

## THOROUGHbred TOKENS Terms of Service

1. These Terms of Service (**Terms**) form a contract between Thoroughbred Tokens (**Thoroughbred Tokens, TT, us, we**) and the THOROUGHbred TOKENS user (**Users, you**), which you must accept to use any part of THOROUGHbred TOKENS.
2. THOROUGHbred TOKENS is a distributed application that runs on the Ethereum network, using uniquely developed smart contracts (**Smart Contracts**) to enable users to purchase, sell, breed and race statistically unique digital thoroughbreds, which can then be visualise TT on a website that the user can interact and earn Ethereum from THOROUGHbred TOKENS (TT).
3. PLEASE READ THESE TERMS CAREFULLY BEFORE USING TT, THE SMART CONTRACTS, OR THE WEBSITE. THESE TERMS GOVERN YOUR USE OF THE WEBSITE, THE SMART CONTRACTS, AND THE WEBSITE, UNLESS WE HAVE EXECUTED A SEPARATE WRITTEN AGREEMENT WITH YOU FOR THAT PURPOSE. WE ARE ONLY WILLING TO MAKE TT, THE SMART CONTRACTS, AND THE WEBSITE AVAILABLE TO YOU IF YOU ACCEPT ALL OF THESE TERMS. BY USING TT, THE SMART CONTRACTS, THE WEBSITE, OR ANY PART OF THEM, OR PURCHASING AN NON-FUNGIBLE TOKEN (NFT), YOU ARE CONFIRMING THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY ALL OF THESE TERMS, INCLUDING ANY AMENDED TERMS. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO ACCEPT THESE TERMS ON THAT ENTITY'S BEHALF, IN WHICH CASE "YOU" WILL MEAN THAT ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT ACCEPT ALL OF THESE TERMS, THEN WE ARE UNWILLING TO MAKE TT, THE SMART CONTRACTS, THE WEBSITE, OR AN NFT, AVAILABLE TO YOU. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT ACCESS OR USE TT, THE SMART CONTRACTS, OR THE WEBSITE.

## USING THOROUGHbred TOKENS

### 4. Restrictions

- a. TT is only available to users over the age of 18. You must not create an account if you are under the age of 18.
- b. You must not, under any circumstances:
  - i. use exploits, automation software, bots, mods, or any unauthorised third-party software designed to modify or interfere with the Thoroughbred Tokens service, any Thoroughbred Tokens game, any Thoroughbred Tokens smart contract, any Thoroughbred Tokens NFT, or any Thoroughbred Tokens game experience or without TT's express written consent, modify or cause to be modified any files that are a part of the service or any Thoroughbred Tokens platform or game.
  - ii. disrupt, or assist to disrupt, any computer, network or server used to provide the Thoroughbred Tokens service or game environment.
  - iii. obtain, or attempt to gain, unauthorised access to the Thoroughbred Tokens service or to any account of another Thoroughbred Tokens user.
- c. You agree that you will not use a name for any NFT or user that is likely to be offensive, derogatory, prejudicial, inflammatory or inappropriate for use in the TT community. TT reserves the right upon to cancel the name of any NFT or user which TT determines in its absolute discretion to be offensive, derogatory, prejudicial, inflammatory or inappropriate for use in the TT community by giving the NFT owner or user written notice (which may be provided after the name has been cancelled). Where such a determination is made, the NFT name or user name will be changed to a generic name and the NFT owner or account registrant will be able to

choose a new name. You agree that the determination of TT is final and not reviewable, and that repeated breaches of this clause may result in suspension of the user's account or the ability for the NFT to participate in TT and/or the termination of the Licence issued under clause 23.b.

d. We reserve the right to suspend or terminate a User account for breach of these Terms of Service by the User or fraudulent, harmful, criminal or unfair behaviour of a User, to include:

- i. we suspect the User of committing fraud in connection with these Terms;
- ii. the User engaging in suspicious transactions;
- iii. if we suspect the User has used, is using, or will use confidential information of TT in any manner not authorised by TT.
- iv. the User does not comply with some or all of these Terms;
- v. The User's account login and password are in the possession of a third party.

e. Thoroughbred Tokens is not available in every region. We reserve the right to restrict or block access to our services based on the User's location.

5. TT has utilised TT Smart Contracts to develop the TT Genesis racehorses. TT will release a certain number of Genesis racehorses into the marketplace and make them available for purchase to the public at the Company's discretion. TT will release 38,000 racehorses and will never, ever release any more thoroughbreds. As described below, the racehorses may breed offspring.

