.2 In this Agreement except where the context otherwise requires:

- a. The singular includes the plural and vice versa and a gender includes each other gender.
- b. Another grammatical form of a defined word or expression has a corresponding meaning.
- c. A reference to a dollar is to New Zealand currency.
- d. A reference to a statute includes any statute by way of consolidation, amendment, re-enactment or replacement.
- e. If a Member comprises more than 1 person, the covenants in this Agreement bind those persons jointly and severally.

- f. A reference to a person includes a natural person, partnership, body corporate, association or other entity.
- g. A rule of construction does not apply to the disadvantage of a party to this Agreement because the party was responsible for the preparation of this Agreement or any part of it.
- h. Headings are for ease of reference only and do not affect interpretation.

5. The Syndicate Fund

- 5.1 The Syndicate adopts and ratifies the purchase of the Bloodstock.
- 5.2 The Syndicate Fund includes the Bloodstock and all other Bloodstock and other property, investments and other assets acquired and held by the Syndicate from time to time.
- 5.3 The Syndicate Fund is made up of Twenty (20) undivided equal shares held by the Members as tenants in common, however, notwithstanding this clause, the Manager can, at his discretion, divide shares into smaller parcels.

6. The Duration Period

- 6.1 The Duration Period for this Syndicate is the period from and inclusive of the date of this Agreement until 31 March 2040, or on any earlier date chosen by the Members.
- 6.2 Despite the rest of this Agreement the Syndicate may not do anything that effectively extends the Distribution Date beyond the end of the Duration Period.
- 6.3 The Syndicate shall not be dissolved by the death or bankruptcy or liquidation of any Member nor by the transfer by any Member of his or her Share(s) but shall continue as to the remaining Members and any new Member (if applicable) until determined by effluxion of time or otherwise as provided in this Agreement.

7. Members

- 7.1 The Shares in the Syndicate Fund at the date of this Agreement are held by the persons, and as, set out in the Second Schedule.
- 7.2 Each of the Members warrants to the others, and to the Manager, that it is not disqualified or prevented by any relevant rules of racing from owning an interest in a thoroughbred.
- 7.3 Each of the Members, by executing this Agreement, authorises the Manager to sign on behalf of the Member, any New Zealand Thoroughbred Racing ownership and registration documents relating to the bloodstock as described in Schedule 3.

8. Transfer of Shares

- 8.1 Except as is provided in clauses 8.2 and 8.10, no Member shall sell, transfer, assign, mortgage or charge ("transfer") his or her Share(s) in the Syndicate, without:
 - a. the written approval of the Manager; and
 - b. the Member complying with clauses 8.3 to 8.13.

Subject to clause 8.13.2, where the Manager's approval is required it may be withheld in the Manager's discretion, including, but not exclusively so, if the proposed transferee is disqualified or prevented by any relevant rules of racing from owning an interest in a thoroughbred.

8.2 Subject to clauses 9.6 and 10:

- a. a transfer from one or more joint owners of a Share to one or more other joint owners of the same Share does not require the Manager's approval, under clause 8.1 and is not required to comply with clauses 8.3 to 8.13;
- b. the personal representative of a deceased Member may transfer the deceased Member's Share(s) to any person(s) entitled thereto under his or her Will or Intestacy, and a Member may sell or transfer the Member's Share(s) to the trustees of a trust exclusively or principally for the benefit of the Member and his or her family ("Trust"), subject to those persons, or trustees (as the case may be):
 - i.* entering into an Agreement of Accession with the Manager and other Members binding the transferee in accordance with the terms, covenants and conditions set forth in this Agreement;
 - ii.* not being disqualified or prevented, by any relevant rules of racing from owning an interest in a thoroughbred.
- c. the trustees of a Trust may transfer the Share(s) held by the Trust to new trustees of the Trust, provided the new trustees are not disqualified or prevented by any relevant rules of racing from owning an interest in a thoroughbred.
- d. if the Members wishing to sell their shares are either Te Akau Racing, Fortuna Ltd or John Eric Galvin as individual or Trustee, then those Members are not required to comply with clauses 8.3 to 8.12

