

Participation Agreement

This Participation Agreement (this "**Participation Agreement**") is effective as of July 1, 2008, and sets forth the agreement by and among the California Thoroughbred Business League (the "**Business League**"), the California Horsemen's Safety Alliance (the "**CHSA**") and the undersigned participant (together with such participant's affiliates and subsidiaries, "**you**" or "**your**"). If you previously entered into a Participation Agreement with the Business League or the CHSA, this Participation Agreement amends and restates such previous Participation Agreement and such previous Participation Agreement is of no further force and effect, provided, that you have the right to terminate this Participation Agreement and thereby decline to receive further Workers' Compensation Subsidies (as defined in Section 1.10 below) if you do not agree to the terms of this amended and restated Participation Agreement.

Section 1.01 Scope and Purpose of the Business League and the CHSA. The Business League is an organization formed pursuant to California Business and Professions Code Section 19605.75 for the purpose of improving the thoroughbred racing industry in California by, among other things, reducing the costs of worker's compensation insurance incurred in connection with thoroughbred horses that race in the State of California at thoroughbred associations and racing fairs through (a) the payment of supplemental premiums that reduce worker's compensation insurance rates, (b) payment to or for the benefit of qualifying licensed trainers and owners of such thoroughbreds (collectively, "**Participants**"), based on the number of such thoroughbreds they start, in order to reimburse Participants for a portion of the costs of workers' compensation insurance directly or indirectly incurred by Participants, and (c) other appropriate payments (collectively, "**Workers' Compensation Subsidies**"). The CHSA is an organization formed for the purpose of assisting licensed California Thoroughbred Trainers and other participants in the thoroughbred racing industry in California by implementing programs designed to reduce the cost of workers' compensation insurance.

Section 1.02 Representations, Warranties and Covenants. In consideration for participation in the programs provided by the CHSA and receipt of Workers' Compensation Subsidies from the Business League:

(a) **Your Insurer; The Roles of the Business League and CHSA:** You understand, acknowledge and agree that, as more specifically set forth in Subsection 1.02(h) below, neither the Business League, CHSA, nor their designees are acting as an insurer, an insurance agent, insurance producer, or insurance administrator, and such entities are acting solely to implement statutory and other related programs designed to improve the overall condition of the thoroughbred horseracing industry in California, primarily by helping control and reduce the cost of workers' compensation insurance. You further understand and acknowledge that the relationship between you and your worker's compensation insurer, which is currently an affiliate of AIG, is governed by the terms of your workers' compensation insurance policy, and that in the event of any conflict or inconsistency between the terms or conditions of this Participation Agreement and your worker's compensation policy, the terms and conditions of your worker's compensation policy shall prevail.

(b) **Distribution of Workers' Compensation Subsidies:** The Business League will distribute Workers' Compensation Subsidies to you by way of a reduction in the insurance premiums that you are required to pay to your insurer. For administrative convenience, the amount of Workers' Compensation Subsidies that will be applied to your policy premiums will be incorporated into a "daily per stall" charge. You will be notified of your daily per stall rate prior to the commencement of the policy period. You understand that the per stall rate may represent only a portion of your actual worker's compensation premium, which is based on payroll and set by your worker's compensation insurer based on your payroll estimate, loss history, and as adjusted for experience modification and other factors, including the amount of funds, in any, allocated or available to the Business League to provide Workers' Compensation Subsidies. You further acknowledge and agree that (1) the Business League reserves the right to change the amount of the per stall fee, which shall be effective upon 30 days notice to you; and (2) that should your actual payroll at the end of a policy year (including any

adjustments to your payroll that result from any premium audit conducted by your insurer) exceed your estimated payroll provided at the beginning of the policy year, you may be surcharged in an amount necessary to properly calculate the amount of the Workers' Compensation Subsidy to which you are entitled, and to ensure that the proper amount of premium is remitted to your carrier.