6. **WHEN PARTICIPANTS COMPETE IN RACES USING THEIR VIRTUAL THOROUGHBREDS, THEY ARE UTILIZING SKILL TO CHOOSE THE THOROUGHBRED, THE RACE, AND OTHER FACTORS SUCH AS THE GATE FROM WHICH THE THOROUGHBRED WILL RACE. IN OTHER WORDS, PLAYERS' ABILITIES DETERMINE THE OUTCOME OF THE**

SKILLS-BASED COMPETITIONS. GAMES OF SKILL ARE PERMITTED IN MOST JURISDICTIONS AND DO NOT CONSTITUTE GAMBLING (WHICH GENERALLY REQUIRES A GAME OF CHANCE, PRIZE, AND CONSIDERATION TO PLAY). SOME JURISDICTIONS LIMIT GAMES OF SKILL WHERE PAYMENTS ARE INVOLVED. IT IS YOUR RESPONSIBILITY TO DETERMINE WHETHER THE JURISDICTION IN WHICH YOU ARE LOCATED PERMITS SKILL-BASED COMPETITIONS. WHEN YOU PARTICIPATE IN COMPETITIONS, THESE TERMS OF SERVICE SHALL APPLY.

7. As users breed their racehorses, new racehorses (offspring) TT genotypes will be created. Using TT's proprietary algorithm, each thoroughbred created from breeding will have a unique profile value. Each offspring will carry over certain characteristics from its mother (mare) and its father (stallion) such as its bloodline, breed type and genotype.
8. How you breed your thoroughbreds is entirely up to each user. The only restrictions that we place are that female (mare/filly) and male (stallion/colt) racehorses must mate together. In addition, male-to-male racehorses and female-to-female thoroughbreds cannot breed together and racehorses cannot breed with brothers, sisters, parents or grandparents.
9. The gender outcome of each offspring is generated according to a pre-determined sequence and the offspring will always be owned by the female racehorse once the breeding transaction is complete.
10. To most easily use TT, we strongly recommend that you first install the Google Chrome web browser. Once you have installed Chrome, you will need to install a browser extension called MetaMask. MetaMask is an electronic digital wallet, which allows you to purchase, store, and engage in transactions using Ethereum or any other ERC-20 cryptocurrency. You will not be able to engage in any transactions on TT other than through MetaMask (or other Ethereum-compatible browsers) or an email address, where TT creates a non-custodial electronic digital wallet for you.

11. TT will only recognize you as a user and you will only be able to interact with TT, if your Ethereum electronic digital wallet is connected and unlocked through your MetaMask account or your email address. There is no other way to sign up as a user, or to interact directly with TT. BY USING OUR SERVICES YOU AGREE THAT YOU ARE GOVERNED BY THE TERMS OF SERVICE AND PRIVACY POLICY FOR THE APPLICABLE EXTENSIONS. FOR METAMASK, THOSE TERMS ARE AVAILABLE AT (<https://metamask.io/terms.html>) and (<https://metamask.io/privacy.html>).
12. You are responsible for any Internet connection and telecommunication fees and charges that you incur when accessing TT.
13. Transactions that take place on TT are managed and confirmed via the Polygon blockchain, which is a proof of stake network, and a sidechain to the Ethereum blockchain. The main Ethereum blockchain is currently a proof of work network. Proof of stake networks use less energy than proof of work networks. You understand that your Ethereum public address will be made publicly visible whenever you engage in a transaction on TT.
14. We neither own nor control MetaMask, Google Chrome, the Ethereum network, or any other third party site, product, or service that you might access, visit, or use for the purpose of enabling you to use the various features of TT. TT will not be liable for the acts or omissions of any such third parties, nor will we be liable for any damage that you may suffer as a result of your transactions or any other interaction with any such third parties.
15. You must provide accurate and complete registration information when you create an account on TT. By creating an account, you agree to provide accurate, current and complete account information about yourself, and to maintain and promptly update as necessary your account information. You are responsible for the security of your account and your MetaMask wallet (and other Ethereum wallets and email accounts).

16. You may not share or transfer any account. You may not disclose your password or other credentials to anyone. You agree to immediately notify TT by sending an email to us at [thoroughbredtokens.com](mailto:thoroughbredtokens.com) concerning any known or suspected unauthorised TT use(s) of your account or any known or suspected breach of security, including loss, theft or unauthorised TT disclosure of your password. You understand and agree that you shall be liable for all activities that occur under any account created for your use, even if such activities were not committed by you. We are not responsible for any loss or damage arising from your failure to maintain the confidentiality of your password or of your account.

