



HOSPITALITY EQ

MANAGEMENT AGREEMENT

Made and entered into by and between:

As per individual agreement

Registration number ()

Represented herein by

As per individual agreement

Duly authorized thereto (Herein called the "Owner")

And

BarosEQ Kenya Limited

Registration number (PVT-XYU8Y8MG) Represented herein by

BARRY CLEMENS

Duly authorized thereto (Herein called the "Manager")

1. DEFINITIONS

- 1.1. In this Agreement, unless the context indicates otherwise, the words and expressions below will have the following meanings:
- 1.1.1. "Agreement" means any and all the provisions, terms and conditions contained in this document and any annexures and appendices hereto;
 - 1.1.2. "Auditors" means the auditors appointed by the Owner from time to time;
 - 1.1.3. "Bank" means **Bank name**;
 - 1.1.4. "Management Fees" means the Manager's monthly fee payable from the effective date, each and every month for the duration of this agreement and is made up as follows. A monthly base fee of **As per individual agreement**
 - 1.1.4.1.) Payable in advance on the 1st day of each new month. For the first month it will be paid pro rata from and on the effective date.
 - 1.1.4.2. A management incentive fee equal to **As per individual agreement** of the monthly Gross Operating Revenue
 - 1.1.4.3. When the Facility is a new build 1.1.4.1 and 1.1.4.2 will only become effective the date of opening of the Facility
 - 1.1.5. "Business" means the hospitality business which is owned by the Owner, and which operates from (**As per individual agreement**)
 - 1.1.6. "Confidential Information" means any and all information disclosed by the Manager to the Owner, or the Owner to the Manager, at any time before or after the signature date of this Agreement, that may reasonably be regarded as confidential information (being information not in the public domain) whether such information is oral or written, recorded, or stored by electronic magnetic, electro-magnetic or other form or process, or otherwise in a machine-readable form, translated from the original form, recompiled, made into a compilation, wholly or partially copied, modified, updated or otherwise altered, originated or obtained by, or coming into the possession, custody, control or knowledge of the Owner or the Manager whether alone or jointly,
 - 1.1.7. "Day" means any 24 hour day;
 - 1.1.8. "Effective Date", such date as agreed upon between the Parties in writing;
 - 1.1.9. "Yearly Financial Statements" means the audited financial statements prepared by the Auditors for the Financial Year;
 - 1.1.10. "Financial Year" means **As per individual agreement** or any other date agreed by the Parties in writing from time to time.
 - 1.1.11. "Gross Operating Revenue" means any and all revenue and income of any kind whatsoever derived directly or indirectly from the operations of the Business and which is properly attributable to the period under consideration, provided however that the Gross Operating Revenue will be after the deduction of the following
 - 1.1.11.1. Value added tax,
 - 1.1.11.2. Tourism levies,
 - 1.1.11.3. Gratuities paid to employees,
 - 1.1.11.4. Proceeds from the sale of furniture fittings and equipment (hereinafter "FF& E");
 - 1.1.11.5. Interest received or accrued with respect to the funds in the FF&E reserve,
 - 1.1.11.6. Working capital,
 - 1.1.11.7. Any refunds, rebates, discounts and credits of a similar nature given, paid or returned in the course of obtaining Gross Operating Revenue or components thereof,
 - 1.1.11.8. Insurance proceeds other than proceeds from business interruption or other loss of income insurance,
 - 1.1.11.9. Condemnation proceeds other than that for a temporary taking,
 - 1.1.12. "Facility" means the Facility currently known as Adere Safari Lodge doing business from the address referred to in clause 1.1 5 above,
 - 1.1.13. "Intellectual Property" means all patents, designs, copyrights, trademarks, trade name and other intangible proprietary rights customarily considered as intellectual property or applications thereof or which a Party may at any time own, adopt, use, or register.
 - 1.1.14. "Interest Rate" means the Bank's rate of interest, from time to time, certified by any manager or assistant manager of any branch of the Bank recording such rate and whose decision shall be final and binding on the Parties.
 - 1.1.15. "Management Term" means the initial term of the Agreement being for a period of **As per individual agreement** as from the Effective Date. Renewable by mutual written agreement. Both Parties are to advise 6 (six) months prior to the termination date on their intentions to renew or terminate the agreement. Allowing sufficient time for negotiations or arrangements to ensure uninterrupted business continuation.
 - 1.1.16. "Manager" means the entity herewith appointed as the manager, being BarosEQ Kenya Limited (registration number *PVT-XYU8Y8MG*) a company duly registered according to the relevant Kenyan legislation

