

**Constitution of New Zealand  
Thoroughbred Breeders'  
Association Incorporated**

**Date** 25<sup>th</sup> August 2017

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# RULES OF NEW ZEALAND THOROUGHBRED BREEDERS' ASSOCIATION INCORPORATED

## 1. Interpretation

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### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Annual General Meeting** means the meeting of Members that must be called by the Council in accordance with this Constitution prior to 31 August of each calendar year, in accordance with clause 7.1;

**Annual Subscription Fee** is the amount as determined at the Annual General Meeting of the Association payable for different classes of membership that must be paid by each Member as a condition of membership of the Association and (as applicable) the relevant branch(es);

**Association** means New Zealand Thoroughbred Breeders' Association Incorporated;

**Chair** means the person elected to that role in accordance with clause 7.8;

**Chief Executive** means the Association's chief executive officer employed by the Association as provided for in clause 15;

**Constitution** means this constitution, as amended from time to time;

**Contact Officer** means the person appointed by the Council in accordance with clause 18 to act as the contact officer for the Association, which will involve performing the "contact officer" duties (if any) as specified in the Incorporated Societies Act;

**Council** means such Council Members who number not less than the required quorum, as set out in clause 11.1, acting together as the Council of Council Members of the Association;

**Council Member** means each person appointed to the Council of the Association who has not been removed or otherwise ceased to hold office as a Council Member in accordance with this Constitution;

**Default Interest** means the rate of the published overdraft rate at the Bank of New Zealand or such other bank as the Council may appoint from time to time plus 2 per cent per annum;

**General Resolution** means a resolution of the Council that requires the affirmative votes of at least a bare majority of Council Members (50%) eligible to vote to be passed;

**Incorporated Societies Act** means the Incorporated Societies Act 1908, as amended or replaced from time to time;

**Member** means each person, organisation or syndicate who is admitted as a member of the Association by the Council pursuant to clause 5.1;

**Members' Meeting** means an Annual General Meeting or a Special General Meeting;

**Members' Register** means the register of Members maintained by the Association in accordance with clause 23;

**NZTR** means New Zealand Thoroughbred Racing Incorporated;

**Special General Meeting** means a meeting of Members (other than the Annual General Meeting) called by the Council at any time or following written request by 15 or more Members, in accordance with clause 7.2;

**Special Resolution** means a resolution of the Council that requires the affirmative votes of at least three-quarters (75%) of Council Members eligible to vote to be passed; and

**Studmaster Branch** is the studmaster branch as set up in accordance with clause 21.

## 2. Name and commencement

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### 2.1 Name

The name of the incorporated society is “New Zealand Thoroughbred Breeders’ Association” Incorporated (the **Association**).

### 2.2 Constitution

This Constitution sets out the rules governing the Association and is binding on each Member.

### 2.3 Commencement

This Constitution will take effect as the constitution of the Association from 25 August 2017 (the **Commencement Date**).

## 3. Purposes and powers of the Association

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### 3.1 Purposes of the Association

The purposes of the Association are to:

- (a) encourage, promote and advance the breeding and racing of thoroughbred horses;
- (b) collaborate with such other body or organisation which itself manages or promotes the breeding and racing of thoroughbreds and all or any matters relating to the health and general well-being of the thoroughbred horse; and
- (c) encourage, promote and advance education and training relating to all aspects of breeding and racing of thoroughbred horses.

### 3.2 Powers of the Association

The Association has all of the powers of a natural person necessary for, or ancillary or incidental to, fulfilling each purpose of the Association to the maximum extent permitted by law, including the power to borrow money.

## 4. Location of the Association

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The registered office of the Association will be situated at such place in New Zealand as the Council determines from time to time.

## 5. Membership

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### 5.1 Becoming a Member

- (a) Any person, organisation or syndicate with an interest or interests aligned with the purposes of the Association, as outlined in clause 3.1 above, may apply to the Council to be a Member of the Association. Such application must include a statement that the individual consents to be a Member of both the Association and of the relevant branch the Member is allocated membership to, in accordance with (d) below.
- (b) Upon receiving an application the Association may at its sole discretion accept or reject the application.
- (c) On receipt of an application form, the person's name will be entered in the Members' Register (at which time the person, organisation or syndicate will become a Member).
- (d) On becoming a Member, a Member will be allocated membership of a branch. Allocation to a branch is at the discretion of the Council based on the address of the Member or upon receipt of a request from the Member to become a member of a particular branch.
- (e) Members may apply to the Council to be members of more than one branch.

### 5.2 Membership obligations

All Members must:

- (a) promote the interests and the purposes of the Association;
- (b) pay the Annual Subscription Fee within 90 days of the commencement of a new financial year;
- (c) comply with the Rules of Racing as published by NZTR at all times; and
- (d) not do anything to bring the Association or thoroughbred racing in New Zealand into disrepute.

### 5.3 Grievances

- (a) A Member may complain to the Council in writing if:
  - (i) there has been an unjustified interference with any rights or privileges granted to that Member under this Constitution; and/or
  - (ii) the Member has concerns regarding the misconduct or discipline of other Members,(in either case, a **grievance**).
- (b) A grievance of the kind described in paragraph (a)(i) above, may relate to the conduct of a Member, a Council Member or the Association.
- (c) The process followed by the Council must at all times adhere to the principles of natural justice. As necessary, the Council must provide the persons concerned with an adequate opportunity to be heard, either in writing or at an oral hearing, and must

consider the information provided by such persons before deciding what actions (if any) the Council will take to remedy the grievance.