## FEES

17. If you elect to purchase, sell or breed racehorses using TT, or with or from other users in TT, any financial transactions that you engage in will be conducted solely through the Ethereum network via MetaMask. We will have no insight into or control over these payments or transactions, nor do we have the ability to reverse any transactions. With that in mind, we will have no liability to you or to any third party for any claims or damages that may arise as a result of any transactions that you engage in via the App, or using the Smart Contracts, or any other transactions that you conduct via the Ethereum network or MetaMask.

18. Ethereum requires the payment of a transaction fee (a “Gas Fee”) for every transaction that occurs on the Ethereum network. The Gas Fee funds the network of computers that run the decentraliTT Ethereum network. This means that you will need to pay a Gas Fee for each transaction that occurs via the App.

19. In addition to the Gas Fee, each time you utilize a Smart Contract to conduct a transaction with another user via TT, you authorize TT to collect a commission on certain events only (a “Commission”). These events include purchasing, selling or breeding of a thoroughbred on the

App. You acknowledge and agree that the Commission will be transferred directly to us through the Ethereum network as part of your payment.

## TERMS OF SALE OF NON-FUNGIBLE TOKENS

20. When you purchase or Procure non-fungible tokens (**NFTs**) for use in TT you must agree to the following terms and conditions (**NFT Terms**), which apply to you and any subsequent person to whom you sell the NFT(s) you purchased from us in the first instance, or to whom you otherwise transfer the NFT(s) you Procured.

### 21. Applicability of NFT Terms

- a. All NFTs purchased or Procured by you are subject to these NFT Terms, unless otherwise agreed in writing and by purchasing, or pre-purchasing or Procuring any NFT you are agreeing to be bound by these NFT Terms.
- b. The use of any NFTs with TT is subject to these NFT Terms together with any other terms and conditions which may apply to the use of TT including without limitation our Privacy Policy and any ancillary document relating to the Licence referred to in clause 23.b.
- c. Termination of these NFT Terms for any reason will not affect any obligations which have arisen prior to termination.

### 22. Purchasing NFTs

#### a. Pre-sales of NFTs.

- i. We may conduct pre-sales of NFTs from time to time, either as a stand-alone or with bundles, including for early access or for expansions of TT.
- ii. Orders placed for pre-purchase of NFTs are non-refundable, cannot be cancelled for change of mind, and require payment of the Purchase Price at the time of the pre-purchase.

- iii. We may require that you register an account with us to pre-purchase an NFT.
- iv. We may require that you nominate your Digital Wallet at the time of the order, or nominate a Digital Wallet at a later time for delivery of any pre-purchased NFT.
- v. We will undertake reasonable endeavours to deliver any pre-purchased NFTs to your nominated Digital Wallet by any date we provide for delivery. You acknowledge, however, that the delivery date may change for reasons (including for reasons outside or within our control) at our sole discretion.

#### b. Sales of NFTs

- i. We may list NFTs for sale from time to time, which may be stand-alone or as part of a bundle of other digital goods.
- ii. Orders placed for NFTs are non-refundable, cannot be cancelled for change of mind, require payment in full of the Purchase Price at the time of purchase and may require that you connect or provide a Digital Wallet for delivery of the NFT at the time of sale.
- iii. If you engage in a secondary sale of your NFT to another purchaser, that transaction may involve third party platforms or Blockchain digital wallets which are not associated with us, and may be subject to transaction fees charged by that network. Should any transfer be conducted using a marketplace we provide, then fees and charges may apply to those transactions payable to us at the time of the transaction.

#### c. Pre-conditions to sale

- i. You must make payment in full in any nominated Digital Currency or via any other nominated payment method as a pre-condition to any purchase of an NFT.



ii. In the case of a primary sale, we will have no obligation to transfer any NFT to you until we have received the Purchase Price in full for any NFT. If you make payment to our Digital Wallet, you must ensure your transfer is made to the correct wallet address.

iii. In the event that any payment is reversed or becomes invalid, including via either a double spend attack or recall or refund request by a payment processor, you agree to immediately return to us any NFTs the subject of a sale where the Purchase Price has no longer been retained in full by us.

#### d. Title and Risk

i. Risk and title in any NFT purchase transfers to you upon purchase of the NFT and you are responsible for ensuring your Digital Wallet is accurately linked. If you lose your private key or login or seed phrase for your Digital Wallet you will lose access to your NFTs stored in your Digital Wallet.

#### e. Refunds – Risk in value of Digital Currency

i. Where the Purchase Price has been paid in a Digital Currency and you are entitled to a refund for any reason, you agree the refund is to be made in the same form of Digital Currency used in the initial transaction, or at our option in Australian dollars equivalent to the value of the Digital Currency used in the initial transaction on the date the Purchase Price was paid.