- 1.1.17. "Net Operating Income" means the excess (if any) of Gross Operating Revenue after deducting the Operating Expenses.
- 1.1.18. "Operating Expenses" means any and all costs and expenses of the operation of the Business and the Facility for the duration of this Agreement including and without limiting the generality of the above the following;
 - 1.1.18.1. The costs of any and all maintenance and utilities for the Business and the Facility;
 - 1.1.18.2. Any and all administrative expenses for the Business and the Facility;
 - 1.1.18.3. Any and all cost for advertising, marketing and promotions for the Business and the Facility;
 - 1.1.18.4. The Management Fees payable to the Manager;
 - 1.1.18.5. Any and all salaries, wages, and contract fees payable to employees and/or contractors of the Business and the Facility;
 - 1.1.18.6. any and all amounts payable to by the Owner or payable to the Manager as recorded in this Agreement; and
 - 1.1.18.7. Any and all costs and expenses incidental to the day to day managing, running, and operating of the Business and the Facility,
- 1.1.19. "Owner" means (insert owner detail + business registration number) a company duly registered according to Ugandan legislation with its head office business address at (insert owner business address)
- 1.1.20. "Party/Parties" means the Owner and the Manager collectively and a reference to a "Party" means one of them. as determined from the context of this Agreement;
- 1.1.21. "Signature Date" means the date upon which all the Parties to this Agreement have signed this Agreement or, in the event of their having signed the Agreement on different dates, the date of the last signature
- 1.2. The headings or the paragraphs of this Agreement are inserted for reference purposes only and shall not affect the interpretation or any or the provisions to which they relate.
- 1.3. Words importing the singular shall include the plural; and words importing the masculine gender shall include the female; and words importing persons shall include corporate and non-corporate entities; and vice versa.
- 1.4. If any provision and/or definition and/or interpretation clause is a substantive provision conferring rights or imposing obligations on any Party notwithstanding that it is only in a definition or interpretation clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 1.5. The terms and conditions of this Agreement shall be binding on the executors, administrators, trustees, liquidators, judicial managers, receivers, assigns, and all successors in title of the respective Parties hereto as fully and effectually as if they had entered into this Agreement in the first place.
- 1.6. This Agreement shall apply to all transactions, or services rendered and supplied by the Manager to the Owner, to the complete exclusion or any other terms and conditions whether oral or in writing, including, but not limited to any other terms and conditions contained in any previous communications or documents and not specifically agreed to in writing and signed by the Manager. The Owner's terms and conditions not recorded in this Agreement are null and void for the purposes of any transaction concluded between the Owner, and the Manager.

2. RECORDAL - WHEREAS:

- 2.1. The Owner owns and conducts the Business and the Facility, and
- 2.2. The Manager has the necessary expertise to operate and manage the Business and the Facility;
- 2.3. The Owner wishes to employ the services of the Manager and the Manager is willing to provide such services in accordance with the terms of this Agreement; and THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

3. NAME AND BRANDING OF FACILITY

- 3.1. The name of the Facility shall be Tala Whitehouse

4. SUSPENSIVE CONDITIONS AND TIMELINES

- 4.1. This Agreement is not subject to any suspensive conditions
- 4.2. The Parties shall be entitled by mutual agreement recorded in writing to extend the date by which any timelines or conditions are to be fulfilled, it being agreed that the consent to an extension of time shall not be unreasonably withheld by either the Owner or the Manager.