- (d) To the extent applicable, the Council will avoid bias in accordance with clause 6.2(c) and conflicts generally in accordance with clause 13.
- (e) If, in accordance with the investigations conducted by the Council under (c) above, it becomes apparent that the Member has failed to comply with the membership obligations set out in clause 5.2, the Council must follow the process set out in clause 6.2.
- (f) If it becomes apparent that any Council Member should to be removed from his or her position in accordance with clause 9.3(b), the Council may remove that Council Member accordingly.
- (g) The Council may, in its sole discretion, elect not to consider or continue consideration of any grievance if it is satisfied that:
  - (i) the matter is trivial or does not appear to disclose material misconduct or material damage to the interests of any Member;
  - (ii) the grievance appears to be without foundation or there is no apparent evidence to support it;
  - (iii) the complainant or Member alleging the grievance has an insignificant interest in the matter; or
  - (iv) the conduct, incident, event or issue has already been investigated and dealt with by or on behalf of the Association.

## **6. Cessation of membership**

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### **6.1 Termination of membership**

- (a) Subject to clause 6.2, if, in the sole discretion of the Council, a Member has failed to comply with the obligations of membership as set out in clause 5.2, the Council may terminate the Member's membership, in which event the Member will be removed from the Member's Register and will cease to be a Member.
- (b) Where a Member's membership is terminated in accordance with (a), that Member's branch membership(s) will also be terminated.
- (c) A branch may request that the Council terminate a branch member's membership of that branch where the branch considers that that branch member has failed to comply with the obligations of branch membership set out in the branches' constitution.

### **6.2 Process to be followed by Council in accordance with natural justice**

- (a) Prior to exercising the power of termination under clause 6.1, the Council must provide the Member concerned with the following:
  - (i) an explanation of the alleged grounds on which the Council is considering terminating the membership of that Member;
  - (ii) at least five (5) business days' notice of the meeting of the Council at which the Council will consider the allegations referred to in (i) above; and

- (iii) an opportunity to attend that meeting and offer a reply to the allegations (in person or in writing),

and the Council must, acting in accordance with the principles of natural justice, consider any reply before determining whether to exercise its powers under clause 6.1.

- (b) In the event of the Member referred to in (a) above failing to attend or reply to the allegations, the matter may be considered and determined by the Council in that Member's absence.
- (c) The Council must take all reasonable steps to avoid bias affecting any Council Member involved in the decision making. If two or more Council Members consider that there are reasonable grounds to believe that a Council Member may not be impartial or may not be able to consider the matter without a predetermined view, that Council Member may not decide or participate as a decision-maker in respect of the relevant matter.

### **6.3 Voluntary cessation**

- (a) A Member may voluntarily relinquish his or her membership of the Association and a branch by notifying the Association in writing that he or she wishes to cease to be a Member or member.
- (b) Where a Member relinquishes his or her membership of the Association, that Member also relinquishes his or her branch membership(s).
- (c) Following receipt of a notice under (a) above, the Association is to terminate the Member's membership accordingly.
- (d) Where a Member ceases being a member of a branch, the Association will notify the relevant branch that the Member is no longer a member of that branch.

### **6.4 Consequences of termination of membership**

Any person whose membership has been terminated in accordance with this clause 6 may apply in writing to the Council to reinstate their membership.

## **7. Members' Meetings**

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### **7.1 Annual General Meeting**

- (a) An Annual General Meeting of the Association must be held no later than five months after the end of the financial year. The Annual General Meeting may be held at any time at such time and place as the Council determines.
- (b) The business of the Annual General Meeting shall be:
  - (i) apologies;
  - (ii) to adopt the minutes of the previous Annual General Meeting and any recent Special General Meeting;
  - (iii) to receive, consider and approve the annual report of the Association for the previous year;

- (iv) to receive, consider and approve the financial statements of the Association, including the audited accounts of the Association for the previous year;
- (v) to receive and consider a notice of any disclosures made in accordance with clause 13 since the previous Annual General Meeting, including a brief summary of the types of matters to which the disclosures relate;
- (vi) announcements of any newly elected Council Members;
- (vii) to appoint an auditor for the Association;
- (viii) to consider and approve the Annual Subscription Fee for different classes of membership (including relevant branch membership);
- (ix) to consider and, if thought fit, pass any remits (proposed in accordance with clause 7.4); and
- (x) to consider such other general business as the meeting resolves to consider.

## **7.2 Special General Meetings**

- (a) Each Members' Meeting other than an Annual General Meeting is a Special General Meeting.
- (b) A Special General Meeting may be called by the Council at any time and must be called following written request to the Council by 15 or more Members.
- (c) A Special General Meeting may only consider the matters set out in the notice of the meeting.

## **7.3 Notice of Members' Meeting**

- (a) The date, time and place for the Annual General Meeting or Special General Meeting must be notified to each Member in the notice of meeting, not less than 30 days before the date of that meeting.
- (b) The notice of meeting must state:
  - (i) the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it;
  - (ii) the time, place and date of the meeting; and
  - (iii) in the case of an Annual General Meeting, the annual report, profit and loss account and balance sheet duly audited.

