

HORSE RACING ONTARIO

MEMBERSHIP AGREEMENT

THIS AGREEMENT is made and entered into as of the 1st day of ■, 2018 (the "**Effective Date**").

B E T W E E N:

HORSE RACING ONTARIO,
a not-for-profit corporation incorporated and
organized under the laws of Canada
(the "**Corporation**")

- and -

**EACH OF THE OPERATORS OF LIVE HORSE
RACING TRACKS LOCATED IN THE PROVINCE
OF ONTARIO LISTED IN PART A OF
SCHEDULE 1, AS RACETRACK MEMBERS**

- and -

**EACH OF THE ONTARIO HORSE RACING
INDUSTRY ASSOCIATIONS LISTED IN PART B
OF SCHEDULE 1, AS INDUSTRY ASSOCIATION
MEMBERS**

RECITALS

1. Capitalized terms have the respective meanings specified in Section 1.1.
2. The parties wish to work together to create an organization of Ontario horse racing industry representatives, including racetrack operators and industry associations, to provide strong, effective and efficient industry leadership with respect to issues affecting the entire Ontario horse racing industry (the "**Industry**"), including Industry administration and governance (collectively, the "**Purpose**"), commencing on the Effective Date.
3. The Corporation was incorporated on or about ■, 2018 to facilitate the fulfillment by the Industry of the Purpose, and the constating documents of the Corporation provide for, among other things, the admission of members to the Racetrack Members' membership class and the Industry Association Members' membership class.
4. The Corporation was incorporated with the name "Horse Racing Ontario" but intends to carry on its operations as "Ontario Racing".
5. OLG has agreed to provide certain financial support for the funding of purses for live horse racing in Ontario and certain related costs and expenses pursuant to a Funding

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Agreement for Live Horse Racing (the “**Funding Agreement**”) that will be entered into among OLG, the Corporation, ORM and WEG.

6. The Corporation and ORM will enter into a Management Agreement (the “**Management Agreement**”) whereby ORM will perform all material management and operating services for and on behalf of the Corporation, including with respect to the Corporation's obligations hereunder and under the Funding Agreement.
7. Each of the parties (other than the Corporation) wishes to become a Racetrack Member of the Corporation or an Industry Association Member of the Corporation, in each case as indicated in Schedule 1, and the Corporation is prepared to admit such Members, upon and subject to the terms and conditions specified in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the admission of Members into the Racetrack Member or the Industry Association Member class of membership of the Corporation as indicated in Schedule 1, the above premises, the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of all of which are hereby acknowledged), the parties agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions**

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and phrases shall have the respective meanings specified below and grammatical variations thereof shall have corresponding meanings:

“**Act**” means the *Canada Not-for-profit Corporations Act*;

“**AGCO**” means the Alcohol and Gaming Commission of Ontario, or any successor administrative body or bodies established by the Government in respect of the regulation of the Industry;

“**Agreement**” means this Membership Agreement, including the Schedules and Exhibits attached hereto;

“**Annual Payment**” has the meaning specified in the Funding Agreement;

“**Applicable Law**” has the meaning specified in the Funding Agreement;

“**Approved Annual Business Plan**” has the meaning specified in the Funding Agreement;

“**Assumption Agreement**” means an agreement, in such form as the Board prescribes from time to time, pursuant to which a Person agrees to be bound by this Agreement as a Racetrack Member or an Industry Association Member in accordance with the provisions of this Agreement following the Effective Date;

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“**Board**” means the board of directors of the Corporation;

“**Books and Records**” has the meaning specified in Section 5.4(a);

“**Business Day**” means a day other than a Saturday, Sunday or statutory or civic holiday observed in Toronto, Ontario;

“**By-Law No. 1**” means By-Law No. 1 of the Corporation;

“**Claim**” means any claim, demand, liability, damage, loss, suit, dispute, civil or criminal litigation, action or cause of action, arbitration, or legal, administrative or other proceeding or governmental investigation, including appeals and applications for review, and all costs and expenses relating thereto;

“**Claimant**” has the meaning specified in Section 8.3;

“**Commissions**” has the meaning specified in Schedule 3;

“**Consolidated Net Revenue**” has the meaning specified in Schedule 3;

“**Cost Allocation Services**” means the various duties and services specified in Schedule 2, as the same may be amended from time to time in accordance with this Agreement;

“**Corporation**” has the meaning specified in the list of parties to this Agreement;

“**Corporation Indemnitee**” has the meaning specified in Section 8.2;

“**CPMA**” has the meaning specified in the Funding Agreement;

“**Deductions**” has the meaning specified in Schedule 3;

“**Director**” means a director of the Corporation;

“**Dispute**” has the meaning specified in Section 9.1;

“**Disputing Parties**” has the meaning specified in Section 9.1;

“**Effective Date**” means ■, 2018;

“**Eligible Capital Cost**” has the meaning specified in the Funding Agreement;

“**Eligible Cost**” has the meaning specified in the Funding Agreement;

“**Funding Agreement**” has the meaning specified in the recitals to this Agreement;

“**Funding Agreement Term**” means the “**Term**” of the Funding Agreement, as defined in the Funding Agreement;

“**Funding Year**” has the meaning specified in the Funding Agreement and is also the fiscal year of the Corporation, being the 12-month period that commences on April 1 and ends on March 31;

“Government” means the government of Her Majesty the Queen in right of the province of Ontario, including any of its Ministries or agencies from time to time;

“Governmental Authorities” has the meaning specified in the Funding Agreement;

“Governmental Consents” has the meaning specified in the Funding Agreement;

“Grassroots Standardbred Racetrack Members” means, collectively, Clinton, Hanover, Kawartha, Lakeshore, Hiawatha and Dresden (each as defined in Schedule 1), in each case for so long as such party remains a Racetrack Member, and any other similar racetrack operator that becomes a Racetrack Member following the Effective Date which the Board designates as one of the Grassroots Standardbred Racetrack Members;

“Guest Facilities” has the meaning specified in Schedule 3;

“Indemnifier” has the meaning specified in Section 8.3;

“Independent Director” has the meaning specified in Section 3.1(f);

“Industry” has the meaning specified in the recitals to this Agreement;

“Industry Association Members” means those Persons that are listed in Part B of Schedule 1, and any other Person that applies for and is admitted to the Industry Association Members’ class of membership of the Corporation from time to time and becomes a party to this Agreement by entering into an Assumption Agreement, in each case for so long as such Persons are members in good standing of the Industry Association Members’ class of membership in accordance with this Agreement;

“Industry Nominee Directors” has the meaning specified in Section 3.1(e);

“Joint Materials” has the meaning specified in Section 7.3(b);

“Management Agreement” has the meaning specified in the recitals to this Agreement;

“Marks” has the meaning specified in Section 7.2(a);

“Materials” means data and information, reports, budgets, interpretations, records, technology and trade secrets, copyrighted works, strategies, methods of operation and files of a party, in each case whether in verbal, visual, written, electronic or other form;

“Member Indemnitee” has the meaning specified in Section 8.1;

“Members” means the Racetrack Members and the Industry Association Members;

“Net Revenue Allocation” has the meaning specified in Schedule 3;

“Nominating Group” means, as applicable, the Premier Standardbred Racetrack Members, the Signature Standardbred Racetrack Members, the Grassroots Standardbred Racetrack Members, the Premier Thoroughbred Racetrack Members, the Signature Thoroughbred Racetrack Members, the Quarterhorse Breeder and Horseperson Group, the Standardbred Breeder Group, the Standardbred Horseperson

Group, the Thoroughbred Breeder Group, the Thoroughbred Horseperson Group or the Representative Director Group;

“**Notice**” has the meaning specified in Section 10.6;

“**OLG**” means Ontario Lottery and Gaming Corporation;

“**OR Racetrack Member**” has the meaning specified in the Funding Agreement;

“**ORM**” means Ontario Racing Management Inc., a wholly owned subsidiary of WEG;

“**Pari-Mutuel Wagering Revenue Sharing Arrangements**” means the arrangements between the Corporation and the Racetrack Members relating to the sharing of Consolidated Net Revenue in accordance with Schedule 3;

“**parties**” means the parties to this Agreement from time to time, and “**party**” means any one of them;

“**Person**” is intended to have a broad meaning and includes any individual, corporation, partnership, trustee or trust or unincorporated association and pronouns have a similar extended meaning;

“**Premier Standardbred Racetrack Members**” means WEG, for so long as WEG remains a Racetrack Member, and any other similar racetrack operator that becomes a Racetrack Member following the Effective Date which the Board designates as one of the Premier Standardbred Racetrack Members;

“**Premier Thoroughbred Racetrack Members**” means WEG, for so long as WEG remains a Racetrack Member, and any other similar racetrack operator that becomes a Racetrack Member following the Effective Date which the Board designates as one of the Premier Thoroughbred Racetrack Members;

