



**Invitation to tender
to provide technical support in
the development of a Jump
racing risk model to the British
Horseracing Authority Limited**

Issued on 10 June 2019

1. INTRODUCTION

Purpose

- 1.1 This ITT is being issued to Tenderers for the purpose of inviting Tenderers to submit a Proposal to the BHA for selection as a supplier of the Services.
- 1.2 This ITT is provided to Tenderers for their sole use and for the sole purpose of assisting them to prepare and submit a Proposal in accordance with the requirements of the BHA in relation to this tender process. The information set out in this ITT is being made available on condition that it is used only in connection with the tender process and for no other purpose whatsoever.
- 1.3 This ITT is provided to Tenderers on the terms set out herein and it is not being issued to the wider public.
- 1.4 The BHA has taken all reasonable care to ensure that the information presented in this ITT is true and accurate in all material respects at the time of drafting. However, this ITT is not purported to be comprehensive nor to have been independently verified and the BHA does not accept any liability or responsibility for the accuracy, adequacy or completeness of the information set out within it nor shall it be assumed that such information will remain unchanged. The BHA reserves the right to abandon, amend or vary this ITT and any information contained herein at any time by means of written notice to each of the Tenderers.

Overview

- 1.5 A short overview of the contents of each section is set out below:

- **Section One: Instructions To Tenderers**

This section of the ITT describes the nature of the tender process, the anticipated timetable, the format in which Proposals are to be submitted and the information that Tenderers are required to include within their Proposals.

- **Section Two: Statement of Requirements**

This section of the ITT sets out the detailed requirements of the BHA for the Services.

- **Section Three: Pricing Requirements**

The Tenderer must provide a pricing proposal in response to the Statement of Requirements in accordance with the pricing requirements set out in this section.

- **Section Four: Services Agreement pro forma**

This section sets out the standard form Services Agreement which will form the **basis** of the definitive agreement between the BHA and the chosen supplier. The Tenderer will be deemed to have accepted all of the provisions and the principles contained in this agreement unless they clearly identify any objections or qualifications to these provisions and principles.

- **Section Five: Ancillary Documents**

This section sets out the ancillary documents that Tenderers may find useful in preparing their Proposals.

2. **CONDITIONS OF TENDER PROCESS**

Applicable law

- 2.1 This ITT shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any matter or dispute arising out of or in connection with this document and the tender process.

Costs

- 2.2 Each Tenderer will be liable for its own costs and expenses in relation to the preparation and submission of any Proposal and the conduct of any discussions with the BHA during the tender process. For the avoidance of doubt, the BHA has no obligation whatsoever to reimburse any Tenderer in respect of any costs or any economic or other loss incurred by it either in the preparation and submission of any Proposal or arising from clarifications and discussions with the BHA in connection with its participation in the tender process, regardless of whether or not the Tenderer is successful in the tender process.

Conflict of Interest

- 2.3 The Tenderer must declare any potential conflict of interest that may impact or be perceived to impact on its ability to provide the Services.

Canvassing

- 2.4 Direct or indirect canvassing by any Tenderer or its advisers in relation to the tender process or any attempt to obtain information from any of the agents or employees of the BHA or their appointed advisers concerning another Tenderer or the tender process, that has not been invited by the BHA, may result in disqualification from further participation in the tender process.

Collusion

- 2.5 Any attempt by any Tenderer or its advisers to influence the tender process in any way will result in disqualification from further participation in the tender process. In particular, Tenderers and their advisers shall not directly or indirectly at any time:
- fix or adjust the amount or content of any Proposal in accordance with any agreement or arrangement with any other person, other than in good faith where such other person is a proposed partner or adviser; or
 - communicate to any person other than the BHA, or seek or obtain from such other person, information about the content of any Proposal other than in good faith to obtain quotations for supplies, services or finance.

Confidentiality

- 2.6 The Tenderer agrees to keep confidential the contents of this ITT, and all information which has either been designated as confidential by the BHA in writing or that ought to be considered confidential including commercially sensitive information, information which relates to the business and affairs of the BHA (and their employees, service providers, agents, professional advisers and representatives) and all information which the Tenderer receives or obtains as a result of its involvement in the tender process ("Confidential Information").
- 2.7 Accordingly, the release of Confidential Information to the Tenderer during the tender process is conditional upon:
- 2.7.1 the Tenderer taking all steps necessary to prevent the Confidential Information from being disclosed to the public or any third party or coming by any means into the possession of any third party;
 - 2.7.2 this confidentiality undertaking being binding upon the Tenderer and all of its officers, employees, servants, agents or professional advisers (together "Relevant Persons");
 - 2.7.3 the Tenderer using the Confidential Information solely for the purpose of evaluating whether or not to enter into an agreement with the BHA in relation to the subject of this tender process or to perform any obligations which the Tenderers may undertake with the BHA relating to the subject of this tender process, and neither the Tenderer nor any Relevant Person shall use any of the Confidential Information for any other purpose whatsoever;
 - 2.7.4 the Tenderer not using or disclosing or permitting the disclosure by any person of any of the Confidential Information for the benefit of any third party;
 - 2.7.5 the Confidential Information and its circulation shall be restricted to circulation and disclosure to individuals whose access to such Confidential Information is strictly necessary for the purpose as set out above;
 - 2.7.6 the Tenderer keeping all materials containing Confidential Information in a secure place and returning them to the BHA immediately on termination of the discussions relating to this tender process or upon the request of the BHA; and
 - 2.7.7 the Tenderer undertaking to indemnify and keep the BHA at all times fully indemnified from and against any loss, actions, proceedings, claims, demands, costs, (including, without prejudice to the generality of this provision, legal costs of the BHA), awards and damages howsoever arising directly or indirectly as a result of any breach or non-performance by the Tenderer or any Relevant Persons of any of the confidentiality obligations in this Section.
- 2.8 In the event that the Tenderer is unable to comply with the foregoing, the Tenderer should notify the BHA immediately following receipt of this ITT and, in the event of any inability by the Tenderer and the BHA to agree confidentiality terms, the BHA shall be entitled to require the Tenderer to withdraw from this tender process.
- 2.9 This provision shall not apply to any Confidential Information received by the Tenderer from the BHA: (a) which is or becomes public knowledge (otherwise than by a breach of this provision); or (b) which was in the possession of the Tenderer, without restriction on its disclosure, before receiving it from the BHA; or (c) which is received from a third party

who lawfully acquired it and who is under no obligation restricting its disclosure; or (d) is independently developed without access to the Confidential Information.