#### f. Gameplay

i. NFTs purchased or Procured by you may be used for gameplay in TT, which may provide additional features and services.

ii. Gameplay in TT may be subject to further instructions, restrictions, terms and conditions as detailed in these Terms,

TT or on the Website, including in respect of our stud and breeding programs and racing game.

- iii. We do not represent or guarantee that your access to TT will be uninterrupted or will be maintained into the future.

## 23. Intellectual Property Licence in NFTs

- a. We grant, to the party who Owns an NFT we have issued for the time that party Owns the NFT (Term), a licence in respect of the Art associated with the NFT purchase subject always to these NFT Terms in force at the date of sale or transfer together with any other terms and conditions which may apply to the NFT.
- b. The Licence is assignable, transferable and revocable on the terms of these NFT Terms, and is for your personal, non-commercial, royalty free use of the NFT (including to sell or transfer on a Marketplace) and to display and enjoy the Art associated with the NFT anywhere in the world (Licence).
- c. Upon your sale of the NFT you Own, the Licence transfers to the purchaser who then Owns the NFT and will be subject to the Licence and these NFT Terms. For the avoidance of doubt, the transfer of the Licence does not constitute a commercial use for the purposes of clause b.
- d. With immediate effect upon your sale of the NFT you Own, your rights under the Licence pursuant to clause b shall cease to apply and will no longer be in force and effect. You will no longer be entitled to use the Art (or any reproductions of the Art) upon sale by you of the NFT.
- e. Except as expressly stated in these NFT Terms, nothing in these NFT Terms are intended to, or shall operate to, give you ownership of any Intellectual Property Rights in, or other rights in respect of the Intellectual Property.

- f. There is no transfer of title or ownership of any Intellectual Property or any Intellectual Property rights upon the sale of the NFT under these NFT Terms.
- g. The NFT may not be used in any way which would:
  - i. modify any Art; or
  - ii. use the Art to market or to sell third-party products or for any other commercial benefit; or
  - iii. use the Art in connection with images of hatred, violence or other inappropriate behaviour be reasonably considered to bring the Intellectual Property Rights owner into disrepute; or
  - iv. seek to trademark or acquire Intellectual Property Rights in the Art; or
  - v. take, appropriate or represent any ownership in the Intellectual Property; or
  - vi. assert any right to or over the Intellectual Property in any manner inconsistent with the rights under these NFT Terms; or
  - vii. take any action which would or might invalidate, challenge, oppose or otherwise put in dispute the owner's title to the Intellectual Property; or be reasonably seen to disparage the Intellectual Property Rights of the owner; or
  - viii. contravene the moral rights of the artist or licensor of the Art; or
  - ix. contravene the Website Terms or these NFT Terms; or
  - x. cause, permit or assist any other person directly or indirectly to do any of the above acts.
- h. For the avoidance of any doubt:
  - i. the restrictions on the Licence survive termination or assignment transfer of the Licence; and
  - ii. the purchase of an NFT does not grant you any ownership or licence for any Intellectual Property Rights over TT or any

- aspect of Art used in our NFTs other than as expressly set out in these NFT Terms; and
- iii. the Licence granted under this clause is limited to the time you Own the NFT and upon your sale of the NFT to another party the Licence is assigned to the purchaser of the NFT and your rights under the Licence cease to have any effect, and you must draw to the other party's attention the contents of these NFT Terms prior to your sale of the NFT;
- iv. the sale of your NFT does not constitute a "commercial use" of your NFT for the purposes of these NFT Terms.

#### 24. Termination

- a. Termination with cause.
- b. These NFT Terms and the Licence may be terminated with immediate effect:
  - i. by us if any of the warranties in clause 26 are breached; or
  - ii. by us if the limitations of the Licence in clause 23.g are breached; or
  - iii. by either party if the other party commits any material breach of its obligations under these Terms and fails to remedy such breach (if capable of remedy) within 30 days of receipt of notice from the non-defaulting party requiring it to do so.
- c. Termination of these Terms does not affect the rights of the parties which have accrued prior to termination.