“**Proposed Annual Business Plan**” has the meaning specified in the Funding Agreement;

“**Purpose**” has the meaning specified in the recitals to this Agreement;

“**Quarterhorse Breeder and Horseperson Group**” means (i) as of the Effective Date, collectively, the Industry Association Members representing Quarterhorse breeders and horsepeople as identified in Schedule 1, in each case for so long as such Person remains an Industry Association Member, and (ii) following the Effective Date, such new Industry Association Members representing Quarterhorse breeders and horsepeople as the Board designates from time to time;

“**Racetrack Member Obligations**” has the meaning specified in Section 4.2(a);

“**Racetrack Member Property**” has the meaning specified in Section 7.1(a);

“**Racetrack Members**” means those Persons that are listed in Part A of Schedule 1, and any other Person that applies for and is admitted to the Racetrack Members’ class of membership of the Corporation from time to time and becomes a party to this Agreement

by entering into an Assumption Agreement, in each case for so long as such Persons are members in good standing of the Racetrack Members' class of membership in accordance with this Agreement and By-Law No. 1;

"Racetrack Nominee Directors" has the meaning specified in Section 3.1(d);

"Representative Director Group" means, collectively, the incumbent Directors at the relevant time who are Racetrack Nominee Directors and Industry Nominee Directors;

"Signature Standardbred Racetrack Members" means, collectively, Flamboro, Western Fair, Grand River, Georgian and Rideau-Carlton (each as defined in Schedule 1), in each case for so long as such party remains a Racetrack Member, and any other similar racetrack operator that becomes a Racetrack Member following the Effective Date which the Board designates as one of the Signature Standardbred Racetrack Members;

"Signature Thoroughbred Racetrack Members" means For Erie (each as defined in Schedule 1), for so long as Fort Erie remains a Racetrack Member, and any other similar racetrack operator that becomes a Racetrack Member following the Effective Date which the Board designates as one of the Signature Thoroughbred Racetrack Members;

"Standardbred Breeder Group" means (i) as of the Effective Date, collectively, the Industry Association Members representing standardbred breeders as identified in Schedule 1, in each case for so long as such party remains an Industry Association Member, and (ii) following the Effective Date, such new Industry Association Members representing standardbred breeders as the Board designates from time to time;

"Standardbred Horseperson Group" means (i) as of the Effective Date, collectively, the Industry Association Members representing standardbred horsepeople as identified in Schedule 1, in each case for so long as such Person remains an Industry Association Member, and (ii) following the Effective Date, such new Industry Association Members representing standardbred horsepeople as the Board designates from time to time;

"Standard of Care" has the meaning specified in the Funding Agreement;

"Statement of Purpose" has the meaning specified in Section 2.3(a)(i);

"Thoroughbred Breeder Group" means (i) as of the Effective Date, collectively, the Industry Association Members representing thoroughbred breeders as identified in Schedule 1, in each case for so long as such party remains an Industry Association Member, and (ii) following the Effective Date, such new Industry Association Members representing thoroughbred breeders as the Board designates from time to time;

"Thoroughbred Horseperson Group" means (i) as of the Effective date, collectively, the Industry Association Members representing thoroughbred horsepeople as identified in Schedule 1, in each case for so long as such party remains an Industry Association Member, and (ii) following the Effective Date, such new Industry Association Members representing thoroughbred horsepeople as the Board designates from time to time;

"TPA" has the meaning specified in Section 1.5; and

“WEG” means Woodbine Entertainment Group;

1.2 Rules of Interpretation

In this Agreement the following rules shall apply to the interpretation thereof:

(a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the words “include”, “includes” and “including” and other similar words and expressions shall in all cases be deemed to be followed by the words “without limitation”; (c) any reference to a statute shall mean the statute in force as at the Effective Date, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided; (d) references to any document, instrument or agreement, including this Agreement, (i) will include all exhibits, schedules and other attachments thereto, (ii) will include all documents, instruments or agreements issued or executed in replacement thereof, and (iii) will mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, restated, amended and restated, modified or supplemented from time to time (to the extent permitted hereunder) and in effect at the given time; (e) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; (f) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency; (g) the division of this Agreement into separate Articles, Sections, Schedules and Exhibits and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; (h) references in this Agreement to “Articles”, “Sections”, “Schedules” and “Exhibits” refer, respectively, to Articles and Sections of, and Schedules and Exhibits to, this Agreement; (i) “hereunder”, “herein”, “hereto” and “hereof”, when used in this Agreement, refer to this Agreement and not to a particular Section or clause of this Agreement; and (j) except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

1.3 Accounting Principles

Wherever in this Agreement reference is made to generally accepted accounting principles or “GAAP”, such reference shall be deemed to be to the generally accepted accounting principles from time to time established and approved by Chartered Professional Accountants of Canada (“CPA Canada”), or any successor entity, and recommended in the CPA Canada Handbook applicable as at the date on which such principles are to be applied and applied on a consistent basis.

1.4 Schedules and Exhibits

(a) The following Schedules are attached to, incorporated into and form a part of this Agreement:

- Schedule 1 - List of Members as of the Effective Date
- Schedule 2 - Cost Allocation Services
- Schedule 3 - Pari-Mutuel Wagering Revenue Sharing Arrangements

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(b) The following Exhibits are attached to this Agreement for reference purposes but are not incorporated into this Agreement except to the extent expressly contemplated herein:

- Exhibit A - Statement of the Purpose of the Corporation
- Exhibit B - By-Law No. 1 of the Corporation
- Exhibit C - Funding Agreement

1.5 Transition

On the Effective Date, each Racetrack Member is a party to a transfer payment agreement (each, a “TPA”) between such Racetrack Member and Her Majesty the Queen in right of Ontario (as represented by the Minister of Finance, as represented by OLG), as assignee of The Ontario Racing Commission, and pursuant to such TPA receives certain payments from OLG as set out thereunder. The Corporation and the Racetrack Members acknowledge and agree that each TPA will be terminated by no later than March 31, 2019, as contemplated by the Funding Agreement.

ARTICLE 2 PRINCIPAL TERMS

2.1 Purposes of Agreement

The purposes of this Agreement are to establish the terms and conditions under which (i) each of the Members will be a member of and participate in the business of the Corporation, including the distribution of the Annual Payment to or for the benefit of the Racetrack Members in accordance with the Funding Agreement, and (ii) the Corporation will provide administration, governance and decision-making on behalf of the Industry in respect of, among other things, live horse racing in Ontario and pari-mutuel wagering thereon, and Industry-wide development programs.

2.2 Membership in Corporation

(a) The Corporation and each Member acknowledges that such Member wishes to become a Racetrack Member or an Industry Association Member, in each case as indicated in Schedule 1, and the Corporation is prepared to admit such Member into the Racetrack Member class of membership of the Corporation or the Industry Association Member class of membership of the Corporation, as applicable.

(b) Upon execution and delivery of this Agreement by the Corporation and any Member, such Member shall be and shall be deemed to be a Racetrack Member or an Industry Association Member, as indicated in Schedule 1.

(c) In accordance with By-Law No. 1, following the Effective Date, no Person shall become a member of the Corporation unless and until such Person has agreed to be bound by this Agreement as a Racetrack Member or an Industry Association Member, as applicable, by executing and delivering an Assumption Agreement, and Schedule 1 shall thereafter be deemed to be amended accordingly.

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2.3 Governing Principles and Conditions of Membership

- (a) Each Member acknowledges and agrees as follows:
- (i) the Member has received a copy of, and has reviewed and understands, the 'statement of the purpose' of the Corporation, as specified in the Articles of Incorporation of the Corporation, a copy of which is attached hereto as Exhibit A (the "**Statement of Purpose**"). The Member shall govern itself and its activities in a manner that is consistent with the Statement of Purpose;
 - (ii) the Member has received a copy of, and has reviewed and understands, By-Law No. 1 of the Corporation, a copy of which is attached hereto as Exhibit B, and the governance of the Corporation shall be effected in accordance with this Agreement, By-Law No. 1 and as otherwise required by and in compliance with the Act; and
 - (iii) the Member has received a copy of, and reviewed and understands, the Funding Agreement, a copy of which is attached hereto as Exhibit C and during the Funding Agreement Term, each Racetrack Member shall comply with each of the obligations of an OR Racetrack Member as set forth in the Funding Agreement, and no Member shall take any action or omit to take any action that will result in the Corporation failing to comply with its obligations under the Funding Agreement.