Copyright

- 2.10 Tenderers are reminded that the copyright in the documentation and any other materials supplied by the BHA and/or its advisers in this tender process, in whatever format, belongs to the BHA or their appointed advisers. Such documentation and materials may not, either in whole or in part, be copied, reproduced, distributed or otherwise made available to any other third party or used without the prior written consent of the BHA except in relation to the preparation of Proposals in the course of the tender process. All documentation supplied by the BHA in relation to this tender process must be returned on demand, without any copies being retained by the Tenderer.

Disqualification

- 2.11 A Tenderer that contravenes any of the terms and conditions set out in this ITT may, at the sole discretion of the BHA, be disqualified and prohibited from any further participation in the tender process.

Publicity

- 2.12 No publicity in relation to the tender process or the award of a contract will be permitted unless and until the BHA has given express prior written consent to the relevant communication. In particular, no statements should be made to the press or other similar organisations regarding the nature of the tender process, its contents or any proposals relating thereto without the express prior written consent of the BHA.
- 2.13 The BHA retains the right to publicise or otherwise disclose to any third party, information in relation to the tender process, the list of Tenderers applying to become a supplier and the award of supplier status at any time.

Third Parties

- 2.14 Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

Disclaimer

- 2.15 Each Tenderer must rely on its own enquiries and on the ensuing Services Agreement, as and when finally executed, subject to such limitations and restrictions as may be specified in such Services Agreement. Neither the issue of any documentation in the tender process nor any of the information presented in it should be regarded as a commitment or representation on the part of the BHA or any other person to enter into a contractual arrangement.
- 2.16 Although it is currently anticipated that the remainder of the tender process will take place in accordance with the provisions of this ITT, the BHA reserves the right to vary, amend or terminate the tender process by notice in writing at any time. Under no circumstances will the BHA or their appointed advisers accept any liability arising out of or in respect of the tender process, the award procedure or any variation or amendment to the tender process. No implied or quasi contract between the BHA and the Tenderers will arise as a result of this ITT or other document or instructions issued to Tenderers in the context of this tender process.

- 2.17 Neither the BHA nor any of their appointed advisers will be liable or responsible for any opinion, statement, or conclusion contained in, or any omission from, this ITT or for any other written or oral communication transmitted or otherwise made available to any Tenderer during the tender process. No representation or warranty is made in respect of such statements, opinions or conclusions, and neither the BHA nor their appointed advisers shall accept any liability for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of any reliance upon such statements, opinions or conclusions. In the absence of any express written warranties or representations as provided for in the Services Agreement neither the information in this ITT nor any other information provided by the BHA or their appointed advisers shall be deemed to constitute a contract or be used in construing any such contract.
- 2.18 The only information that shall have any legal effect or on which any person may rely will be the information specifically and expressly represented or warranted in writing to the Tenderer. For the avoidance of doubt, only the terms of the Services Agreement as and when executed will have any legal effect in connection with the matters to which this tender process relates.
- 2.19 Nothing contained in this ITT or any information supplied by or on behalf of the BHA during the tender process is, or shall be relied on, as a representation of fact or promise as to the future. Any summaries or descriptions of documents or contractual arrangements set out in any part of this ITT or tender process cannot be and are not intended to be comprehensive, nor any substitute for the underlying documentation (whether already existing or to be drafted in the future), and are in all respects qualified by reference thereto.
- 2.20 The BHA does not make any commitment to award supplier status to a Tenderer as a result of this tender process or otherwise, nor to accept any Proposal. Nothing in this tender process shall be deemed or construed to constitute a warranty or representation or contract that the tender process will be conducted in accordance with the timetable or procedures set out in this ITT or subsequently during the tender process.

Definitions

- 2.21 Capitalised words and expressions used in this ITT shall have the meanings assigned to them in the Glossary of Terms in Section 1 Annex A unless the context specifically requires otherwise. It should also be noted that references to the singular include the plural and vice versa.

Acceptance

- 2.22 The acceptance of the delivery of this ITT by each Tenderer shall constitute and imply its agreement to and full acceptance of the provisions of this ITT. Any attempt to qualify any of the provisions of this ITT may result in a Tenderer being disqualified.
- 2.23 Tenderers are required to acknowledge by email receipt of this ITT and if any Tenderer believes that it has not received all of the documents referred to within this ITT or believes that any part or section of this ITT is incomplete, the Tenderer concerned shall contact jconnor@britishhorseracing.com. It is the responsibility of each Tenderer to ensure that it has all of the documentation referred to in this ITT.

SECTION 1: INSTRUCTIONS TO SUPPLIERS

1. TENDER PROCESS

Process overview

The tender process leading to the award of supplier status is intended to take place in the following phases subsequent to the issuance of this ITT. A summary of the key activities within each phase of the tender process is set out below:

1.1 Proposal Stage

Stage One of the tender process will begin with the issuance of this ITT and conclude with the submission of Proposals by Tenderers. The principal activities within this stage comprise the return of Tender Questionnaire (**Annex B**) and the preparation and submission of Proposals by Tenderers by 21 June 2019.

Stage Two of the tender process is likely to involve some or all of the following activities:

- Evaluation of submitted Proposals;
- Tenderer meetings with the BHA to present potential solutions;
- Shortlist Proposals and invite to submit best and final offer;
- Selection of preferred bidder by the BHA;
- Financial/commercial/contractual meetings with Tenderer to discuss, negotiate and develop the contractual documentation associated with the tender process.

This stage shall continue until the BHA is satisfied that it has identified and defined its requirements with sufficient precision to enable selection of the supplier that it requires.

1.2 Agreements Stage

- Following the completion of Stage Two as detailed above, the selected supplier will be required to enter into a Services Agreement with the BHA. To the extent that any discussion of the draft Services Agreement is required, meetings will be scheduled for such purpose.
- It is important to note that all Tenderers may not be invited to continue in the tender process following the submission of Proposals. In addition, the BHA reserves the right to further reduce the number of Tenderers at its election at any point in the tender process.

1.3 Indicative timetable

- The target timetable for completion of the main activities within the tender process is set out in the table below. Please note that the timetable is indicative and may be amended at any time at the BHA's sole discretion.