## **7.4 Remits**

- (a) Any Member may propose a remit for consideration at any Members' Meeting by written notice signed by not less than two Members to the Chief Executive not less than 21 days before the date of that meeting or, in the event that less than 30 days' notice of the meeting has been given, by such date as shall be specified in the notice of that meeting.
- (b) Any remit which proposes alteration, amendment, addition or rescission of this Constitution must be proposed by written notice signed by not less than two Members

to the Chief Executive not less than 42 days prior to the holding of any Members' Meeting.

## **7.5 Irregularity in notice**

An irregularity in a notice of a Members' Meeting is to be waived if all the Members entitled to attend and vote at, and who attend, the meeting attend that meeting without protest as to the irregularity, or if all such Members in attendance at that meeting agree to the waiver.

## **7.6 Quorum for Members' Meetings**

- (a) No business may be carried out at a Members' Meeting unless a quorum is present.
- (b) 15 Members personally present and entitled to vote at the meeting will constitute a quorum.
- (c) If a quorum is not present:
  - (i) at an Annual General Meeting, the meeting shall stand adjourned to the same time and place on the same day in the following week and the Members present at the adjourned meeting may transact any business but only if there is quorum; and
  - (ii) at a Special General Meeting, the Special General Meeting shall lapse.

## **7.7 Chair of Members' Meetings**

The Chair of a Members' Meeting must be the President of the Association. In the event of the President being unavailable or unwilling to chair the Members' Meeting, the Vice President, or if the Vice President is unavailable or unwilling, a member of the Council elected for the purpose by the Members present, shall chair the meeting in the President's absence.

## **7.8 Methods of holding Members' Meetings**

- (a) A Members' Meeting may be held by:
  - (i) a number of Members, who constitute a quorum, being assembled together in person at the place, date, and time appointed for the meeting;
  - (ii) if determined by the Council, assembled by means of audio, or audio and visual, communication provided that all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting and confirm their attendance at the start of the meeting in a manner satisfactory to the Chair of the meeting; or
  - (iii) by such other electronic means as determined by the Council, so long as all Members participating and constituting a quorum can participate in the meeting equally and without unreasonable cost or effort.
- (b) For the avoidance of doubt, any Member participating in a Members' Meeting by means of audio, audio and visual, or other electronic communication (as determined by the Council) will be counted as part of the quorum for that meeting and will be considered to be "personally present" for the purpose of clause 7.6(b).

## 7.9 Attendees

The following persons will be entitled to attend Members' Meetings:

- (a) Council Members (including the Contact Officer);
- (b) Members;
- (c) as an observer, any person employed by the Association; and
- (d) as an observer, any person invited to attend by the Council.

## 7.10 Voting

- (a) Each Member will be entitled to one vote for each resolution voted on at a Members' Meeting.
- (b) In the case of an equality of votes, the Chair will have a casting vote.
- (c) Voting at a Members' Meeting will be conducted:
  - (i) by a show of hands of the Members unless (before or on the declaration of the result of the show of hands) a secret poll is demanded by the Chair of that Members' Meeting. If a secret poll is demanded, it will be taken in such a manner as the Chair of that Members' Meeting directs; or
  - (ii) if the Council so determines, by postal ballot. In such case, a voting paper will be included with the notice of the resolution issued to Members in accordance with clause 7.3. Completed voting papers must be returned to the Chief Executive no later than two days before the Members' Meeting. The voting papers will be opened in the presence of an independent scrutineer and the result kept confidential until announced at the Members' Meeting.

## 7.11 Resolutions

- (a) Unless otherwise provided in this Constitution, any resolution passed by a bare majority of Members present and voting at a Members' Meeting will be duly made.
- (b) Notwithstanding (a) above, any resolution relating to the following matters must be passed by not less than 75% of Members present and voting at a Members' Meeting to be duly made:
  - (i) an alteration, adoption or revocation of this Constitution; or
  - (ii) the dissolution of the Association in accordance with clause 28.
- (c) Any resolution passed in accordance with this clause will be binding on all Members whether present or not at the meeting.

## 7.12 Minutes to be kept

Minutes must be kept of all proceedings at each Members' Meeting. Minutes of a meeting which have been signed as correct by the Chair (or by the person acting as Chair for that meeting) are conclusive evidence of the proceedings at that meeting.

## 8. Council

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### 8.1 Management of the Association

Management of the Association will be vested in a Council comprising 11 members at all times.

## 9. Appointment of Council Members to Council

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### 9.1 Election of Council Members

- (a) The Members of the Auckland and Waikato Branches (the Northern Region) shall elect five Council Members to the Council.
- (b) The Members of the remainder of the North Island Branches (the Central Region) shall elect three Council Members to the Council.
- (c) The Members of the South Island Branches (the Southern Region) shall elect two Council Members to the Council.
- (d) The Members of the Studmaster Branch shall elect one Council Member to the Council.
- (e) To be eligible for election, the persons standing for Council must:
  - (i) be Members of the Association;
  - (ii) be Members of a relevant branch (being a district branch located within a relevant region when standing for a regional Council Member position or being the Studmaster Branch when standing for the Studmaster Branch Council Member position);
  - (iii) be resident in New Zealand;
  - (iv) be up to date with payment of the Annual Subscription Fee; and
  - (v) not be ineligible to be a Council Member under clause 9.4.
- (f) Where an election is required in a particular region or regions (including in respect of the Studmaster Branch), the election will be co-ordinated by the Chief Executive in advance of the Annual General Meeting.
- (g) Within the relevant regions, the Chief Executive will call for nominations for candidates to be appointed as Council Members. The notice calling for nominations will specify number of vacancies to be filled and the names of any Council Members continuing in office (on behalf of the relevant region). The notice must also specify a closing date by which nominations must be received, and the name and email address of the person to whom the nominations must be provided.
- (h) Each Member in the relevant region may nominate no more than one (1) candidate for each vacant position. Subject to this clause 9.1 and clause 9.4, any Member may be nominated as a candidate in accordance with this Constitution. Nominations must be signed by both the nominator and the nominee.

