

TINPOT TRUST TTM3202 T/A GAVIN SMITH RACING STABLES

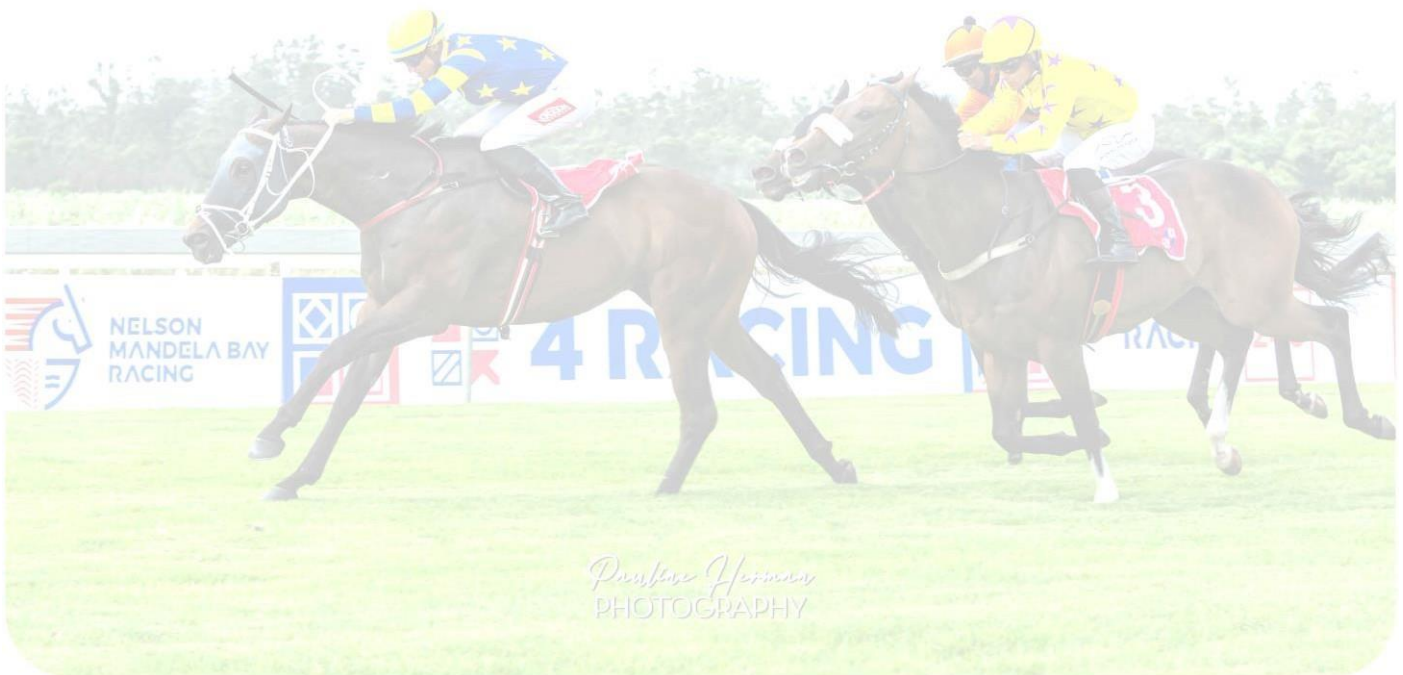
Yard 8, Fairview Racecourse, Draaifontein Road, Greenbushes, Gqeberha, 6001
Vat Registration Number: **4400172534**



Gavin - Yard:	082 565 2852 / tinpot2@mweb.co.za
Dean - Accounts:	084 711 4336 / deangavinsmith@icloud.com
Bonita - Admin:	082 600 1771 / tinpot3@mweb.co.za
Fax to email:	086 584 4499

GAVIN SMITH RACING

STANDARD TERMS & CONDITIONS OF TRADE



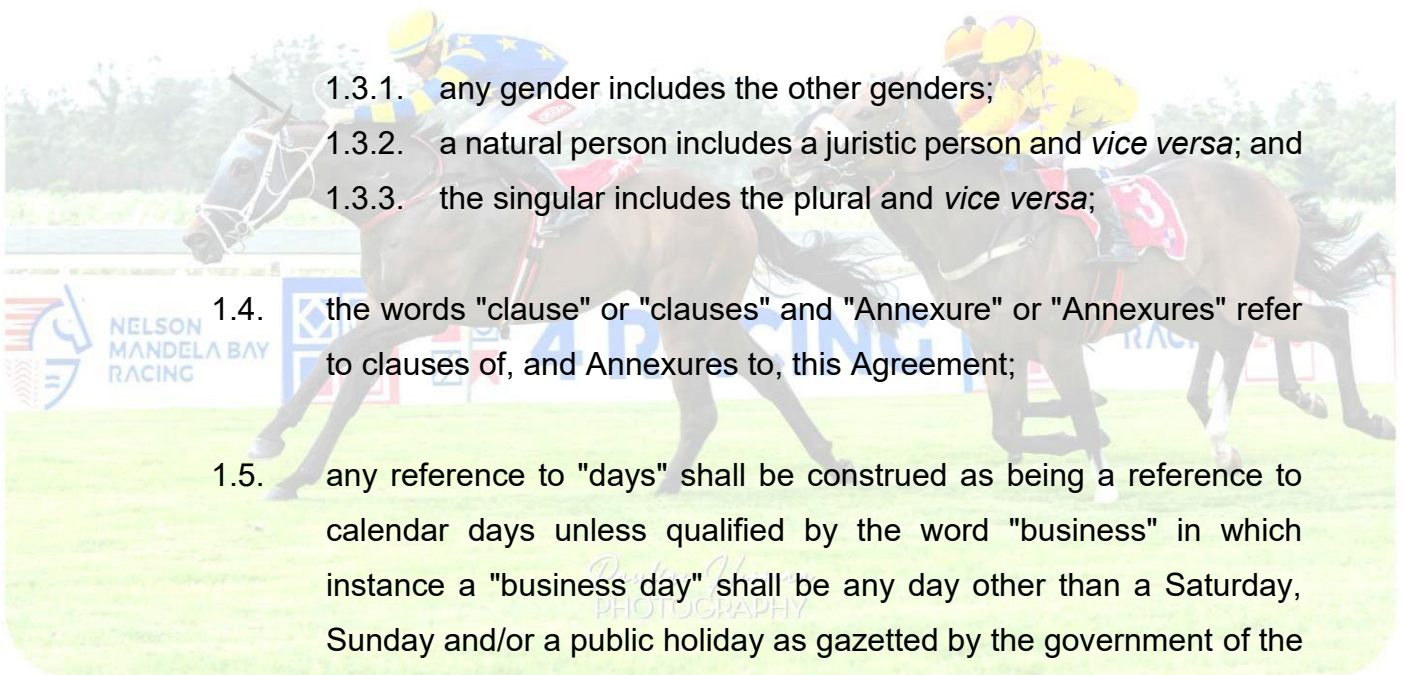
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1. INTERPRETATION

In this Agreement –

- 1.1. clause headings are for convenience only and are not to be used in the interpretation of the provisions herein contained;
- 1.2. the *contra proferentem* rule of interpretation which dictates that in the event of any ambiguity in the wording of the contract rendering two or more plausible meanings to the contract, that the meaning to be assigned will be the meaning least favourable to the party responsible for the drafting of the contract, is expressly excluded from application in the interpretation of any provisions of this Agreement; and
- 1.3. unless the context indicates a contrary intention, an expression which denotes –
 - 1.3.1. any gender includes the other genders;
 - 1.3.2. a natural person includes a juristic person and *vice versa*; and
 - 1.3.3. the singular includes the plural and *vice versa*;
- 1.4. the words "clause" or "clauses" and "Annexure" or "Annexures" refer to clauses of, and Annexures to, this Agreement;
- 1.5. any reference to "days" shall be construed as being a reference to calendar days unless qualified by the word "business" in which instance a "business day" shall be any day other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.6. any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day, and any reference to time shall be a reference to South African standard time;



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- 1.7. the words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation";
- 1.8. the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it. The application of the *eiusdem generis* rule is expressly excluded from application in the interpretation of any provision of this Agreement;
- 1.9. any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 2 or elsewhere within this Agreement or any Annexure thereto or in the Short Form Ownership Agreement, shall be given effect to as if it were a substantive provision within the body of this Agreement or any Annexure or Short Form Ownership Agreement concerned;
- 1.10. terms other than those defined within this Agreement will be given their plain English meaning;
- 1.11. defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their ordinary meaning as qualified by clause 1.10 above and shall, unless the context otherwise indicates, include the term as defined;
- 1.12. a reference to any statutory enactment shall be construed as a reference to that South African enactment as at the date of signature of this Agreement, as amended or substituted from time to time and includes all regulations to such enactment;



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1.13. unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day

or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day; and

1.14. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2. DEFINITIONS

2.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the following meanings:

2.1.1. **"Agreement"** means the entirety of the contractual relationship between the Trainers and the Owner, encompassing the Ownership Agreement, inclusive of the Short Form Ownership Agreement and these Terms and Conditions, and all related transaction documents including but not limited to quotations, purchase orders, invoices, and delivery notes, along with any written instructions and mutually agreed upon written amendments;

2.1.2. **"Agreement Term"** means the period of the agreement commencing with effect from the Effective Date and ending on the Termination Date (whether by mutual cancellation or breach of the contract by the Owner that has not been remedied);

2.1.3. **"the Carrier"** means any third party contracted to deliver the Horse to any location;

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2.1.4. **“Confidential Information”** means any information including technical, financial or commercial information pertaining to the Trainers and the Horse, including all information which could reasonably be considered to be proprietary and/or

confidential and which the Trainers seek to protect against unauthorised disclosure, including but not limited to the use and/or training, and/or conditioning of the Horse;