Event	Target Date
Issue ITT	10 June 2019
Submission of questionnaire responses and proposals	21 June 2019
Evaluation of Proposals	w/c 24 June 2019
Appointment of supplier and contract sign off	1 July 2019
Presentation of preferred model and final report from chosen supplier	November 2019
On-going support by chosen supplier	Q1 2020

1.4 **Proposal submission**

- Tenderers are required to submit their Proposals and any other supporting documentation in English signed and dated by their authorised representative as nominated by each Tenderer, and electronic copies shall be delivered to jconnor@britishhorseracing.com by no later than 4pm 21 June 2019.
- All Proposals and the contents of the same will become the property of the BHA on receipt. The BHA may, at its own absolute discretion, extend the date for the submission of Proposals. Any extension so granted will be notified to all Tenderers as soon as possible.
- The BHA reserves the right to seek clarification of any aspect of any Proposal at any time. Where the BHA requires a Tenderer to clarify its Proposal then a request for clarification shall be submitted in writing to the individual identified in the Proposal as the authorised representative of the Tenderer. Unless otherwise stated, Tenderers will be required to respond to any and all requests for clarification in writing within three working days of the date of issue of the relevant request for clarification.

1.5 **Clarification requests**

- The BHA will respond to all reasonable requests for clarification of any aspect of this ITT. It is stressed that except in respect of minor points of detail or clarification, all clarification requests must be submitted in writing and that written responses must be secured as a prerequisite to a Tenderer placing any reliance upon any responses. All clarification requests must be submitted electronically to jconnor@britishhorseracing.com.
- All clarification requests submitted by electronic mail will not be considered to have been received unless acknowledged by the BHA within two working days.
- If the BHA believes that the response to a clarification request is likely to be of general interest to all Tenderers, then the response will be issued to all Tenderers on a uniform basis unless expressly stated otherwise. If a Tenderer wishes the BHA to treat a matter as confidential then this must be stated and the BHA will consider all such requests and will contact the Tenderer concerned if reluctant to comply with the request. If in the opinion of the BHA a clarification request is not considered confidential, then the Tenderer will have the opportunity to withdraw the request.

- Information given orally will not be considered valid unless and until it has been confirmed specifically in writing. No want or lack of knowledge will be excused following the submission of a Proposal should a Tenderer fail to comply with this provision. In addition, no contractual reliance shall be placed on queries and responses. The BHA will use its reasonable endeavours to give complete and accurate answers to clarification requests, but will not give any express or implied warranty as to the accuracy of information supplied.
- The BHA will endeavour to answer all clarification requests as soon as possible, but cannot guarantee to provide a response within a given time period. Tenderers should note that the BHA will not guarantee to answer any clarification requests received within five business days of the deadline for the receipt of Proposals.

1.6 Proposal addenda

- Tenderers should note that the BHA reserves the right to issue addenda to this ITT at any time prior to the Proposal submission date. All addenda so issued will be deemed to form part of this ITT and will supersede any part of this ITT to the extent indicated in the relevant proposal addenda.

2. INFORMATION REQUIREMENTS

Introduction

- 2.1 All Proposals submitted must be fully paginated with an index, annotated and cross-referenced as appropriate. Any additional submissions must be numbered and a list should be included within the index.

Submission structure

- 2.2 Tenderers must provide their Proposal, containing all of the information requested in this ITT. All Proposals must be set out in the format presented below in order to facilitate the evaluation process.

Section	Content
A	Response to the BHA's Statement of Requirements
B	Response to the Pricing Requirements
C	Response to Services Agreement
D	Enhanced related offerings from the Tenderer to the extent not incorporated in the above responses.

Other confirmations

- 2.3 Tenderers are required to confirm that they will be able to meet the timetable set out in paragraph 1.3 above. Tenderers are also required to provide full details of the form and timing of any due diligence that will need to be conducted by the Tenderer.

ANNEX A

Glossary of Terms

BHA means the British Horseracing Authority Limited;

Proposal means the formal proposal submitted in response to this ITT where the Tenderers respond formally to the Statement of Requirements, make such proposals as they consider may enhance their bid to be selected as supplier and provide any comments on the Services Agreement;

Services means the supply of the services detailed in the Statement of Requirements;

Services Agreement means the agreement to be entered into between the BHA and the Tenderer;

Statement of Requirements means the specific requirements for the Services as set out in Section 2 of this ITT;

Tenderer means the person or persons, firm or firms, or company or companies that have been provided with a copy of this ITT and are now invited to tender.

ANNEX B

Tender Questionnaire

Tenderer Notes

Purpose

The purpose of this questionnaire is to assist the BHA in managing the tender process for the provision of technical support in the development of a Jump racing risk model.

Please answer every question. If the question does not apply to you, please write "N/A". If you do not know the answer, please write "Not known".

1	BASIC DETAILS OF YOUR ORGANISATION	
1.1	Name of the organisation in whose name the tender would be submitted:	
1.2	Contact name for enquiries about this bid:	
1.3	Contact position (Job Title):	
1.4	Address: Post Code:	
1.5	Telephone number:	
1.6	E-mail address:	
1.7	Company Registration number (if this applies):	
1.8	Date of Registration (if this applies):	
1.9	Registered address if different from the above: Post Code:	
1.10	VAT Registration number (if this applies):	

1.11	Is your organisation: (Please tick one)	i) a public limited company	
		ii) a limited company	
		iii) a partnership	
		iv) a limited liability partnership	
		iv) a sole trader	
	v) other (please specify)		
1.12	Name of (ultimate) parent company (if this applies):		
1.13	Companies House Registration number of parent company (if this applies):		
1.14	Please confirm that the legal entity for whom you have provided the information in this section will be the entity that undertakes the services that are the subject of this procurement and that that legal entity does not form a subsidiary part of another corporate entity in respect of whom the same information has not been provided.		
2	CONFLICT OF INTEREST		
2.1	Please confirm that you have carried out a conflict of interest search and the results of that search: (please tick one)	(i) no conflicts would arise from you being engaged to deliver the Services;	
		(ii) further checks and consents are required;	
		(iii) other. (please provide details)	

2.2	Please identify if there are any other relationships your firm or relevant staff have with the BHA or other third parties which should be taken into consideration.	
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SECTION 2: STATEMENT OF REQUIREMENTS

Introduction

The BHA is the governing and regulatory body for horseracing in Great Britain. We are responsible for the governance, administration and regulation of horseracing and the wider horseracing industry in Great Britain. We also lead on the development and growth of our sport, and prioritise the health and welfare of our participants.

