Shared Starting Gates Agreement

BACKGROUND

1. The Owner has agreed to make the Equipment available for hire by each Participating Club on the terms set out in this Agreement.
2. Each Participating Club has agreed to hire the Equipment on the terms set out in this Agreement.

DETAILS SCHEDULE

|  |  |  |
| --- | --- | --- |
| 1. OWNER
 | Club: | [insert] |
| ABN: | [insert] |
| Address: | [insert] |
| 1. EQUIPMENT
 | Equipment:  | [Mobile Barrier Stalls and Trailer] |
| Type:  | Simtrack Transportable Trailer and Simtrack Mechanical Gate Barrier |
| Operating Instructions: | As developed by the Equipment manufacturer. |
| 1. TERM
 | Commencement Date:  | [insert] |
| End Date:  | [insert (e.g. ‘End of Life of the Equipment’, if the arrangement is intended to operate for the remaining useful life of the equipment)] |
| Hire Period: | For each Participating Club, the Hire Period is each period from the date the Equipment is collected for delivery to that Participating Club until the Equipment is either delivered back to the Owner or collected by another Participating Club. |
| 1. Participating Clubs
 | Participating Clubs: | The race clubs that have signed this Agreement (other than the Owner) or who request or receive the use of the Equipment. |

OPERATIVE PROVISIONS

1. Definitions & interpretation
	1. In this Agreement, the following definitions apply:

Agreement means this agreement and all schedules and annexures to it;

Club means each of the Participating Clubs and the Owner;

Laws includes those principles of law established by decisions of courts, statutes, regulations, by-laws or other subordinate regulations, and mandatory approvals, codes and standards;

Race Meeting has the meaning given to it in the *Racing Act 2002* (Qld);

Racing Season means:

* + 1. subject to (b) below, each period from 1 August until 30 July in the next year;
		2. the first Racing Season is the period from the Commencement Date until the next 30 July;

Racing Venue, of a Participating Club, means the venue from which the Participating Club’s Race Meeting is to be conducted.

* 1. Capitalised terms used without definition shall have the meanings assigned to them in the Details Schedule.
1. HIRE PERIOD & TERM
	1. This Agreement starts on the Commencement Date and continues until the End Date.
	2. A Participating Club is entitled to use the Equipment for each Hire Period unless terminated earlier.
2. Annual contribution
	1. At the beginning of each Racing Season, each Participating Club will be required to pay to the Owner:
		1. its share of the costs of insuring, registering and maintaining the Equipment for the Racing Season (as estimated by the Owner); and
		2. an administration fee of $[100.00] for each Race Meeting to be conducted by the Participating Club during the Racing Season,

(Annual Contribution).

* 1. A Participating Club’s share of the costs referred to in clause 3.1(a) will be calculated based on the number of Race Meetings the Participating Club is to conduct during the Racing Season, relative to the total number of Race Meetings to be conducted by all Clubs that are party to this Agreement.
	2. At the end of each Racing Season, the Owner will:
		1. provide an account of the actual costs of insuring, registering and maintaining the Equipment during the Racing Season (including any costs of emergency maintenance incurred in accordance with clause 7.4);
		2. recalculate the Annual Contributions of Participating Clubs for the past Racing Season, based on the actual costs of insuring, registering and maintaining the Equipment, and the actual number of Race Meetings conducted by each Participating Club;
		3. issue a credit or invoice to each Participating Club for the amount of the Annual Contribution over or under the estimate provided at the beginning of the Racing Season (the Prior Year Adjustment);
		4. set out the planned maintenance work to be undertaken over the next Racing Season;
		5. provide an estimate of each Participating Club’s Annual Contribution for the next Racing Season; and
		6. calculate and seek payment of each Participating Club’s Annual Contribution (estimate) for the next Racing Season.
	3. For the purpose of the recalculation in clause 3.3(b), a Participating Club will be deemed to have conducted a Race Meeting (and therefore all costs will still be payable) if the Equipment was delivered to the Participating Club’s Racing Venue before that Race Meeting was cancelled.
1. Insurance