8.3 Subject to clauses 8.1, 8.2 and 9.6, any Member who is permitted by this Agreement, and who wishes, to transfer a Share or Shares ("the Transferor") must:

8.3.1 Give the Manager written notice of the proposed transfer ("the Transfer Notice").

i.3.2 The Transfer Notice must specify:

- i.* The Share(s) the Transferor proposes to transfer; and
- ii.* The price which the Transferor considers to be the value of the relevant Share(s) (the "Specified Price").
- iii.* The specified price will take into account the value of any credit or debit balance in the Members syndicate current account

If a Member is a body corporate any sale or issue of shares changing the control of that Member will be deemed to be written notice to the Manager of the proposed transfer of that Member's Share(s) in the Syndicate, at the fair value of the Member's Share(s), determined as set out in clause 10.2.

8.4 The Manager will act as the Transferor's agent for the sale of the Shares.

8.5 The Share(s) specified in the Transfer Notice must be offered for sale by the Manager to the remaining Members.

8.6 The offer must:

- 8.6.1 Be in writing;
- 8.6.2 Be pro rata according to the number of Shares held by each Member; and
- 8.6.3 State the number of Shares on offer, the Specified Price and the time for acceptance (at least 14 days after the date of the offer).
- 8.6.4 Be subject to the Transferor's right in clause 8.11 to revoke the Transfer Notice.

The offer may contain any reasonable conditions imposed by the Manager (e.g. a requirement that any transferee contribute money to the Syndicate in accordance with the relevant parts of clause 9).

- 8.7 Members who wish to purchase a Share, or an interest in a Share, being sold by a Transferor must accept the Transferor's offer in accordance with clause 8.8. Members may also apply for and purchase additional shares, or additional interests in a Share, to the extent that other Members do not accept the Transferor's offer in full. Competing applications for additional Shares, or for additional interests in a Share, must be allocated pro rata according to the number of Shares held by the applicants.
- 8.8 An acceptance by a Member under clause 8.7:
 - 8.8.1 Must be in writing;
 - 8.8.2 May relate to all or part of the Share(s), or to all or part of the interest in the Share(s), offered to the Member for sale
 - 8.8.3 May state the number of additional Shares, or additional interests in the Share(s), to be purchased from declined offers (if any); and
 - 8.8.4 Must be received by the Manager within the time for acceptance specified by the Manager.
- 8.9 Offers for the sale of Shares, or of interests in a Share, that have not been accepted as specified in the preceding clauses will be treated as having been declined.
- 8.10 The Manager will allocate the Shares, or interests in a Share, offered for sale according to acceptances received when the time for acceptance of all offers expires. The Manager will give notice of the Share allocation to all Members who have been allocated Shares, or interests in a Share, within 14 days of the expiry of the time for acceptance.
- 8.11 The Transferor may withdraw the Transfer Notice in respect of those of its Shares, or its interests in a Share, offered for sale and which remain unallocated 30 days after issue of the Transfer Notice.
- 8.12 The sale of the Shares, or of an interest in a Share, must be settled, 7 days after written notice from the Manager of allocation of the Shares or of that interest in the Share(s).
- 8.13 Any Share(s), or the interest in a Share, which remain unallocated 30 days after the Manager receives the Transfer Notice may, with the Manager's consent, be transferred by the Transferor to a third party who is not a Member on the following conditions:
 - 8.13.1 The sale price of the relevant Shares, or interest in a Share, transferred to the third party ("Transferee") must not be a lower sum than the last Specified Price offered by the Transferor to the other Members.
 - 8.13.2 The Manager may not unreasonably withhold its approval of the Transferee under clause 8.1, if clause 8.13.1 is complied with and if the Transferee is not disqualified or prevented by any relevant rules of racing from owning an interest in a thoroughbred.