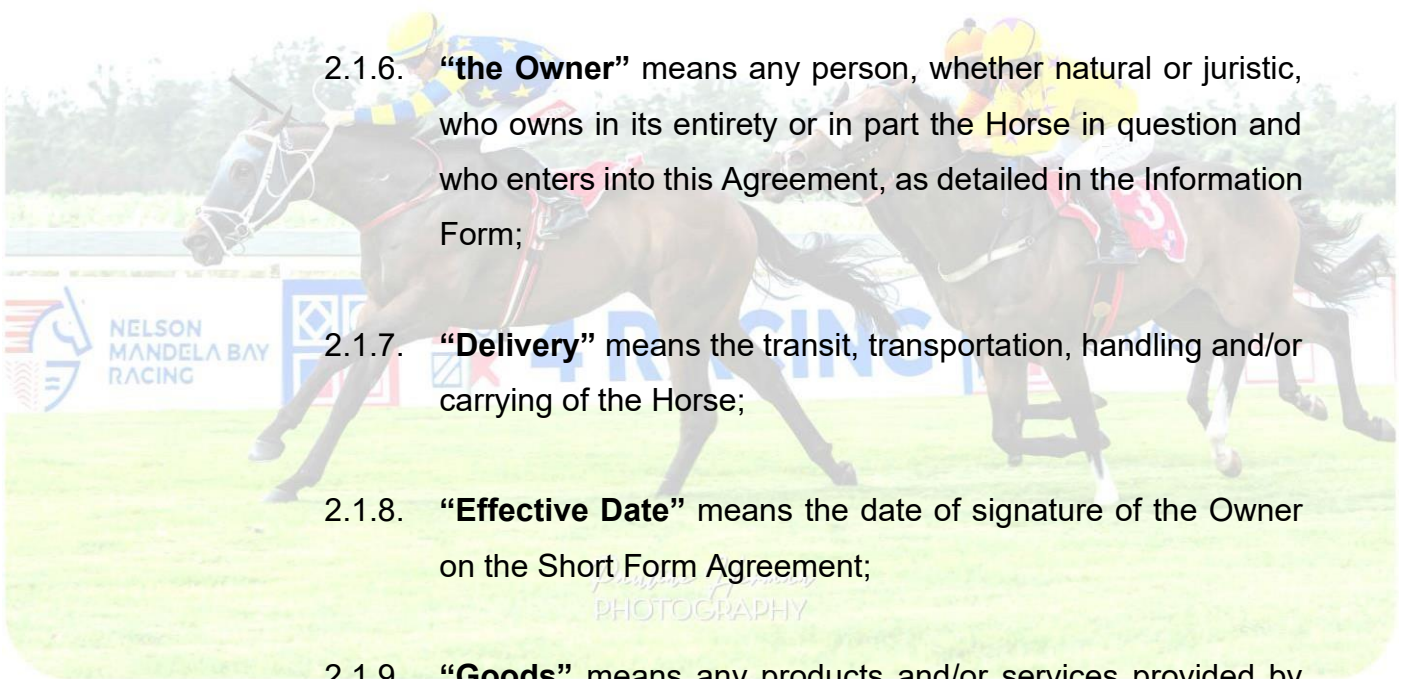
2.1.5. **“the Horse”** means the equine domesticated animal known as a horse, as defined in terms of the Animal Protection Act, and registered with the National Horseracing Authority, including colts, stallions, geldings, rigs, fillies and/or mares, owned by the Owner(s) as evidenced by the registration number provided by the Owner on the Information Form and which forms the subject of this Agreement;

2.1.6. **“the Owner”** means any person, whether natural or juristic, who owns in its entirety or in part the Horse in question and who enters into this Agreement, as detailed in the Information Form;

2.1.7. **“Delivery”** means the transit, transportation, handling and/or carrying of the Horse;

2.1.8. **“Effective Date”** means the date of signature of the Owner on the Short Form Agreement;

2.1.9. **“Goods”** means any products and/or services provided by the Trainers and more specifically described on the Trainers' forms, price lists, quotations, orders, delivery notes and/or invoices and shall include whatever services and/or products, even of an ancillary nature, rendered and/or provided by the



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Trainers to the Owner from time to time at the Owner's special instance and request, whether written or oral;

2.1.10. **"handling of the Horse and/or Goods"** means the Horse and/or Goods being handled, stabled, warehoused, held, controlled, loaded or unloaded, carried or otherwise possessed by the Trainers for any purpose whatsoever;

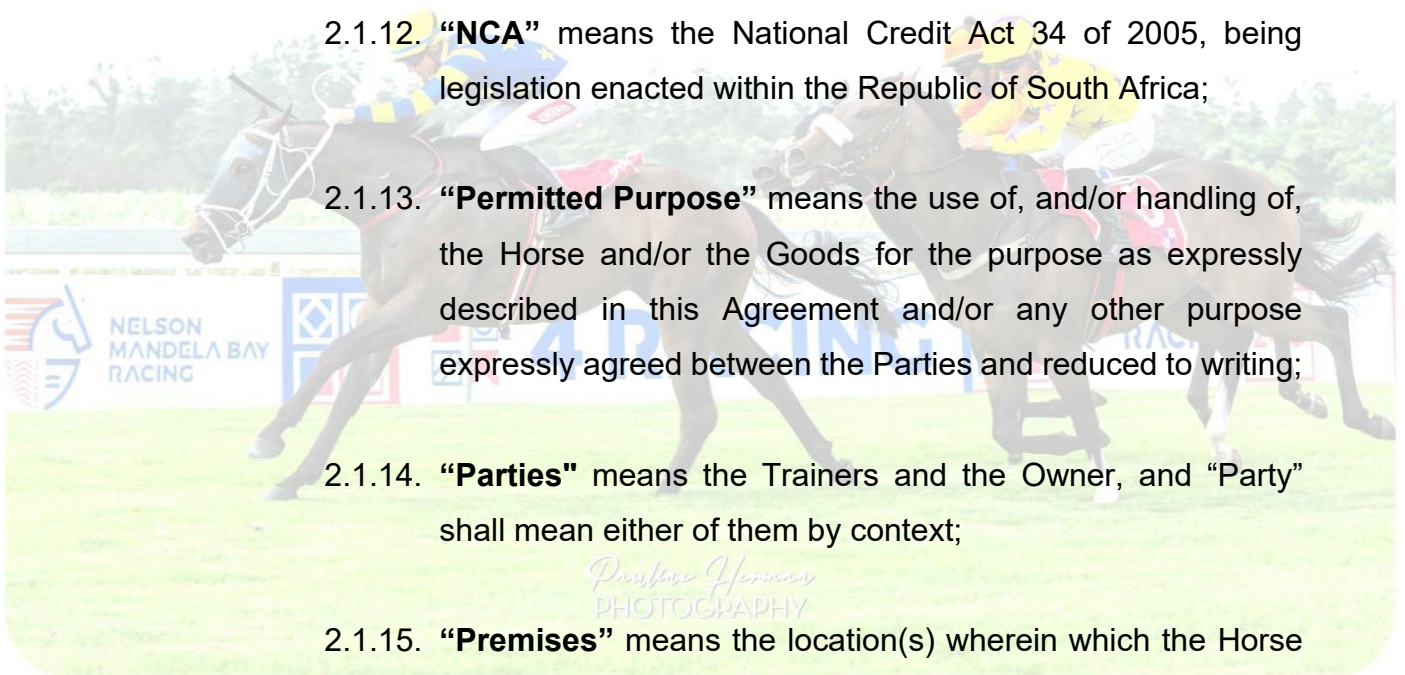
2.1.11. **"the Trainers"** means the Trustees of Tin Pot Trust t/a Gavin Smith Racing, bearing Trust number TM3202, duly registered in terms of the Trust Laws of South Africa with its principal place of business and registered address situated at Fairview Racecourse, Draaifontein Road, Uitenhage Farms, Port Elizabeth, 6001 or any of its subsidiary, associated or affiliated companies, their successors in title and assigns;

2.1.12. **"NCA"** means the National Credit Act 34 of 2005, being legislation enacted within the Republic of South Africa;

2.1.13. **"Permitted Purpose"** means the use of, and/or handling of, the Horse and/or the Goods for the purpose as expressly described in this Agreement and/or any other purpose expressly agreed between the Parties and reduced to writing;

2.1.14. **"Parties"** means the Trainers and the Owner, and "Party" shall mean either of them by context;

2.1.15. **"Premises"** means the location(s) wherein which the Horse and/or Goods may be stabled and/or stored from time to time, and which may include any large containers used in the transportation thereof;



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2.1.16. **“Staff”** means trustees, employees, agents, contractors and sub-contractors, representatives, directors and/or members employed, commissioned and/or appointed by either of the Parties to perform and execute their obligations under and in terms of this Agreement;

2.1.17. **“Services”** means the training, upkeep, racing and healthcare of the Horse;

2.1.18. **“Training and/or Conditioning”** means the same as “Services” above and is interchangeable in this Agreement;

2.1.19. **“Termination Date”** means the date upon which this Agreement is terminated, whether by mutual cancellation, notice of cancellation by either Party or whether the Agreement has been cancelled in terms of the Breach Clause of these Standard Terms & Conditions of Trade;

2.1.20. **“Territory”** means the Republic of South Africa;

2.1.21. **“VAT”** means Value Added Tax.

3. THE AGREEMENT

3.1 Upon signature of the Short Form Ownership Agreement, the Trainers grant the Owner a training facility, governed by the terms of this Agreement, effective for the Agreement Term. This facility pertains to the training of the Horse by the Trainers.

3.3 The Owner may place orders for the training of the Horse under this facility. All orders must be submitted in writing to the Trainers. The Trainers reserve the discretion to accept or refuse such training as may be requested.