5. DURATION & OPTION TO RENEW

- 5.1. This Agreement shall commence on the Effective Date and shall continue for the Management Term, unless terminated or cancelled earlier in accordance with the terms of this Agreement
- 5.2. The Parties shall have the option to renew this Agreement on the same terms and conditions for a further period of As per individual agreement. This option is to be exercised by mutual written consent and the option shall automatically lapse if this Agreement is terminated in accordance with the terms of this Agreement.

6. MANAGERS OBLIGATIONS

- 6.1. The Owner hereby appoints the Manager to be its exclusive operator and manager of the Business and the Facility; to attend to any and all aspects of such appointment and to perform any and all duties and discharge any and all responsibilities regarding the operation and management of the Business and the Facility in such a manner and to such a standard as can reasonably be expected of qualified and competent Facility managers for the duration of this Agreement
- 6.2. Any and all fees payable to the Manager in terms of this Agreement shall remain payable notwithstanding any additions or alterations to the Facility and/or facilities
- 6.3. In the event of the Owner requiring any Further or additional services from the Manager, outside the scope of this Agreement, the Owner will be required to remunerate the Manager for such additional services and associated costs at an agreed charge.
- 6.4. Except as otherwise provided in this Agreement. the Manager shall at the Owner's expense provide services including but not limited to all matters in respect of the following;
 - 6.4.1. housekeeping;
 - 6.4.2. front office;
 - 6.4.3. security;
 - 6.4.4. the Facility restaurant. including a la carte service;
 - 6.4.5. maintenance and grounds;
 - 6.4.6. training, empowerment, and skills development;
 - 6.4.7. personnel and training procedures;
 - 6.4.8. purchasing;
 - 6.4.9. quality assurance;
 - 6.4.10. website;
 - 6.4.11. reservation system;
 - 6.4.12. emergency procedures;
 - 6.4.13. accounting and bookkeeping;
 - 6.4.14. credit policies (including entering into agreements with credit card organizations);
 - 6.4.15. leasing, licensing, and granting concessions for commercial space at the Facility, provided that such leases, licenses and concessions shall in each instance be in the Owner's name and executed and approved by the Owner or by its officers on the Owner's behalf and shall not extend beyond the Management Term or any option to renew exercised in terms of this Agreement;
 - 6.4.16. all phases of promotion, advertising, marketing, and publishing relating to the Business and the Facility;
 - 6.4.17. the determination of any and all labor practices and management of all staff and employees at the Facility;
 - 6.4.18. the financial structure and management of the Business and the Facility;
- 6.5. The Manager undertakes to advise the Owner on the optimization of revenue from the Business and the Facility and to provide the Owner with advice generally in respect of the Business and the Facility.
- 6.6. The Manager shall provide advice on the advertising and other publicity required by the Owner to improve the usage, patronage and profitability of the Business and the Facility.
- 6.7. In order to maintain the Manager's standards, procedures and practices all management employees shall report directly to the Manager's head office in Nairobi, who in turn shall report to the Owner in accordance with this Agreement.
- 6.8. In the performance of its duties, the Manager shall act solely as an agent of the Owner nothing herein shall constitute a partnership or joint venture between the Owner, and/or the Manager.
- 6.9. Notwithstanding anything contained in this Agreement or elsewhere, any and all debts and liabilities to third parties incurred by the Manager, or the Owner in the course of the Manager operating and managing the Business and the Facility shall be the exclusive debts and liabilities of the Owner.
- 6.10. The Manager agrees that it shall not enter into any contracts or litigation without the Owner's prior written approval, unless such approval has already been included in the annual budget referred to in clause 8.2 below.
- 6.11. The Owner agrees to refrain from any business or advertising practice which, in the Manager's opinion, may be harmful to the Business or the business of the Manager and the goodwill associated therewith.

7. EMPLOYEES

- 7.1. Any and all employees of the Business shall be employed by the Owner as the employer. Except for the general manager whom will be an employee of the Manager.
- 7.2. The Manager will interview all candidates for positions and appoint all suitable candidates. With Owners written approval.
- 7.3. All employees or prospective employees of the Business will be subject to the Kenyan employment law and legislation. All employees of the Business will be subject to the Manager's standard conditions of employment

inclusive of the Manager's code of conduct which will be provided as an appendix to this agreement, and available to the Owner or any employee of the Owner or prospective employee of the Owner.