(b) Each of the parties covenants and agrees to execute and deliver, or cause to be executed and delivered, all such instruments and other documents, and to exercise or cause to be exercised any and all voting rights attaching to its membership interest from time to time and to do or cause to be done all such other acts and things within its power in order that all provisions of this Agreement shall be fully and effectively carried out in accordance with the terms hereof, including consenting to, approving or otherwise giving effect to all such changes to the articles, by-laws, resolutions and other documents governing the Corporation as may be necessary or desirable for such purpose. Without limiting the generality of the foregoing, the parties agree that, in the case of any conflict between the provisions of this Agreement and the articles of the Corporation or By-law No. 1, it is their intention that the provisions of this Agreement shall govern and, to the extent required, all of the parties shall cooperate and do such acts and things and execute such documents and instruments as may reasonably be required in order to amend the articles or By-law No. 1 to remove any such conflict. Notwithstanding the foregoing or any other provision of this Agreement, the parties do not intend for this Agreement to be a unanimous member agreement as defined in and for purposes of the Act, and nothing in this Agreement shall be construed to restrict, in whole or in part, the powers of the Directors to manage, or supervise the management of, the activities and affairs of the Corporation or to otherwise fetter the discretion of any Director or to require the Directors to act in a particular manner.

2.4 Rights and Obligations

Except as specifically contemplated and provided for in this Agreement, nothing in this Agreement shall be deemed to constitute any party as the partner, agent or legal representative of any other party, or to create any fiduciary relationship between them, for any purpose whatsoever. Except as specifically contemplated and provided for in this Agreement,

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no party shall have any authority to act for or to assume any obligation or responsibility on behalf of any other party.

2.5 Business of the Member

Except as specifically contemplated and provided for in this Agreement (including Section 2.3(a)(i)), nothing in this Agreement shall be deemed to restrict in any way the freedom of a Member to conduct as it sees fit any of its other businesses or activities whatsoever.

2.6 Term and Termination of Membership

(a) The term of a Member’s membership in the Corporation, and the renewal and termination thereof, shall be governed by By-Law No. 1 of the Corporation. For certainty, Member acknowledges that it is a condition of membership in the Corporation that it shall at all times comply with its obligations in, and otherwise be in good standing under, this Agreement, as determined by the Board.

(b) In the event that a Member’s membership in the Corporation is terminated (including in circumstances in which the Member resigns as a member), such termination shall not relieve or release such Member from any liabilities or obligations, or deprive a Member of any rights, that have accrued to it prior to the date of such termination, other than those liabilities, obligations or rights that may be discharged or exercised only if such Member were still a member of the Corporation.

2.7 Cessation of Operations

In the event that the Board determines to cease some or all of the operations of the Corporation, the Corporation undertakes to use reasonable commercial efforts to assist each Racetrack Member to obtain the necessary licences and regulatory approvals necessary to allow the Racetrack Member to offer live racing and pari-mutuel wagering at its racetrack and in the relevant home market area.

**ARTICLE 3
GOVERNANCE OF THE CORPORATION**

3.1 Board of Directors

(a) As of the Effective Date, the Board shall initially consist of 10 Directors, each of whom shall be an individual qualified to act as a Director under the Act.

(b) The Members agree that the initial Directors as of the Effective Date shall be as follows, in each case to hold office for the term indicated next to such Director’s name, and each of the Members covenants and agrees to exercise all voting rights attaching to its membership interest and to execute all resolutions and other documents as may be required in order to elect such individuals as Directors as of the Effective Date:

<u>Nominating Group</u>	<u>Name of Director</u>	<u>Term</u>
Premier Standardbred Racetrack Members	Jessica Buckley	1 year
Signature Standardbred Racetrack Members	Hugh Mitchell	1 year

DRAFT

<u>Nominating Group</u>	<u>Name of Director</u>	<u>Term</u>
Grassroots Standardbred Racetrack Members	Ian Flemming	1 year
Premier Thoroughbred Racetrack Members	James Lawson	1 year
Signature Thoroughbred Racetrack Members	James Thibert	1 year
Quarterhorse Breeder and Horseperson Group	Bob Broadstock	1 year
Standardbred Breeder Group	Walter Parkinson	1 year
Standardbred Horseperson Group	Bill O'Donnell	1 year
Thoroughbred Breeder Group	Peter Berringer	1 year
Thoroughbred Horseperson Group	Sue Leslie	1 year

(c) Promptly following the Effective Date, the Corporation shall request that the Representative Director Group nominate an Independent Director in accordance with Section 3.1(f), following which the Board shall consist of 11 Directors. Each of the Members covenants and agrees to exercise all voting rights attaching to its membership interest and to execute all resolutions and other documents as may be required in order to elect such nominee as a Director. It is the intention of the Members that the first Independent Director will be nominated and elected by no later than December 31, 2018. The Representative Director Group shall specify the term for which such first Independent Director will hold office, subject to the limitations in By-Law No. 1.

(d) Subject to Section 3.1(b), the Racetrack Members shall have the right to nominate five Directors (collectively, the "**Racetrack Nominee Directors**"), as follows:

- (i) the Premier Standardbred Racetrack Members shall have the right to nominate one Director, and in the event that there are no Premier Standardbred Racetrack Members, then the Signature Standardbred Racetrack Members and the Grassroots Standardbred Racetrack Members shall nominate the Director;
- (ii) the Signature Standardbred Racetrack Members shall have the right to nominate one Director, and in the event that there are no Signature Standardbred Racetrack Members, then the Premier Standardbred Racetrack Members and the Grassroots Standardbred Racetrack Members shall nominate the Director;
- (iii) the Grassroots Standardbred Racetrack Members shall have the right to nominate one Director, and in the event that there are no Grassroots Standardbred Racetrack Members, then the Premier Standardbred Racetrack Members and the Signature Standardbred Racetrack Members shall nominate the Director;

DRAFT

- (iv) the Premier Thoroughbred Racetrack Members shall have the right to nominate one Director, and in the event that there are no Premier Thoroughbred Racetrack Members, then the Signature Thoroughbred Racetrack Members shall nominate the Director; and
- (v) the Signature Thoroughbred Racetrack Members shall have the right to nominate one Director, and in the event that there are no Signature Thoroughbred Racetrack Members, then the Premier Thoroughbred Racetrack Members shall nominate the Director,

and each of the Members covenants and agrees to exercise all voting rights attaching to its membership interest and to execute all resolutions and other documents as may be required in order to elect such nominees as Directors of the Corporation.

(e) Subject to Section 3.1(b), the Industry Association Members shall have the right to nominate five Directors (collectively, the “**Industry Nominee Directors**”), as follows:

- (i) the Quarterhorse Breeder and Horseperson Group shall have the right to nominate one Director;
- (ii) the Standardbred Breeder Group shall have the right to nominate one Director;
- (iii) the Standardbred Horseperson Group shall have the right to nominate one Director;
- (iv) the Thoroughbred Breeder Group shall have the right to nominate one Director; and
- (v) the Thoroughbred Horseperson Group shall have the right to nominate one Director,

and each of the Members covenants and agrees to exercise all voting rights attaching to its membership interest and to execute all resolutions and other documents as may be required in order to elect such nominees as Directors of the Corporation. In the event that, at any time or from time to time, there cease to be any Industry Association Members which are included in any of the foregoing Nominating Groups, the other Industry Association Members, collectively, shall have the right to nominate the Director in the stead of such Nominating Group.

(f) Subject to Section 3.1(c), the Corporation shall request that the Representative Director Group, acting collectively, nominate one Director (the “**Independent Director**”), provided, however that the Independent Director shall (i) be an individual who is not in a relationship that could reasonably be expected to interfere with the exercise of independent judgement in relation to the business and affairs of the Corporation, and (ii) shall not be a shareholder, partner, member, director, officer or employee of any Member or of the Corporation or any affiliate of the Corporation. The Independent Director shall serve as the chairperson of the Board.

(g) The parties acknowledge that pursuant to By-Law No. 1, each Director will hold office for a term not to exceed three years. Each Nominating Group shall specify the term for which its nominee Director will hold office; provided, however, that in the absence of any such

designation, such term will be deemed to be 2 years. It is the Members' intention that each Nominating Group shall be entitled at any time and from time to time to remove and replace its nominee Director. If a Nominating Group wishes to remove and replace its nominee Director prior to the end of such Director's term of office, or if a Director ceases for any reason to be a Director, the Nominating Group that nominated such Director shall as soon as practicable notify the Corporation and the other Members of its new nominee Director, and each Member shall exercise all voting rights attaching to its membership interest, execute all such other resolutions or other documents and do such other acts and things as the Corporation or such Nominating Group, acting reasonably, may request for the purpose of removing such Director from the Board (if applicable) and electing such replacement Director to the Board.