- (i) Notice of every eligible nomination received by the Chief Executive will be sent to all Members in the relevant region.
- (j) In situations where an insufficient number of eligible nominations are received to fill each of the vacancies in the relevant region, any eligible candidates nominated for the position shall be announced and declared to have been elected as Council Members at the applicable Annual General Meeting. The Council may then appoint such number of persons as is required to raise the overall number of Council Members to 11, such appointment to be made by General Resolution. Any Council Member appointed pursuant to this sub-clause (j) must be a Member of the Association and must not be ineligible for election as a Council Member under clause 9.4.
- (k) In situations where the number of eligible nominations received is equal to the number of vacancies, the eligible nominees shall be announced and declared to have been elected as Council Members at the applicable Annual General Meeting.
- (l) In situations where more eligible nominations than vacant positions are received for the position of Council Member, the Chief Executive will facilitate a postal election in accordance with the following process:
  - (i) the Chief Executive will provide each Member in the relevant region with a voting paper listing the names of each eligible nominated candidate and specifying the deadline by which all votes must be received;
  - (ii) each Member will be eligible to vote and may cast one (1) vote per vacant position for the nominees wishing to represent the region to which that Member belongs (where a Member is both a Member of a regional branch and a member of the Studmaster Branch, that Member shall be entitled to multiple votes; one for each vacant regional position and one for the vacant Studmaster Branch position);
  - (iii) each Member must, on receipt of a voting paper provided by the Chief Executive, tick the name of the candidate for whom he or she wishes to vote and return the voting paper to the Chief Executive by the specified deadline;
  - (iv) the Chief Executive may (in his or her sole discretion) declare invalid any vote that fails to comply with (iii) above;
  - (v) following the deadline for votes, two scrutineers will be appointed to count the total number of voting papers received, the number of invalid votes, the number of valid votes cast in favour of each candidate and, unless there is a tie, determine the highest polling candidates for each vacancy to be elected as the Council Members;
  - (vi) in the event of a tie (being an equal number of votes) for the position of a Council Member, the tie shall be resolved as soon as possible by the drawing of lots. "Drawing of lots" refers to resolution of a tie by a method of chance that is random, and does not prejudice any candidate (such as a coin toss, a drawing of names or a drawing of straws). The drawing of lots will be carried out by the Chief Executive in the manner the Chief Executive deems appropriate; and
  - (vii) the result of the election will be announced at the applicable Annual General Meeting. The Chief Executive must retain the voting papers for three (3) months at which time they must be destroyed.
- (m) The Council Members elected will be published each year in the annual report.
- (n) Subject to the occurrence of any factor listed in clause 9.3(a), each Council Member will hold office from the conclusion of the Annual General Meeting at which they are

declared a Council Member until the conclusion of the Annual General Meeting which occurs two years following their appointment, unless the Council Member was appointed by virtue of sub-clause (j) above in which case such Council Member will only hold office until the next Annual General Meeting.

- (o) Each Council Member whose term is due to expire may stand for re-appointment.

## 9.2 **President, Vice President Treasurer and Contact Officer**

- (a) The Council must, as soon as possible after each Annual General Meeting, convene a meeting of the Council to elect the President, Vice-President, Treasurer and Contact Officer.
- (b) The President, Vice President, Treasurer and Contact Officer must be appointed by Special Resolution of the Council.
- (c) The President, Vice President, Treasurer and Contact Officer appointed under this clause will hold office until the next occurring Annual General Meeting. For the avoidance of doubt, if the President, Vice President, Treasurer or Contact Officer resigns or is removed, the Council must, at the next meeting of the Council, fill that vacancy.
- (d) Each President, Vice President, Treasurer or Contact Officer who retires, resigns or is removed may be re-appointed.

## 9.3 **Extraordinary vacancy**

- (a) In the event of an extraordinary vacancy caused by:
  - (i) death;
  - (ii) resignation by notice in writing to the Council;
  - (iii) removal by the Council under (b) below;
  - (iv) any ineligibility of the Council Member to undertake his or her role; or
  - (v) any other incapacity,of any Council Member, the Council will follow the procedure set out in (c).
- (b) The Council may remove a Council Member from office in the event that Council Member is, in the Council's sole opinion:
  - (i) ineligible to hold his or her position in accordance with clause 9.4;
  - (ii) breaching his or her duties under this Constitution or otherwise;
  - (iii) acting in a manner that is or is likely to bring the Association into disrepute;
  - (iv) absent without leave of the Council from more than two (2) successive meetings of the Council;
  - (v) not acting in good faith and what the Council Member believes to be in the best interests of the Association;
  - (vi) exercising his or her powers for an improper purpose; or

- (vii) acting, or agreeing to the Association acting, in a manner that contravenes this Constitution.
- (c) Where an extraordinary vacancy occurs in respect of a Council Member, the Council may decide by Special Resolution to appoint a Member to hold office as a Council Member until the next Annual General Meeting.
- (d) Any person appointed in accordance with paragraph (c) above will hold office as a Council Member until the next Annual General Meeting, at which time such person may stand for election as a Council Member.