The Owner must:

* + 1. take out and maintain insurance covering the Equipment against loss or damage from all risks to its full insurable value, including risks occurring at each Participating Club, and with each Participating Club being noted as an interested party; and
		2. if the Equipment is of a kind that is expected to be or intended to be driven on a public road, ensure it is covered by comprehensive motor vehicle insurance that is valid for any licensed driver; and
		3. take out and maintain public liability insurance and such other insurance as may be required by law.
1. Transportation AND DELAYS
	1. Except where clause 5.2 applies, each Participating Club is responsible for the costs of arranging a suitably qualified and insured transport provider to collect the Equipment from the Owner’s Address prior to each of its Race Meetings, and returning it to the Owner’s Address thereafter.
	2. Participating Clubs may, with the prior consent of the Owner, agree to transport the Equipment directly between their Racing Venues where convenient due to the timing of scheduled Race Meetings. If this applies:
		1. each of the Participating Clubs will be responsible for an equal share of the costs of such transportation (unless they agree otherwise).
		2. where the Equipment being collected from a Participating Club’s Racing Venue, the Participating Club from whose venue the Equipment is being collected must ensure the Equipment is left in a clean state, free of soil or foreign matter, with all parts and components included.
	3. All Clubs must take all reasonable steps and precautions to prevent and minimise the risk of any delays to the delivery of the Equipment.
	4. If a Club becomes aware that it will be unable to provide the Equipment as expected to another Club, it must immediately give written notice to the other Club and the Owner of such delay, together with details of the date on which it expects to be able to provide the Equipment.
2. TITLE AND RISK IN THE EQUIPMENT
	1. The risk of any accidental loss or damage to the Equipment remains with the Owner, subject to this Agreement.
	2. The Owner warrants that it has title in and ownership of the Equipment, and each Participating Club acknowledges and agrees not to claim any rights over the Equipment other than the right to use the Equipment for the Hire Period as bailee only.
	3. Each Participating Club agrees not to take any encumbrance or security over the Equipment.
	4. The Owner may retake possession of the Equipment if a Participating Club breaches any provision of this Agreement and fails to remedy such breach within seven (7) days, notwithstanding any other provision of this Agreement.
3. OPERATION OF THE EQUIPMENT
	1. The Owner must provide each Participating Club with a copy of the Operating Instructions for the Equipment, including details on the appropriate processes for storage, set-up, and transport.
	2. Each Participating Club:
		1. agrees that the use of the Equipment carries with it dangers and risks of injury, and further agrees to take reasonable care in using the Equipment;
		2. may allow use of the Equipment by its employees, nominees, contractors or representatives, but the Participating Club remains responsible under this Agreement for any such use; and
		3. agrees to operate and store the Equipment strictly in accordance with the Operating Instructions and any reasonable instruction provided by the Owner.
	3. The Owner agrees to maintain or repair the Equipment in accordance with the Operating Instructions, unless it becomes uneconomic to do so.
	4. If there is a breakdown or failure of the Equipment while it is in the possession of a Participating Club, the Participating Club shall notify the Owner, and the Participating Club may only attempt to repair the Equipment with the Owner’s prior approval.
4. Warranties
	1. Each Participating Club warrants that:
		1. the Equipment will be used in accordance with this Agreement; and
		2. each person the Participating Club allows to operate the Equipment will follow all Operating Instructions and comply with all laws; and
		3. it will not, without prior written consent of the Owner, modify, or permit any modification of, the Equipment in any way.
	2. The Owner represents and warrants to each Participating Club that the Equipment (and all materials, plant, and other items supplied as part of the Equipment Hire) will:
		1. comply with this Agreement;
		2. be of merchantable quality;
		3. be properly maintained and free of damage at the commencement of the Hire Period; and
		4. comply with all applicable Laws.
5. Liability
	1. In the event of accidental loss or damage of the Equipment during this Agreement, the Owner will apply all insurance proceeds to repairing or replacing the Equipment, and any repaired equipment or replacement equipment will be the “Equipment”.
	2. No Club is responsible for fair wear and tear to the Equipment.