(h) Each Nominating Group shall comply with any policies, processes and timelines that the Corporation establishes relating to the selection of its nominee Director (including any processes to be followed in the event that the Members of a Nominating Group are unable to identify a nominee Director); provided, however, that such policies and processes shall at all times include or be deemed to include the following:

- (i) in the event that the Nominating Group (other than the Representative Director Group) will select its nominee Director at a meeting of the Members comprising such Nominating Group:
 - (A) if such Nominating Group is comprised of only two Members, then both of such Members shall be present at such meeting; and
 - (B) if such Nominating Group is comprised of three or more Members, then at least 50% of such Members shall be present at such meeting;
- (ii) in the event that the Nominating Group (other than the Representative Director Group) will select its nominee Director without a meeting, then all of the Members comprising such Nominating Group shall agree to such nominee Director in writing;
- (iii) in the event that the Nominating Group (other than the Representative Director Group) is not able to successfully identify a nominee Director:
 - (A) if such Nominating Group is comprised of only two Members, then each such Member shall be entitled to propose one nominee; and
 - (B) if such Nominating Group is comprised of three or more Members, then such Members shall collectively be entitled to propose up to three nominees,

and in such circumstances, the Corporation shall request that the incumbent Directors at the relevant time, other than the incumbent Director who was previously the nominee of such Nominating Group, identify which of the proposed nominees will be put forward to the other Members as the nominee Director for such Nominating Group, and if necessary, the Chair of the Board will have tie-breaking vote for purposes of making such determination;

- (iv) in the event that the Representative Director Group will select its nominee Director at a meeting, then the Corporation shall require that at least 50% of the Racetrack Nominee Directors and 50% of the Industry Nominee Directors be present at such meeting; and
- (v) in the event that the Representative Director Group will select its nominee Director without a meeting, then the Corporation shall require that all of the Racetrack Nominee Directors and the Industry Nominee Directors agree to such nominee Director in writing.

(i) Each Nominating Group shall provide written evidence of the selection of its nominee Director in the form prescribed by the Corporation from time to time.

ARTICLE 4 **ROLES AND RESPONSIBILITIES**

4.1 Roles and Responsibilities of the Corporation

(a) In addition to any other obligations, covenant and agreements specified elsewhere in this Agreement, the role and responsibility of the Corporation is to, and the Corporation shall, fulfill and comply with all of the obligations and responsibilities of the Corporation under the Funding Agreement, including and without in any way limiting the foregoing:

- (i) receiving from OLG and distributing to all Racetrack Members the Annual Payment, as provided in Article 2 and Article 3 of the Funding Agreement;
- (ii) preparing each Proposed Annual Business Plan, as provided in Article 5 of the Funding Agreement, submitting each Proposed Annual Business Plan to the Board for approval, and implementing and monitoring the Approved Annual Business Plan; and
- (iii) preparing audited financial statements of the Corporation for delivery to OLG, as provided in Article 7 of the Funding Agreement.

(b) Further and without in any way limiting the foregoing, in furtherance of the Corporation's Statement of Purpose and its obligations under the Funding Agreement, the Corporation shall:

- (i) provide administration and funding management with respect to the Quarterhorse, Standardbred and Thoroughbred HIP programs;
- (ii) manage a central race office, including managing bank accounts, purse payments and staking programs, with a mandate of ensuring the highest standard possible in quality and competitive racing, for both overnights and stake racing at each Racetrack Member's racetrack;
- (iii) establish live race schedules and post times for all Racetrack Members' racetracks, with a mandate of maximizing pari-mutuel wagering for all Racetrack Members;

- (iv) brand and promote wagering of Ontario live races through all wagering channels, including seeking opportunities to increase joint venture revenue;
- (v) establish co-op or group purchasing of common services, where applicable and available; subject to each Racetrack Member's right to decline to participate in such co-op or group purchasing if such Racetrack Member wishes to continue its existing group purchasing arrangements in respect of one or more services;
- (vi) establish, administer and enforce common racetrack rules and regulations, where and to the extent it is reasonably practical to do so;
- (vii) consult and cooperate with the AGCO on the establishment and enforcement of the applicable Rules of Racing (or equivalent rules and regulations);
- (viii) administer and manage all equine welfare programs;
- (ix) market and promote the Industry as a vital part of Ontario's agricultural, sports, entertainment and gaming sectors, including marketing and promotion of horse ownership;
- (x) develop, promote and work with regulators to generate new revenue for the Industry via new and/or enhanced pari-mutuel wagering products or other revenue streams;
- (xi) report to and liaise with OLG with respect to Industry funding matters;
- (xii) monitor and report to all Members and to OLG regarding all pre-determined benchmarks and Government funding accountability standards for all Racetrack Members; and
- (xiii) perform its obligations, covenants and agreements under this Agreement and under the Funding Agreement in compliance with the Standard of Care, and with the goal and intent of promoting and effecting the Statement of Purpose.

(c) Each Member acknowledges and agrees that, in connection with the performance of any of the obligations, covenants or agreements of the Corporation under this Agreement, the Corporation shall be entitled to engage the assistance of such subcontractors and service providers as the Board determines are necessary or appropriate for that purpose, and that, in that regard, the Corporation will enter into the Management Agreement pursuant to which ORM will perform all material management and operating services for and on behalf of the Corporation, including with respect to the Corporation's obligations, covenants or agreements hereunder and under the Funding Agreement. Notwithstanding the Corporation's use of any such subcontractor or other service provider, the Corporation shall retain overall responsibility for fulfilling its obligations, covenants and agreements under this Agreement and the Funding Agreement.

4.2 Roles and Responsibilities of Racetrack Members

(a) In addition to any other obligations, covenant and agreements specified elsewhere in this Agreement, the role and responsibility of each Racetrack Member is to, and each Racetrack Member shall, fulfill and comply with all of the obligations, covenants, agreements and responsibilities of an OR Racetrack Member specified in the Funding Agreement (collectively, the “**Racetrack Member Obligations**”) during the Funding Agreement Term. Without in any way limiting the foregoing, wherever the Funding Agreement provides that the Corporation shall cause or require the OR Racetrack Member to do something or to refrain from doing something, or to otherwise comply with a requirement of the Funding Agreement, the Racetrack Member shall do or not do such thing or shall otherwise comply with such requirement, all in the manner required by the Funding Agreement and, where applicable, as reasonably directed by the Corporation. For certainty, to the extent that any provision of the Funding Agreement includes an obligation, covenant or agreement that is expressed to be an obligation, covenant or agreement of a Racetrack Member (as an OR Racetrack Member), including the Racetrack Member Obligations, the Racetrack Member shall comply with such obligation, covenant or agreement as if it were a party to the Funding Agreement and shall fully cooperate with the Corporation in ensuring such Racetrack Member’s compliance therewith.

(b) Further and without in any way limiting the foregoing, each Racetrack Member shall at all times:

- (i) during the Funding Agreement Term, implement the Approved Annual Business Plan, and not take any steps or actions contrary to the Approved Annual Business Plan, in the operation of its own racetrack and the conduct by it of pari-mutuel wagering on live horse races;
- (ii) implement and comply with all guidelines, policies, directions and standards established by the Corporation from time to time in connection with the fulfillment of the Statement of Purpose, the implementation of the Approved Annual Business Plan, and the performance of the Funding Agreement by the Corporation and by the Racetrack Member with respect to the Racetrack Member Obligations;
- (iii) comply at all times with Applicable Law, including all requirements of the CPMA;
- (iv) remain in good standing with all Governmental Authorities having jurisdiction or authority over or in respect of it, and obtain and maintain in good standing all Governmental Consents that are necessary in connection with the performance of any of its obligations under this Agreement, the Funding Agreement or the operation of its racetrack;
- (v) during the Funding Agreement Term, ensure that any portion of the Annual Payment that is provided to the Racetrack Member is used and expended in accordance with this Agreement and the Funding Agreement, and if the Corporation or OLG determines, acting reasonably, that any funds comprising an Annual Payment have not been used or expended by Member to satisfy an Eligible Cost or an Eligible Capital Cost or in accordance with the relevant Approved Annual Business Plan, repay such funds to the Corporation (for repayment to OLG) or to OLG, as directed by the Corporation, promptly following receipt of written notice from the Corporation;

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- (vi) during the Funding Agreement Term, conduct its live races on their scheduled racing dates and run the race dates with the purse allocations specified in the Approved Annual Business Plan for the relevant Funding Year;
- (vii) allow all other Racetrack Members to wager on, and display (if applicable), the Racetrack Member's live races at such other Racetrack Members' Guest Facilities without compensation, except for the compensation specifically described in Section 4.6;
- (viii) accept, or allow the Corporation to accept, at the Racetrack Member's Guest Facilities pari-mutuel wagers and transfer the related wagering information and Commissions as provided in Section 4.6;
- (ix) during the Funding Agreement Term, within 140 days after the end of each fiscal year of the Racetrack Member, deliver to the Corporation (for delivery to OLG) audited financial statements of the Racetrack Member, as required by the Funding Agreement;
- (x) during the Funding Agreement Term, cooperate with and provide such assistance, and cause its directors, officers and employees to do so, to the Corporation and to OLG, and any authorized representatives designated by either of them, as they reasonably require in order to exercise or carry out the rights of OLG in Article 8 of the Funding Agreement, including supplying to the Corporation (for delivery to OLG) such information in respect of the operation of the Racetrack Member's racetrack as is requested by either the Corporation or OLG; and
- (xi) perform its obligations, covenants and agreements under this Agreement and under the Funding Agreement (with respect to the Racetrack Member Obligations) in compliance with the Standard of Care, and with the goal and intent of promoting and effecting the Statement of Purpose.