#### 9.4 **Ineligibility for election as a Council Member**

Notwithstanding any other provision of this Constitution, the following persons are ineligible to be appointed as a Council Member. A person who:

- (a) is under 18 years of age;
- (b) is an undischarged bankrupt;
- (c) is prohibited from being a Council Member or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993;
- (d) is disqualified from being an officer of a charitable entity under section 31(4)(b) of the Charities Act 2005;
- (e) has been convicted (whether before or after the commencement of this Constitution) of any of the following crimes, or of being a party to any such crime:
  - (i) crimes involving dishonesty, fraud, forgery, bribery, corruption or an indictable offence;
  - (ii) participation in an organised criminal group under section 98A of the Crimes Act 1961; or
  - (iii) a criminal offence, if the person is not eligible under the Criminal Records (Clean Slate) Act 2004;
- (f) is otherwise disqualified or ineligible to be appointed as an officer of the Association under the Incorporated Societies Act 1908 or any successor Act.

### 10. **Powers and duties of Council**

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#### 10.1 **Management of the Association**

The business and affairs of the Association, including:

- (a) the governance, including planning and setting the strategic direction; and
- (b) the control and investment of funds of the Association and the borrowing of money by the Association,

is to be managed by, or under the direction or supervision of, the Council.

## 10.2 Exercise of powers by Council

- (a) The Council may exercise all the powers of the Association which are not required, either by the Incorporated Societies Act or this Constitution, to be exercised by the Members at a Members' Meeting, including (without limitation) the powers specified in Schedule 1.
- (b) The Council may delegate to a committee, a Council Member or to any other person or class of persons, any one or more of its powers.

## 10.3 Council Member's duties

- (a) A Council Member, when exercising powers or performing duties, is to act in good faith in what the Council Member believes to be the best interests of the Association and in the manner which he or she believes will best attain the objects of the Association.
- (b) A Council Member is to exercise a power for a proper purpose.
- (c) A Council Member may not act, or agree to the Association acting, in a manner that contravenes the Incorporated Societies Act or this Constitution.
- (d) A Council Member may not:
  - (i) agree to the affairs of the Association being carried on in a manner likely to create a substantial risk of serious loss to the Association's creditors; or
  - (ii) cause or allow the affairs of the Association to be carried on recklessly or in a manner likely to create a substantial risk of serious loss to the Association's creditors.
- (e) A Council Member may not agree to the Association incurring an obligation unless the Council Member believes at that time on reasonable grounds that the Association will be able to perform the obligation when it is required to do so.
- (f) A Council Member, when exercising powers or performing duties as a Council Member, is to exercise the care, diligence and skill that a reasonable Council Member would exercise in the same circumstances taking into account:
  - (i) the nature of the Association;
  - (ii) the nature of the decision;
  - (iii) the circumstances applying at the time; and
  - (iv) the position of the Council Member and the nature of the responsibilities undertaken by him or her.
- (g) To the extent applicable, the members of any committee appointed by the Council must comply with the duties outlined in this clause.

## 11. Quorum and voting at Council meetings

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### 11.1 Quorum required

- (a) Unless extraordinary circumstances exist, no business may be transacted at a Council meeting if a quorum is not present.
- (b) A quorum for a Council meeting is five (5) Council Members including two Council Members from outside the Northern Region.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a Council meeting, the meeting is to be adjourned to such other date, time, and place as the Chair may appoint.

### 11.2 Voting at Council meetings

- (a) At any meeting of the Council all questions will be decided by the affirmative votes of at least a bare majority of Council Members (50%) eligible to vote (a **General Resolution**), provided that any question relating to:
  - (i) selection of the President, Vice President, Treasurer and Contact Officer under clause 9.2; and
  - (ii) adoption of the annual financial budget;will be decided by a resolution requiring the affirmative votes of at least three-quarters (75%) of Council Members eligible to vote (a **Special Resolution**).
- (b) Each Council Member is to have one vote and the Chair will have a casting vote in the event of a tie.

## 12. Meeting of Council

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### 12.1 Methods of holding meetings

- (a) A minimum of three (3) meetings of the Council must be held each calendar year and may be conducted either:
  - (i) by a number of the Council Members who constitute a quorum, being assembled together at the place, date and time appointed for the meeting;
  - (ii) by means of audio, or audio and visual, communication by which all the Council Members participating and constituting a quorum can simultaneously hear each other throughout the meeting and confirm their attendance at the start of the meeting; or
  - (iii) by such other electronic means as determined by the Chair, so long as all Council Members participating and constituting a quorum can participate in the meeting equally and without unreasonable cost or effort.
- (b) For the avoidance of doubt, any Council Member participating in a meeting of the Council by means of audio, audio and visual, or other electronic communication (as determined by the Council) will be counted as part of the quorum for that meeting.

- (c) Notice of a meeting of the Council is to be provided to each Council Member by the Council Member(s) convening the meeting. Unless impracticable in the circumstances, a minimum of five (5) days' notice must be given prior to any meeting of the Council.