8.13.3 The Transferee if approved by the Manager under clause 8.13.2 must enter into an Agreement of Accession with the Manager and other Members binding the Transferee in accordance with the terms, covenants and conditions set forth in this Agreement.

9 Members Accounts

9.1 The Manager may at any time require the Members to make financial contributions to the Syndicate as is reasonably required by the Syndicate to meet any of the Syndicate's actual or prospective obligations. The financial contributions must be made:

9.1.1 At the same time by all Members; and

9.1.2 In the same proportions, as they hold the Shares in the Syndicate.

The financial contributions must be made by the Members at the time specified by the Manager or within 30 days of receiving written notice of the requirement if no time is specified.

a. The Manager must use the Members' financial contributions, and any other Syndicate funds, only for the purposes of the Syndicate approved by the Members or as stipulated in this Agreement.

b. The Manager must invest monies forming part of the Syndicate Fund, and not required for the Syndicate's current obligations, in on-call or term deposits with a reputable trading bank.

9.2 The Manager will keep a current account for each Member in the Financial Accounts of the Syndicate.

9.3 The Manager will include the value of the current account (be it credit or debit) in the value of the "Specified Price" of any share which is being sold by a Member to another Member

9.4 Despite clause 9.1 the Manager may require a new Member only, to make a contribution to put that Member on the same current account basis as existing Members.

9.5 If the Manager requires it, a Member who has not complied with the obligation in clause 9.1 must pay interest at the rate of 12% per annum on the unpaid financial contribution from the due date of payment until actual payment. Nothing in this clause limits or affects any other rights or remedies of any other Member or of the Manager.

9.6 A Member who has not complied with the obligation in clause 9.1 is not entitled, while that non compliance continues, to sell, transfer or dispose of that Member's Share(s).

10. Default and Disqualification

10.1 A Member in default of that Member's obligations under this Agreement who fails to remedy the default within 30 days of receiving written notice to do so or who becomes bankrupt or goes into receivership or liquidation or is disqualified by any relevant rules of racing from having an interest in a thoroughbred:

10.1.1 Will be treated as having given the Manager a valid irrevocable Transfer Notice for the sale of all of his her or its Shares in accordance with clause 8.3 (and so that clause 8.11 does not apply to such a sale) and;

10.1.2 The Specified Price in the Transfer Notice will be the Fair Value of the relevant Share(s) (clause 10.2), less 40%.

- 10.1.3 The other Members will be entitled to hold the Share(s) in the same proportion as their existing Shares
- 10.1.4 Payment will be made as soon as the Members who are purchasing the Share(s) can reasonably do so without prejudicing the Members or the objects of the Syndicate.
- 10.1.5 However payment must be made no later than 12 months after the date of default, disqualification, bankruptcy, receivership or liquidation.
- 10.2 The Fair Value of a Share will be fixed by an independent valuer experienced and knowledgeable in the bloodstock industry, ("Valuer") approved by the Transferor, Transferee(s) and the Manager, and
- 10.2.1 The valuer will act as an expert.
- 10.2.2 The valuer must not take into account the fact that the Share or Shares transferred is or are a minority, if that is the case.
- 10.2.3 If the Transferor, Transferee and Manager cannot agree on the Valuer to be appointed, the appointment will be made by the Management Committee.
- 10.3 Any Share, or interest in a Share, to which clause 10.1 applies and which is unallocated 30 days after the Manager is deemed to have received the Transfer Notice in respect of that Share, or of that interest in the Share, may be transferred by the Manager as agent of the defaulting Member to a third party who is not a Member on the same conditions as are set out in clauses 8.13.1 to 8.13.3 except that the sale price must not be a lower sum than the Fair Value, less 40%, of that Share or interest in a Share.
- 10.4 The Manager shall have full power and authority to effect a transfer or transfers pursuant to this clause 10 including the receipt of the purchase money and deduction from the purchase money of any money due by the defaulting Member. The Manager shall following receipt of the purchase money and after any deduction promptly account to the defaulting Member for the balance of it.
- 10.5 However, notwithstanding Clauses 10.1 to 10.4 inclusive, the Manager has an alternative remedy at his disposal, which is to collect, by any legal means at his disposal, any arrears including costs of collection from a Member whom has not met his or her obligations under this agreement.