4.3 Roles and Responsibilities of Industry Association Members

In addition to any other obligations, covenant and agreements specified elsewhere in this Agreement, each Industry Association Member shall at all times:

- (a) act in a manner that is in the best interests of the Industry and which is consistent with the Statement of Purpose;
- (b) implement and comply with all guidelines, policies, directions and standards established by the Corporation from time to time in connection with the fulfillment of the Statement of Purpose, the implementation of the Approved Annual Business Plan and the performance of the Funding Agreement by the Corporation and by the Racetrack Members with respect to the Racetrack Members' Obligations;
- (c) during the Funding Agreement Term, cooperate with and provide such assistance, and cause its directors, officers and employees to do so, to the Corporation and to OLG, and any authorized representatives designated by

either of them, as they reasonably require in order to exercise or carry out the rights of OLG in Article 8 of the Funding Agreement; and

- (d) perform its obligations, covenants and agreements under this Agreement in compliance with the Standard of Care, and with the goal and intent of promoting and effecting the Statement of Purpose.

4.4 Additional WEG Covenant – Race Dates and Purse Allocations

WEG shall ensure that, during each Funding Year of the Funding Agreement Term, each of the Racetrack Members shall run the race dates with the purse allocations specified in the Approved Annual Business Plan for such Funding Year and, to the extent necessary in connection therewith, WEG shall contribute to the Corporation, at WEG's own cost and expense (without any obligation of the Corporation or any other party to repay such amount), that amount of money as may be required by the Corporation to ensure that such purse allocations are available to the relevant Racetrack Members promptly following a request therefor from the Corporation, if and to the extent that such amounts are not available from the Corporation.

4.5 Roles and Responsibilities re Cost Allocation Services

(a) Subject to compliance by a Racetrack Member with its obligations, covenants and agreements under this Agreement, the Corporation shall provide the Cost Allocation Services to and on behalf of such Racetrack Member during the Funding Agreement Term.

(b) The list of Cost Allocation Services in Schedule 2 will be reviewed by the Board on an annual basis and may be amended by the Corporation following the approval of such amendments by the Board, which approval shall include the affirmative vote or approval of at least 75% of the Racetrack Nominee Directors.

4.6 Roles and Responsibilities re Pari-Mutuel Wagering Revenue Sharing

(a) During the Funding Agreement Term, the Corporation shall determine the Consolidated Net Revenue in accordance with Schedule 3 and, subject to compliance by a Racetrack Member with its obligations, covenants and agreements under this Agreement, each Racetrack Member shall be entitled to receive from the Corporation, and the Corporation shall pay to the relevant Racetrack Member, such Racetrack Member's Net Revenue Allocation, being a share of the Consolidated Net Revenue for each Funding Year calculated in accordance with the provisions of Schedule 3.

(b) During the Funding Agreement Term, each Racetrack Member and the Corporation shall fulfill and comply with their respective additional obligations, covenants and agreements set out in Schedule 3.

**ARTICLE 5
FINANCIAL AND REPORTING OBLIGATIONS**

5.1 Payments by Parties

The Corporation shall pay to each Racetrack Member all amounts due and owing to such Racetrack Member pursuant to this Agreement, including in respect of Cost Allocation

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Services and the Pari-Mutuel Wagering Revenue Sharing Arrangements, as provided in Sections 4.5 and 4.6. Each Racetrack Member shall pay to the Corporation all amounts due and owing to the Corporation from such Racetrack Member pursuant to this Agreement, including in respect of the Pari-Mutuel Wagering Revenue Sharing Arrangements, as provided in Section 4.6.

5.2 Right to Set-Off

Each Member hereby authorizes the Corporation, without demand for payment, and without any formality, all of which are hereby waived, at any time and from time to time, to set off, appropriate and apply any and all amounts owing by Member under this Agreement from time to time, irrespective of whether or not the Corporation has made any demand under this Agreement against any and all amounts at any time held by the Corporation on behalf of such Member and any and all amounts to be remitted to such Member by the Corporation hereunder.

5.3 Costs and Expenses

(a) Except as otherwise expressly provided for in this Agreement, each party shall be responsible for all costs and expenses incurred by it in fulfilling or complying with its own obligations under this Agreement, including its costs of planning, establishing, participating in, assisting, operating and monitoring the activities of the Corporation.

(b) For certainty, during the Funding Agreement Term, except as specifically set out in the Cost Allocation Services, each Racetrack Member shall be solely responsible for all costs of conducting its live races and, except for the Deductions, for all costs associated with accepting the pari-mutuel wagering accepted at its Guest Facilities and transferring the Commissions derived from pari-mutuel wagering to the Corporation.

5.4 Books and Records

(a) Each party shall keep and maintain complete and accurate records and books of account in which shall be entered the particulars of all matters in respect of the business and operations of the party's activities related to this Agreement, and as are appropriate or customary to be entered into records and books of account maintained by Persons engaged in any similar business (the "**Books and Records**"). The Books and Records shall be prepared in accordance with generally accepted accounting principles, consistently applied. The Books and Records shall at all times be maintained, (i) in the case of the Corporation, at the principal office of the Corporation, (ii) in the case of a Racetrack Member, at an office located on the premises of a racetrack operated by such Racetrack Member, or (iii) in the case of an Industry Association Member, at the principal office of such Industry Association Member in Ontario.

(b) Without limiting the foregoing, the Books and Records shall include, as applicable, all relevant financial information in respect of (1) the conduct of pari-mutuel betting carried on pursuant to this Agreement, including gross wagering handle, Commissions and Deductions, and (2) all payments made or received by the party pursuant to the Funding Agreement or from the payment or distribution of funds received by the Corporation pursuant to the Funding Agreement.

5.5 Information

- (a) The Corporation shall make available to the Members its annual financial statements in accordance with the Act and By-Law No. 1.
- (b) The Corporation shall make available to the Members the Approved Annual Business Plan for each Funding Year by no later than the commencement of the Funding Year to which such Approved Annual Business Plan applies.
- (c) In addition to any other information requirements under the Act and By-Law No. 1, the Corporation shall make available or furnish to the Members and to the Government from time to time, in a form approved by the Board or required by the Government, such information in respect of the business and operations of the Corporation and the parties' activities undertaken pursuant to this Agreement, as the Board shall reasonably require or as required by the Government from time to time.
- (d) Each Member shall furnish to the Corporation such information with respect to such Member's activities related to this Agreement as may be reasonably required by the Corporation from time to time solely for purposes of the Corporation (1) ensuring compliance by such Member with its obligations under this Agreement, and (2) fulfilling the Corporation's obligations under this Agreement and the Funding Agreement, including the preparation and delivery of reports and other information required by the Government.

**ARTICLE 6
REPRESENTATIONS AND WARRANTIES**

6.1 Representations and Warranties of Parties

Each of the parties hereby represents and warrants to and for the benefit of the other parties as follows, and each Member acknowledges that the Corporation is relying on such representations and warranties in connection with the admission of the Member as a member of the Corporation:

- (a) it has the full right, power and authority to enter into and carry out its obligations under this Agreement, and every other agreement or document to be entered into by it as contemplated or provided for in this Agreement;
- (b) it is duly authorized by all necessary and appropriate corporate or other action to execute and deliver this Agreement and each such other agreement or document;
- (c) it has no prior commitments, arrangements or agreements with any other Person which might interfere with, or preclude the carrying out of its obligations under this Agreement, or any other agreement or document to be entered into by it as contemplated or provided for in this Agreement;
- (d) in the case of Member, it currently holds or will obtain, and will continue to hold at all times during the period when it is a Member, all Governmental Consents and other licences, consents and approvals necessary or required to enable it to carry out its obligations under this Agreement, and any other agreement or

document to be entered into by it as contemplated or provided for in this Agreement; and

- (e) the Member satisfies all of the conditions for being a member of the Corporation as specified in By-Law No. 1.

6.2 Survival of Representations and Warranties

The representations and warranties in Section 6.1 are conditions on which the parties have relied in entering into this Agreement and are continuing representations and warranties that will survive for so long as the Member is a member of the Corporation. The inaccuracy of a representation or warranty by a Member at any time may, in the Board's discretion, result in such Member ceasing to be a Member in good standing under this Agreement.