## 12.2 **Insufficient number of Council Members**

The Council may act notwithstanding any vacancy in their body, provided that the total number of Council Members is not less than 11.

## 12.3 **Minutes to be kept**

Minutes must be kept of all proceedings at each meeting of the Council. Minutes of a meeting which have been signed as correct by the Chair (or by the person acting as Chair for that meeting) are conclusive evidence of the proceedings at that meeting.

## 12.4 **Other procedures**

- (a) The Council will consider all remits submitted by written notice signed by not less than two Members of the Association to the Chief Executive not less than one (1) month before the date of the Council meeting unless the matter is one for Members as a whole to determine in which case it shall be considered at the next Annual General Meeting.
- (b) Except as set out in this clause, the Council may regulate its own procedure.

## 13. **Conflicts of interest**

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- (a) No Council Member (including, for the purposes of this clause, any member of a committee established by the Council) may vote on a resolution of the Council or the committee or sign any document relating to the entry into a transaction or the initiation of the matter in respect of any matter in which that Council Member has an interest, including (without limitation) if the Council Member:
  - (i) is a party to the transaction, could derive a material financial benefit from the transaction, or has a material financial interest in another party to the transaction;
  - (ii) is a committee member, officer or trustee of either another party to the transaction, or a person who could derive a material benefit from the transaction;
  - (iii) is the parent, child, spouse, civil union partner or de facto partner of either another party to the transaction, or a person who could derive a material benefit from the transaction; or
  - (iv) is otherwise directly or indirectly materially interested in the transaction.
- (b) A person who is prevented from voting on a matter as a result of being interested under (a) above, may still be counted for the purpose of determining whether there is quorum at any meeting at which the matter is considered. However, if 50% or more of the members of the Council or committee are prevented from voting on a matter, a Special General Meeting must be called to consider and determine the matter.
- (c) Any "interest" must be disclosed as soon as practicable after the Council Member or committee member becomes aware of the interest. The nature and extent of the interest (including any monetary value of the interest if it can be quantified) must also

be disclosed. After disclosure, the Council Member or committee member may not participate in any decision on that matter, and may be excluded by the rest of the Council or committee from any discussion on it.

- (d) The Council must maintain an “interests register” recording the particulars of the Council Member’s or committee member’s “interest”. This “interests register” shall be open for inspection by Members upon reasonable notice to the Chief Executive. A summary of the “interests register” must be presented to each Annual General Meeting.

## **14. Council Members’ remuneration and other benefits**

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### **14.1 Remuneration and benefits**

- (a) No Council Member will be entitled to any remuneration in respect of their role as a Council Member.
- (b) Council Members are entitled to reimbursement for any expenses incurred in connection with the Council’s business.
- (c) The Council may pay such honorarium to the President as it deems appropriate (if any) from time to time.

## **15. Employees**

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The Council may appoint, employ and remove a Chief Executive and any other employees at such salary and wages as it thinks fit in accordance with the Employment Relations Act 2000.

## **16. President**

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- (a) The President will be ex officio, a member of any committees.
- (b) The President may order the removal of any person from a Members’ Meeting for obstructing the business of the meeting, or behaving in a disorderly manner, or of any person not entitled to be present.
- (c) In the absence of a quorum, the President may adjourn a Members’ Meeting or a meeting of the Council, or declare such meeting closed.

## **17. Vice President**

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- (a) The Vice President will assist the President in carrying out the duties pertaining to that office, and in the absence of the President, the vice President shall have and may exercise all the powers and shall perform all the duties of the President.
- (b) In the event of the office of President becoming vacant the Vice President shall act as President until the new President has been elected or appointed in accordance with clause 9.2.

## 18. Contact Officer

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- (a) The Contact Officer must be at least 18 years of age and ordinarily resident in New Zealand.
- (b) The Contact Officer will perform all such duties as required the Incorporated Societies Act (if at all) and/or as the Council from time to time decides.

## 19. Indemnity and insurance

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### 19.1 Indemnity for Council Members

- (a) Each Council Member, from time to time, is to be indemnified by the Association for any costs incurred by him or her in any proceeding:
  - (i) that relate to liability for any act or omission in his or her capacity as a Council Member; and
  - (ii) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- (b) Each Council Member, from time to time, is to be indemnified by the Association for any liability or costs in respect of:
  - (i) liability to any person other than the Association for any act or omission in his or her capacity as a Council Member; or
  - (ii) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.
- (c) However, a Council Member's right to be indemnified does not extend to any liability or costs incurred that are the result of a criminal act or a breach of any fiduciary duty owed to the Association or in relation to any wilful default or fraudulent acts or omissions on the part of the Council Member.

### 19.2 Indemnities for employees

In addition to the indemnity set out in clause 19.1, the Association may indemnify an employee of the Association for any costs referred to in clause 19.1.

### 19.3 Insurance

The Council may determine that the Association procures and maintains appropriate insurance in respect of:

- (a) its indemnity obligations in clauses 19.1 and 19.2 above; and
- (b) liabilities that a Council Member, committee member or employee may incur in their capacity as a Council Member, committee member or employee, including the defence costs associated with defending allegations of such liability.