#### 25. Acknowledgements

You acknowledge and agree that:

- a. we provide NFTs solely on a proprietary basis for use with TT and if we transact with you we do so solely on a bilateral basis;
- b. NFTs are not intended for speculative use, are not sold or represented to be financial product and nothing we publish is in any way financial advice to you or any other person;

- c. NFTs may experience or may have extreme price volatility, including being worthless in the future;
- d. we are not providing and will not provide any fiduciary, advisory, brokerage, exchange or other similar services to you or any other person;
- e. you are solely responsible for any decision to enter into a transaction subject to these NFT Terms, including the evaluation of any and all risks related to any such transaction;
- f. a significant degree of IT sophistication is required to safely deal in and store NFTs of any kind using a Digital Wallet;
- g. we are not a custodian for the purposes of the Corporations Act, and transfers of any NFTs are for transaction purposes only;
- h. all transactions entered into and conducted under these Terms are deemed to have occurred within the jurisdiction of New South Wales, Australia;
- i. we are not responsible for any Loss caused by your failure to act in accordance with our policies, procedures or in accordance with our reasonable directions;

1. you purchase NFTs entirely at your own risk and understanding and we have not made any representations or warranties as to the IT security or ongoing availability of such NFTs or that your access to use your NFTs in TT or in any other way will be uninterrupted, timely or secure at all times;

- j. you understand and acknowledge that your ownership of NFTs remains contingent upon you remaining in control of the seed phrases and private key(s) associated with your Digital Wallet and that we will not store any information in connection with your Digital Wallet beyond that required for the sale of NFTs or the interaction of your Digital Wallet with TT;

- k. we do not and cannot guarantee there will be any use for, or any particular price available for any NFT you purchase from us; and
- l. we do not represent or guarantee any outcomes, or any financial return from your acquisition of any NFT from us, save the ability to use the NFT within TT for such time as we choose to support on and off TT, and such access to TT may be subject to further terms and conditions, including payment of subscription fees.

## 26. Warranties

### a. Our Warranties

We represent and warrant that:

We own, or have the right to use under licence, the Intellectual Property Rights in the NFTs which we sell and are legally entitled to, and are capable of, selling the NFTs offered for sale;

We will give you notice before we discontinue or alter the rights or features of any NFTs which you have purchased, subject to any other terms and conditions applying to TT; and

We will undertake reasonable efforts to deliver any pre-purchased NFTs within the planned time indicated for delivery.

### b. Purchaser warranties

You warrant and assure us that in acquiring an NFT (from us or from a third party or existing NFT holder):

You are sufficiently experienced and educated to make decisions regarding the procurement or purchase of NFTs from us, including sufficient experience in dealing with and storing NFTs using a Digital Wallet;

You have all necessary experience, resources, certificates, licences, permits and approvals to procure or purchase of NFTs applicable in Your Jurisdiction, and that any

transactions under these NFT Terms or in your use of TT will be legal under the applicable laws of Your Jurisdiction;

ii. All information you supply to us is true and accurate as at the time it is given, and that any Digital Wallet address you provide to us has been generated in accordance with best practice security measures and no other party, other than you or your authorised representative, has used, or has access to, the seed phrases, private keys or analogous passwords required to effect transfers from, the Digital Wallet;

iii. As far as you are aware, there are no facts, circumstances or other information which both:

i. you have not fully and fairly disclosed to us in a manner and to an extent that it would impact our ability to make a reasonable assessment of those facts, matters and circumstances prior to entering into a transaction to sell you an NFT; and

ii. is of such nature and materiality that a reasonable person, had it been made aware of, could not reasonably be expected to consider prior to entering into a transaction for the sale of NFTs;

iv. You are not involved in any capacity in any claim, legal action, proceeding, suit, litigation, prosecution, investigation, enquiry, mediation or arbitration (nor which are pending or threatened) concerning NFTs;

v. If we request, you will identify and substantiate the source of funds involved in transactions to acquire NFTs;

vi. No Digital Currency transferred to us as part of a Purchase Price has been derived from any illegal or unlawful activity;

vii. You are the lawful owner of any Digital Wallet nominated for delivery of NFTs and each Digital Wallet is owned and

- operated solely for your benefit, and no person has any right, title or interest in your nominated Digital Wallet; and
- viii. You have had the opportunity to obtain independent legal advice in relation to the terms and effect of these Terms.
- ix. You have not suffered an Insolvency Event.

#### 27. Continuous warranties

You represent and warrant to us that each of the Purchaser Warranties in clause 26.b is true and accurate, and not misleading or deceptive as at the date of these NFT Terms and, except as expressly stated, will be true, accurate and not misleading or deceptive each time an NFT or NFTs are provided to you.

#### 28. Notification

You must disclose to us anything that has or will constitute a material breach of a Purchaser's Warranty or cause a Purchaser's Warranty to be untrue or inaccurate, as soon as practicable after you become aware of it.