ARTICLE 7 OWNERSHIP AND USE OF IP

7.1 Ownership and Use of Races and Related Materials

(a) The Corporation acknowledges and agrees that, as between the Corporation and any Racetrack Member, all right, title and interest (including copyright or otherwise) in and to (1) such Racetrack Member's live races, and their presentation or exploitation in or through any media, and (2) any film, tape, video tape, microwave or satellite transmission or other material in respect of such Racetrack Member's live races (collectively, the "**Racetrack Member Property**") shall be and remain the sole and exclusive property of such Racetrack Member.

(b) Each Racetrack Member hereby grants to the Corporation (and the Corporation shall be entitled to grant to the Corporation's subcontractors and other service providers, including ORM) a fully paid-up, royalty free, irrevocable, non-cancellable, non-terminable, exclusive right to use, in any manner the Corporation considers necessary or appropriate, the Racetrack Member Property in connection with or in furtherance of the performance or fulfillment of the obligations, covenants or agreements of the Corporation under this Agreement and the Funding Agreement.

7.2 Ownership and Use of Marks

(a) None of the parties shall be permitted to use any trademarks, logos or other identifying names or marks (collectively, "**Marks**") of any other party, without the express prior consent of the owning party. Each party acknowledges and agrees that the relevant party is the exclusive owner of the relevant party's own Marks and shall not take any action that will adversely affect the validity of any of such Marks or, directly or indirectly, attempt to dilute or depreciate the value of the goodwill attached thereto.

(b) If requested by the Corporation, a Member shall enter into such agreements and make such applications as may be necessary to permit the Corporation, ORM or another Member to be a permitted user of such Member's Marks, solely in connection with or in furtherance of the performance or fulfillment of the obligations, covenants or agreements of the Corporation or such other Member under this Agreement or the Funding Agreement.

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7.3 Ownership and Use of Materials

(a) Members shall not develop or use any name, mark, logo or design for use in connection with the provision of the business or operations of the Corporation or the parties' business arrangements under this Agreement.

(b) Each party acknowledges and agrees that there may be instances in which: (i) certain parties have jointly contributed to the development of certain Materials, or (ii) certain Materials are developed by or on behalf of the Corporation, and in respect of which a Member may desire to use such Materials. The parties agree that any such Materials (the "**Joint Materials**") shall be owned by the Corporation, and that, provided that Member is a member of the Corporation in good standing, including being in full compliance with its obligations under this Agreement, any Member shall have an unrestricted right to use the Joint Materials without any obligation to account to the Corporation or to any other Member in respect of such use. For certainty, Joint Materials shall not include any Materials but for this provision owned by any party and incorporated therein. To the extent any Materials of a Member are incorporated into the Joint Materials, such Member hereby grants to the Corporation (and the Corporation shall be entitled to grant to the Corporation's subcontractors and other service providers, including ORM) a non-exclusive, perpetual, royalty-free, unlimited right to use such Materials solely as part of the Joint Materials, provided that any proprietary confidential information is protected.

ARTICLE 8 **INDEMNIFICATION**

8.1 Indemnification of Members

The Corporation covenants and agrees to indemnify and hold harmless each Member and such Member's directors, officers, employees and agents (each, a "**Member Indemnitee**") from and against any and all third party Claims that are incurred or suffered by a Member Indemnitee resulting from or arising out of:

- (i) any inaccuracy or misrepresentation of any representation or warranty of the Corporation in this Agreement;
- (ii) any failure of the Corporation to perform or comply with any of its obligations, covenants or agreements under this Agreement;
- (iii) any bad faith or wanton or wilful misconduct, negligence or fraudulent act in connection with the performance by the Corporation (or any of its directors, officers, staff, subcontractors or anyone for whom it is legally responsible) of any of its obligations, covenants or agreements in this Agreement; or
- (iv) any death or bodily injury, sickness, disease or injury of any kind, of any Person or any damage, loss or destruction of any real, personal or intangible property to the extent caused by any negligence or wilful misconduct of the Corporation (or any of its directors, officers, staff, subcontractors or anyone for whom it is legally responsible).

Each Member shall hold the benefit of the foregoing indemnities in trust for the other Member Indemnitees.

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8.2 Indemnification of Corporation

Each Member, on a several basis (and not jointly and severally with the other Members), covenants and agrees to indemnify and hold harmless the Corporation and ORM, and their respective directors, officers, employees and agents (each, a “**Corporation Indemnatee**”) from and against any and all third party Claims that are incurred or suffered by a Corporation Indemnatee resulting from or arising out of:

- (i) any inaccuracy or misrepresentation of any representation or warranty of such Member in this Agreement;
- (ii) any failure of such Member to perform or comply with any of its obligations, covenants or agreements under this Agreement;
- (iii) any bad faith or wanton or wilful misconduct, negligence or fraudulent act in connection with the performance by such Member (or any of its directors, officers, staff, subcontractors or anyone for whom it is legally responsible) of any of its obligations, covenants or agreements in this Agreement; or
- (iv) any death or bodily injury, sickness, disease or injury of any kind, of any Person or any damage, loss or destruction of any real, personal or intangible property to the extent caused by any negligence or wilful misconduct of Member (or any of its directors, officers, staff, subcontractors or anyone for whom it is legally responsible).

The Corporation shall hold the benefit of the foregoing indemnities in trust for the other Corporation Indemnitees.

8.3 Notice of Claim and Process

In the event that a party (the “**Claimant**”) receives notice of a Claim in respect of which it intends to seek indemnification from another party (the “**Indemnifier**”) pursuant to Section 8.1 or 8.2, as the case may be, it shall promptly notify the Indemnifier of such fact and permit the Indemnifier, at the Indemnifier’s option and expense, to conduct the defence (including any settlement discussions) with counsel acceptable to the Claimant, provided that no settlement shall be effective without the approval of the Claimant. The Claimant shall cooperate in any such defence.

8.4 Limitations of Liability

(a) For certainty, in no event shall the Corporation be liable, responsible or accountable in damages or otherwise to any Member for any action taken or failure to act within the scope of the authority conferred on the Corporation by this Agreement, unless such action or omission was performed or omitted fraudulently or in bad faith or constitutes wanton and wilful misconduct or negligence or is in breach of the terms and conditions of this Agreement.

(b) Notwithstanding any other provision of this Agreement, the liability of each party to any other party pursuant to Section 8.1 or 8.2 shall be limited to the direct damages sustained by such other party as a result of the Claim.

(c) In no event will any party be liable to any other party pursuant to or in connection with this Agreement for any indirect or consequential losses (including loss of profits or business interruption losses), or for any aggregated or non-compensatory damages (including punitive or exemplary damages), whether by statute, in tort or contract.

(d) The provisions of this Section 8.4 will apply irrespective of the nature of the cause of action, demand or claim, including breach of contract (including fundamental breach), negligence, tort or any other legal theory, and will survive a fundamental breach and /or failure of essential purpose of this Agreement.

ARTICLE 9

DISPUTE RESOLUTION

9.1 Resolution Procedure

If any question, difference or dispute arises between the parties (or any of them) in respect of any matter arising under this Agreement or in relation to the construction of this Agreement (each, a “**Dispute**”), the parties to the Dispute (the “**Disputing Parties**”) shall use their reasonable commercial efforts to settle such Dispute.

9.2 Mediation Procedure

If the Disputing Parties are not able to reach a settlement within a period of thirty (30) days following notice by one Disputing Party to the other of the Dispute, then, upon a further notice by any one of the Disputing Parties delivered to the other, the Dispute shall be referred to mediation. A single mediator shall be appointed by agreement of the Disputing Parties. If a mediator is not appointed within a period of thirty (30) days or such Disputing Parties are not able to reach a settlement within a period of thirty (30) days of notice being given for the referral of the matter to mediation, any one of the Disputing Parties may give notice of arbitration as set out in the following section.

9.3 Arbitration Procedure

(a) If the Disputing Parties are not able to reach a settlement pursuant to either of Sections 9.1 or 9.2 then, upon notice by one of the Disputing Parties to the other, the Dispute shall be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario).

(b) The arbitration tribunal shall consist of one (1) arbitrator appointed by mutual agreement of the Disputing Parties or, in the event of a failure to so agree, the arbitration tribunal shall consist of three (3) arbitrators, one (1) to be appointed by the Corporation, one (1) to be appointed by the Member(s) and the third to be appointed by such two (2) appointees. If either Disputing Party fails to appoint its designated arbitrator, or if the two (2) appointed arbitrators are unable to agree on the third arbitrator, then in each case, such arbitrator(s) shall be chosen by a judge of the Ontario Court of Justice upon application of either of the parties.

(c) The arbitration tribunal shall be instructed that time is of the essence in proceeding with its determination of any Dispute. Each Disputing Party shall bear its own costs (including any legal costs and costs of experts and consultants retained by such party) related to the arbitration and shall share equally in the costs of the arbitrators and any other third party costs or expenses of the arbitration.