- 7.4. The Owner will have the right to bring any anomalies or conduct of an employee not conforming the clause 7.3 above to the attention of the Manager who will then be obliged to investigate and if such conduct of the employee is found to be not conforming to clause 7.3 above, the Manager will take the prescribed action as determined by the Ugandan labor law and legislation and the Manager's code of conduct against such employee
- 7.5. In the event of retrenchment of employees of the company being required by the Manager of the, employees to be retrenched will be decided upon by the Manager in consultation with the Owner and such retrenchment costs will be borne by the Owner as part of operating expenses.

8. REPORTS, ACCOUNTS, RECORDS AND FINANCIAL STATEMENTS

- 8.1. Any and all requests, communications, and documents applicable to or relevant to the Business and the Manager's obligations in terms of this Agreement shall be delivered to the Manager upon receipt of same by the Owner
- 8.2. The Manager will annually prepare and submit an income and expenditure budget as well as a capital budget not less than 3 (three) calendar months prior to the Financial Year end. The Owner undertakes to indicate its approval of the aforesaid budget before the commencement of each Financial Year for the duration of this Agreement. In the event of the Owner failing to object to such budget in writing within 30 (Thirty) Days of receiving same, the Owner shall be deemed to have approved and consented to such budget for purposes of this Agreement. The Owner concedes that the Manager does not warrant or represent in any way, in whole or in part, that the income and expenditure as budgeted will be met or exceeded. In the event of consent to the budget being unreasonably withheld in any one instance, the Manager shall be entitled to forthwith cancel this Agreement.
- 8.3. Further to clause 8.2 above, the Manager will prepare and submit a budget for the period from the Effective Date to the first Financial Year end following the Effective Date with 90 (Ninety) Days from the Effective Date. The Owner undertakes to indicate its approval of the aforesaid budget within 10 (ten) Days from receipt thereof in the event of the Owner failing to object to such budget in writing within 10 (ten) Days of receiving same, the Owner shall be deemed to have approved and consented to such budget for purposes of this Agreement. The Owner concedes that the Manager does not warrant or represent in any way, in whole or in part, that the income and expenditure as budgeted will be met or exceeded. In the event of consent to the budget being unreasonably withheld in any one instance, the Manager shall be entitled to forthwith cancel this Agreement.
- 8.4. The Manager shall, for the account of the Owner, keep full true and accurate books of account and other records reflecting the results of the operation and management of the Business which shall be made available for control at any time.
- 8.5. The Manager shall provide the Owner with monthly and yearly financial statements regarding the Business, this includes an itemized Profit & Loss statement. The monthly and quarterly financial statements shall be provided by the Manager, twenty (20) Days after every month end and/or end of every quarter respectively. The yearly financial statements will be provided by the Manager within sixty (60) Days after the end of the Financial Year. The Owner shall have the right to request audits and any and all such audit costs shall be an Operating Expense
- 8.6. Subject to 8.5 above, all other books of account and all other records relating to the operation and management of the Business shall be kept by the Manager and shall be available to the Owner or its representatives on reasonable written notice.
- 8.7. The Owner shall notify the Manager of any objections it has to any financial statements provided by the Manager in terms of this Agreement, in writing within 30 (thirty) Days of receipt of same, failing which the Owner shall be deemed to have accepted same and to have waived any objections to the said financial statements

9. EXPENSES INCURRED BY MANAGER

- 9.1. The Manager may during the normal course of business incur expenses in respect of the Operating Expenses, maintenance management and improvement of the Business and the Facility on behalf of the Owner
- 9.2. The Manager will be entitled to a refund of all expenses and money outlaid on behalf of the Owner at the end of every month or as otherwise agreed between the Parties, upon the Manager providing to the Owner with proper invoicing and statements containing detailed information of such expenses paid
- 9.3. The owner will provide complimentary accommodation at the premises on a full board basis including to employees of the Manager who will be required to stay at the premises from time to time to execute the duties of the Manager as prescribed in this agreement

10. OWNER'S OBLIGATIONS AND REQUIREMENTS

- 10.1. The Manager shall be entitled to expend funds of the Owner to repair and maintain the Facility as per the approved budget.
- 10.2. Or if anything required outside of the budget to be approved by the owner in writing prior to execution. Should there be an emergency and the owner is not directly available the Manager may use its own discretion, provided the Manager has notified the owner and tried to get approval where possible.