#### 29. Mutual warranties

Each party warrants and assures the other party that:

- a. if it is a company, it is duly incorporated and validly exists under the law of its place of incorporation; and
- b. these terms constitute a legal, valid and binding terms enforceable in accordance with its terms by appropriate legal remedy.

#### 30. Consumer Guarantees

- a. Certain legislation, including the Australian Consumer Law (ACL) contained in the Competition and Consumer Act 2010 (Cth and similar consumer protection laws and regulations, may provide you with rights, warranties, guarantees and remedies relating to your purchase of NFTs which cannot be excluded, restricted or modified in these NFT Terms (**Statutory Rights**).
- b. Nothing in these NFT Terms does, or is intended to, exclude any Statutory Rights which you are entitled to.



### 31. Knowledge and awareness

Where a warranty is given 'to the best of a party's knowledge, belief and awareness', or 'as far as the party is aware' or with a similar qualification as to the relevant party's awareness or knowledge, the party giving the warranty will be deemed to know or be aware of a particular fact, matter or circumstance if that party's directors or senior management employees are aware of that fact, matter or circumstance, or would have become aware if they had made reasonable enquiries as at the date of these NFT Terms.

### 32. Indemnity

- a. You hereby indemnify us and our Personnel and will keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Loss or Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, a breach of a Purchaser Warranty without limitation.
- b. In addition, you must indemnify us and our Personnel and keep us and our Personnel indemnified at all times to the fullest extent permitted by law in respect of any Claim which we or our Personnel may suffer, sustain or incur arising from, or connected with, any breach of these NFT Terms, other than a breach of a Purchaser Warranty, or any breach of all applicable laws, reduced to the extent of the Loss in respect of the Claim was caused by the negligent act or omission of us or our Personnel.

### 33. Limitation of liability

#### a. Limitation of liability

In the absence of a material breach of these NFT Terms by us or the gross negligence, fraud or wilful misconduct by us when providing NFTs to you under these NFT Terms, we will not be liable to you on account of anything done, omitted or suffered by us acting in good faith when providing NFTs to

you pursuant to these NFT Terms, including in respect of a Force Majeure Event.

b. Third party services

Subject to clause 36.a.i., we will not be liable for the performance, errors or omissions of unaffiliated, nationally or regionally recognised third parties or decentralised networks such as, by way of example and not limitation: blockchain networks (whether private/permissioned or public) courier companies, national postal services and other delivery, telecommunications and other companies not under our reasonable control, and third parties not under our reasonable control providing services to the blockchain industry generally, such as, by way of example and not limitation, companies and other entities providing processing and payment or transaction services (including “Layer 2” or similar “roll-up” or optimisation services), banking partners, custody services, market making services and/or third party pricing services and decentralised blockchain networks such as, by way of example and not limitation, the blockchain(s) upon which any NFT depends or forks of those blockchain(s).

c. Compliance with laws — No monitoring responsibilities

We will have no liability or responsibility for your compliance with laws or regulations governing the transfer and use of NFTs. Further, you are solely responsible for compliance with all applicable requirements of any laws, rules, and regulations of governmental authorities in Your Jurisdiction. You further acknowledge that neither we nor any of our Personnel is, and will not be, by virtue of providing NFTs to you, an advisor or fiduciary to you.

d. No liability for Consequential Loss

Neither party will be liable to the other for any Loss or Claim in the nature of consequential or indirect loss, including without limitation loss of profits, loss of chance, loss of expectations, or loss or opportunity.

e. Liability Cap

Our total liability to you under any circumstances is limited to

A. the amount for which an NFT was originally sold by us ; or

B. the amount of Commission we received for a Breeding service for NFTs created through Breeding;

and we shall not be liable for any amount above these sums.

## GENERAL CONDITIONS

### 34. Tax

- a. The price for any transaction in TT (including the Purchase Price) will be considered to be inclusive of any applicable Sales Tax.
- b. If any additional Sales Tax is applicable by virtue of any law under Your Jurisdiction, you agree to pay such amount as is payable on behalf of us, and inform us of that payment forthwith.
- c. Any reference to a cost or expense incurred by a party in these Terms excludes any amount of Sales Tax forming part of the relevant cost or expense when incurred by the party for which the party can claim an input tax credit.
- d. Each party is solely responsible for any taxation which arises as a result of dealing in the NFTs, including capital gains or income tax and no party shall have a Claim for any Loss against the other in respect of any taxation amounts however arising.