(d) The decision of the arbitrator or arbitrators, as the case may be, shall be given in writing and shall be final and binding upon the Disputing Parties, and not subject to appeal.

(e) Arbitrations hereunder shall be held in Toronto, Ontario unless otherwise agreed by the Disputing Parties.

ARTICLE 10 **GENERAL PROVISIONS**

10.1 Independent Legal Advice

Each Member confirms the following matters to the other parties and acknowledges that the other parties are relying upon such confirmations in connection with the execution, delivery and performance of this Agreement, including the admission of the Member as a member of the Corporation:

- (a) it has been advised by the Corporation to seek independent legal advice prior to entering into this Agreement or into any other agreement, document, certificate or undertaking to be delivered hereunder or thereunder or in connection herewith or therewith;
- (b) it has sought such independent legal advice or deliberately decided not to do so;
- (c) it understands its rights and obligations under this Agreement (including, in the case of a Racetrack Member, those rights and obligations set forth in the Funding Agreement that are Racetrack Member Obligations), the Act and By-Law No. 1; and
- (d) it executed this Agreement voluntarily with the intention of being bound hereby.

10.2 Excusable Delay/Force Majeure

In the event that a party is prevented, delayed or interrupted in performing its obligations under this Agreement due to any occurrence beyond its control, such as, but not limited to, acts of God, acts of war, riot, fire, flood or other disaster, strikes, walkout or communication line or power failure, then such prevention, delay or interruption shall not be construed to be a default under this Agreement, and no party shall be liable to any other party for any prevention, delay or interruption in the performance of such obligations resulting from such occurrence or any loss or damage resulting therefrom.

10.3 Assignment

Except as provided in Section 4.1(c), no party shall assign or transfer this Agreement or any part hereof, or any of its respective rights or obligations hereunder, without the prior written consent of the other parties.

10.4 Entire Agreement

This document embodies the entire agreement of the parties and, subject to the Act and By-Law No. 1, there are no additional terms, conditions, representations, inducements

or warranties of any kind or nature whatsoever existing among the parties or any of them other than as set forth or incorporated or specifically contemplated herein.

10.5 Amendment

Except as provided in Section 4.5(b), this Agreement may not be modified or amended, except by a written document signed by each of the parties.

10.6 Notice

Any notice, consent, approval, agreement, writing or other communication required or permitted under this Agreement (each, a “**Notice**”) shall be in writing. Any Notice delivered or to be delivered by a party shall be sufficiently given if delivered personally to the party at the addresses set out in Schedule 1, and shall be deemed to be received on the day of delivery provided that if such day is not a Business Day, it shall be deemed to have been received on the next following Business Day.

10.7 Law of Contract

This Agreement shall be construed and enforced in accordance with the laws in force in the Province of Ontario, which laws shall govern the rights of the parties.

10.8 Parties in Interest

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

10.9 Third Parties

Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon or give to any Person, other than the parties and their respective successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

10.10 Further Assurances

Each of the parties shall upon the reasonable request of any other party, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances and assurances as may be reasonably necessary to give full effect to this Agreement.

10.11 Counterparts and Fax Signatures

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. The execution of this Agreement by any party and the facsimile transmission of such execution to the other parties, or as they may designate, shall be as binding on all of the parties as if an original signature of the relevant party had been provided.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the Effective Date under the hands of their proper officers duly authorized in that behalf.

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HORSE RACING ONTARIO

By: _____
Name:
Title:

Name:
Title:

[Signature pages for Members follow.]

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**SCHEDULE 1
LIST OF MEMBERS AS OF THE EFFECTIVE DATE**

PART A – NAMES AND ADDRESSES OF RACETRACK MEMBERS

PART B – NAMES AND ADDRESSES OF INDUSTRY ASSOCIATION MEMBERS

Quarterhorse Breeder and Horseperson Group

■

Standardbred Breeder Group

■

Standardbred Horseperson Group

■

Thoroughbred Breeder Group

■

Thoroughbred Horseperson Group

■

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**SCHEDULE 2
COST ALLOCATION SERVICES**

1. Racing

- (a) Completion and submission of AGCO race date applications, with the assistance of the Racetrack Member where this is required.
- (b) Racing Secretary duties related to scheduling race cards, issuing overnights, accepting entries, drawing post positions, entering the horses into the appropriate racing system, but not verifying program data or capturing race day changes such as scratches or the official result of any race.
- (c) Purse payment processing using funds provided by the Racetrack Member and to the extent required, by ORM.
- (d) TCO² tests

2. On-track Wagering

- (a) Tote System services through the tote supplier required by ORM.
- (b) Contract for all tote interface fees.
- (c) Tote data network required for wagering purposes.
- (d) Decoder rental costs.
- (e) All import and export contracting services.
- (f) Settlement services.
- (g) All CPMA applications required for wagering.
- (h) Thoroughbred Racing Protective Bureau (TRPB) wagering security service costs (Tote Security Initiative).

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**SCHEDULE 3
PARI-MUTUEL WAGERING REVENUE SHARING ARRANGEMENTS**

1. Background

(a) Each Racetrack Member operates its racetrack in Ontario for the conduct of live thoroughbred, quarter-horse or standardbred horse racing.

(b) Each Racetrack Member also operates Guest Facilities, all of which as of the Effective Date are listed in Appendix A to this Schedule 3, to accept pari-mutuel bets from customers.

(c) The Racetrack Members intend for the Corporation to account for and consolidate the Net Revenue earned by each of the Racetrack Members from such pari-mutuel betting at Guest Facilities, as provided in the Agreement and this Schedule 3; provided, however, that to the extent that a betting permit is required for any such activities, a designate acting on behalf of the Corporation (which, as of the Effective Date, shall be WEG) will perform such accounting and consolidation.

(d) The Racetrack Members have agreed to share the Consolidated Net Revenue in the manner and to the extent specified in this Schedule 3.

2. Defined Terms.

For purposes of the Agreement, including this Schedule 3, the following words and phrases shall have the respective meanings specified below and grammatical variations thereof shall have corresponding meanings:

“Breakage” means the net of the rounding of a payout on a winning pari-mutuel wager in accordance with CPMA regulations;

“Commissions” means, for each Racetrack Member for any Funding Year, the aggregate amount of commissions earned from HMA Gross Wagering Handle generated by a Racetrack Member during such Funding Year. For certainty, the commissions earned by a Racetrack Member is equal to the gross takeout as reported by such Racetrack Member’s totalizator system, plus all breakage, but does not include the payment of winning wagers or refunds payable by such Racetrack Member, or any Outstanding Ticket Revenue payable by such Racetrack Member;

“Consolidated Net Revenue” means, for each Funding Year, the sum of the Net Revenue of all Racetrack Members during such Funding Year;

“Deductions” means, for each Racetrack Member for any Funding Year, the following costs, expenses and obligations incurred by such Racetrack Member or by the Corporation or ORM for on behalf of, or for the benefit of, such Racetrack Member during such Funding Year:

(a) the following mandatory levies and taxes directly incurred in the normal course of pari-mutuel wagering:

(i) CPMA levy;

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- (ii) Ontario tax;
 - (iii) PMTR – Horse Improvement Program levy;
 - (iv) PMTR – AGCO Regulatory Fee; and
 - (v) PMTR – Horseperson’s Share
- (b) host track share of HMA Joint Venture Gross Wagering Handle; and
- (c) the cost of providing cash awards to wagering customers participating in the provincial loyalty program administered by or on behalf of the Corporation;

“**Guest Facilities**” means those facilities in Ontario that are from time to time either owned or operated by a Racetrack Member, and in the case of account wagering (“**ADW**”), means the systems to accommodate this form of pari-mutuel wagering by customers located in Ontario;

“**HMA Joint Venture Gross Wagering Handle**” means the amount of pari-mutuel wagering handle from wagers placed at Racetrack Member tracks, teletheatres or by customers wagering in Ontario using TAB or simulcast or Racetrack Member live terminals;

“**Home Market Area**” or “**HMA**” means Home Market Area as determined by the AGCO and approved by the CPMA, and for the purposes of this Agreement, the HMA is the Province of Ontario from which a customer places a pari-mutuel bet on races conducted at racetracks located in Ontario or on races conducted at racetracks located outside of Ontario through all available channels (i.e., Live, Simulcast, Teletheatre, TAB/HPI);

“**Member’s Ontario Gross Wagering Handle**” means, for each Racetrack Member for any Funding Year, the aggregate amount of pari-mutuel wagering handle generated by customers in Ontario betting on live horse racing conducted at such Racetrack Member’s racetrack in Ontario, through any channel (including, for example, Live, Simulcast, Teletheatre and Telephone Account Betting (including HPI), as each such term is defined in the Funding Agreement), during such Funding Year, including pari-mutuel wagering from all Guest Facilities;