11. Income and Capital

- 11.1 The Manager may at any time before the Distribution Date, pay all or any monies being income or capital of the Syndicate Fund to the Members.
- 11.2 The Manager must add to the capital, all of the net income of the Syndicate Fund that is not paid to Members within 6 months following Balance Date.
- 11.3 Revenue profits and losses, capital gains and losses shall be shared by the Members in proportion to the Shares held by them.
- 11.4 The capital of the Syndicate Fund shall include racing stock and racing stakes, cash reserves and racing expenditure shall be a capital expense.
- 11.5 The Manager may, without limiting or affecting any other provision in this Agreement, set off against a Members share of the income or capital of the Syndicate Fund, any amount due by the Member to the Syndicate, or to the Manager, under this Agreement.

12. Payments to Members

12.1 Subject to clauses 9.4 and 11.5, all payments of income or capital to, or for the benefit of, Members must be made:

12.1.1 At the same time to all Members; and

12.1.2 In the same proportion as the Shares to which they are entitled.

However:

12.1.3 The Members may unanimously agree to payments being made on a different basis.

12.1.4 An adjustment, if appropriate, may be made against a new Member who has not been a Member for all of the relevant income period.

13. Winding up this Syndicate

13.1 Subject to clause 11.5, the Manager must, on the Distribution Date:

13.1.1 distribute all of the Syndicate Fund to the Members, and

13.1.2 in the same proportion as the Shares to which they are entitled.

14. Decisions Made by Members

14.1 Subject to clauses 14.10, 15.1 and 19.13, decisions made, or approvals given, by Members will be binding on all Members if approved by a majority of at least 80%, of the votes of Members entitled to vote and voting on the question; and

14.1.1 Each Member will be entitled to one vote for each of the Shares held for that Member; and

14.1.2 The required majority will be determined accordingly, but

14.1.3 This clause will not apply where this Agreement requires something else.

14.1.4 The Syndicate may meet for the dispatch of business, and adjourn and otherwise regulate their meetings as they think fit.

14.1.5 In the case of a joint interest in the Syndicate the vote or consent of the senior whether in person or by proxy shall be accepted to the exclusion of the vote or consent of the other joint holders and for this purpose the senior shall be the first name in order of such joint holders which appears in the register of Members.

14.2 Written notice of the time and place of a meeting of Members must be sent to every Member entitled to receive notice of the meeting not less than 7 days prior to the meeting. The notice must state:

14.2.1 The nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgement in relation to it; and

14.2.2 The text of any resolution to be submitted to the meeting.

An irregularity in a notice of meeting is waived if all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or if all such Members agree to the waiver.

14.3 A meeting of Members may be held either by:

- 14.3.1 A number of Members who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- 14.3.2 Means of audio or audio and visual communication by which all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 14.4 Quorum:
- 14.4.1 No business may be transacted at a meeting of Members if a quorum is not present.
- 14.4.2 A quorum for a meeting of Members is present if Members or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted at the meeting.
- 14.4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as a majority of the Members agree and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the Members or their proxies present are a quorum.
- 14.5 Voting at a meeting shall be by whichever of the following method as determined by the chairperson of the meeting:
- a. Voting by voice; or
- b. Voting by show of hands.
- 14.5.1 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact.
- 14.5.2 The chairperson of a Members' meeting is not entitled to a casting vote.
- 14.6 If the Members have elected a chairperson and the chairperson is present at a meeting of Members he or she must chair the meeting. If no chairperson has been elected or if at any meeting of Members the chairperson of the meeting is not present within 15 minutes of the time appointed for the commencement of the meeting the Members present may choose one of their number to be a chairperson of the meeting.
- 14.7 A Member may exercise the right to vote either by being present in person or by proxy.
- 14.7.1 A proxy for a Member is entitled to attend and be heard at a meeting of Members as if the proxy were the Member.
- 14.7.2 A proxy must be appointed by notice in writing signed by the Member and the notice must state whether the appointment is for a particular meeting or a specified term.
- 14.7.3 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- 14.8 A Member may exercise the right to vote at a meeting by casting a postal vote provided that the notice of a meeting at which Members are entitled to cast a postal vote must state the name of the person authorised by the Manager to receive and count postal votes at that meeting and if no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised, the Manager is deemed to be so authorised.