Horseracing is the second highest attended sport in the country, and forms an industry which generates an annual GDP of £3.4bn, employs over 17,000 people directly with 85,000 people depending on the sport for their livelihoods. British racing is a major contributor to the UK economy. The sport also has a rich heritage at the heart of British culture.

Our vision is: *"Together, we're building a brighter future for our sport, our horses and our people"*.

Our main areas of activity, and our strategic objectives, may be summarised as follows:

Regulation and governance

- Keeping racing fair and clean
We maintain the integrity of British racing by supporting participants to comply with the rules and dealing appropriately and effectively with rule breaches
- Deliver competitive and compelling racing
We aim to produce a fixture list and race programme that works for horsemen and racecourses and drives wider engagement in our sport

Health, development and growth of our sport

- Securing long-term, sustainable funding for our sport
We represent and promote the best interests of racing with one, clear voice
- Working with others to grow our sport
We make sure all participant groups benefit from growth in our sport

Health and welfare of our horses and people

- Leading on equine health and welfare
We prioritise the health and welfare of our horses and set standards to ensure they receive first-class care and attention
- Looking after our people
We prioritise the well-being and development of our people and support others to make racing a great place to work

Our values are:

- Integrity: we will always do the right thing to uphold the BHA's reputation for fairness and to maintain the trust of our stakeholders
- Accountable: we take personal responsibility for our actions and strive to improve the health of British racing
- Credible: we are open and honest about what we do and treat everyone fairly and with respect
- Responsive: we stay in-tune with the sport's diverse stakeholders so that we can effectively meet agreed objectives and goals
- Progressive: we promote a forward-thinking and collaborative culture while respecting the strong heritage of British racing as a sport and an industry.

Please also refer to our website for more information:

<http://www.britishhorseracing.com/bha/about-us>

As part of the remit to lead on equine health and welfare, the BHA undertook a welfare review of the Cheltenham Festival following the 2018 running, in which six horses were fatally injured. This review made seventeen recommendations aimed at reducing the probability of horses injuring themselves when participating in British Jump racing. Some of these recommendations were specific to the Cheltenham Festival, but many were aimed at the wider sport. One such recommendation related to the development of a Jump risk model:

The industry must support a major research project to develop a predictive model for identifying risk factors for all Jump racing, inclusive of non-course factors, such as horse history and performance, rider and training factors. Any risks arising from this significant work must be addressed and mitigated appropriately. A timeline and project plan to be developed as soon as possible, enabling this work to begin in early 2019.

Since the publication of the report, animal welfare groups including the RSPCA and World Horse Welfare have cited this recommendation a “critical priority” for the sport.

The sport will now be looking to develop such a model that will be able to inform policy in such a way as to reduce the risks associated with Jump racing.

The full 2018 Cheltenham Review is available on the BHA website:

<https://www.britishhorseracing.com/regulation/making-horseracing-safer/the-cheltenham-review/>

- **Scope of the Project**

The BHA wishes to appoint an external consultant to assist with the development of a regression model aimed at quantifying the equine welfare risk factors in British Jump racing.

The role of the consultant will be advisory; the modelling will be carried out by the BHA project team, who are likely to have ad hoc questions around some of the technicalities of the process.

You are invited to submit a costed proposal detailing:

- Your relevant experience of performing regression analysis on large datasets (and of the horseracing industry);
- Your proposed approach to this brief;
- The composition, qualifications and curriculum vitae of the person or team proposed for this commission;
- What information you would need to deliver against the objectives;
- Proposed budgets and scope of work; and
- At least two suitable client referees who may be approached forthwith;

The successful supplier will be expected to assess and comment on the following specific areas, amongst others:

- Suitability of proposed modelling methodology;
- Are the collected independent variables in an appropriate format to model?
- Is there any inherent bias in the data that will cause issues in the model, and how can these be overcome?

- Which of these variables should ultimately be included in the model?
- Mathematical interpretation of the model's output; and
- Thoughts on the required format for variables about which data has not yet been collected.

An opportunity to further refine, and contribute to, the scope and terms of reference of the review will be given to the successful supplier prior to commencement of the project.

- **Timeline of the project**

It is anticipated that this support will require between ten and twelve days' work from the supplier across the lifetime of the project. This will likely include three meetings in London with the wider project group, and three or four practical sessions with technical group members. The successful supplier will also be on hand throughout the modelling process to answer any ad hoc methodology questions, most of which can be done via the phone.

Stage	Process	Date
Stage 1	Meet with project group and confirm methodology and initial variables to test	Early July 2019
Stage 2	Provide assistance to technical team in refining initial model using available variables	July - September 2019
Stage 3	Presentation of initial findings to project group, and discussion on how the model might be improved	Late September 2019
Stage 4	Assist technical team with finalisation of preferred model	October 2019
Stage 5	Presentation of preferred model to project group, and discussion on how new variables can best be incorporated in future	November 2019
Stage 6	Ad hoc assistance in any incorporation of new variables as they become available (e.g. veterinary data, schooling practices)	Q1 2020

SECTION 3: PRICING

1. Tenderers must provide full details of the costs associated with this Proposal.
2. It would be helpful for the BHA to see costs broken down as far as possible to ensure transparency of pricing i.e. by position/ rate. Tenderers are free to suggest pricing on a fixed or time/ rate basis.
3. Any costs not highlighted in the Proposal will not be accepted at a later date. Please therefore include the full costs for all services offered, whether core or ancillary.
4. Pricing should remain valid for at least 60 days from the due date of tender return.
5. Prices should be quoted in GBP and excluding VAT.
6. **Any assumptions/ dependencies identified by the Tenderer in developing its pricing proposal must be clearly stated in the Proposal together with the consequences of the assumptions and/ or dependencies not being fulfilled. The Proposal shall not be subject to any unstated assumptions.**

SECTION 4: SERVICES AGREEMENT

The Services Agreement included in this Section 4 represents the minimum contract obligations that will form the basis of the definitive agreement between the BHA and successful supplier. Such Services Agreement may be amended and expanded as deemed necessary at the BHA's sole discretion depending on the outcome of the ITT process.

Unless stated otherwise in the Proposal, the Tenderer shall be deemed to have accepted all of the provisions of the Services Agreement.