- 10.3. The Owner shall timeously pay for the Manager's customary reimbursable expenses in connection with the management and operation of the Facility and the Business as recorded in the annual budget prepared by the Manager in terms of Clause 8.2 above or otherwise approved by the Owner.
- 10.4. Without admitting the generality of the aforesaid the Owner shall pay for and have the following liabilities and obligations;
 - 10.4.1. The Facility and the Business shall require marketing, sales, reservations and other services and programs applicable to similar Facility's under the Manager's management. The Owner shall pay any and all fees, costs and expenses for such sales, services, and programs, provided that the estimated fees and costs in any given Financial Year shall be included in the annual operating budget in terms of Clause 8.2 above or otherwise approved by the Owner,
 - 10.4.2. The Manager shall assist the Owner in obtaining any and all licenses, permits, for the Business, the Facility and any and all employees, staff, management and/or executives and the costs thereof shall be for the Owner's account,
 - 10.4.3. In the event that the Manager's staff is required at the Business for agreed services the Owner shall provide the Manager's staff, employees, managers and/or executives with board and lodging at the Business premises and use of the Facility facilities free of charge whenever their presence is required to carry out the Manager's duties and obligations in terms of this Agreement,
 - 10.4.4. The Owner shall pay and remain liable for any and all costs of renovating and refurbishing the Facility as per the Manager's recommendations and suggestions from time to time as per the Owner's approval,
- 10.5. The Owner shall not represent that the Manager is in anyway liable for any of the obligations of the Owner in terms of this Agreement or in respect to the Facility and Business and the Owner indemnifies and holds harmless the Manager, its representatives, servants, officers, executives and employees against any and all claims and costs in respect thereof.
- 10.6. If repairs, replacements or changes to the Facility shall be required by reason of any requirement under any law, ordinance or regulation now or hereafter in force, or by order of any governmental or municipal authority or otherwise, then in such event all such repairs, replacements or changes shall be at the Owner's expense and the Manager shall be entitled to expend the funds of the Owner to attend to same.

11. RISK AND INSURANCE

- 11.1. Notwithstanding anything contained in this Agreement, no rights or obligations of the Manager shall in any way be represented or construed to amount to the transfer of any risk or liability to the Manager for the Business and/or Facility
- 11.2. The Owner shall pay any and all insurance premiums and be liable for any and all insurance required by the Business and the Facility. The Owner absolves the Manager and holds the Manager harmless against any and all responsibilities for any insurance obligations and/or third-party claims which may arise from the Facility operations or Business

12. DAMAGE OR DESTRUCTION

- 12.1. In the event of the Facility or any portion thereof being damaged , destroyed by any force or event whether natural or not natural in nature, closedown or suspended as a result of any government or authority empowered to do so, the Owner shall at Its own cost and expense and with due diligence , repair, replace or comply with such government or authorities requirements so that the Facility shall operate substantially the same as prior to such damage, destruction or government or authorities decision.
- 12.2. It is agreed that the Management Terms may be extended by a number of Days equivalent to the number of days the Facility could not operate because of such event in clause 12.1 above,
- 12.3. If the Owner fails to undertake such work referred to in clause 12.1 above within 90 (ninety) Days after the said event is caused or fails to comply with same diligently the Manager may lodge a dispute.
- 12.4. The Owner absolves the Manager from any and all liability and/or damages it may suffer as a result of the said event referred to in clause 12.1 above.

13. ASSIGNMENT & CESSION

- 13.1. The Manager shall not have the right to cede, transfer and/or assign its right, title and/or interest in and to this Agreement without the Owner's prior written consent thereto. which consent shall not be unreasonably withheld.