14.8.1 A Member may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner which his, her or its shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

14.8.2 If a vote is taken at a meeting on a resolution in which postal votes have been cast the Chairperson of the meeting must on a vote by show of hands count each Member who has submitted a postal vote for or against the resolution, or if voting is by voice, count each Member who has submitted a postal vote for or against the resolution.

14.9 Members must ensure that minutes are kept of all proceedings at meetings of the Members. Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

14.10 A resolution in writing signed or assented to by all Members then entitled to receive notice of a meeting of the Syndicate and to vote on the relevant matter is as valid and effective as if it had been passed at a meeting of the Syndicate duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Members.

14.11 A body corporate, trust or other entity which is a Member may appoint a representative to attend a meeting of Members on its behalf in the same manner as that in which it could appoint a proxy.

14.12 If a sum is due to the Syndicate by a Member and has not been paid by the Member, by the date by which it is due to be paid, that Share may not be voted at a Members meeting.

15. Amending this Syndicate Agreement

15.1 The Members may from time to time by unanimous agreement alter this Agreement, provided that the Manager must also agree to any alteration that materially affects, or is likely to materially affect, the Manager.

15.2 Notwithstanding the provisions of Clause 15.1 any such alteration must not detract from Members' rights under this Agreement or which may cause Members to bear costs or liabilities which could not have been reasonable anticipated from the Disclosure Statement, unless the Members unanimously agree to any such detraction.

16. Power of Appointment of Management Committee and Racing Manager

16.1 The Members may from time to time, in accordance with clause 14, appoint, remove and replace, all or any of the Manager, Additional Manager, a Management Committee, a Racing Manager, and an Alternate Racing Manager, provided that in the case of removal of the Manager, the Members give the Manager 6 months prior written notice of the proposed removal unless the Manager has breached any of the Manager's obligations in this Agreement, and the breach is incapable of being remedied, or has not been remedied by the Manager within 30 days of receiving written notice of the breach (in which case no prior notice of removal is required).

16.2 The first Racing Manager, Alternate Racing Manager and Management Committee are named in clause 4.1.

16.3 If for any reason the Racing Manager is unable to act then the Alternate Racing Manager will act as Racing Manager.

16.4 The Management Committee may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided however that the Manager or any two Committee members may at any time summon a meeting of the Management Committee upon seven (7) days notice to all

Members. The quorum shall be two Members present in person or by proxy. The Manager will be the Chairman.

17. Removal and Resignation of the Manager

- 17.1 Without limiting clause 16.1, the Manager will be deemed to have been removed if he is adjudicated bankrupt.
- 17.2 The Manager may, on six month's written notice to the Members, resign as Manager of the Syndicate or on two month's written notice if the Racing Manager is removed or replaced or if any of the Manager's decisions under clause 18.1.2 and which require the approval of the Management Committee under that clause are not approved by the Management Committee.
- 17.3 The Board of New Zealand Thoroughbred Racing Inc (NZTR) has the power to remove the Manager upon any of the grounds listed in Clause 18.4 of the Bloodstock Syndication Code of Practice and appoint another person to act as Manager of the Bloodstock Syndicate in his place. The intent of this clause is to create benefit to NZTR and the Board of that body and is to be enforceable by either or both of them in terms of the Contracts(Privity)Act 1982
- 17.4 Any liability of the Manager will survive the Manager's removal or resignation.