“**Net Revenue**” means, for each Racetrack Member for any Funding Year, the Commissions received by such Racetrack Member during such Funding Year, minus such Racetrack Member’s Deductions for such Funding Year;

“**Net Revenue Allocation**” means, for each Racetrack Member for any Funding Year, that portion of the Consolidated Net Revenue that accrues and will be paid, as applicable, to such Racetrack Member by the Corporation in respect of such Funding Year, as determined in accordance with Section 3 of this Schedule 3;

“**Outstanding Ticket Revenue**” means the revenue, as determined in accordance with past practice, from a winning ticket (or voucher) that has not been cashed before the end of the racing day for which it was issued;

"PMTR" also known as "Pari-Mutuel Tax Reduction", means the forgone government revenue that was made available to the horse racing industry in Ontario following the 1996 amendments to the Racetracks Tax Act (Ontario) which lowered the taxes on a bet placed under the system known as pari-mutuel wagering from 7.4% to 0.5%, and also includes any changes to or replacements of such arrangements;

"Quarter" means a calendar quarter during a Funding Year, being a three-month period ending June 30, September 30, December 31 or March 31;

"Remotes Joint Venture Gross Wagering Handle" means the amount of pari-mutuel handle wagered at locations outside of the HMA on live races conducted by the Racetrack Members;

"Top-Up Amount" means the variances between a Racetrack Member's Net Revenue Allocation and each Racetrack Member's payment in Appendix B to this Schedule 3; and

"Total Ontario Gross Wagering Handle" means, for each Funding Year, the sum of the Member's Ontario Gross Wagering Handle of all Racetrack Members during such Funding Year.

3. Net Revenue Allocation

(a) The Corporation shall determine the Net Revenue Allocation for each Racetrack Member in respect of each Funding Year as follows: $(A) / (B) \times C$, where:

(A) = the sum of the Member's Ontario Gross Wagering Handle plus the Remotes Joint Venture Gross Wagering Handle from betting on live horse racing conducted at such Racetrack Member's racetrack in Ontario, in each case during such Funding Year

(B) = the sum of the Total Ontario Gross Wagering Handle plus the Remotes Joint Venture Gross Wagering Handle from betting on live horse racing at all Racetrack Members' racetracks in Ontario, in each case during such Funding Year

(C) = the Consolidated Net Revenue for such Funding Year

(b) The Corporation shall pay to each Racetrack Member its respective Net Revenue Allocation in accordance with this Schedule 3.

(c) The Corporation and the Racetrack Members acknowledge and agree that the Net Revenue Allocation reflects the fact that (i) Racetrack Member share of Remote Joint Venture Gross Wagering Handle earned by a Racetrack Member will be received by WEG from third parties where those Racetrack Members use WEG's totalizer system, (ii) the Racetrack Members' track share of each Racetrack Member share of Remote Joint Venture Gross Wagering Handle is exclusively retained for the benefit and use of that Racetrack Member; and (iii) all Racetrack Members, with the exception of WEG, agree to assign 100% of the Racetrack Member share of Remote Joint Venture Gross Wagering Handle to WEG to utilize for funding of the purse deficit of the Racetrack Member to levels consistent with past practice for the Racetrack Member's level of racing, with any additional incremental money to be utilized for funding of the purse deficit of the collective Racetrack Members.

4. Additional Obligations of Racetrack Members

(a) In connection with the calculation and payment of the Net Revenue Allocation to the Racetrack Members, and the administration thereof by the Corporation, as provided in this Schedule 3, each Racetrack Member covenants and agrees (in respect of itself) to:

- (i) provide to the Corporation all information pertaining to pari-mutuel wagering transactions accepted by such Racetrack Member at its respective Guest Facilities or otherwise, and such Racetrack Member shall electronically transfer such data, in the format specified by the Corporation from time to time, immediately following completion of each Sunday to Saturday period, or at such other time as is determined by the Corporation from time to time, acting reasonably;
- (ii) if applicable, electronically transfer Deductions data in the format specified by the Corporation no less than five Business Days after each Quarter end; and
- (iii) fulfil all obligations under this Schedule 3 on a prompt basis.

(b) Each Racetrack Member that holds a betting permit shall hold the funds for Outstanding Ticket Revenue, refunds and vouchers that it issues and shall be responsible for payment in the event such tickets are cashed.

(c) Each Racetrack Member shall maintain, as a minimum, the following at its race track property:

- (i) Racing Surfaces & Paddock
 - (A) Racetrack Member agrees to meet the requirements of AGCO Policy Directive No. 2-2010 regarding Standardbred Racetrack Surfaces Minimum Standards.
 - (B) Racetrack Member will provide a Paddock of the standard required to maintain AGCO licensing.
 - (C) Racetrack Member will provide the personnel and services required to conduct racing each AGCO-approved race day, except for those items provided by WEG as per the Cost Allocation Services.
- (ii) Wagering Facility
 - (A) Racetrack Member will keep open to the public, at its own cost, the specified portion of their race track property, on such days and times as are scheduled by the Corporation, provided that such days and times do not deviate materially on an ongoing basis from those on which simulcast operations have traditionally been open to the public, and will maintain such areas in reasonable condition for purposes of pari-mutuel wagering.

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- (B) Racetrack Member will as soon as possible after April 1, 2019, permit WEG or its contractor to provide exclusive totalizator system services at its race track provided WEG pays for these expenses. Until such time as this is implemented, Racetrack Member will be responsible for its own costs related to its totalizator system.
- (C) Racetrack Member will as soon as possible after April 1, 2019, transfer its betting permit to WEG or at the request of WEG, cancel its betting permit, in order for WEG to account for all pari-mutuel wagering conducted at its race track facility. Until such time that this is implemented, Racetrack Member will be responsible for all pari-mutuel wagering conducted under its betting permit, including settlements and remittances, as well as for reporting such activity as required in this Schedule 3.

5. Additional Obligations of the Corporation

In connection with the calculation and payment of the Net Revenue Allocation to the Racetrack Members, and the administration thereof by the Corporation, as provided in this Schedule 3, the Corporation covenants and agrees to:

- (a) hold in trust for the benefit of all Racetrack Members the Commissions (less Deductions) comprising the Consolidated Net Revenue;
- (b) provide to each Racetrack Member for each Quarter, by no later than 45 days following the end of each Quarter, an accurate accounting of all Commissions contributed by all Racetrack Members during such Quarter together with a breakdown of the Deductions related thereto;
- (c) pay on the last Business Day of each month to each Racetrack Member the interim payments set forth in Appendix B to this Schedule 3, subject to any annual adjustment following the final accounting of the actual Net Revenue Allocation payable to each Racetrack Member as calculated in accordance with this Schedule 3 for each Funding Year; and
- (d) within 120 days following the end of each Funding Year, provide to each Racetrack Member a final accounting of the Net Revenue Allocation payable to each Racetrack Member in accordance with this Schedule 3 for such Funding Year, including details of the calculation of each Racetrack Member's Net Revenue Allocation.

6. Payment Adjustments

(a) Subject to the conditions in Section 6(c), the Corporation shall pay any Top-Up Amount in a Racetrack Member's favour on the next interim payment date that follows the 120-day period referred to in Section 5(d).

(b) Each Racetrack Member shall pay any adjustment in favour of the Corporation by no later than the next interim payment date, or at the option of the Corporation, the Corporation may deduct the applicable adjustment amount from the next interim payment or

payments, as the case may be, until the Racetrack Member's Net Revenue Allocation has been reconciled for the preceding Funding Year.

(c) Each Racetrack Member shall assign to the Corporation the Top-Up Amount to which it is entitled in respect of the first two Funding Years of the Funding Agreement Term. The Corporation shall use the Top-Up Amounts to fund the Racetrack Members' collective purse deficit during such two Funding Years. In the event that no purse deficit exists, or that funds comprising the Top-Up Amounts remain after any purse deficit has been satisfied, the Corporation shall pay the Top-Up Amounts or the remaining portions thereof to the Racetrack Members that assigned such funds to the Corporation pursuant to this Section 6(c), in accordance with the Net Revenue Allocation. Subsequent to the first two Funding Year, the Corporation will review the assignment of the Top-Up Amount and determine any adjustments thereof.

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**APPENDIX A TO SCHEDULE 3
LIST OF GUEST FACILITIES**

List of Guest Facilities Owned or Operated by Racetrack Members in Ontario:

TRA Hub Code	TRA Customer ID	Customer Name	Service Location(s)

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**APPENDIX B TO SCHEDULE 3
MONTHLY INTERIM PAYMENTS**

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EXHIBIT A
STATEMENT OF THE PURPOSE OF THE CORPORATION

(attached)

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EXHIBIT B
BY-LAW NO. 1 OF THE CORPORATION

(attached)

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**EXHIBIT C
FUNDING AGREEMENT**

(attached)

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