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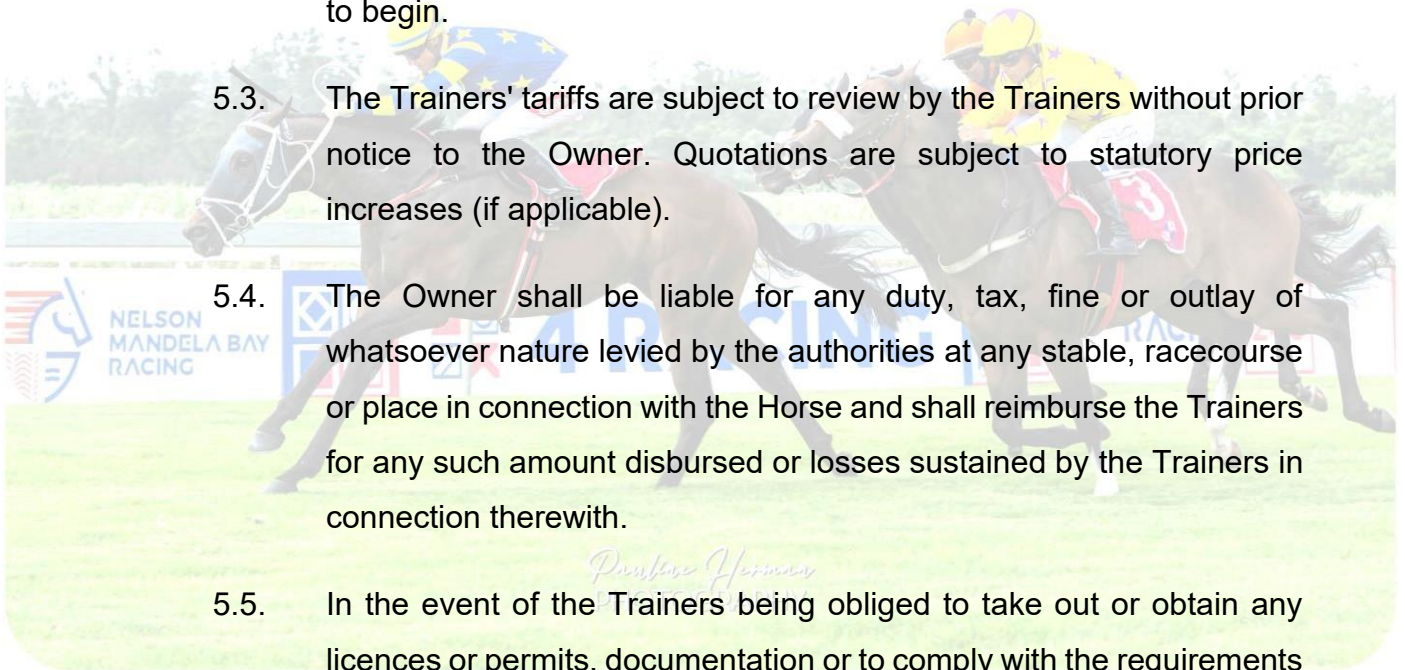
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4. DURATION

- 4.1. The Agreement shall commence on the Effective Date.
- 4.2. This Agreement shall run indefinitely until and/or unless terminated or cancelled by the Trainers during such period in accordance with these Terms and Conditions referred to herein.

5. PRICE AND QUOTATIONS

- 5.1. In the absence of any written agreement to the contrary, the rate(s) & price(s) payable to the Trainers by the Owner will be in accordance with the standard tariffs or quotation of the Trainers.
- 5.2. A cancellation fee will be charged if the order placed by the Owner is cancelled the week before the training and/or services are scheduled to begin.
- 5.3. The Trainers' tariffs are subject to review by the Trainers without prior notice to the Owner. Quotations are subject to statutory price increases (if applicable).
- 5.4. The Owner shall be liable for any duty, tax, fine or outlay of whatsoever nature levied by the authorities at any stable, racecourse or place in connection with the Horse and shall reimburse the Trainers for any such amount disbursed or losses sustained by the Trainers in connection therewith.
- 5.5. In the event of the Trainers being obliged to take out or obtain any licences or permits, documentation or to comply with the requirements of any lawful authority, the Trainers shall be entitled to make an additional charge to cover any expenses resulting therefrom not already included in the Trainers' standard tariffs. Delays as a result of non-compliance by the Owner will be for the account of the Owner.



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- 5.6. In the event of the Trainers being obliged to cause a deviation from the training programme selected by it for the training and/or conditioning of the Horse for any reason whatsoever, including but not limited to adverse weather conditions, veterinarian conditions or the instructions of any competent authority, the Trainers shall be entitled to charge an additional remuneration as a result of the additional training required.

6. PAYMENT OF INVOICES

- 6.1. The Owner agrees to pay all invoices within 30 (thirty) days of the invoice date, unless otherwise agreed in writing by both parties. This condition applies uniformly throughout the Short Form Agreement as well as these Terms & Conditions.
- 6.2. The 30-day payment period shall commence from the date of issuance of the invoice. All invoices will be issued upon the 25th of the same month in which the Agreement is first entered into.
- 6.3. The Trainers shall in their absolute discretion be entitled to appropriate all payments made by the Owner towards the payment of any debt or obligation of whatsoever nature owing by the Owner to the Trainers, irrespective of when such debt or obligation arose.

7. DEFAULT PROVISIONS

- 7.1. If any amount in respect of the services rendered by the Trainers by the Owner remains unpaid for a period longer than 30 (thirty) days period from date of the Trainers' invoice, then the full amount then owed by the Owner to the Trainers shall immediately become due, owing and payable, notwithstanding that any part of such amount may otherwise not then have been due for payment, and the Owner shall thereafter be liable to pay interest as regulated by the Rules of Court after legal action has been instituted.

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7.2. The Trainers reserve the right to cancel/suspend services by the Trainers, and to exercise its rights in terms of this Clause 7 if any amount due by the Owner remains unpaid for longer than a period of 30 (thirty) days as indicated directly above.

7.3. In the event that the Owner should breach any provision of this Agreement including but not limited to failing to make payment for any services rendered, notwithstanding the reason therefore, the Owner consents to:-

7.3.1. the jurisdiction of the Magistrates Court in terms of Section 45 of the Magistrates Court Act, notwithstanding that the amount due, owing and payable may exceed the jurisdictional limit without in any way restricting or inhibiting the rights of the Trainers to approach any High Court of competent jurisdiction;

7.3.2. a certificate signed by a Trustee of the Trainers, whose designation it shall not be necessary to prove, shall constitute *prima facie* proof of the Owner's indebtedness to the Trainers and *prima facie* proof of the services rendered sufficient for the purposes of entering judgment against the Owner;

7.3.3. payment of all costs and expenses incurred by the Trainers in enforcing the provisions of this Agreement on the scale as between attorney and client, including collection charges, tracing agent's fees and counsel's fees.

7.4. If any amount due, owing and payable is not settled in full on demand, the Trainers shall be entitled to, without prejudice to any of its rights:

7.4.1. claim specific performance of any obligation then due by the Owner to the Trainers; and/or

7.4.2. cancel any and/or all orders then pending; and/or

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7.4.3. Take and/or keep possession of the Horse in lien for such services as yet unpaid for; and/or

7.4.4. claim damages.

8. THE TRAINERS' LIEN

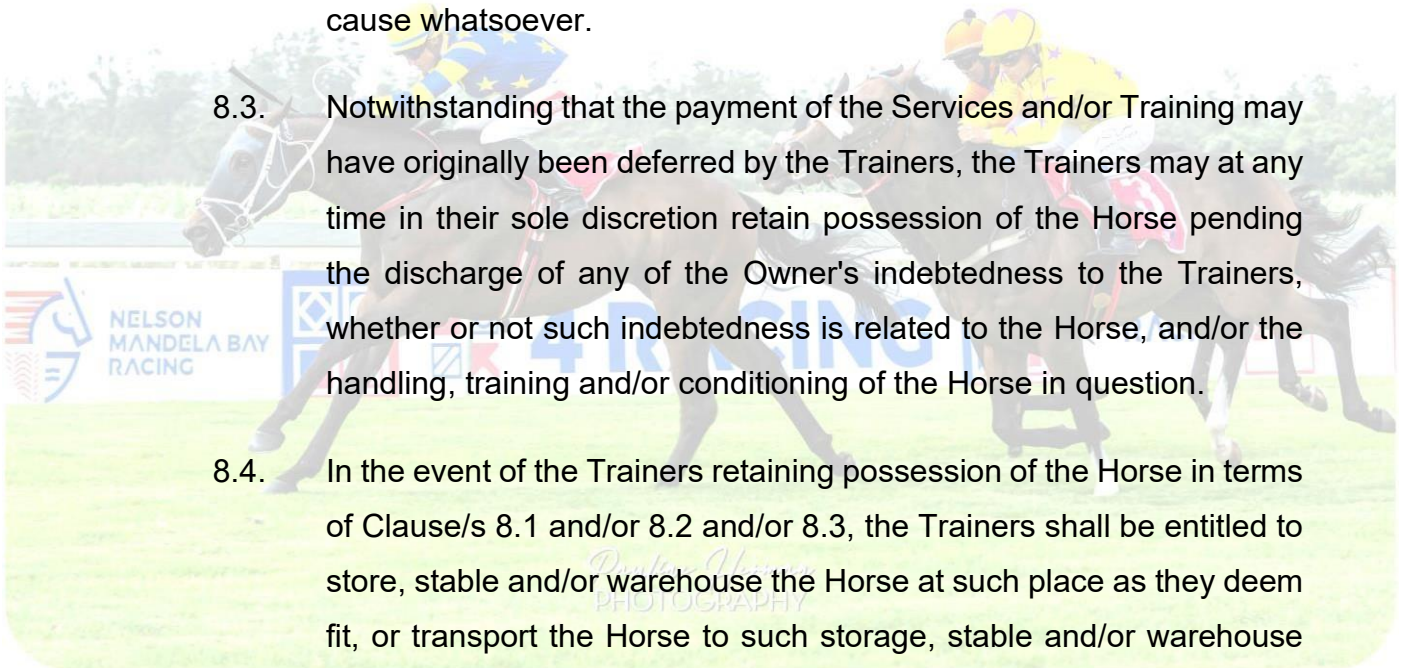
8.1. As security for all monies (whether past or present) owing for the services rendered by the Trainers to the Owner, or in terms of the handling thereof, whether forming the subject matter of this Agreement or otherwise, the Trainers shall have a lien over the Horse, documents and licenses relating to the Horse, during the training and/or conditioning thereof.