18. Manager's Powers and Functions

- 18.1 The functions of the Manager are to:

18.1.1 race and manage the Bloodstock in a manner that is consistent with the best interests of the Members, and the Bloodstock, and which is approved by the Racing Manager. This includes, but is not limited to, the sole right, in the Manager's discretion (but with the consent of the Racing Manager) to make decisions without any obligation to consult with the Members, on matters which relate to the racing and management of the Bloodstock such as (but not exclusively so):

- a. the choice of racing programme;
- b. training methods and veterinary treatment
- c. the choice of jockey;
- d. the choice of trainer;
- e. if the Bloodstock is to be raced outside New Zealand;
- f. stud management and breeding policy (including whether any colts are to be gelded);
- g. agistment,

provided those decisions are in the best interests of the Members and are approved by the Racing Manager.

18.1.2 to enter into contracts (including contracts with persons or entities owned by or associated with the Manager – including the Bloodstock's Trainer) and to incur expenditure on behalf of the Syndicate provided that:

- h. the relevant contract or expenditure is in the best interests of the Members; and
- i. is approved by the Management Committee where the proposed contract is with a person or entity owned by or associated with the Manager, or the proposed expenditure will be for the benefit of such a person or entity.

18.2 The Manager has the following powers for the purpose of carrying out the Manager's functions in accordance with clause 18.1 and its duties in clause 19:

18.2.1 All powers given to a Manager or Agent by law, and

18.2.2 The powers in this Agreement, and

18.2.3 The additional powers in the first schedule.

18.3 The Manager may also pay from the Syndicate Fund reasonable and appropriate bonuses to key parties, such as the Bloodstock's Trainer, or employees of the Bloodstock's Trainer or the Manager, whose skill and expertise has contributed to the racing success of the Bloodstock, provided those bonuses, and the payment of them to the relevant parties, are first approved by the Management Committee.

18.4 For clarity, if the Bloodstock stands at stud the Manager may exercise any of the powers in clause 18 in relation to that business of owning a thoroughbred Stallion at Stud, without the approval of the Management Committee.

18.5 A Member by his execution of this Agreement hereby appoints the Manager to be his attorney in his name and on his behalf to:

18.5.1 Execute all New Zealand Thoroughbred Racing Incorporated forms or documents or forms or documents prescribed by any relevant controlling body of racing;

18.5.2 To execute each Agreement of Accession required to be executed pursuant to clauses 8.2 and 8.13.3.

19. Manager's Duties and Remuneration

19.1 The Manager shall:

19.1.1 Upon the execution of this agreement apply to the Inland Revenue Department for GST registration of the Syndicate unless it is determined that the Syndicate should not be registered for GST.

19.1.2 Cause true accounts to be kept of all items of income, assets and liabilities of the Syndicate.

19.1.3 Promptly bank to the Syndicate bank account, and properly account for, all Syndicate monies received by the Manager.

19.1.4 Only use the Syndicate funds for the purposes of the Syndicate as authorised by this Agreement or by the Management Committee.

19.1.5 On the Balance Date in each year cause an account to be taken of all the capital assets and liabilities of the Syndicate and a Balance Sheet and a Profit and Loss Account to be prepared and a copy thereof furnished to each of the Members.

19.1.6 Cause minutes of the proceedings of any meeting of the Management Committee and Syndicate to be recorded.

The minutes must be accepted as correctly recording decisions unless there is an obvious error.

