

## **TERMS & CONDITIONS of SERVICE** **donnmcclean.com - 2008**

Conditions for provision of donnmcclean.com Subscription Service.

By subscribing to this Service you are indicating that you accept these terms and conditions of use and you consent to be bound by and to become a party to them and to the privacy policy (as each may be amended from time to time) which govern your relationship with us.

In consideration of our providing the donnmcclean.com Services to you, you agree to all of the terms and conditions contained in this agreement.

### **1 Definitions and Interpretation**

1.1 In these terms and conditions the following words or expressions shall have the following meanings attributed to them unless there is something in the subject or context inconsistent therewith and save to the extent otherwise specified:-

"Conditions" means the Standard Terms and Conditions set out in this document and governing the provision of donnmcclean.com's Service to Subscribers.

"Contract" means the contract for the provision of donnmcclean.com's Service.

"donnmcclean.com" is the website of Donn McClean Racing which is the trading name of Donn McClean Limited whose registered office is 10 Lad Lane, Lower Baggot Street, Dublin 2 (Registered in Ireland No. 412909)

"Service(s)" means, the provision of horse racing "Selections" information and tips via email, internet, SMS text message or any other such means of delivery.

"Service Commencement" means the date and time donnmcclean.com advises the Subscriber that the Services are available (by means of the issue of the Subscriber email).

"Subscriber" means a person at whose application donnmcclean.com provides Services under this Contract and by whom the applicable charges are payable.

"Subscription Period" means the period of weeks, months, year, or such other period as may be quoted by donnmcclean.com and accepted by the Member at the point of subscribing for the Service and receiving and utilising the email Service.

1.2 The Contract governs the provision of donnmcclean.com's Service to the Subscriber to the exclusion of all other written or verbal representations, statements, understandings, negotiations, proposals or agreements.

## **2 Duration**

2.1 This Contract shall come into effect on the Service commencement date and shall continue thereafter for the subscription period unless earlier terminated pursuant to Condition [7] (Termination).

## **3 Provision of Donnmcclean.com Service**

3.1 donnmcclean.com shall provide the Service to the Subscriber throughout the subscription period. donnmcclean.com will use all reasonable endeavours to maintain the Service but Subscribers will not be eligible for any compensation because they cannot use the Service or because of a failure, suspension or withdrawal of all or any part of the Service. donnmcclean.com reserves the right to suspend or cancel the Service at its sole discretion in the event that a Subscriber does not fulfil his obligations under this agreement.

3.2 Selections are provided by way of an email Service at a fixed time of day. donnmcclean.com will exercise all reasonable care and skill to provide Subscribers with a quality Service but in subscribing to the Service, members accept and acknowledge that Selections cannot be guaranteed and that members subscribe entirely at their own risk with no refund being payable.

3.3 Recognising the time sensitive nature of selections, donnmcclean.com will use all reasonable endeavours to enable members to place a bet at the most advantageous price; nonetheless donnmcclean.com shall not be held responsible if the price of the selection falls due to heavy backing.

## **4 Charges for Service**

4.1 As specified at time of subscription and pursuant to current charges displayed at any given time.

## **5 Subscribers' Use of the Service**

5.1 A Subscriber will be entitled to at least one email per week (via email or internet, combination of both, or via any other means provided by the given Service)

5.2 Subscribers acknowledge and agree that it is not in the interests of Subscribers that selections should become available to any person(s) who has not subscribed to the Service as this could have a detrimental effect on the price available. Accordingly:-

5.2.1 Subscribers must not provide or otherwise make available any selection(s) to non member third parties;

5.2.2 Subscribers may not allow other persons to use such Subscriber's identity.

5.3 donnmcclean.com attaches the utmost importance to the protection and enforcement of the legal rights to which donnmcclean.com is entitled as regards the confidentiality, copyright and other proprietary

rights comprised within or otherwise arising in the course of the provision of the Service and selections. Accordingly it is a fundamental condition of receiving the Service (the breach of which will entitle donnmcclean.com to take the steps referred to at paragraph [7]), that Subscribers acknowledge and agree:-

5.3.1 The Service and selections are made available for use solely by each individual Subscriber alone in placing bets;

5.3.2 The Subscriber shall not do nor permit any other person to do any act which would infringe any copyright in the selections or other information obtained through accessing the Service or the use of the Subscriber's Identity; more particularly no part of such Service may be copied or incorporated into any other work or materials or resold;

5.3.3 Subscribers shall not retain any part of the Service or any selection(s) or information for re-use in any computer system or database.