### 35. Notices

- a. Unless a provision of these Terms expressly state otherwise, a notice, consent, approval, waiver or other communication (notice) in connection with these Terms must be in writing and in English and sent to, in the case of us, our nominated email or via the TT interface, of in the case of you, to your nominated email or published on the TT website with public access to such notice.
- b. Any notice will be deemed to be received within 24 hours of sending the electronic message (unless a rejection message is received) or publication online.
- c. A party must immediately notify the other party in writing of any changes to its contact details.

### 36. Disputes

#### a. Proceedings suspended

You must not begin legal proceedings in connection with a dispute arising out of or in connection with these Terms unless the steps in this clause 36 have been followed. However, this limitation does not apply:

to a party who wants to apply for equitable relief or urgent interlocutory relief; or

to a party who attempts in good faith to comply with clauses b, c and d but cannot do so because the other party does not comply with those clauses.

#### b. Notice of dispute

If a dispute arises out of or in connection with these Terms (including the validity, breach or termination of it), a party may notify the other party to the dispute. The notice must specify the dispute and indicate that the notifying party wants the dispute to be referred to mediation.

#### c. Commencement of mediation

If the dispute is not resolved within 10 Business Days after a notice under clause b has been served (Notice Period), the dispute is by this clause c submitted to mediation.

The mediation must be conducted in New South Wales, Australia in accordance with the mediation guidelines / rules of the Resolution Institute, save any process in these Terms which is inconsistent with those guidelines or rules will take precedence to the extent of any inconsistency.

If the parties have not agreed on the mediator and the mediator's remuneration within **5 Business Days** after the end of the Notice Period:

the mediator is the person appointed by; and  
the remuneration of the mediator is the amount or rate determined by, the President of the Law Society of New South Wales or the President's nominee, acting on the request of any party.

d. If dispute not resolved

If the dispute is not resolved within 1 month after the appointment of the mediator, you may take legal proceedings in connection with the dispute.

e. Confidentiality

Each party must keep confidential, all information relating to the subject matter of a dispute as disclosed during or for the purposes of dispute resolution under this clause 36, unless that party is compelled by an regulatory or government authority, court or tribunal to disclose that information.

37. Governing law and jurisdiction

These Terms are governed by the laws of New South Wales and Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales and the New South Wales division of the Federal Court of New South Wales and the courts of appeal from them.

#### 38.Amendment

We reserve the right to amend these Terms from time to time in our absolute discretion. Amendments will be effective as soon as such changes are notified to you in writing from time to time.

#### 39.Precedence

Where there is inconsistency between the Terms and other content displayed as part of the TT Platform concerning the sale of NFTs, the content of the Terms will prevail to the extent of any inconsistency.

#### 40.Force Majeure

We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstances beyond our reasonable control (including but not limited to epidemics, pandemics, blockchain congestion or attacks, Government sanctions or orders, whether known or unknown at the time the parties enter into these Terms (**Force Majeure Event**)).

#### 41. Waiver

A provision of these Terms or a right created under it may not be waived except in writing signed by the party granting the waiver.

#### 42.Exercise of a right

A party may exercise a right at its discretion and separately or together with another right. If a party exercises a single right or only partially exercises a right, then that party may still exercise that right or any other right later. If a party fails to exercise a right or delays in exercising a right then that party may still exercise that right later.

#### 43.Remedies cumulative

The rights and remedies provided in these Terms are cumulative with and not exclusive of the rights and remedies provided by law independently of these Terms.

#### 44.No merger

The rights and obligations of the parties (including under the warranties) will not merge on completion of any transaction under these Terms. They

will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

#### 45. Assignment

- a. These Terms are for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by these Terms.
- b. To the extent that any party purchases an NFT from you, they are deemed to have taken an assignment of these Terms as published at the time of the purchase and you must provide that party with a link or copy of these Terms.
- c. We may assign our rights under these Terms without your consent at any time by giving you written notice.

#### 46. Severance

If any provision of these Terms are void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of these Terms nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

#### 47. Entire agreement

- a. These Terms constitute the entire agreement of the parties in respect of the subject matter of these Terms and supersedes all prior discussions, representations, undertakings and agreements.
- b. None of our agents or representatives are authorised to make any representations, conditions or agreements not expressed by us in writing nor are we bound by any such statements.

#### 48. Further assurances

Each party must, at its own expense, do everything reasonably necessary

to give effect to these Terms and the transactions contemplated by it, including but not limited to the execution of documents.

#### 49. Relationship

Nothing in these Terms constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably save as expressly stated in these Terms.

#### 50. Knowledge

In these Terms, a reference to the awareness or knowledge by you is a reference to the actual knowledge, information and belief you have as at the date of any transaction taking place pursuant to these Terms.