- 19.2 The Manager shall comply with all relevant Acts of Parliament, Regulations and the Rules of Racing relating to the Bloodstock (including if it is a stallion a stud) including any rules, regulations, directions or requirements of New Zealand Thoroughbred Racing Incorporated or other relevant controlling body of Racing.
- 19.3 The Manager must act reasonably and sensibly when exercising its powers and carrying out its duties.
- 19.4 Except to the extent expressly authorised by this Agreement, the Manager must not assign, subcontract or delegate his management rights or obligations without the approval of the Members, which approval must not be unreasonably withheld or delayed.
- 19.5 The Manager must manage the Syndicate, and the Bloodstock:
- a. Diligently and professionally, according to industry best practice;
 - b. Ethically, fairly and with all due care and skill.
- 19.6 The Manager shall not incur any liability or obligation in the name of the Syndicate, other than in the normal and ordinary course of the Syndicate's business where the Manager is properly carrying out its functions under this Agreement, without the approval of the Management Committee.
- 19.7 The Manager must notify the Members promptly if he becomes aware of:
- a. A breach by the Manager of this Agreement;
 - b. Any change or proposed change to its business that would be likely to materially affect the Manager's ability to perform its obligations in this Agreement;
 - c. A breach of this Agreement by a Member
- 19.8 The Manager must keep proper records of its management functions for the Syndicate and make them available for inspection by a Member on request together with such explanations and further information as the Member reasonably requests.
- 19.9 The Manager will be entitled to receive 5% of any stakes money (including special bonuses) won by the bloodstock from any races that are classified as "listed" or "group" or "cups" by New Zealand Thoroughbred Racing or from any races that are run in any International Thoroughbred Racing jurisdiction. For the purpose of clarity, the race known as the "Karaka Million" will be regarded as a "listed" race as will the race known as the "Karaka 3YO Mile."
- 19.10 The Manager will, if any of the Bloodstock named in Schedule 1 becomes a Stallion at Stud, be entitled to 2 free service rights per annum if:
- a. The Stallion is standing at stud at the time;
 - b. The Manager has not been removed, or resigned, as a Manager; and
 - c. This Agreement is still in force.
- 19.11 The Manager will, in addition to the service rights in clause 19.10, be entitled to charge a commission of 10% of the gross sale proceeds (excluding GST) received by:

- a. The Syndicate or the Members, on the sale any of the Bloodstock by the Members; and
- b. One or more Members on a sale of their Share(s), in the case of a sale of less than 100% of the Shares in the Bloodstock, (except that this clause will not apply to a sale or transfer of any Share(s) under, or authorised by, clause 8.2) and the Manager will not otherwise be entitled to charge commission, or any other fee, for any of the Manager's services under this Agreement to the Syndicate or for the Members apart from those fees as set out in the Approved Disclosure Statement (Schedule 5 of this Agreement)

19.12 The Syndicate will promptly reimburse the Manager for all reasonable out of pocket expenses (including but not limited to traveling expenses) incurred by the Manager in performing its functions under this agreement.

19.13 The Manager is entitled to charge a monthly Management fee for the provision of administration, communication and other services to the syndicate – that fee is \$350 plus Gst per month for the duration of the Syndicate

19.14 For clarity, nothing in this Agreement imposes any obligation on the Manager to insure the Bloodstock, unless all Members unanimously decide to. If all the Members request that the Bloodstock be insured the Manager will use its best endeavours to insure the Bloodstock, at the cost of the Syndicate, against such insurable risks, and for an amount, that the Management Committee decides. The Manager will use its best endeavours if requested by a Member, to insure that Member's Share(s) at the cost of the Member, against such insurance risks, and for an amount, as the Member requests.

20. Liability and Indemnity

20.1 The Manager will not be liable for a loss incurred by the Syndicate other than as the result of the dishonesty, or negligence of the Manager or the Manager's employees or contractors, or as a result of the breach of this Agreement by the Manager.

20.2 The Manager will be indemnified out of the Syndicate Fund:

20.2.1 for any liability incurred by the Manager, unless

20.2.2 the liability is incurred as the result of the breach of the Agreement by the Manager, or as a result of the dishonesty, or negligence of the Manager, or the Manager's employees or contractors.

20.3 The Manager will indemnify the Members jointly and severally against all loss suffered or incurred by the Members or any of them as a result of:

- a. The breach of this Agreement by the Manager;
- b. The dishonesty or negligence of the Manager, its employees or contractors.