5.4 Any failure by the Subscriber to comply with the provisions of this Condition shall be a fundamental breach of the contract entitling donnmcclean.com to:-

5.4.1 Terminate the contract (as set out in Clause 7 Termination) and the provision of the Service(s) forthwith (without notice); and without recompense

5.4.2 Forthwith seek to recover all and any loss or damage which donnmcclean.com may have sustained as a result of such failure or breach by the Subscriber or any person to whom selections or other information forming part of the Service, may have been passed by the Subscriber in breach of the contract.

5.5 The Subscriber shall indemnify donnmcclean.com in full against all losses, costs, damages, charges, expenses and other liabilities incurred by or awarded against donnmcclean.com as a result of or in connection with any breach of this Condition by the Subscriber.

## **6 Limitation of Liability**

6.1 Notwithstanding that donnmcclean.com will exercise reasonable skill and care donnmcclean.com has no duty to the Subscriber and no contractual situation shall exist between donnmcclean.com and the Subscriber and donnmcclean.com will have no liability in breach contract, breach of duty and/or breach of statutory duty or otherwise.

6.2 donnmcclean.com shall not be liable to the Subscriber for any losses incurred as a result of subscribing to the Services including loss of profits, business or anticipated savings or profits or for any direct or indirect, consequential or non-consequential losses howsoever occurring of whatsoever nature.

6.3 donnmcclean.com nor any of its Data Providers nor affiliates have any liability (whether in contract or tort) for any losses, costs or

damages resulting from or related to use of or inability to use any Information contained in the Services or the provision of the Services to the fullest extent to which such liability may be excluded or avoided by law and in no event shall donnmcclean.com be liable to the Subscriber for lost profits or for indirect, incidental, special, punitive or consequential damages arising out of or in relation to the Services or the provision of Information.

## **7 Termination**

7.1 The Subscriber may terminate this agreement by giving donnmcclean.com not less than 30 days notice and donnmcclean.com may do the same. Termination by the Subscriber is limited to their liability for any future payments only. It does not entitle the Subscriber to any refund, in full or in part, of fees already paid. However, donnmcclean.com will treat each request for a refund in the event of cancellation on its merits.

7.2 The following will give rise to termination:

7.2.1 If the Subscriber fails to pay for the Service or defaults in payment thereof or if donnmcclean.com fails to receive payment from the Subscriber for any reason whatsoever.

7.2.2 If the Subscriber is in breach of any of the terms of this agreement, or any generally accepted guidelines on Internet usage and etiquette (such as restrictions on mass mailings and mass advertisements, pirating or copying software, mail bombing or attempts to violate security).

7.2.3 If the Subscriber does or fails to do any act which jeopardises the continuance of the Services.

7.2.4 If the Subscriber becomes insolvent or is sequestrated or should a liquidator or receiver be appointed to all or any part of the assets of the Subscriber.

7.2.5 If the Subscriber makes an arrangement with creditors or a receiver or administrator is appointed over the Subscriber's assets.

7.2.6 If the Subscriber goes into liquidation, then donnmcclean.com may withdraw the Services immediately and without notice or compensation. donnmcclean.com will then be under no further obligation to the Subscriber.