Dated

2019

(1) BRITISH HORSERACING AUTHORITY LIMITED

and

(2) THE SUPPLIER

SERVICES AGREEMENT

SUBJECT TO CONTRACT – NOT CAPABLE OF ACCEPTANCE

PARTIES

- (1) **BRITISH HORSERACING AUTHORITY LIMITED** a company incorporated in England and Wales under registration number 2813358, whose registered office is at 75 High Holborn, London, WC1V 6LS (the **Customer**); and
- (2) [**SUPPLIER**] a company incorporated in [England and Wales] under registration number [*to be inserted*], whose registered office is at [*full address to be inserted*] (the **Supplier**),

each a **Party** and together the **Parties**.

BACKGROUND

- (A) The Customer is the governing and regulatory body for horseracing in Great Britain and wishes to [*insert details*].
- (B) The Supplier is in the business of [*insert details*]. The Customer wishes to engage the Supplier to provide certain Services to the Customer on the terms and conditions of this Agreement.

AGREED PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms and expressions shall have the following meaning:

Applicable Data Protection Law means all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018 and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);

Applicable Law means all applicable laws, regulations, rules, codes of practice, guidelines, directions and decrees imposed by law or any competent authority in any jurisdiction within the United Kingdom;

Charges means the charges set out in Schedule 2 and payable to the Supplier in accordance with the provisions of Clause 6 (Charges);

Confidential Information means in relation to each Party, all information of a confidential nature relating to the business and/or operations of that Party (whether such information is disclosed in writing, by delivery of items, orally, by visual presentation, by means of providing access to such information (when, for example, the information is contained on a database or otherwise) including but not limited to:

- (a) any such information subsisting in any Intellectual Property Rights of either Party;
- (b) any such information which is commercially sensitive or price sensitive;
- (c) the business, finances, systems or other affairs of the other Party; and

(d) the provisions and subject matter of this Agreement;

Customer Materials means all documents, software, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services;

Deliverables means any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in Schedule 1 and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services;

Effective Date means [*the date of signature of this Agreement*] or [*other date to be inserted*];

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a nationally recognised company engaged in the same type of activity under the same or similar circumstances;

Intellectual Property Rights means (i) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, knowhow and Confidential Information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) all applications, extensions and renewals in relation to any such rights;

Services means the services described in Schedule 1;

Term means the duration of this Agreement;

VAT means value added tax as defined in the Value Added Tax Act 1994 (and legislation supplemental to it) and including any other tax from time to time replacing it or of a similar fiscal nature, or its equivalent charged in other jurisdictions, and any interest or penalties in respect thereof.

- 1.2 References to **Schedules** are to the schedules of this Agreement, references to **Clauses** are to clauses in the main body of this Agreement and references to **Paragraphs** are to paragraphs of the Schedules.
- 1.3 The Clause and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 1.5 Any reference to persons includes natural persons, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations, local authorities, governments, states, foundations and trusts (in each case whether or not having separate legal personality) and any agency of any of the above.
- 1.6 Any phrase introduced by the expressions "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 Any reference to a statute, statutory provision or subordinate legislation (**Legislation**) (except where the context otherwise requires) shall be: (a) deemed to include any bye laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that Legislation; and (b) construed

as referring to any Legislation which replaces, re-enacts, amends or consolidates such Legislation (with or without modification) at any time.

- 1.8 In the event of any conflict or inconsistency between a Clause of the main body of this Agreement and a Paragraph of any of the Schedules to this Agreement, the Clause(s) of this Agreement shall take priority as between them to the extent that is necessary to resolve the conflict or inconsistency.

2. **COMMENCEMENT AND TERM**

- 2.1 This Agreement shall commence on the Effective Date and shall continue until the Services are complete in accordance with Schedule 1 whereupon it will automatically terminate unless it is terminated previously in accordance with the provisions of Clause 12 (Termination).

3. **SUPPLY OF THE SERVICES**

- 3.1 The Supplier shall, and shall procure that any of its personnel shall, provide the Services and Deliverables:
- 3.1.1 in accordance with Schedule 1;
 - 3.1.2 using all due skill and care;
 - 3.1.3 in accordance with Good Industry Practice;
 - 3.1.4 in accordance with the instructions of the Customer and the Customer's authorised representatives from time to time; and
 - 3.1.5 in compliance with Applicable Law and all Customer's policies (as updated from time to time).

4. **PERSONNEL**

Personnel issues

- 4.1 The Supplier shall procure that there shall at all times be a sufficient number of staff engaged in the provision of the Services with the requisite level of skill, experience, training and accreditation.
- 4.2 The Supplier shall use suitable, appropriately qualified, experienced and competent personnel in the provision of the Services and shall procure that all such persons conduct themselves in a courteous and professional manner and in accordance with the terms of this Agreement.
- 4.3 The Customer shall have the right to refuse admission to, or order the removal from the performance of, the Services of any person employed or engaged by the Supplier who, in the reasonable opinion of the Customer:
- 4.3.1 is not a fit and proper person to be on the premises or engaged in the provision of the Services; or
 - 4.3.2 is not performing properly or effectively their role in the performance of the Services.

4.4 Action taken under Clause 4.3 shall forthwith be confirmed in writing by the Customer to the Supplier and shall not relieve the Supplier of any of its obligations under this Agreement.

5. **BHA RESPONSIBILITIES**

5.1 The Customer shall use reasonable endeavours to:

5.1.1 provide the Supplier with access to information within the Customer's possession and control which is reasonably required by the Supplier for the purpose of providing the Services;

5.1.2 make available to the Supplier on reasonable notice for consultation and guidance staff who are familiar with the organisation and operations of the Customer to the extent reasonably necessary for the provision of the Services; and

5.1.3 co-operate with the Supplier to such extent as is reasonably practicable and necessary to enable the Supplier to provide the Services.

6. **CHARGES**

6.1 In consideration of the satisfactory provision of the Services, the Customer shall pay the Charges in the manner and at the times set out in this Clause 6 and Schedule 2.

6.2 In no event shall the Customer be responsible for any fees, charges or expenses not expressly provided for in this Agreement. For the sake of certainty, the Charges are fully inclusive of all and any out of pocket expenses and similar disbursements.

6.3 The Charges shall be invoiced as set out in Schedule 2 and the Customer shall pay all sums due to the Supplier within sixty (60) days of the date of receipt a valid invoice.

6.4 All sums due to the Supplier under this Agreement are exclusive of VAT thereon, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Customer against receipt from the Supplier of a valid VAT invoice in respect thereof.