8.2. In addition, the Trainers shall be entitled to hold the Horse as security for any other monies which may be owing by the Owner to it from any cause whatsoever.

8.3. Notwithstanding that the payment of the Services and/or Training may have originally been deferred by the Trainers, the Trainers may at any time in their sole discretion retain possession of the Horse pending the discharge of any of the Owner's indebtedness to the Trainers, whether or not such indebtedness is related to the Horse, and/or the handling, training and/or conditioning of the Horse in question.

8.4. In the event of the Trainers retaining possession of the Horse in terms of Clause/s 8.1 and/or 8.2 and/or 8.3, the Trainers shall be entitled to store, stable and/or warehouse the Horse at such place as they deem fit, or transport the Horse to such storage, stable and/or warehouse they deem fit, at the Owner's expense.

8.5. The Trainers shall not be liable for any loss, damage and/or deterioration of the Horse attributable to the implementation of this Clause.

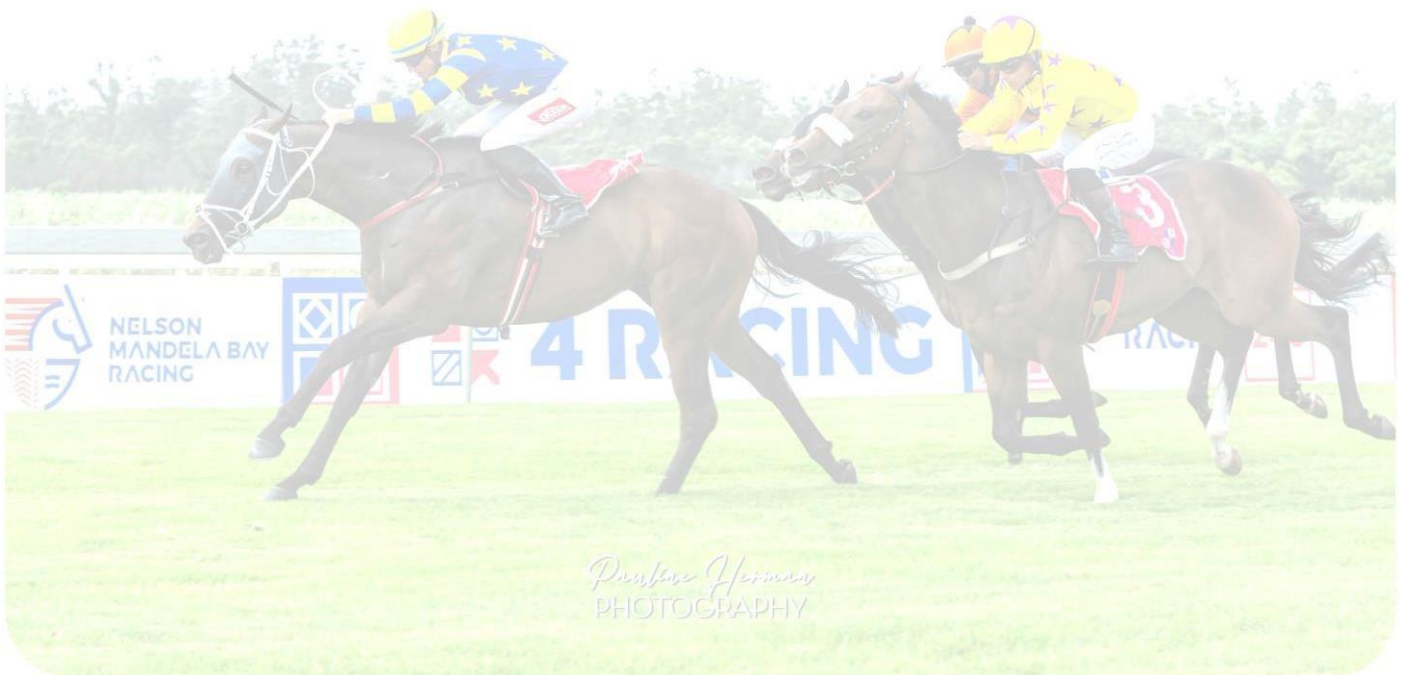


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- 8.6. The Trainers' rights under this Clause are not exhaustive and are in addition to any other rights which it may have against the Owner.



9. OWNER'S WARRANTIES AND UNDERTAKINGS

9.1. Accuracy of Information and Indemnification:

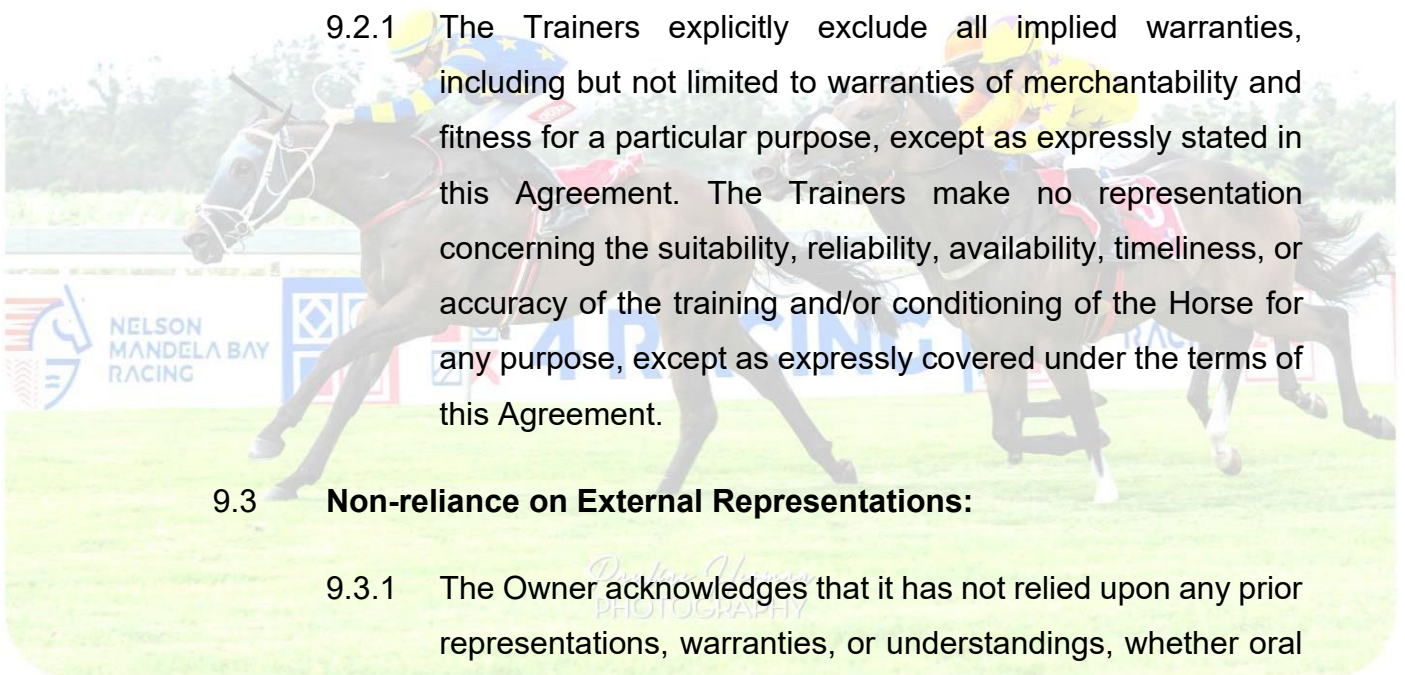
9.1.1 The Owner warrants that all descriptions, values, particulars, and documentation provided to the Trainers for any and all related regulatory purposes are complete, accurate, and truthful. The Owner further indemnifies and holds the Trainers harmless from all costs, expenses, claims, fines, or penalties that may arise due to any inaccuracy, omission, or misstatement, regardless of whether such inaccuracy or omission occurs without negligence on the part of either the Trainers or the Owner.

9.2 Exclusion of Implied Warranties:

9.2.1 The Trainers explicitly exclude all implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose, except as expressly stated in this Agreement. The Trainers make no representation concerning the suitability, reliability, availability, timeliness, or accuracy of the training and/or conditioning of the Horse for any purpose, except as expressly covered under the terms of this Agreement.

9.3 Non-reliance on External Representations:

9.3.1 The Owner acknowledges that it has not relied upon any prior representations, warranties, or understandings, whether oral or written, concerning the specific terms of this Agreement and the goods provided under it, other than those incorporated into this written Agreement.



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9.4 Regulatory Compliance and Safety Standards:

9.4.1 The Owner confirms that the Horse that forms the subject of this Agreement is and will continue to be fully in compliance with all applicable regulatory standards enforced by relevant authorities. The Owner commits to conducting regular audits and inspections to ensure ongoing compliance and will immediately rectify any non-compliance identified during such reviews.

9.5 The Trainers' Rights Upon Owner's Default or Insolvency:

9.5.1 In the event of any default by the Owner under the terms of this Agreement, or should the Owner become insolvent, enter into liquidation or judicial management, or commit an act of insolvency as defined by applicable laws, the Trainers shall have the immediate right to terminate this Agreement and to repossess the Horse in respect of any services rendered which have not been fully paid for. This right is exercisable without the necessity for any judicial proceeding, and the Trainers retain the right to pursue any additional remedies available under the law.