7.3 Without prejudice to its other rights and remedies, donnmcclean.com may terminate the contract forthwith and without notice:

7.3.1 In the circumstances detailed at condition [5] (Breach of Copyright etc.);

7.3.2 If the Subscriber fails to pay the subscription charges or is otherwise in material breach of this contract and in the case of a

remedial breach fails to remedy the breach within twenty four hours of receiving notice to that effect from donnmcclean.com;

- 7.3.3 If the Subscriber publishes, posts, voices, or otherwise makes available any derogatory, defamatory or malicious statement regarding, or directed at, the company and/or its Service providers. Or if the Subscriber is in breach of any generally accepted guidelines on Internet usage and etiquette (such as restrictions on mass mailings and mass advertisements, pirating or copying software, mail bombing or attempts to violate security).

## **8 Availability and Accuracy of Information**

- 8.1 donnmcclean.com reserves the right to change the content, presentation, performance, user facilities and availability of any part of the Services at its sole discretion. Neither donnmcclean.com nor any of its Data Providers or affiliates makes any warranties, expressed or implied, as to the accuracy, adequacy, quality or fitness for any particular purpose of the information or Services for a particular purpose or use, and all such warranties are expressly excluded to the fullest extent that such warranties may be excluded by law. You are responsible for validating the integrity of any information obtained.
- 8.2 No guarantees are made by donnmcclean.com as to the profitability of the information provided and any declaration of past performance should be used as a guide only and is not indicative of future performance. You should never gamble with more money than you can afford to lose.
- 8.3 Services provided by donnmcclean.com and its clients are regulated by Irish laws and regulations. Users of any of the Services provided by donnmcclean.com and its clients are responsible for ensuring that they are legally allowed to do so in relation to laws governing the use of such Services depending on their country of residence.

## **9 Miscellaneous and General**

- 9.1 This contract shall supersede all and any previous contracts with the Subscriber for the Services.
- 9.2 Failure by either party to exercise or enforce any right conferred by this contract shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise or enforcement thereof or of any other right on any subsequent occasion.
- 9.3 donnmcclean.com shall not be liable for any loss or damage whatsoever caused by any failure to perform any obligations under this contract if such failure is caused by attributable to events, acts or omissions beyond its control including the acts or omissions of other telecommunication providers.
- 9.4 This contract shall be governed in all respects by Irish law and be subject to the jurisdiction of the Irish courts.

## 10 **Hypertext Links**

10.1 donnmcclean.com provides hypertext links to sites on the Internet which are operated by other people. Using an external hypertext link means that you may be leaving the donnmcclean.com website and donnmcclean.com therefore takes no responsibility for and gives no warranties, guarantees or representations in respect of linked sites.

10.2 donnmcclean.com can accept no legal liability in respect of any inaccuracy or incompleteness in the information on this site.

## 11 **Payment**

11.1 Although some of the donnmcclean.com Services are available for free, you agree to pay any fee for any of the Services that you use which are not free of charge. donnmcclean.com will notify you in all cases if the Service you are trying to access is not free and give you the opportunity to choose to pay for such a Service. Fees are payable in advance if it is a subscription Service. donnmcclean.com will send you an e-mail or write to you one week before the expiry date of your subscription, where that subscription is for a period longer than 30 days.

## 12 **Indemnity**

12.1 You irrevocably indemnify donnmcclean.com and its Data Providers and affiliates from and against any and all losses, damages and costs suffered or incurred by donnmcclean.com, any Data Providers or affiliates of whatsoever nature arising out of or in connection with your use, provision or distribution of Information or any part or the Services or any part or otherwise howsoever arising in relation to any breach of this Agreement by you.

12.2 You agree to indemnify and hold donnmcclean.com and its subsidiaries, affiliates, officers, directors, agents and employees harmless from any liabilities, claims, losses or demands made by any third party arising out of your breach of this agreement or out of your violation of any law or the rights of any third party.

12.3 You acknowledge that donnmcclean.com and its subsidiaries and affiliates will hold information with respect to your identity, including, but not limited to, your name and address. You agree that we rely on this information in entering into this agreement with you and you agree to hold donnmcclean.com harmless against any falsehood or inaccuracy contained in the information you provide.

12.4 You agree to indemnify donnmcclean.com for any losses, costs or expenses which may be incurred by us as a result of any errors contained in instructions submitted by you or any unauthorised or unlawful use of the donnmcclean.com Service.