6.5 If the Customer fails to make payment in accordance with this Clause 6 then the Supplier shall be entitled to charge interest on the overdue amount at a rate of two percent (2%) above the base rate of Barclays Bank plc from time to time in force from the date on which such amount fell due until payment, whether before or after judgment.

6.6 The Supplier shall, except as otherwise expressly provided for in this Agreement, be responsible at its own cost for providing the facilities, personnel and other resources, including any consumables, as required by the Supplier in providing the Services.

6.7 If following receipt of any invoice the Customer notifies the Supplier in writing of a bona fide dispute concerning the Charges payable under such invoice (indicating in such notice the basis for its dispute), then the Customer shall pay any undisputed amount but shall be entitled to withhold the amount in dispute pending resolution. For the avoidance of doubt, the Supplier's obligations to provide the Services shall in no way be affected by any dispute in relation to the Charges or payment of them.

7. WARRANTIES

- 7.1 The Supplier represents and warrants to the Customer that:
- 7.1.1 it has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated therein;
 - 7.1.2 the entering into and performance of its obligations under this Agreement have been duly authorised by all necessary corporate action on its part;
 - 7.1.3 it has obtained all consents, permissions and licences necessary to enable it to perform its obligations under this Agreement;
 - 7.1.4 it shall, and it shall procure that its employees, officers or agents, perform the Services in accordance with the provisions of this Agreement;
 - 7.1.5 it will at all times act in good faith towards the Customer and shall not make and shall procure that none of its employees, officers or agents make any defamatory or derogatory statements about, or take part in any activities in any manner which might be considered to be derogatory or detrimental to the reputation of the Customer, the sport of horseracing or the persons competing, officiating, performing or participating at or in horseracing events;
 - 7.1.6 it shall co-operate fully and in good faith with the Customer, the Customer's employees, authorised representatives and agents, and any third party suppliers to the Customer;
 - 7.1.7 it will not publicly associate itself with the Customer except in accordance with the terms of this Agreement;
 - 7.1.8 the receipt and use of the Services and the Deliverables (excluding the Customer Materials) by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 7.1.9 the Deliverables shall comply at all times with Applicable Laws and be of satisfactory quality and fit for purpose.
- 7.2 If there is a breach of any of the warranties in Clause 7.1 above, the Supplier shall ensure that the breach is remedied as a matter of urgency at no cost to the Customer. Failure to remedy (if capable of remedy) such a breach in order to comply with Clause 7.1 above within seven (7) days of notification by the Customer shall constitute a breach of this Agreement entitling the Customer to terminate this Agreement in accordance with Clause 12 (Termination).

8. INTELLECTUAL PROPERTY

- 8.1 In relation to the Customer Materials:
- 8.1.1 the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
 - 8.1.2 the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term for the purpose of providing the Services to the Customer.
- 8.2 The Customer shall own all right, title and interest, including Intellectual Property Rights, in and to any Deliverables.

- 8.3 To the extent that any such right, title and interest in and to any Deliverables does not vest in the Customer by operation of Applicable Law, the Supplier hereby irrevocably assigns to the Customer as at the date of creation all of its rights, title and interest (including all Intellectual Property Rights) in and to any such Deliverable without further consideration and such assignment shall also be an assignment (in respect of any copyright existing therein) of future copyright pursuant to section 91 of the Copyright, Designs and Patents Act 1988 or equivalent provision in any relevant jurisdiction.
- 8.4 The Supplier shall procure that all authors of the Deliverables waive absolutely their moral rights arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights they may have in any territory of the world.

9. INDEMNITIES

- 9.1 The Supplier shall indemnify and keep indemnified the Customer, its employees and its agents against any costs, claims, damages, losses, expenses and fines, including legal fees, costs and other expenses reasonably incurred in connection with such costs, claims, damages, losses, expenses and fines which the Customer suffers which arise as a result of:
- 9.1.1 any use by the Supplier of any of the Customer's Intellectual Property Rights in breach of the provisions of this Agreement;
 - 9.1.2 any claim that the use by the Customer of any Intellectual Property Rights in the Deliverables in accordance with the terms of this Agreement infringes the Intellectual Property Rights of any third party;
 - 9.1.3 any claim brought against the Customer in respect of injury, death, loss or damage of any type suffered by a third party where such injury, death, loss or damage has resulted from any act(s), omission(s) and/or negligence of the Supplier or any of its subcontractors, employees or agents; or
 - 9.1.4 any breach of confidentiality by the Supplier including any breach of Clause 10 (Confidentiality).
- 9.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Customer for and in respect of:
- 9.2.1 any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Supplier shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
 - 9.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any of the Supplier's personnel (or any substitute personnel) against the Customer arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Customer.

10. CONFIDENTIALITY

10.1 Each Party undertakes to keep confidential any Confidential Information relating to the other Party which it obtains under or in connection with this Agreement and not to use such information or disclose it to any other person, other than as permitted under this Clause 10.

10.2 Each Party may disclose any Confidential Information which relates to the other Party to:

10.2.1 any of its directors, employees, advisers and agents; or

10.2.2 where necessary for the provision of the Services, any subcontractor of the Supplier,

provided that such information is disclosed solely for the purposes of this Agreement and provided that the disclosing Party ensures that such recipient executes a confidentiality undertaking in favour of the other Party on terms which are no less restrictive than those set out in this Clause 10.

10.3 Clause 10.1 shall not apply to the disclosure of Confidential Information:

10.3.1 with the consent of the person to whom the information relates; or

10.3.2 if and to the extent:

(a) required by Applicable Law; or

(b) required by any competent regulatory authority or recognised stock exchange; or

(c) that such information is in the public domain other than through breach of this Clause 10,

provided that any Confidential Information shall only be disclosed pursuant to Clauses 10.4.2 (a) or 10.4.2 (b) above by either Party after notification to the Party to which the information relates if such notification is practicable in the circumstances.

11. DATA PROTECTION

11.1 Each party shall comply at all times with Applicable Data Protection Law and shall not perform its obligations under the Agreement in such a way as to cause the other to breach any of its applicable obligations under Applicable Data Protection Law.

11.2 In the event that either party processes any Personal Data on behalf of the other party, the provisions of the data processing addendum in Schedule 3 shall apply.