9.6 Comprehensive Limitation of Liability:

9.6.1 The Trainers shall not be liable for any indirect, special, incidental, consequential, or punitive damages, including but not limited to loss of profits, revenue, data, or use, incurred by the Owner or any third party, whether in an action in contract or tort/delict, even if advised of the possibility of such damages. The Trainers' liability under this Agreement shall be limited to the total amount paid by the Owner for the services rendered under this Agreement.

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9.7 Indemnification Against Third-Party Claims:

9.7.1 The Owner agrees to indemnify, defend, and hold harmless the Trainers and its officers, directors, employees, agents, and subcontractors from any claims, demands, losses, costs, expenses, liabilities, or damages, including attorneys' fees, arising out of or related to any third-party claims concerning defects in the services rendered, whether latent or apparent, or the Owner's use of the Horse after such training and/or conditioning has taken place.

9.8 Enhanced Owner Responsibilities for Information Provision and Handling of the Horse:

9.8.1 The Owner is responsible for ensuring that all information provided to the Trainers is comprehensive, accurate, and timely. The Owner must ensure the Horse is properly, adequately, and appropriately prepared, labeled, and marked in accordance with industry standards and legal requirements. The Owner also warrants that it/they is/are authorised to bind all persons or entities associated with the Horse, including owners, senders, consignees, or agents, to these terms and conditions.

9.9 Suitability and Compliance of Transport Units:

9.9.1 The Owner warrants that all transport units used for the carriage of the Horse are suitable for such purposes, are in good operational condition, comply with all relevant legal and safety standards, and are properly loaded. The Owner is responsible for any damages or compliance failures of these transport units and must ensure they meet all regulatory requirements before use.

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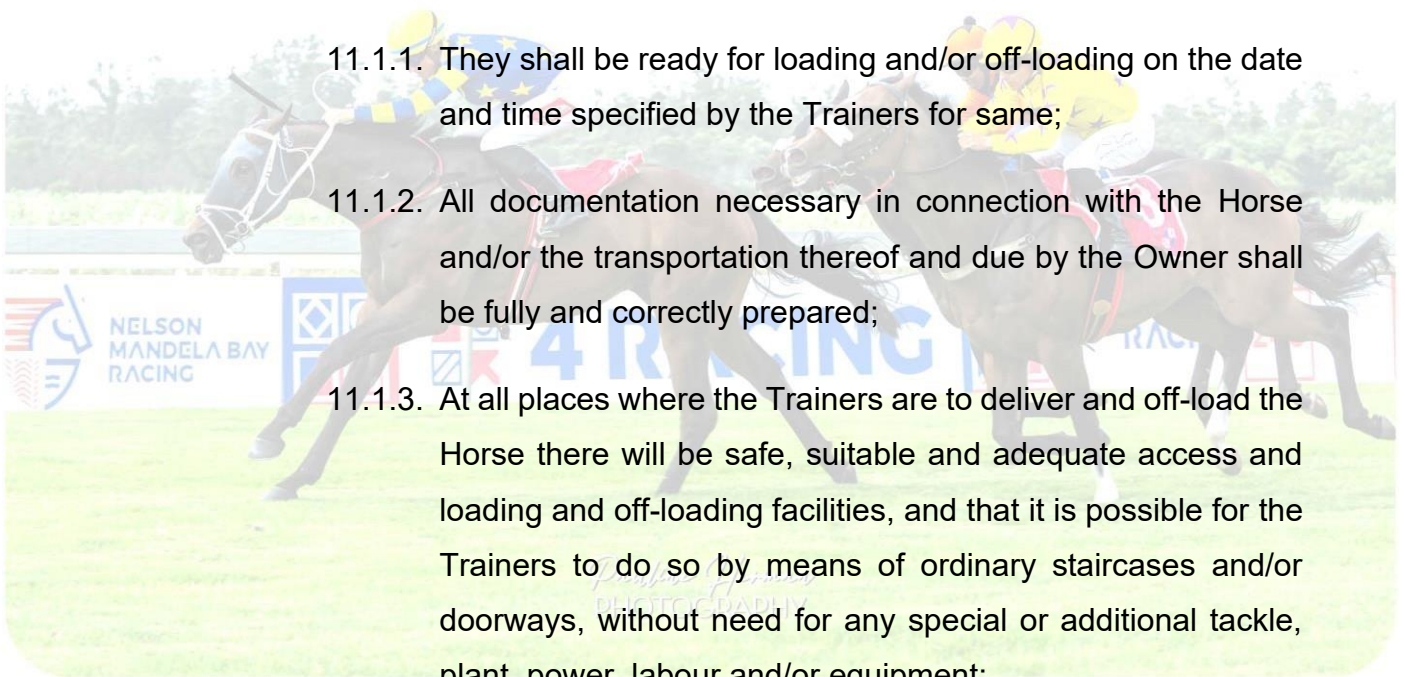
10. CONDITION OF THE HORSE

- 10.1. The onus of proving the type, physical properties, composition and the condition of the Horse at the time of receipt thereof by the Owner after training and/or conditioning thereof shall, at all times, remain with the Owner, and no delivery note, receipt or other document furnished or signed at such time by or on behalf of the Trainers shall constitute conclusive proof thereof.
- 10.2. Furthermore thereto, the Owner agrees to abide by all regulations of the racing jurisdiction within which the Horse competes, including but not limited to providing certification of the condition of the Horse.

11. LOADING AND OFF-LOADING — EQUIPMENT REQUIRED

- 11.1. The Owner shall ensure that:

- 11.1.1. They shall be ready for loading and/or off-loading on the date and time specified by the Trainers for same;
- 11.1.2. All documentation necessary in connection with the Horse and/or the transportation thereof and due by the Owner shall be fully and correctly prepared;
- 11.1.3. At all places where the Trainers are to deliver and off-load the Horse there will be safe, suitable and adequate access and loading and off-loading facilities, and that it is possible for the Trainers to do so by means of ordinary staircases and/or doorways, without need for any special or additional tackle, plant, power, labour and/or equipment;
- 11.1.4. The grounds in question must be able to support lifting equipment if necessary and is the sole responsibility of the Owner to ensure compliance. Delays or inability to complete



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delivery and/or receipt of the Horse as a result thereof will be for the account of the Owner.

11.1.5. Quotations exclude any tests, inductions or medicals required for site access;

11.2. The Owner shall sign such certificates and receipts on loading and off-loading as the Trainers may require.

11.3. The Trainers shall not be under any obligation to provide any plant, power and/or labour for the loading and/or off-loading of the Horse. Any assistance given by the Trainers in such loading and/or unloading shall be at the sole risk of the Owner.

11.4. The Owner conducting any packing and/or other operation and/or activity in any area or premises provided by the Trainers shall do so at its own risk, and the Owner indemnifies the Trainers against all claims and/or losses arising out of the presence of the Owner in such area or premises.

12. OWNERSHIP AND RISK

12.1. The Owner herein, by virtue of their signature upon this Agreement, confirms that they are the owner or part-owner of the Horse in question and as per the Information Form filled in by them above in relation thereto.

12.2. The Horse shall at all times remain the property of Owner throughout the duration of this Agreement. No other party, be it a seller or any other third party, acquires any right, title or interest in and/or to the

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Horse until such time as the sale and/or transfer of ownership interest in and to the Horse is approved by all current owners.

12.3. The Owner herein undertakers to update the ownership details pursuant to any sale and/or transfer of such ownership interest in and to the Horse with the appropriate racing authorities, and confirms that they bear the sole responsibility to ensure that same is done in a timely fashion.

12.4. Risk of loss remains with the Trainers while the Horse is stabled and/or under their care.

13. DEMURRAGE IN RE. OF STABLING

13.1. The Trainers shall not be liable for demurrage and/or storage/stabling charges of any nature whatsoever and howsoever arising.

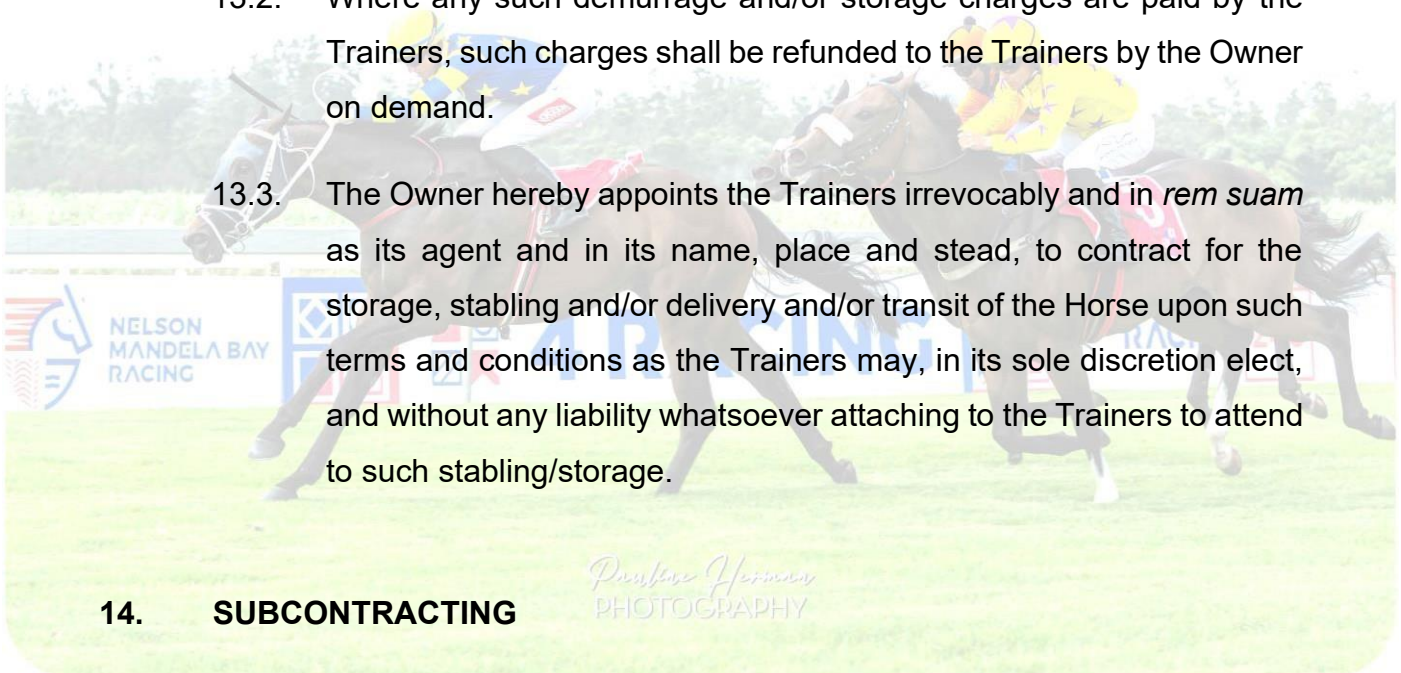
13.2. Where any such demurrage and/or storage charges are paid by the Trainers, such charges shall be refunded to the Trainers by the Owner on demand.