14. INDEMNITY

- 14.1. Neither the Manager nor any of its representatives, servants, officers, executives or employees shall be liable to the Owner for any act or omission whatsoever and howsoever arising, except for any proven breach of this Agreement, nor shall the Manager or any of its representatives, servants, officers, executives or employees be liable to any other person in respect of any act or omission whether negligent or not in the performance of the

duties of the Manager and the Owner hereby indemnifies and holds harmless the Manager, its representatives, servant, officers, executives and employees against any and all claims and costs in respect thereof.

15. NON-DISCLOSURE AND NO RIGHT TO CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 15.1. The Parties acknowledge that while performing its duties and obligations in terms of this Agreement, the Parties shall disclose various Confidential Information (inclusive of marketing and branding). The Parties acknowledge that all rights, title and interest in and to the Confidential Information vests with the respective Party
- 15.2. The Parties agree and undertake that they will, during the currency and after termination of this Agreement:
 - 15.2.1. Maintain the confidentiality of all and any Confidential information to which the Parties becomes or has already become acquainted with, whether before or after this Agreement and whether such information be disclosed orally, visually or in writing or in any other manner whatsoever;
 - 15.2.2. Not use or disclose or attempt to use or disclose Confidential Information for any purpose other in accordance with this Agreement;
 - 15.2.3. Not directly or indirectly divulge or permit to be divulged any aspect of such Confidential Information beyond the ambit of this Agreement, without the prior written consent of the other Party.
 - 15.2.4. Not directly or indirectly use or attempt to use the Confidential Information in any manner, which will cause or be likely to cause injury or loss to the Manager, or the Owner, and/or
 - 15.2.5. Not directly or indirectly utilize, exploit or in any other manner whatsoever use the Confidential Information for its own benefit or any purpose whatsoever, other than in terms of this Agreement.

16. DEFAULT

- 16.1. Should either Party commit a breach of any provision of this Agreement and fail to remedy such breach within 14 (fourteen) Days after receiving written notice from the other Party requiring it to do so. Then the Party aggrieved by such breach shall be entitled, without prejudice to its other rights in law or in terms of this Agreement, to cancel this Agreement (subject to clause 16.2 below) or to claim specific performance of all of the defaulting Party's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the aggrieved Party's right to claim damages.
- 16.2. The Parties agree that all amounts outstanding or in arrears in terms of this Agreement shall bear interest at the Interest Rate and shall be calculated monthly in arrears and compounded from the date that the amount became due until settled in full.
- 16.3. In the event of either Party (the presumed innocent Party) having to institute legal proceedings against the other Party (the presumed defaulting Party) for any cause whatsoever arising from a breach of this Agreement, the defaulting Party agrees to be liable to the innocent Party for any and all legal costs on an attorney and own client scale in the event of costs being awarded in favor of such innocent Party.

17. DISPUTE RESOLUTION AND ARBITRATION

- 17.1. Should a dispute arise between the Parties in regard to any matter arising out of this Agreement or its interpretation or their respective rights and obligations under this Agreement, any Party shall be entitled to convene a meeting for the purposes of resolving the dispute upon written notice thereof to all the other Parties (the "Meeting") The Party requesting the Meeting shall prepare an agenda for the meeting and provide the other Parties with a copy thereof 1 (one) week prior to the Meeting and the Meeting shall be convened on not less than 1 (one) month written notice
- 17.2. Both parties agree to carry 50% of the cost of the arbitrator. And upon the arbitrator's decision the cost of the determined defaulting party will be compensated by the other party.
- 17.3. The Parties undertake to co-operate during the Meeting and the Parties undertake to use reasonable endeavors to reach consensus and attempt to resolve the issues in disputes raised in the Meeting
- 17.4. In the event that the Parties cannot successfully reach consensus or agreement in the Meeting, the dispute must be referred to and decided by arbitration, by way of a written referral to arbitration by either Party on notice to all the Parties (the referral to arbitration').
- 17.5. such arbitration will be held:
 - 17.5.1. In Nairobi, Kenya
 - 17.5.2. With only the Parties and their legal representatives, and
 - 17.5.3. In terms of the rules and procedures determined by the appointed arbitrator, it being the intention that the arbitration will, where possible, be held and concluded within 21 (Twenty-One) Days after it has been demanded.
- 17.6. The Parties will endeavor to agree the appointment of the arbitrator In the event that the Parties are unable to come to an agreement within 10 (ten) days of the date of referral to arbitration, for any reason, then the arbitrator or arbitrators will be appointed by the president for the time being of the law society or its successors in title.
- 17.7. The decision of the arbitrator may be made an order of any court of competent Jurisdiction and the Parties shall have the right to appeal the arbitrators' award.