(c) **Calculation of Per Stall Amount:** You understand and agree that your monthly balance will be determined based on the number of horses or the number of allocated stalls you have at a licensed and approved thoroughbred training or racing facility. Such figure will be provided by the facility and reviewed on a monthly basis. You will then be notified of the charge based on said number of horses or stalls, with payment due on or before the 20th of each month. You understand and agree that your monthly balance is affected by factors beyond the control of the Business League or CHSA, and that such amount may change during the period of coverage. Should said rate and/or subsidy change you will be given 30 days' notice of said change and hereby agree that the mailing of said notice to your last know address shall serve as legal and adequate notice of said change or changes. Should you have an increase or reduction in the number of stalls or horses, you agree to promptly notify the Business League of said change in writing. Any increase or decrease in payment based on a change in the number of horses or stalls shall take place at the beginning of the month immediately following the date that the Business League receives notice of said change. Payments received more than 5 days after the due date will be charged a late payment penalty of 3% of the amount due or \$50.00 whichever is greater. If cancellation notice is sent on your policy a reinstatement fee of \$250.00 will be charged. As used herein, the terms "per stall" and "per horse" are used interchangeably and the Business League may, at its sole option, use either method to determine your Workers' Compensation Subsidy or premium contribution. The Business League will use reasonable efforts to correctly identify the number of horses being trained by you but is under no obligation to use any figure other than that provided by the designated racing or training facility.

(d) **Loss Control & Safety Programs:** You agree to participate in any insurance cost reduction programs as may be required from time to time by the Business League or the CHSA, including, but not limited to, injury reduction programs, claims management programs and return-to-work programs (the "**Programs**").

(e) **Payroll Audits:** You agree to cooperate in payroll audits as and when requested by the Business League or your insurer.

(f) **Obligation to Respond To Information Requests:** You agree to requests from the Business League for information reasonably required to calculate the appropriate amount of Workers' Compensation Subsidies and to properly administer the Programs administered by the Business League and the CHSA, and you agree to provide the following information to the Business League within ten (10) days after a written request therefore and hereby represent and warrant that such information shall be accurate and complete in all material respects: (i) a summary of your workers' compensation insurance policies then in force, (ii) the amount of premiums paid under such insurance policies during the period specified in such request, (iii) the amount of payroll paid during the period specified in such request, (iv) the number of thoroughbred horses you then start at races in the State of California at thoroughbred associations and racing fairs, (v) the number and classification of your employees, and/or (vi) such other information as may be reasonably requested by the Business League in such request.

(g) **Workers' Compensation Subsidies Not Guaranteed:** You understand, acknowledge and agree that funding for Workers' Compensation Subsidies and Programs comes from independent sources not within the control of the Business League or the CHSA and are not guaranteed and that the Business League and the CHSA may, at any time and without liability, reduce or eliminate any particular Workers' Compensation Subsidy or Program.

(h) **Limited Roles of the Business League and CHSA:** You further understand, acknowledge and agree that neither the Business League nor CHSA are acting as an insurer, or an insurance company, nor is it an agent for any party, and is, without compensation, providing administering funds made available by the California Legislature for Workers' Compensation Subsidies, and the CHSA is administering the Programs for your benefit and the benefit of the California thoroughbred racing industry, therefore, the Business League and the CHSA shall not be liable to you for any matters arising out of the contract between you and the provider of your workers' compensation insurance coverage or any other matters related to this Participation Agreement. The Business League, either directly or through the CHSA, will attempt to obtain such financial support and other services as may be deemed appropriate and available by the Business League and the CHSA in an attempt to reduce workers' compensation insurance premiums for the benefit of the entire thoroughbred racing industry, but shall not be obligated to do so.

(i) **Reimbursement of Excess Workers' Compensation Subsidies:** You agree to reimburse to the Business League any over-payments of Workers' Compensation Subsidies paid to you or for your benefit as determined by the Business League from time to time, including over-payments resulting from the amount of Workers' Compensation Subsidy being based on premiums that are later refunded to you as a result of an annual audit or otherwise. In addition, if you fail to pay premiums owed for your policy of workers' compensation insurance and the Business League or CHSA become liable for said amounts, you agree to reimburse the Business League for said amounts so paid, including any costs incurred in the collection of said amounts.