### 19.4 Duty to certify

The Council Members who vote in favour of authorising the effecting of insurance under clause 19.3 (in the event such vote occurs) are to sign a certificate stating that, in their

opinion, the cost of effecting the insurance is fair and reasonable for the Association to incur in the circumstances.

## **20. Regional Branches**

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- (a) Subject to prior written approval of the Council, branches of the Association may be formed in districts, as defined by the Council, throughout New Zealand.
- (b) The Council will approve the name to be given to each branch.
- (c) The Council will approve the rules of the branch before the rules take effect. The branch rules may not be altered except with the prior approval of the Council.
- (d) The purposes of each branch will be to further the purposes of the Association set out in clause 3.1.
- (e) Each branch may have such office bearers as its members shall from time to time determine.
- (f) Each branch may hold meetings of its members from time to time as its office bearers or its members shall determine.
- (g) No branch may set and require a subscription fee to be paid by its members.
- (h) The Council will approve the dissolution of a branch and the amalgamation or merger of two or more branches before such dissolution, amalgamation or merger takes effect.
- (i) Where a branch is dissolved or merges or amalgamates with another branch the surplus assets and property of the branch will be disposed of to the Association.
- (j) Any branch may make a written representation to the Council as its thinks fit concerning thoroughbred horses and/or the interests of breeders. Copies of all such written representation shall be provided to any Council Members residing within the region where that branch is located.
- (k) No branch may write or deal directly with any Cabinet Minister, Member of Parliament, Government Department, the Reserve Bank, NZTR or the New Zealand Racing Board on behalf of the Association or as a branch of the Association, without prior approval from the Council.

## **21. Studmaster Branch**

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- (a) Members who operate as a principal or manage a stud farm at which a registered thoroughbred stallion stands may be members of the Studmaster Branch.
- (b) The purposes of the Studmaster Branch will be to further the purposes of the Association set out in clause 3.1.
- (c) The Studmaster Branch may have such office bearers as its members shall from time to time determine.
- (d) The Studmaster Branch will hold meetings of its members at least once a year.
- (e) Seven (7) members of the Studmaster Branch personally present and entitled to vote at a meeting of the Studmaster Branch will constitute a quorum.

- (f) The Studmaster Branch may make a written representation to the Council as its thinks fit concerning thoroughbred horses and/or the interests of breeders but shall not write or deal directly with any Cabinet Minister, Member of Parliament, Government Department, the Reserve Bank, NZTR or the New Zealand Racing Board.
- (g) The Council will approve the rules of the Studmaster Branch before the rules take effect. The Studmaster Branch rules may not be altered expect with the prior approval of the Council.
- (h) The Council shall fix the annual subscription fee to be paid by members of the Studmaster Branch.
- (i) The Council retains the absolute discretion to disband or dissolve the Studmaster Branch if it deems it necessary or in the interests of the Association to do so.

## **22. Appointment of sector member to NZTR Members' Council**

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The Association will nominate and/or appoint one person as its representative on the NZTR Members' Council (as that term is defined in NZTR's constitution) in accordance with the relevant procedure as set out in NZTR's constitution, as amended from time to time.

## **23. Register of Members and access to information**

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- (a) The Association will compile and maintain at the offices of the Association, a Members' Register. The Members' Register is to include a register of all of the Members of the Association and the members of each of the branches and all information required to be kept by the Council, in accordance with any rules or legislation by which the Association is bound.
- (b) The Members' Register will be made available along with each annual report. The Members' Register will also be available for inspection by Members upon reasonable request in writing to the Chief Executive.
- (c) A Member may, at any time, make a written request to the Council for information held by the Association. A written request made by a Member must specify the information sought in sufficient detail to enable the Council to identify it.

## **24. Financial records**

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### **24.1 Money received by the Association**

- (a) All Annual Subscription Fees and other moneys received by or on behalf of the Association is to be paid to the credit of the Association's account at one of the registered banks in New Zealand (such bank to have an appropriate credit rating).
- (b) All cheques drawn on or withdrawals made from the Association's account will be authorised by signature of any two of the following:
  - (i) the President;
  - (ii) the Vice President;
  - (iii) the Treasurer;
  - (iv) the Chief Executive; or

- (v) the office manager of the Association, or such other person(s) as designated from time to time by the Council.

## 24.2 No pecuniary gains

- (a) The funds and property of the Association will be devoted solely to the purposes specified in clause 3, and no pecuniary gains will be derived by any Member from the operations or property of the Association, provided that at its discretion the Council may remunerate Council Members (as provided in clause 14) and/or pay such honorarium to the Chair as it deems appropriate (if any) from time to time and/or pay any person employed by the Association in accordance with clause 15 .
- (b) No Council Member or any employee of the Association may enter into any contract with the Association except with the unanimous approval of the Council (excluding the interested Council Member) or Members at a Members' Meeting, or in the event that the contract is an employment contract between an employee of the Association and the Association.
- (c) No Member or any person associated with a Member shall participate in or materially influence any decision made by the Association in respect of the payment to or on behalf of that Member or associated person of any income, benefit, or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value) and shall not be for the private pecuniary profit of that Member or associated person.
- (d) Paragraph (c) does not prohibit any payment for:
  - (i) a salaried employee of the Association appointed in accordance with this Constitution;
  - (ii) professional services rendered to the Association in the course of its business charged at no greater than current market rates in circumstances where the provisions in this Constitution governing conflicts of interests have been complied with;
  - (iii) goods supplied, on arm's length terms, to the Association in the ordinary course of business; or
  - (iv) any reasonable out-of-pocket expenses incurred by a Council Member, committee member, employee or Member acting in the interests of the Association and with the written approval of the Council.
- (e) Notwithstanding any other provision of this Constitution, a Member's membership in the Association shall not be deemed to confer upon that Member any right, title, or interest, either legal or equitable, in the property of the Association.
- (f) This clause shall not be removed from this Constitution and shall be included and implied in any document replacing this Constitution.

