

DATED

17 JULY 2014

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

The attention of the Client is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Additional Services: any services including but not limited to the Support Service and the Finders Service provided by the Introducer (outside the scope of the Services) as more particularly defined in clause 5.

Advertisement: the advertisement prepared by the Introducer in conjunction with the Client in relation to the horse including four photographs of the horse demonstrating the horse's ability, as directed by the Introducer, and details relating to the horse's background and experience. The Advertisement will then be placed on the Introducers Website.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services and / or Additional Services in accordance with clause 5.

Client: the person or firm who purchases the Services from the Introducer.

Commencement Date: has the meaning set out in clause 2.2.

Commission: the commission payable by the Client in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.7.

Confirmation Form: the order by the Client for the supply of Services and the written acceptance by the Client of the quotation from the Introducer.

Contract: the contract between the Introducer and the Client for the supply of Services in accordance with these Conditions.

Finders Service: the service of the Introducer preparing a portfolio of approximately 8 – 10 horses for the Client for the Clients potential purchase.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Introduction: the publication of the Advertisement on the Introducers Website. Introduce, Introduces and Introduced should be interpreted accordingly.

Introduction Date: for each Prospective Client the date during the term of this Contract on which the Introduction is made.

Introduction Period: for each Prospective Client 4 calendar months from the Introduction Date irrespective of whether such period ends before or after the date of termination of this Contract.

Introducer: Southgate Equisearch Ltd (registered in England and Wales with company number 09034096).

Introducers Website: <http://southgateequisearch.co.uk/> and a link to the Advertisement from <http://www.southgatefarm.co.uk/>

Net Income: the payments made to the Client or the Introducer (as applicable) for the sale of the horse under a Relevant Contract less any value added tax.

Prospective Client: a person to whom the Client sells the horse to.

Relevant Contract: a contract for the sale of the horse entered into during the Introduction Period between the Client and a Prospective Client.

Services: the services of assessment of the horse and basic marketing advice relating to the horse including working with the Client to prepare the Advertisement which shall be published on the Introducers Website (as defined as the Assessment Service on the Confirmation Form).

Support Service: the services of the Introducer attending any viewing of the horse.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) A reference to a party includes its personal representatives, successors or permitted assigns;
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) A reference to **writing or written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Client shall contact the Introducer via telephone, email or an online form as applicable. The completed Confirmation Form constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Confirmation Form shall only be deemed to be accepted when the Introducer signs the Confirmation Form and the Assessment Fee, as required in clause 5, has been received by the Introducer in cleared funds at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Introducer which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Introducer, and any descriptions or illustrations contained in the catalogues or brochures of the Introducer, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Introducer shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Introducer shall supply the Services and / or , where applicable, the Additional Services to the Client.
- 3.2 The Introducer shall use all reasonable endeavours to meet any performance dates requested by the Client but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and / or Applicable Services.
- 3.3 The Introducer shall have the right to make any changes to the Services or Additional Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services or Additional Services, and the Introducer shall notify the Client in any such event.

3.4 The Introducer warrants to the Client that the Services and Additional Services will be provided using reasonable care and skill.

4. OBLIGATIONS OF THE CLIENT

4.1 The Client shall:

- (a) ensure that the terms of the Confirmation Form are complete and accurate;
- (b) co-operate with the Introducer in all matters relating to the Services and / or Additional Services;
- (c) provide the Introducer, its employees, agents, consultants and subcontractors, with access to the horse, premises of the Client, office accommodation and other facilities as reasonably required by the Introducer;
- (d) provide the Introducer with such information and materials as the Introducer may reasonably require in order to supply the Services and / or Additional Services, and ensure that such information is accurate in all material respects;
- (e) prepare the premises of the Client and ensure that the horse is in a good standard of condition for the supply of the Services and / or Additional Services;
- (f) advise the Introducer as soon as possible if the Client will offer a 7 day warranty with the horse;
- (g) authorise the Introducer to disclose the Client's full contact details on the Introducers Website and with any Prospective Client;
- (h) advise the Introducer as soon as practicable if the Introducer is required to attend any viewings of the horse (the Support Service) providing full details of the time, date and location. For the avoidance of doubt whether or not the Introducer is willing or able to attend is at the sole discretion of the Introducer;
- (i) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (j) inform the Introducer immediately if the Client is approached directly by a Prospective Client;
- (k) inform the Introducer immediately if the Client has agreed to sell the horse with details of the sale of the horse including, but not limited to, the details of the purchaser and the purchase price; and
- (l) inform the Introducer immediately on the sale of the horse with details of the sale of the horse including, but not limited to, the details of the final purchaser and the final purchase price.