	3. Each Club acknowledges that it is responsible for any loss or damage arising from the Club’s breach of this Agreement or negligence of its workers.
	4. No Club will be liable to any other Club for loss of profit, loss of revenue, loss of Race Meetings, or any other indirect or consequential loss of any kind arising out of or in relation to this Agreement.
6. Health and safety
	1. Each Club will:
		1. comply with all safety and other Laws;
		2. comply with the Operating Instructions;
		3. not wilfully place at risk the work health and safety of any other person in the performance of the Equipment Hire; and
		4. not wilfully injure themselves.
7. INVOICING, PAYMENT and GST
	* 1. Each Participating Club must pay any amount payable under this Agreement within 14 days of receiving a compliant tax invoice from the Owner.
		2. All payments to be made by a Participating Club to the Owner will be made by electronic funds transfer to the bank account nominated by the Owner.
		3. All amounts used in this Agreement are exclusive of GST, unless it is clearly stated that they are intended to be GST inclusive.
		4. If a party makes a supply under or in connection with the Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause (GST exclusive consideration) is increased by an amount equal to the GST payable (unless the consideration is stated to be GST-inclusive), provided a Tax Invoice has been issued for the supply.
8. Confidentiality
	1. Each Club will not at any time, before or after termination of this Agreement, use or disclose any information relating to this Agreement or the Equipment, other than:
		1. to workers who have a need to know the information; or
		2. to Racing Queensland; or
		3. where legally obliged to disclose the information.
9. Termination
	1. The Owner may terminate this Agreement as it applies to a Participating Club immediately, without the provision of notice, at any time if:
		1. the Participating Club engages in serious misconduct or dishonesty, including in relation to the hire of the Equipment;
		2. the Participating Club commits a breach of any of the provisions of this Agreement (other than a breach that cannot be remedied) and does not rectify that breach within 14 days after written notice requiring the breach to be remedied;
		3. the Participating Club commits a breach of any provision of this Agreement that cannot be remedied;
		4. the conduct of the Participating Club means that the Owner is in breach of its obligations under any Law or its insurance policies; and
		5. the Participating Club threatens to cease to carry on as a race club or becomes insolvent (within the meaning of the [*Corporations Act 2001* (Cth)](https://www.legislation.gov.au/Details/C2022C00215)).
	2. A Participating Club may only terminate this Agreement if the Owner commits a breach of any of the provisions of this Agreement and does not rectify that breach within 14 days after written notice requiring the breach to be remedied.
	3. Termination of this Agreement by any Participating Club, or termination of the application of the Agreement to a Participating Club, does not affect the validity of the Agreement as between the Owner and all other Participating Clubs.
	4. This Agreement will automatically terminate at the end of the useful life of the Equipment.
10. General
	1. Any notices or other communications to be given under this Agreement may be effected by personal delivery, email or by post where:
		1. if posted – 3 days after the date of posting;
		2. if delivered by hand during ordinary business hours – on the date of delivery; or
		3. if emailed – on the date of the email.
	2. This Agreement cannot be assigned without the prior written consent of the other parties.
	3. This Agreement is to be governed by the laws of the State of Queensland.
	4. If any part of this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
	5. Each Club must pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement.
	6. This Agreement may be signed in any number of counterparts, all of which, when taken together, will constitute the same instrument.
	7. This Agreement will become binding between each Participating Club and the Owner upon the earlier of the Participating Club signing this Agreement or using the Equipment, irrespective of whether any other Participating Club has signed.

execution

Signed as an Agreement

The Owner and each Participating Club acknowledges that by signing this Agreement they are entering into the Agreement and agree to be bound by its terms.

OWNER

Signed by [insert details of the legal entity of the Owner including the ACN/ABN]

on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of authorised officer

Full name: [Insert full name of authorised officer]

PARTICIPATING CLUB

Signed by [insert details of the legal entity of the Participating Club including the ACN/ABN]

on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of authorised officer

Full name: [Insert full name of authorised officer]