13.3. The Owner hereby appoints the Trainers irrevocably and in *rem suam* as its agent and in its name, place and stead, to contract for the storage, stabling and/or delivery and/or transit of the Horse upon such terms and conditions as the Trainers may, in its sole discretion elect, and without any liability whatsoever attaching to the Trainers to attend to such stabling/storage.

14. SUBCONTRACTING

14.1. The Trainers reserves the right to employ sub-contractors or agents to act for it.

14.2. Where the Trainers employs independent third parties to perform all or any of the functions required of the Trainers, the Trainers shall have



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no responsibility and/or bear liability to the Owner for any acts and/or omissions of such third parties, even though the Trainers may be responsible for the payment of their charges.

- 14.3. If the Trainers is suitably indemnified against all costs (including attorney and client costs) the Trainers shall take such action against the third party concerned on the Owner's behalf as the Owner may direct.

15. INSURANCE

- 15.1. The Trainers shall endeavour to effect any insurance the Owner timeously and in writing instructs them to effect.

- 15.2. Such insurance will be subject to such exceptions and conditions as may be imposed by the insurance company or underwriter taking the risk and the Trainers shall not be obliged to obtain separate cover for any risks so excluded.

- 15.3. Unless otherwise agreed in writing, the Trainers shall not be under any obligation to obtain separate insurance in respect of separate orders but may, not obligated, insure all or any of such orders under any open or general policy held by the Trainers from time to time.

- 15.4. Should any insurer dispute its liability in terms of any insurance policy in respect of any goods, the Owner concerned shall have recourse against such insurer only and the Trainers shall not have any responsibility or liability whatsoever in relation thereto notwithstanding that the premium paid on such policy may differ from the amount paid by the Owner to the Trainers in respect thereof.

- 15.5. Insofar as the Trainers agree to arrange insurance, the Trainers act solely as agents for and on behalf of the Owner. In the event of an accident, fire and/or theft, the Owner is liable for the excess payable.

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16. PERMITS, CONSENTS AND ROUTE PREPARATION

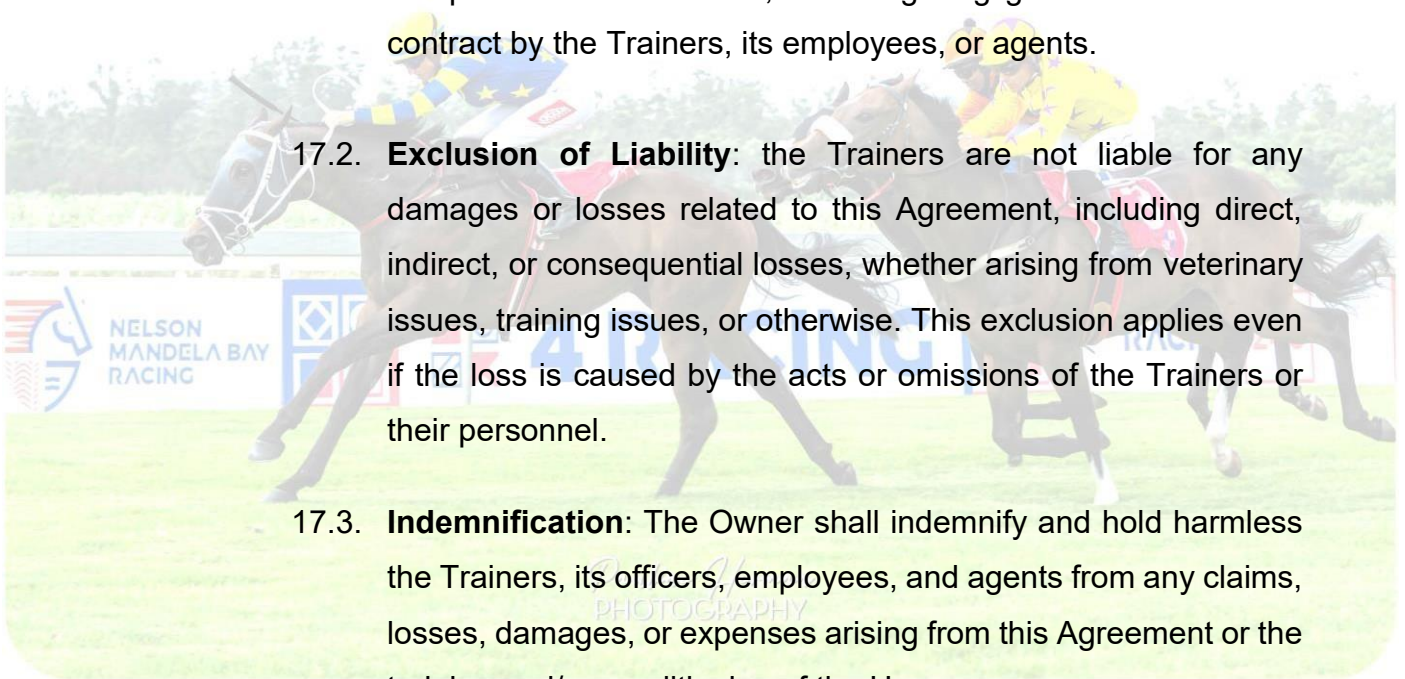
- 16.1. If any permit, consent or approval to own the Horse is required under any law, by-law or regulation of the Republic of South Africa, none of the Trainers' obligations and/or duties shall take effect unless and until it obtains the relevant permit, consent or approval in respect of the above.

17. LIMITATION OF LIABILITY OF THE TRAINERS & INDEMNITIES

- 17.1. **Assumption of Risk:** The Owner acknowledges that the Horse is trained and/or conditioned at their own risk. The Owner exempts and indemnifies the Trainers against any liabilities arising from the training and/or conditioning of the Horse, irrespective of the cause, including negligence or breach of contract by the Trainers, its employees, or agents.

- 17.2. **Exclusion of Liability:** the Trainers are not liable for any damages or losses related to this Agreement, including direct, indirect, or consequential losses, whether arising from veterinary issues, training issues, or otherwise. This exclusion applies even if the loss is caused by the acts or omissions of the Trainers or their personnel.

- 17.3. **Indemnification:** The Owner shall indemnify and hold harmless the Trainers, its officers, employees, and agents from any claims, losses, damages, or expenses arising from this Agreement or the training and/or conditioning of the Horse.



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17.4. Specific Exclusions:

17.4.1. The Trainers are not liable for any personal injuries or damage to the Owner's personal assets, including the Horse and its livery.

17.4.2. The Trainers' liability is limited to remedying breaches of this Agreement.

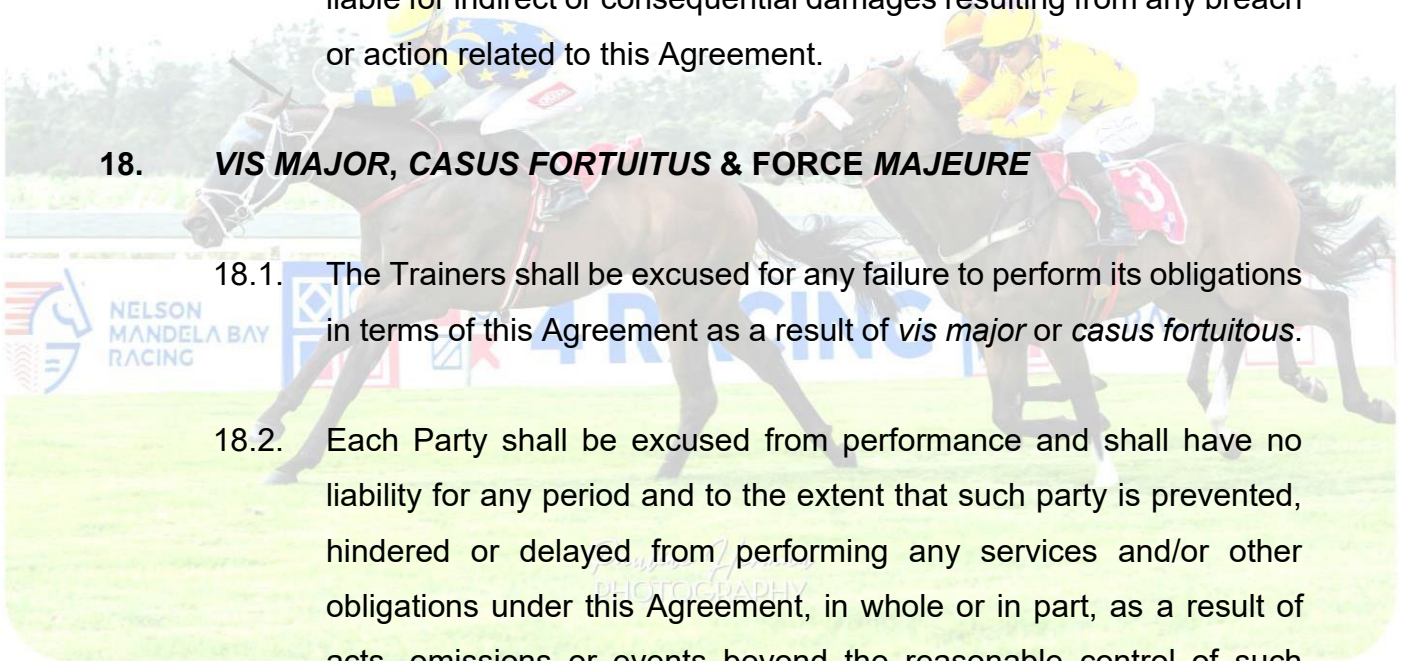
17.4.3. The Trainers are not responsible for losses due to external events beyond reasonable control, such as natural disasters or civil disturbances.