4.2 If the performance of the Introducer of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) the Introducer shall without limiting its other rights or remedies have the right to suspend performance of the Services and / or Additional Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the performance of the Introducer of any of its obligations;
- (b) the Introducer shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the failure or delay of the Introducer to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse the Introducer on written demand for any costs or losses sustained or incurred by the Introducer arising directly or indirectly from the Client Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services and any Additional Services shall be on the following basis:

- (a) the Charges for the Services shall be calculated in accordance with the standard fee rates of the Introducer (the Assessment Fee) of £100 payable in advance;
- (b) the Introducer shall be entitled to charge mileage whilst delivering the Services and Additional Services calculated at £0.45 per mile payable in advance;
- (c) the Advertisement shall be placed on the Introducers Website for 28 days at no cost to the Client, thereafter, the Introducer shall be entitled to charge £35 per calendar month for the placing of the Advertisement on the Introducers Website. The Advertisement shall be placed on the Introducers Website for a maximum of 4 calendar months;
- (d) the Charges for the Introducer to attend any viewings of the horse (Support Service Fee) of £20 per hour including travel time payable in advance;
- (e) the Charges for the Introducer to prepare a portfolio of approximately 8-10 horses for review (Finders Service Fee) of £250 payable in advance including travel time of £20 per hour;
- (f) in the event that the Client offers one week warranty on the horse in respect of the Services, the Net Income shall be transferred from the Prospective Client directly to the Introducer who shall hold the monies for one week and, in the event that no claim is made under the warranty and

the Prospective Client elects to keep the horse, the Introducer shall then release the balance of the Net Income to the Client less any fees or Commission payable to the Introducer; and

- (g) the Introducer shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Introducer engages in connection with the Services including, but not limited to, travelling expenses, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Introducer for the performance of the Services, and for the cost of any materials.

5.2 In addition to the Charges in clause 5.1 the Introducer shall also be entitled to Commission if a Prospective Client Introduced by the Introducer enters into a Relevant Contract.

5.3 The amount of commission payable shall be 5% of the Client's Net Income received under each Relevant Contract (**Commission**).

5.4 The Client shall immediately notify the Introducer in writing of the following:

- (a) the date it enters into a Relevant Contract;
- (b) the amount of the payments due for the horse under it; and
- (c) the date on which payment the such horse is payable,

no later than 3 Business Days after it enters into such Relevant Contract

5.5 Any Commission payable pursuant to clause 5.3 shall be due to the Introducer within 3 days of completion of the Relevant Contract, or 3 days of the expiration of any 7 day warranty, whichever is the later. If the Client receives payment under any Relevant Contract in instalments, then Commission shall be calculated and paid on such instalments as they are received by the Client.

5.6 The Introducer shall invoice the Client for the Commission payable and the Client shall pay such invoice within 3 days of receipt.

5.7 The Introducer reserves the right to increase its fee rates and Commission rates, provided that such charges cannot be increased more than once in any 12 month period. The Introducer will give the Client written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify the Introducer in writing within 4 weeks of the date of the notice provided by the Introducer and the Introducer shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Client.

- 5.8 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Introducer to the Client, the Client shall, on receipt of a valid VAT invoice from the Introducer, pay to the Introducer such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 If the Client fails to make any payment due to the Introducer under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 5% per annum above the base rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 5.10 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Introducer may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Introducer to the Client.
- 5.11 If any dispute arises as to the amount of Commission payable by the Client to the Introducer, the same shall be referred to the Introducers' accountants for settlement and their decision, save in the case of manifest error, shall be final and binding on both parties.
- 5.12 Termination of this agreement, howsoever arising, shall not affect the continuation in force of this clause 5 and the Client's obligation to pay Commission to the Introducer in accordance with it.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Introducer.
- 6.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the use by the Client of any such Intellectual Property Rights is conditional on the Introducer obtaining a written licence from the relevant licensor on such terms as will entitle the Introducer to license such rights to the Client.

7. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a

confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in these Conditions shall limit or exclude the liability of the Introducer for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1:
- (a) the Introducer shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the total liability of the Introducer to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £100.
- 8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 2 months' written notice.

9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(b) to clause 9.2(i) (inclusive);

- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in the opinion of the Introducer the capability of the Client to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.3 Without limiting its other rights or remedies, the Introducer may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 3 days after being notified in writing to do so.

9.4 Without limiting its other rights or remedies, the Introducer may suspend provision of the Services under the Contract or any other contract between the Client and the Introducer if the Client becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(m), or the Introducer reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Introducer all of the outstanding unpaid invoices and interest of the Introducer and, in respect of Services supplied but for which no invoice has been submitted, the Introducer shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Advertisement will be removed from the Introducers Website;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. FORCE MAJEURE

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Introducer including but not limited to strikes, lock-outs or

other industrial disputes (whether involving the workforce of the Introducer or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Introducers or subcontractors.

- 11.2 The Introducer shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents the Introducer from providing any of the Services for more than 4 weeks, the Introducer shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

12. GENERAL

12.1 Assignment and other dealings.

- (a) The Introducer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Introducer, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 12.3 **Severance.**
- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Introducer.
- 12.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 12.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).