12. TERMINATION

12.1 The Customer may (without prejudice to its other rights and remedies) terminate this Agreement either in whole or in part by giving written notice to the Supplier:

12.1.1 if the Supplier commits a material breach of this Agreement and (in the case of a remediable breach) fails to remedy the breach within a reasonable period of time specified by the Customer but in any event within 5 days of being notified in writing of the breach;

12.1.2 if the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is

inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

- 12.1.3 if the Supplier becomes unable to pay its debts (within the meaning of section 123(1)(e) or (2) of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;
- 12.1.4 if a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Supplier;
- 12.1.5 if an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed to the Supplier and/or over all or any part of the assets of the Supplier;
- 12.1.6 if the Supplier enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; if anything equivalent to any of the events or circumstances stated in Clauses 12.1.3 to 12.1.6 inclusive occurs in any applicable jurisdiction;
- 12.1.7 in accordance with Clause 7.2 (Breach of Warranty); or
- 12.1.8 in accordance with Clause 15 (Force Majeure),

and any such termination shall take effect either immediately or at such other date as may be specified in the notice.

- 12.2 The Customer may (without prejudice to its other rights and remedies) terminate this Agreement either in whole or in part by giving 30 days' written notice to the Supplier.

13. **CONSEQUENCES OF TERMINATION**

- 13.1 On expiry or termination of this Agreement:
 - 13.1.1 each Party shall return to the other all Confidential Information of the other which it may have in its possession or at the other Party's request, destroy the same;
 - 13.1.2 save where expressly stated otherwise, the Customer's obligations to pay the Charges to the Supplier shall cease and the Supplier shall refund any monies paid by the Customer to the Supplier for any services that have not yet been performed (less any costs incurred or contractually committed to as at that date by the Supplier in connection with the Services);
 - 13.1.3 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all of the Customer Materials;
 - 13.1.4 the rights and obligations of the Parties under this Agreement which are intended to continue beyond the termination or expiry of this Agreement (including those under this Clause 13 and Clauses 1 (Definition and Interpretation), 8 (Intellectual Property), 9 (Indemnities), 10 (Confidentiality), 14 (Limitation of Liability), 20 (General) and 21 (Governing Law and Jurisdiction)) shall survive the termination or expiry of this Agreement.

14. **LIMITATION OF LIABILITY**

14.1 Nothing in this Agreement shall operate to limit or exclude either Party's liability to the other for:

14.1.1 death or personal injury caused by that Party's negligence;

14.1.2 fraudulent misrepresentation or fraudulent concealment; or

14.1.3 any liability which cannot be limited or excluded by Applicable Law.

14.2 Nothing in this Agreement shall operate to limit or exclude the Supplier's liability to the Customer for:

14.2.1 any loss of or damage to property owned by the Customer (including loss of data) or any other property owned by third parties where such loss or damage has resulted from any act(s) and/or omission(s) by the Supplier or any of its subcontractors, employees or agents;

14.2.2 any wilful default or abandonment in respect of this Agreement by the Supplier;

14.2.3 any liability under Clause 7 (Warranties);

14.2.4 any liability under Clause 9 (Indemnities); or

14.2.5 any liability under Clause 10 (Confidentiality).

14.3 Subject to Clauses 14.1 and 14.2 above, the Supplier's total aggregate liability for all claims arising under or in connection with this Agreement regardless of form of action and whether in contract, tort, warranty, or other legal or equitable grounds (including in each case negligence), shall under no circumstances exceed the sum of two hundred percent (200%) of the Charges.

15. **FORCE MAJEURE**

15.1 For the purposes of this Clause 15, a **Force Majeure Event** means an event the occurrence of which is beyond the reasonable control of either Party to this Agreement, including (without limitation) the following: Act of God, war, explosions, fires, floods, tempests, earthquake, insurrection, riot, civil disturbance, rebellion, strike, lock-out or labour dispute but not a strike, lock-out or labour dispute involving the Party relying on this Clause 15.

15.2 If a Force Majeure Event occurs which prevents a Party to this Agreement (the **Affected Party**) from performing any of its obligations to the other (the **Other Party**), or causes a delay in performance, the Affected Party shall not be liable to the Other Party and shall be released from its obligations to the extent that its ability to perform such obligations has been affected by the Force Majeure Event, provided that:

15.2.1 in the case of the Supplier, the lack of ability to perform the obligations caused by the Force Majeure Event could not have been prevented by reasonable precautions;

15.2.2 the Affected Party notifies the Other Party in writing as soon as reasonably practical of the occurrence of the Force Majeure Event and the nature and likely duration of its impact upon the Other Party;

15.2.3 the Affected Party takes all reasonable steps to mitigate the impact of the Force Majeure Event on the Other Party and in particular continues to

perform those obligations affected by the Force Majeure Event but whose performance has not been rendered impossible to the highest standard reasonably practicable in the circumstances; and

15.2.4 the Affected Party resumes normal performance of all affected obligations as soon as the impact of the Force Majeure Event ceases, and notifies the Other Party in writing of such resumption.

15.3 If the impact of the Force Majeure Event upon the Affected Party prevents it from performing a substantial part of its obligations under this Agreement, the Other Party may, by written notice, terminate this Agreement either in whole or in part (in respect of all or some of those Services which have been affected by the Force Majeure Event) with immediate effect and without liability to the Affected Party.

16. ANNOUNCEMENTS AND PUBLICITY

16.1 Unless specifically agreed in writing by the Parties under the terms of this Agreement or required by Applicable Law, by relevant regulations, or by a recognised stock exchange, neither Party may make any public announcement or undertake in any publicity or advertising in respect of the subject matter of this Agreement. No announcement which is permitted under this Clause 16 shall be made by either Party without the prior written approval of the other Party as to its form and content (such approval not to be unreasonably withheld or delayed).

16.2 Each Party shall take all reasonable steps to ensure the observance of the provisions of Clause 16.1 above by all employees, agents, subcontractors and consultants (including professional advisers) of that Party.

17. ASSIGNMENT

17.1 Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party.

18. NOTICES

18.1 Except as otherwise expressly provided, any notice or other communication from any Party (**Sender**) to the other Party (**Recipient**) which is required to be given under this Agreement (**Notice**) must be in writing (which for these purposes includes e-mail), signed by or on behalf of the Sender (or in the case of an e-mail, bears the name of the sender), and be addressed to the officer of the Recipient whose details are set out in Clause 18.3 below.