17.5. **General Provisions:** Notwithstanding any other provision in this Agreement or applicable law, the Trainers and their personnel are not liable for indirect or consequential damages resulting from any breach or action related to this Agreement.

18. VIS MAJOR, CASUS FORTUITUS & FORCE MAJEURE

18.1. The Trainers shall be excused for any failure to perform its obligations in terms of this Agreement as a result of *vis major* or *casus fortuitous*.

18.2. Each Party shall be excused from performance and shall have no liability for any period and to the extent that such party is prevented, hindered or delayed from performing any services and/or other obligations under this Agreement, in whole or in part, as a result of acts, omissions or events beyond the reasonable control of such party, including by way of illustration, acts or omissions of the other party, third party performance, strikes, labour disputes, riots, war, fire, acts of God or government regulations.



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18.3. The Trainers shall not be liable for any delay occasioned by compliance with any instructions issued by the police or any other competent authority, including but not limited to labour strikes, non-availability of escorts, training delays, adverse weather, accidents and/or breakdowns, or any other cause beyond the control of the Trainers. Any extra costs incurred by the Trainers, as a result of compliance with any such instructions shall be added to its charges to the Owner.

19. JOINT AND SEVERAL LIABILITY OF OWNER

19.1. In the event that the Owner consists of more than one Party, each of the Parties comprising the Owner shall be liable to the Trainers jointly and severally for the performance by the Owner of its obligations in terms of the Agreement.

20. VICARIOUS LIABILITY OF THE OWNER

20.1. The Owner will breach the obligations imposed on it by this Agreement through the actions or omissions of its officers, servants, agents or invitees, notwithstanding that such officer, servant, agent or invitee, as the case may be, may have been acting outside of the course and/or scope of their employment with, or contrary to their contract with, or mandate from, the Owner.

21. CERTIFICATE

In the event of there being a dispute as to the amount of the price/tariff/rates of the services or other amounts payable by the Owner to the Trainers in terms of the Agreement, a certificate signed by:

21.1. A Trustee of the Trainers and/or a duly appointed representative, whose appointment need not be proved, shall be *prima facie* proof

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(that is to say, proof on the face of it) of the amounts so payable;
and/or

- 21.2. an auditor or chartered accountant appointed by the Trainers, shall be conclusive proof of the amounts so payable.

22. BREACH AND CANCELLATION

- 22.1. The Trainers shall be entitled, but not obliged, to cancel the Agreement in the event of:

22.1.1. The Owner failing to make payment of the Price of the Services (if applicable) or any other amount(s) due by it to the Trainers on the due date for payment thereof;

22.1.2. The Owner breaching any term or condition of the Agreement which is incapable of being remedied;

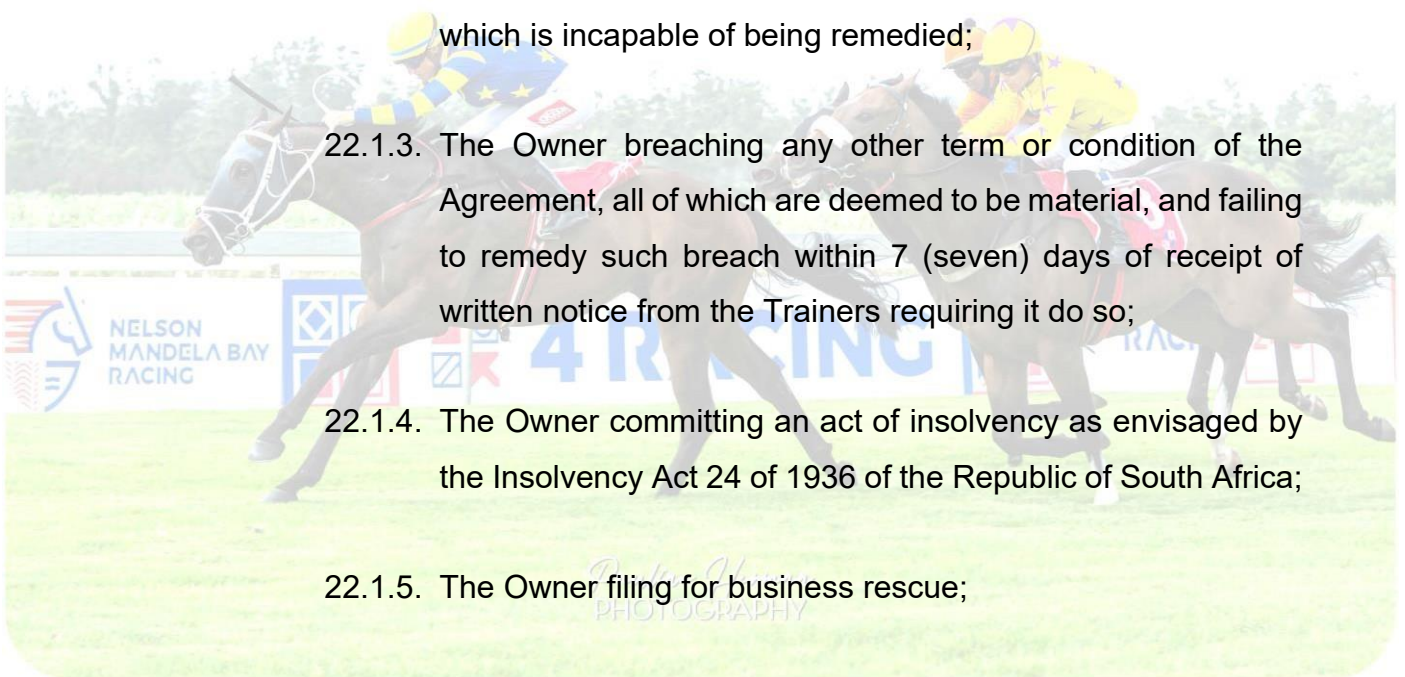
22.1.3. The Owner breaching any other term or condition of the Agreement, all of which are deemed to be material, and failing to remedy such breach within 7 (seven) days of receipt of written notice from the Trainers requiring it do so;

22.1.4. The Owner committing an act of insolvency as envisaged by the Insolvency Act 24 of 1936 of the Republic of South Africa;

22.1.5. The Owner filing for business rescue;

22.1.6. The Owner filing for its liquidation and/or winding-up;

22.1.7. There being a change in the control, shareholding or membership of the Owner (not being a company whose



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shares are listed on a recognised stock exchange) without the prior consent in writing of the Trainers;

22.1.8. The Owner, being a juristic person, ceasing to exist.

22.2. Should the Trainers elect not to cancel or to convert the Agreement in circumstances where it would have been entitled to, its failure to do so shall not be construed as a waiver and it shall not thereby be precluded from exercising its rights to cancel or to convert the Agreement on any future occasion.

22.3. The cancellation of the Agreement by the Trainers shall be without prejudice to the other rights available to it at law, including the right to claim damages and all amounts as may have been owing to it by the Owner as at the date of cancellation.

23. WITHDRAWAL OF SERVICES

23.1. The Trainers' decision to grant or refuse any orders for Services and/or Training received from any Owner and the nature and extent of the terms thereof is at the sole discretion of the Trainers.

23.2. The Trainers reserve the right to withdraw, increase or decrease any credit facilities at any time without prior notice to the Owner.

24. ORDERS

24.1. Whilst the Trainers have a clear preference for written orders, it will accept verbal orders. However, the Owner indemnifies and holds the Trainers harmless against all claims, demands, actions, costs and expenses suffered or sustained in respect of any errors and/or omissions following upon the placement of an oral order upon the Trainers.

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- 24.2. The Owner shall be bound by any order placed upon the Trainers which shall be irrevocable, and/or any variations to any order mutual agreed upon by the Parties. The Trainers shall be entitled but not obliged to require the Owner to confirm verbal orders in writing before acceptance of such orders.