- 17.8. The arbitrator will have the fullest and freest discretion with regarding to the proceedings, and their award shall be binding on the Parties to the dispute. Furthermore, the arbitrator:
- 17.8.1. May dispense wholly or in part with formal submissions or pleadings,
 - 17.8.2. Will determine the applicable procedure, considering the fact that it is intended that the dispute will be determined as quickly as possible and shall not be bound by strict rules of evidence and shall be entitled to take equity into account;
 - 17.8.3. Will include such order as to costs as he/she deem just.
- 17.9. The Parties by signing this Agreement consent to any dispute between them being determined as provided for in this clause.
- 17.10. This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 17.11. Notwithstanding any dispute, which may exist between the Parties and be subject to resolution in accordance with the foregoing, neither Party shall, pending the outcome of the dispute, delay the provision of any of their obligations in accordance with this Agreement, unless such obligations are the payment of monies in dispute
- 17.12. Any referral to arbitration in terms of this Agreement shall constitute an interruption or the running of prescription of such dispute or any statute of limitation applicable to such dispute, by agreement between the Parties.

18. GENERAL TERMS

- 18.1. This Agreement constitutes the whole of the agreement between the Parties and no amendment, alteration, addition, variation, novation, or consensual cancellation of this Agreement shall be of any force or effect unless it is reduced to writing and signed by both Parties.
- 18.2. No agreements, representations, or warranties regarding the subject matter of this Agreement shall be of any force or effect unless it is reduced to writing and signed by both Parties
- 18.3. No waiver of any of the terms and conditions of this Agreement will be binding for any purpose unless expressed in writing and signed by both Parties and any such waiver will be effective only in that specific instant and for that specific purpose given.
- 18.4. No latitude, extension of time, indulgence, failure, or delay on the part of either Party in exercising any rights, powers, privileges or obligations will operate as a waiver by that Party of any of its rights, powers or privileges in terms of this Agreement.
- 18.5. The rule of construction that a contract/agreement shall be interpreted against the Party responsible for the drafting or the preparation of the contract/agreement, shall not apply to this Agreement
- 18.6. The Manager undertakes and agrees to comply with the terms of any governmental concession agreement or any other laws and/or regulations governing the Facility

19. GOVERNING LAW AND JURISDICTION

- 19.1. This Agreement shall be governed by and interpreted in accordance with Kenyan Law
- 19.2. In addition to clause 19.1 above, the Owner agrees to notify the Manager of any and all laws, rules, regulations, by-laws, and legislation when and if same are applicable to the Facility and the Business and the Manager in turn and after such notification agrees to be bound thereby. And the Manager acknowledges that they will ensure they are aware of the Kenyan applicable law.
- 19.3. The Owner and the Manager shall not do or cause to be done or omit to do any act which may jeopardize any permit, license, grading or any other right or privilege issued to the Business or the Facility

20. NOTES AND DOMICILIA

- 20.1. The Parties choose as their domicilia citandi et executandi their respective addresses set out in clauses 1.1.16 and 1.1.19 respectively above for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement. its breach cancellation or termination may validly be served upon or delivered to the Parties
- 20.2. For purposes of this Agreement the Parties' respective addresses shall be the addresses set forth as per clause 20.1 above or at such other address in the Republic of Kenya of which the Party concerned may notify the others in writing provided that no street address shall be changed to a post office box or poste restante.
- 20.3. Any notice given in terms of this Agreement shall be in writing and shall if delivered by hand be deemed to have been duly received by the addressee on the date of delivery unless the contrary is proved
- 20.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such Party

21. SEVERABILITY