#### 51. Costs

Each party must pay its own fees, costs and expenses incurred by it incident to or in connection with the negotiation, preparation, execution, delivery and completion of these Terms and the transactions contemplated by these Terms including without limitation its own legal, accounting and corporate advisory fees.

#### 52. Definitions

In these Terms:

**Art** means any art, design, wording and drawings that are associated with an NFT that you Own;

**Breed** means the creation of an NFT racehorse, as set out in clauses 7, 8 and 9;

**Business Day** means any day except a Saturday or a Sunday or other public holiday in New South Wales, Australia;

**Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, however arising whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and



whether involving a third party or a party to these Terms and where and to the extent the context permits, includes all associated Loss;

**Confidential Information** means:

- a. information, in any form, relating to a party's business including but not limited to any products, fees, markets, operations, processes, techniques, technology, forecasts or strategies; and
- b. negotiations in relation to, and the terms of, these Terms,

but not:

- c. information in the public domain other than because of a breach of these Terms; or
- d. information already known to a party prior to the disclosure by the other party;

**Corporations Act** means the Corporations Act 2001 (Cth);

**Digital Currency** means a cryptographically secured virtual currency or virtual asset which we identify as an acceptable means of payment or transacting with us;

**Digital Wallet** means the applicable "Metamask" location, public key or wallet address, account or storage device which we choose to support for the delivery of the NFTs provided by us;

**Digital Wallet** means the applicable "Metamask" location, public key or wallet address, account or storage device which we choose to support for the delivery of the NFTs provided by us;

**Privacy Policy** means the privacy policy on the Website as may be varied

from time to time.

**Purchase Price** means the amount advertised for the purchase (or pre-purchase) of any NFT or bundle containing an NFT, which may be denominated in a Digital Currency;

**Sales Tax** means any form of value added tax including GST as defined in section 195–1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or other similar sales tax;

**Insolvency Event** means the happening of any of the following events in relation to a body corporate:

- e. the body corporate becomes an externally-administered body corporate;
- f. a person is appointed a controller (as defined in section 9 of the Corporations Act), administrator, receiver, provisional liquidator, trustee for creditors in bankruptcy or an analogous appointment is made in respect of the body corporate;
- g. in Australia, the body corporate is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- h. the body corporate suspends payment of its debts, or enters, or takes any step towards entering, a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- i. a secured creditor of the body corporate enforces its security in relation to its debt for an amount in excess of \$50,000; or
- j. the body corporate is, or its directors state that it is, unable to pay its debts as and when they become due and payable;

**Intellectual Property** means any and all intellectual property in the NFT and the Art including all copyright, patents, trade marks, business names, domain names, trading styles, get-up, designs, knowhow, processes, methodologies and all current and future registered and unregistered rights, development or enhancement of the Intellectual Property owned by us or by our licensors.

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- k. patents, inventions, discoveries, designs, copyright, trade marks, trade names, brand names, business names, product names, domain names or rights in designs, art, images, drawings, know how, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- l. any application or right to apply for registration of any of these rights or other rights of a similar nature arising or capable of arising under statute or at common law anywhere in the world;
- m. other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967;
- n. any registration of any of those rights or any registration of any application referred to in paragraph (b.); and
- o. all renewals and extensions of these rights;

**Loss** includes and loss, damage, cost, charge, liability or expense (including legal costs and expenses);

**Marketplace** means a software platform or software (including a Blockchain digital wallet) which permits the transfer, purchase or sale of an NFT, provided that the Marketplace at all times cryptographically verifies the NFT owner's right to Own the NFT.

**NFT** means a non-fungible token issued by TT for use in TT.

**NFT Terms** mean the terms and conditions of these Terms that specifically relate to the purchase and ownership of NFTs in particular clauses 20–33.

**Own** means, with respect to an NFT, any NFT we have issued where proof of ownership is recorded on a blockchain system and you control the private key associated with a Digital Wallet to which the NFT is associated or located;

**Personnel** means any employee, contractor, subcontractor, agent, partner, shareholder, ultimate beneficial owner, director or officer of a party;

**Procure** means to obtain, and includes to Breed;

**Purchaser Warranties** means the warranties set out in clause 26.(b.).

**Your Jurisdiction** means the country or state where you are ordinarily resident or from which you enter into any agreement with us.

**Website** means <https://thoroughbredtokens.com/> and/or any other website TT may operate from time to time.

**Website Terms** means the terms and conditions on the Website (if any)

as may be varied from time to time

**TT** means the THOROUGHBRED TOKENS online game and associated software interfaces for that game, including the home website for THOROUGHBRED TOKENS, elements of which are located on the Ethereum Blockchain.