18.2 The Sender may either:

18.2.1 deliver the Notice, or arrange for its delivery, by hand and retain satisfactory proof of delivery; or

18.2.2 send the Notice by recorded delivery or registered post and retain a receipt of delivery or sending; or

18.2.3 send the Notice by e-mail and retain an e-mail confirming receipt.

18.3 The details of the Parties for the purpose of Notices are as follows:

BHA:

For the attention of:

Catherine Beloff (Director of Legal and Governance)

Address: 75 High Holborn
London
WC1V 6LS

E-mail address: cbeloff@britishhorseracing.com

Supplier:

For the attention of: *[insert name and position]*

Address: *[insert address]*

E-mail address: *[insert e-mail address]*

Each Party may alter the above details which relate to itself and shall notify the other of any such change by a Notice in accordance with this Clause 18.

18.4 Any Notice shall be deemed to have been served:

18.4.1 if delivered by hand, at the time and date of delivery; or

18.4.2 if sent by recorded delivery or registered post, 48 hours from the date of posting (such date as evidenced by postal receipt etc.); or

18.4.3 if sent by e-mail, when the sender receives a reply e-mail confirming delivery.

19. ENTIRE AGREEMENT

19.1 This Agreement and the Supplier's proposal constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings or collateral contracts of any nature made by the Parties, whether oral or written, in relation to such subject matter.

19.2 Save for where expressly stated otherwise in this Agreement, and save for the Customer's reliance on the Supplier's proposal, each Party acknowledges that in entering into this Agreement it is not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other Party in relation to the subject matter of this Agreement, except for those rights and remedies available under this Agreement.

20. GENERAL

20.1 No variation of this Agreement shall be effective unless made in writing and signed by their duly authorised representatives.

20.2 The rights, powers and remedies provided in this Agreement are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by Applicable Law, or otherwise.

20.3 Nothing in this Agreement shall (except as expressly provided) be deemed to constitute a partnership, or create a relationship of principal and agent for any

purpose between the Parties. Neither Party shall hold itself out as having the authority to bind the other Party.

- 20.4 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents or deeds) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Agreement.
- 20.5 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by Applicable Law shall not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
- 20.6 Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, and execution of this Agreement. The Supplier shall ensure that it has taken out and will maintain appropriate insurance policies with reputable insurers and that its level of insurance cover and the terms of its insurance are reasonably sufficient to cover the Supplier's liabilities under this Agreement (and are in accordance with Applicable Law).
- 20.7 This Agreement may be entered into by the Parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument. This Agreement shall not take effect until it has been executed by both Parties.
- 20.8 A person who is not a party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- 20.9 If any provision, or part of a provision, of this Agreement, is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise stipulated under Applicable Law. The Parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the provision, or part-provision, in question.

21. **GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with English law.
- 21.2 The Parties agree to submit any dispute arising in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales (including any dispute or claim relating to non-contractual obligations).

IN WITNESS of which this Agreement has been entered into on the date written above.

**BRITISH HORSERACING AUTHORITY
LIMITED**

[THE SUPPLIER]

Signed By: _____

Signed By: _____

Full Name: _____

Full Name: _____

Position: _____

Position: _____

**Schedule 1
Services**

The intention is for this schedule to be populated with the relevant information from the Statement of Requirements and the Supplier's tender.

Schedule 2 Charges

The intention is for this schedule to be populated with the relevant information from the Supplier's tender.

**Schedule 3
Data Processing Addendum**

1 ADDITIONAL DEFINITIONS

The following expressions shall have the following meaning in this schedule:

Controller, Data Subject(s), Personal Data, Processing, Processor and Third Party/Parties shall have the same meanings as set out in Applicable Data Protection Law;

European Economic Area, EEA shall mean the member states of the European Union from time to time plus additional states that are party to the EEA Agreement from time to time; and

Personnel shall mean any staff (including temporary, casual and unpaid workers) and sub-contractors employed or appointed by the Processor.

1 DATA PROCESSING

1.1 Where the Processor processes Personal Data on behalf of the Controller, the Processor shall:

1.1.1 process the Personal Data only in accordance with the documented instructions of the Controller;

1.1.2 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and risk which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

1.1.3 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality and take steps to ensure such persons only act on the processor's instructions in relation to the processing;

1.1.4 not transfer Personal Data outside of the EEA without the prior written consent of the Controller and (where the Controller consents to such transfer) Processor shall ensure that the transfer shall be made in such a way as to ensure that the level of protection offered to natural persons by Applicable Data Protection Law is not undermined, which may involve the parties entering into standard contractual clauses as approved pursuant to 'Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries' (or any applicable superseding clauses);

- 1.1.5 remain entitled to appoint third party sub-processors (which may include agents, sub-contractors, Affiliates or Third Parties). Where Processor appoints a third party sub-processor, it shall, with respect to data protection obligations:
- (a) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Processor; and
 - (b) remain fully liable to Controller for all acts and omissions of the third party,
- and all sub-processors engaged by Processor as at the effective date of this agreement shall be deemed authorized.
- 1.1.6 notify Controller without undue delay after becoming aware that it has suffered a personal data breach;
- 1.1.7 permit Controller (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit Processor's data processing activities to enable Controller to verify and/or procure that Processor is complying with its obligations under this clause;
- 1.1.8 assist Controller to respond to requests from data subjects who are exercising their rights under Applicable Data Protection Law;
- 1.1.9 on Controller's reasonable request and at Controller's cost, assist Controller to comply with the Controller's obligations pursuant to Articles 32-36 of the General Data Protection Regulation (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable): (a) notifying a supervisory authority that Controller has suffered a personal data breach; (b) communicating a personal data breach to an affected individual; (c) carrying out an impact assessment; and (d) where required under an impact assessment, engaging in prior consultation with a supervisory authority; and
- 1.1.10 unless applicable law requires otherwise, upon termination of the Agreement at the option of the Controller comply or procure the compliance with the following: (i) return to the Controller all Personal Data and any other information provided by the Controller to the Processor; and/or (ii) delete all Personal Data provided by the Controller to the Processor; and (iii) cease to Process the Personal Data.
- 1.2 The Controller and Processer shall execute and deliver any necessary documentation as may be required for the purposes of either party complying with Applicable Data Protection Law.
- 1.3 The Controller retains all rights, title and interest in the Personal Data including any amendments or alterations to such Personal Data made by the Processor or on the Processor's behalf.

SECTION 5: ANCILLARY DOCUMENTS

Appendix A: []

Appendix B: []

Appendix C: []