(j) **Good Standing:** You represent and warrant that you are, and at all times during the term of this Participation Agreement shall remain, a licensed owner or trainer of thoroughbred horses that race in the State of California at thoroughbred associations and racing fairs.

(k) **Compliance with Law and Policy Provisions:** You shall comply in all material respects with all applicable California horseracing and other applicable licensing requirements and all requirements of your workers' compensation policy or policies.

(l) **No Coverage for Licensed Trainers & Licensed Owners:** You agree not to make any future election, and to retroactively cancel any prior election, under your workers' compensation insurance policy to provide workers' compensation insurance coverage for any individual who is licensed as a thoroughbred owner or trainer. This covenant shall apply irrespective of whether you are operating as a corporation or other business entity and are technically an employee of such entity.

Section 1.03 Termination of this Participation Agreement. The Business League or the CHSA shall have the right to terminate this Participation Agreement and your right to continue to participate in the receipt of Workers' Compensation Subsidies and the Programs upon the occurrence of any of the following events:

(a) your failure to (i) accurately report payroll figures or cooperate in payroll audits when requested, (ii) make one or more premium payments or fail to make any payment due under this Participation Agreement when due, or (iii) cooperate with the any of the Programs;

(b) your failure to perform any of your other obligations or agreements under this Participation Agreement, which failure continues for ten (10) days after receipt of notice therefore from the Business League;

(c) the discovery by the Business League of any material inaccuracy or incompleteness in any representation or warranty you made, or information you provided, in or

pursuant to this Participation Agreement, or in any application for workers' compensation insurance coverage; or

(d) The expiration, repeal or material amendment to California Business & Professions Code Section 19605.75.

Section 1.04 Miscellaneous.

(a) Disputes. In the event that, at any time after the date of this Participation Agreement, the Business League, the CHSA or you shall institute any action or proceeding against the other relating to the provisions of this Participation Agreement, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its actual reasonable attorneys' fees and all fees, costs, expenses incurred in connection with such action or proceeding. The parties further agree that any disputes arising out of the provisions of this Participation Agreement shall be submitted to binding arbitration in Los Angeles, California under the rules of the American Arbitration Association or such other rules as the parties may agree upon.

(b) Successors and Assigns. The terms and conditions of this Participation Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Participation Agreement, express or implied, is intended to confer upon any party other than you, the Business League, the CHSA or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Participation Agreement.

(c) Severability. If one or more provisions of this Participation Agreement are held to be unenforceable under applicable law, the parties hereto agree to renegotiate such provisions in good faith. In the event that the parties hereto cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Participation Agreement, (ii) the balance of this Participation Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Participation Agreement shall be enforceable in accordance with its terms.

(d) Governing Law. This Participation Agreement and all acts and transactions pursuant hereto and the rights and obligations of parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(e) Amendment and Waiver. Any term of this Participation Agreement may be amended by the Business League or the CHSA by a written notice to you but without your prior consent, provided, that you have the right to terminate this Participation Agreement if you do not agree to the terms of such amendment. Failure to enforce any provision of this Participation Agreement by any party hereto shall not constitute a waiver of any term hereof.

(f) Counterparts. This Participation Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(g) Entire Agreement. This Participation Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof. Any and all other written or oral agreements existing between the parties hereto regarding the subject matter hereof are expressly canceled.

PARTICIPANT (Trainer)*

Trainers Signature

Date

***This participation agreement can only be signed by the licensed trainer.**

ACKNOWLEDGED AND ACCEPTED:

CALIFORNIA THOROUGHBRED BUSINESS LEAGUE

By:

Date

CALIFORNIA HORSEMEN'S SAFETY ALLIANCE

By:

Date