20.4 Each Member ("Indemnifier") indemnifies each other Member, and the Manager, for all loss suffered or incurred by the other Member(s) or the Manager (as the case may be) as a result of:

- a. a breach of this Agreement by the Indemnifier;
- b. a breach by a Member of the warranty in clause 7.2.

21. Notices

21.1 All notices which are required to be given to any member shall be given by ordinary post, addressed to such member's last known business or residential address and notice shall be deemed given 3 days after posting.

22. Dispute Resolution

22.1 If a party has any dispute with any other party in connection with this agreement:

- a. That party will promptly give full written particulars of the dispute to the other.
- b. The parties in dispute will promptly meet together and in good faith try and resolve the dispute.

22.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties in dispute) the dispute will be referred to the CEO of New Zealand Thoroughbred Racing.

22.3 The CEO of NZTR will examine the matters at issue and seek to resolve the dispute between the parties.

22.5 If the parties cannot resolve the dispute then the matter can be referred to an Arbitration process with the Arbitrator's ruling being binding on all parties. Costs of Arbitration are to be shared by the parties.

23. No Partnership

23.1 Nothing in this agreement shall be taken to constitute or evidence either a partnership or any relationship of principal and agent between the Members.

24. Counterpart and Facsimile Execution

24.1 This agreement may be executed in any number of counterparts, including facsimile or emailed copies, all of which taken together shall constitute as one and the same instrument which the parties agree is an enforceable Agreement. Any of the parties hereto may execute this agreement by signing any such counterpart.

FIRST SCHEDULE

Manager Additional Powers

1 Powers

1.1 The Manager shall, for the purposes of carrying out its functions and duties, have power and authority to do anything a natural person can do to carry for the objects for which the Syndicate is established and to so or cause to be done all things and to enter all agreements which may be necessary or desirable for such purpose including (but not exclusively so):

Execute Ownership and Registration documents on behalf of the Syndicate and its Members with New Zealand Thoroughbred Racing and any other Racing Jurisdictions in which the Syndicate bloodstock may race.

Give effectual receipts.

Open or otherwise operate a bank account.

Decide if property acquired is income or capital.

Carry on business, in any manner, alone or with any Member or this party.

Pay losses from capital.

Create reserve funds.

Settle any dispute on any terms.

Appoint attorneys.

Delegate powers.

Choose Racing Colours for the Bloodstock

Allocate trophies.

Choose a racing name for the Bloodstock

Provided that the Manager must not do anything that is:

Criminal;

or In breach of this Agreement

SECOND SCHEDULE

Members of the Syndicate, and the number of Shares held by each Member

THIRD SCHEDULE**Register of Bloodstock**

<i>AGE</i>	<i>COLOUR</i>	<i>SEX</i>	<i>BREEDING</i>	<i>Brands</i>
<i>One</i>	<i>Bay</i>	<i>Filly</i>	<i>MERCHANT NAVY – PINDARA</i>	<i>OFL 19/0</i>

FOURTH SCHEDULE

SUMMARY OF INITIAL EXPENSES

ALL FIGURES ARE IN NZ\$

Merchant Navy Filly	#125	Syndicate	
	Amount	GST	Total
Horse Purchase Price	74000	11100	85100
Promoter Fee	10000	1500	11500
Marketing Fee	7500	1125	8625
Sales/Research Fee	2000	300	2300
Veterinary fee	1250		1250
Valuation fee	300	45	345
Insurance to 31 Jan 2023	3400	510	3910
Airfreight to NZ	7000	0	7000
Working Capital	13970	0	13970
Grand Total	119420	14580	134000
Share 10%			13400
Share 5%			6700
Share 2.5%			3350
Share 1%			1340

20 shares (each share 5%) @ \$6,700

(Note that the Manager has the discretion to issue shares in parcels smaller than 5%)

Ongoing monthly contributions \$200 pm (per 5% share) commencing 1st June 2022

Finalised by John Galvin on 15th MARCH 2022