## 25. Annual report and statement of accounts

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### 25.1 Annual report

The Council will prepare or cause to be prepared a report of its activities for the year ended 31 March in each and every year, such report to be signed on behalf of the Council by the Chair and distributed by mail or otherwise notified (including electronically if required) to every Member as soon as practicable after 31 March and not later than 31 August.

## 25.2 Financial statements

The Council must ensure that, within three (3) months of the end of the financial year, financial statements are:

- (a) completed in relation to the Association for that accounting period and in accordance with generally accepted accounting practice;
- (b) audited or reviewed;
- (c) dated and signed by or on behalf of the Council by two (2) Council Members; and
- (d) given to the Registrar of Incorporated Societies for registration.

## 26. Amendment to Constitution

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- (a) Authority to amend, alter, add to or rescind this Constitution will be vested solely in the Members, and no amendment, alteration, addition or rescission of this Constitution will become effective unless proposed as a remit in accordance with clause 7.4 and approved by a resolution of Members passed by not less than 75% of Members present and voting at a Members' Meeting and signed by no less than three (3) Members.
- (b) Notwithstanding any other provision of this Constitution, the Members shall not:
  - (i) amend, alter or add to this Constitution in any manner which is inconsistent with, or contrary to the Incorporated Societies Act, the Income Tax Act 2007 (or any successor enactments to such statutes) and all other applicable legislation; or
  - (ii) without prejudice to the generality of the foregoing, no addition to or alteration of the purposes set out in clause 3.1, to clause 24.2(c), to this clause 26(b) or to clause 28 shall be made which affects the entitlement of the Association to the benefit of section DV 28 of the Income Tax Act 2007 (or any successor provision).
- (c) The provisions and effect of paragraph (b) of this clause 26 shall not be removed from this Constitution and shall be included and implied in any document replacing this Constitution.

## 27. Signing of documents and common seal

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- (a) The common seal of the Association is to be kept in the custody of the Chief Executive and will only be affixed to any deed or document in pursuance of a resolution of the Council and in the presence two Council Members and the Chief Executive. The Chief Executive will at the same time as affixing the seal, sign the relevant document.
- (b) Subject to (a) above, an obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Association, may, with the approval of a resolution of the Council, be signed on behalf of the Association by two Council Members.
- (c) Any obligation or contract which must be by deed must be made under common seal in accordance with (a) above.

## 28. Dissolution

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- (a) The Association may be wound-up or put into liquidation by a resolution of its Members passed by not less than 75% of Members present and voting at a Special General Meeting and otherwise in accordance with the procedures (including any notice requirements) specified in the Incorporated Societies Act.
- (b) In the event of the Association being wound-up or put into liquidation, the property and surplus assets of the Association after payment of the Association's liabilities and the expenses of the winding-up must be disposed of to such organisation or organisations concerned with the breeding of thoroughbred horses in New Zealand as such Special General Meeting shall determine.
- (c) For the avoidance of doubt, the Association must not distribute any property or surplus assets to or among Members upon dissolution.

## 29. General

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- (a) Any matters affecting the Association not provided for in this Constitution must be decided by the Council in light of the purposes of the Association set out in clause 3.
- (b) In the event of any question arising as to the interpretation or application of this Constitution and of any by-laws or regulation made thereunder, the Council will determine the point at issue and its decision will be effective until the next Members' Meeting, where the matter shall be submitted to Members for confirmation.

## Schedule 1: Powers and functions of the Council

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The powers and functions of the Council shall include (without limitation) the power to:

1. be the principal governing body of the Association with responsibility for overseeing the competent and lawful conduct of the Association's affairs;
2. encourage and oversee the work of the Association in accordance with the objects and the policies from time to time laid down by the Association at its Members' Meetings;
3. adopt an annual plan and budget for financial performance and to monitor results against the annual plan and budget;
4. purchase, lease, hire or by other means acquire any real or personal property necessary or convenient for furthering the purposes of the Association;
5. sell, lease, exchange, mortgage, improve, manage, develop or otherwise deal with all or any part of the real and personal property of the Association, or in which the Association has or may hereafter have any beneficial interest;
6. borrow or raise money by mortgage or otherwise and in such manner, with or without security, on such terms as the Council thinks fit;
7. establish and delegate such powers as it considers appropriate, to persons, committees and groups as it considers appropriate to assist it to carry out its responsibilities;
8. co-opt, engage, contract or otherwise agree to obtain the assistance or advice of any person or organisation for the Association;
9. publish any by-laws required to enforce the rules of the Association;
10. resolve and determine any disputes or matters not provided for in this Constitution;
11. appoint legal, accounting or other advisers as and when necessary;
12. act in accordance with all other powers, duties and obligations contained in this Constitution; and
13. do all other acts and things which are within the powers set out above and the purpose of the Association and which the Council considers appropriate.