25. ARBITRATION

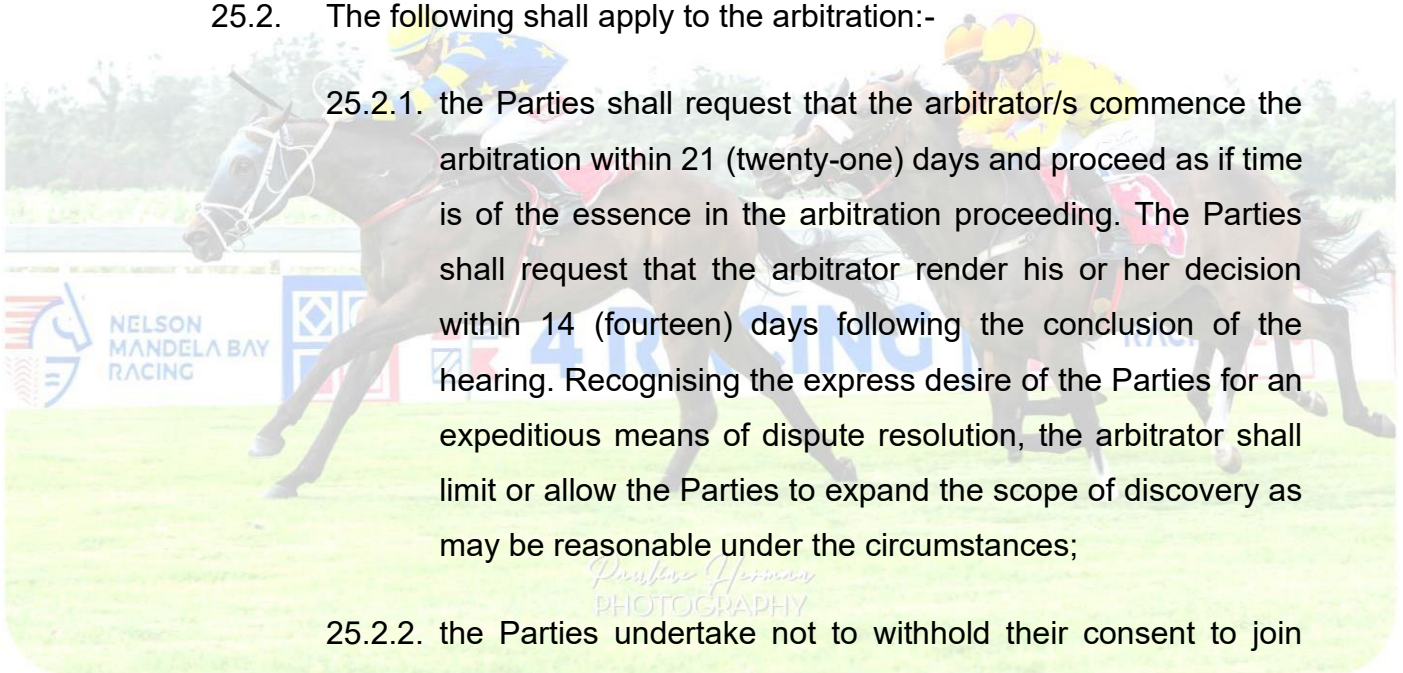
- 25.1. Any dispute arising between the Parties shall on written demand by either Party to the dispute be submitted to arbitration at the Arbitration Foundation of Southern Africa, and in accordance with the rules thereof by an arbitrator or arbitrators agreed on by the Parties or should the Parties fail to agree an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any Party to the dispute by the Arbitration Foundation of Southern Africa.

- 25.2. The following shall apply to the arbitration:-

- 25.2.1. the Parties shall request that the arbitrator/s commence the arbitration within 21 (twenty-one) days and proceed as if time is of the essence in the arbitration proceeding. The Parties shall request that the arbitrator render his or her decision within 14 (fourteen) days following the conclusion of the hearing. Recognising the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator shall limit or allow the Parties to expand the scope of discovery as may be reasonable under the circumstances;

- 25.2.2. the Parties undertake not to withhold their consent to join another party to the Arbitration;

- 25.2.3. the Parties irrevocably agree that the submission to arbitration is subject to the Parties' rights of appeal. Any Party may appeal the decision of the arbitrator within a period of 20



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(twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party to the arbitration. The appeal shall be dealt with in accordance with the rules of the Arbitration Foundation of Southern Africa by a panel of 3 (three) arbitrators appointed by the Arbitration Foundation of Southern Africa; and

25.2.4. the arbitration shall be held in the English language.

25.3. The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision, which becomes final and binding in terms of this clause may be made an order of court at the instance of any Party to the arbitration.

25.4. Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).

25.5. The Parties shall use commercially reasonable efforts to resolve disputes arising under this Agreement as rapidly as possible.

25.6. This clause shall not preclude either Party from seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

25.7. Any dispute resolution or arbitration process under this clause shall be conducted *in camera* and the Parties shall treat as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other Party provided that the Parties shall be entitled to

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disclose such information to such persons as are necessary to enable them to conduct their case.

26. NOTICES AND *DOMICILIA*

26.1. The Parties hereto select the addresses appearing in the Information Form above respectively, or where no Information Form has been provided, the Parties' registered address, as addresses for the purposes of receiving notices as contemplated in this clause and select as their respective *domicilia citandi et executandi* the physical addresses appearing therein. The addresses and/or facsimile numbers may be substituted by notice given as herein required.

26.2. All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), shall be valid and effective only if in writing and if delivered by hand, mail or facsimile. In this regard, a notice, request, demand and determination under this Agreement:

26.2.1. delivered by hand shall be deemed duly given when delivered by hand during business hours as evidenced by a receipt declaration by a member of the addressee's Staff or a delivery declaration by a person authorised to deliver the notice, request, demand and determination by the addresser;

26.2.2. delivered by mail shall be deemed duly given when mailed in a properly addressed envelope to the addressee's Service Manager/Relationship Manager, as the case may be, at the addressee's *domicilium* by registered mail, which delivery shall be evidenced by the registered mail receipt; and

26.2.3. delivered by facsimile shall be deemed duly given when sent to the facsimile number set forth, which delivery shall be

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evidenced by sender's facsimile confirmation sheet. For the avoidance of doubt, notice shall be deemed to have been given upon receipt of such delivery confirmation whether or not such notice has actually been read.

26.3. Notices, requests, demands and/or determinations sent by facsimile and received prior to 13h00 on a business day shall be deemed duly given on such business day; notices, requests, demands and determinations sent by facsimile and received at other times shall be deemed duly given on the first business day following the date that such facsimile is received. A notice, request, demand and/or determination sent by mail shall be deemed to have been received 5 (five) days after posting if addressed within the Republic of South Africa to an address within the Republic of South Africa and 10 (ten) days after posting in all other instances.

26.4. Where any provision of this Agreement requires either Party to perform any act in writing (including the giving of any notice), this requirement will only be satisfied if such performance is made in a written form.

26.5. Notwithstanding the foregoing, any notice given in writing, including one sent by data message, actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause.

27. COSTS

27.1. In the event of either Party taking legal action against the other because of a breach by the other Party of its obligations to the first-mentioned Party including, without limitation, its failure to pay any amount, the other Party shall pay for all legal costs incurred by the

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first-mentioned Party on the scale as between attorney and client including, without limitation, collection fees, tracing agents' fees and fees of counsel as on brief.

27.2. In the event of the Trainers appointing an auditor or chartered accountant for the purposes of the clause immediately above, the Owner shall pay for the costs of such appointment.

27.3. In the event of any provision of this Agreement obliging the Owner to do something or requiring the Owner to attend to something at its cost, or providing that the Owner will pay for something, then in the event of the Trainers deciding, at their election, to do that thing, or to attend to that, or to pay that amount, on behalf of the Owner, the Owner shall reimburse the Trainers.

28. WHOLE AGREEMENT

28.1. This Agreement, read together with any special terms appearing on the Trainers' invoices constitute the sole and exclusive agreement between the Parties relative to the services offered by the Trainers. No variation of this Agreement will be of any force and effect whatsoever, unless reduced to writing and signed by all of the Parties.

28.2. The Owner waives its right to claim rectification of the Agreement.

29. NO SET OFF

29.1. The Owner shall not be entitled to withhold payment or defer any payment, nor shall it be entitled to apply set-off of any amount which it may allege is owing by the Trainers to it.

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30. NO NOVATION

30.1. Any indulgence or relaxation of whatsoever nature which the Trainers may entertain or grant or any relaxation of whatsoever nature, including any such indulgence or relaxation afforded to the Owner shall not constitute a novation of the Trainers' rights. All such rights are strictly and absolutely reserved.

31. NON-VARIATION

31.1. No amendment, alteration, variation, deletion, addition, renewal, or extension of this Agreement, or this clause, whether consensual or unilateral, or mutual termination of this Agreement, shall be of any force or effect unless reduced to writing and signed by both Parties.

32. NON-WAIVER

32.1. No latitude, indulgence or extension of time granted by either Party to the other Party shall in any way prejudice the rights of the first-mentioned Party nor be construed as a waiver of the first-mentioned Party's rights nor create an expectation for the other Party that such latitude, indulgence or extension of time will be granted to it in the future.

33. SEVERABILITY

33.1. It is agreed that each and every term herein contained, creating any rights and/or obligations for either party, is separate, distinct and severable, the one from the other.

33.2. If any term herein contained is adjudged by a competent authority to be unenforceable, invalid, or unlawful, such term shall be severed from this Agreement, regarded as *pro non scripto*, and the remainder

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of the provisions shall remain of full force and effect, binding upon the Owner.

34. VALUE ADDED TAX

34.1. This Agreement is subject to the taxation laws of the Republic of South Africa and, thus, subject to VAT.

34.2. Unless the contrary is stated, all amounts appearing in the Agreement are exclusive of VAT, which tax is payable by the Owner in addition to the amounts in question.

35. APPLICABLE LAW

35.1. This Agreement shall be governed by, and interpreted in accordance with, the laws of the Republic of South Africa.

36. APPLICATION

36.1. The signature of the Agreement by the Owner constitutes an Application for Credit, irrevocable for a period of 60 (sixty) days, on the terms and conditions hereof, which is capable of being accepted by the Trainers by its signature of the Agreement, without express, written notification to the Owner.

37. DATA PROTECTION

37.1. Both Parties agree to adhere to strict data protection and privacy laws, ensuring all personal and business information obtained during the application process or over the course of this Agreement is kept confidential and secure.

38. SIGNATORIES

38.1. Signed and dated on the Short Form Ownership Agreement by the Owner at the place and on the date therein mentioned, the Owner being duly authorised thereto.

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- 38.2. This Agreement and any other documents related to it may be executed electronically and such electronic signatures shall be considered valid and binding upon the parties.

