

Kentucky Horse Racing Commission

Meeting Materials for Special Meeting

March 21, 2023



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MINUTES OF THE FEBRUARY 21, 2023, KENTUCKY HORSE RACING COMMISSION MEETING

KENTUCKY HORSE RACING COMMISSION

MINUTES OF THE MEETING

Date: February 21, 2023 at 1:30 P.M.

Place: Via Zoom and Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511

Members Present: Chairman Jonathan Rabinowitz; Vice-Chairman Frank Jones, Jr.; Commissioner Mike Berry; Commissioner Naveed Chowhan M.D.; Commissioner Michael Dudgeon; Commissioner Tiffany Daniels, D.C.; Commissioner Greg Harbut; Commissioner Lesley Howard; Commissioner William L.S. Landes; Commissioner William May; Commissioner Charles O'Connor; Commissioner Catherine Parke; Commissioner James Worley; Commissioner Frank Shoop; and Commissioner Dr. Tom Riddle

Ex-officio Members Present: Secretary Ray Perry; Mona Juett on behalf of Secretary Lindy Casebier

KHRC Staff Participating/Present: Jamie Eads, Executive Director; Waqas Ahmed, Deputy Executive Director; Jennifer Wolsing, General Counsel; Travers Manley, Deputy General Counsel; Barbara Borden, Chief State Steward; Drew Conners, Incentives and Development Director; Andy Conway, Pari-mutuel Wagering and Compliance Assistant Director; Patricia Cooksey, Associate Judge; Mariah Dietz, Executive Administrative Secretary; and Beth Jacobson, Paralegal

<i>AGENDA ITEM</i>	<i>TRANSCRIPT PAGE NUMBER(S)</i>	<i>DISCUSSION / CONCLUSIONS / RECOMMENDATIONS</i>	<i>ACTION TAKEN</i>
I. Call to Order and Roll Call	4 – 5	Chairman Rabinowitz called the meeting of the Kentucky Horse Racing Commission (KHRC) to order and performed the roll call. A quorum was recognized.	No action taken.

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
II. New Business Tab 1 Meeting Minutes from January 23, 2023 Special Meeting	5 – 43 6 – 7	<p>Chairman Rabinowitz requested a motion from the Commission to approve the proposed minutes of the KHRC Special Meeting on January 23, 2023. Motion by Commissioner Harbut. Second by Commissioner Shoop.</p> <p>Executive Director Eads shared that the minutes were located behind tab number one with an amendment at the top of page four where the text is a duplicate. Approval was recommended by KHRC Staff.</p>	<p>Chairman Rabinowitz called for a vote to approve the proposed special minutes of the January 23, 2023 meeting as presented. Motion carried with no objections or abstentions.</p>

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 2 Approval of the proposed amendment to 810 KAR 8:020</p>	<p>7 - 12</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve the proposed amendment to 810 KAR 8:020. Motion by Commissioner Landes. Second by Commissioner Harbut.</p> <p>Equine Medical Director, Dr. Bruce Howard and General Counsel Jennifer Wolsing were assigned the floor. Dr. Howard explained that the amendment is to place Levamisole back on the KHRC controlled medication list as a Class B Substance.</p> <p>Levamisole is an anthelmintic dewormer with immunodulatory and anti-inflammatory properties and has been used as an off-label medication for equine Protozoal Myelitis. Levamisole metabolizes into other regulated substances, such as Aminorex and Pemoline and they are both Class A Substances.</p>	<p>Chairman Rabinowitz called for a vote to approve the proposed amendment to 810 KAR 8:020. Motion carried with no objections or abstentions.</p>
		<p>Levamisole is FDA approved as a dewormer for many species, but not for horses. Studies have shown that Levamisole stays in the horse for several days after being administered. Levamisole is currently classified as a Class 2 Substance by ARCI which is the same as LHRC Class B and it is currently on the Class B list with HISA. The KHRC feels that Levamisole should go back on the Class B list to be aligned with HISA and ARCI.</p> <p>Approval was recommended by KHRC staff.</p>	

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 3 Approval of Keeneland Backside Improvements</p>	<p>12 - 14</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Keeneland Association, Inc.'s application for monies from the backside improvement funds. Motion by Commissioner Shoop. Second by Commissioner Parke.</p> <p>Director of Incentives and Development, Drew Connors, was assigned the floor. Mr. Connors explained that the KHRC received a request from Keeneland for \$127,565.30 for stall jam fabrication and mounting hardware to replace the outside metal on several of their stalls. This request meets the statutory requirements of KRS 230.3615 and 810 KAR 7:010 and confirmation was made that the funds are available for this request. Approval was recommended by KHRC staff.</p>	<p>Chairman Rabinowitz called for a vote to approve Keeneland Association, Inc.'s application for money from the backside improvement funds. Motion carried with no objections or abstentions.</p>

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 4 Approval of Churchill Downs Racetrack LLC's Backside Improvement</p>	<p>14 - 16</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Churchill Downs' application for monies from the backside improvement fund. Motion by Commissioner Parke. Second by Commissioner Landes.</p> <p>Director of Incentives and Development, Drew Connors, was assigned the floor. Mr. Connors explained that the KHRC received a backside improvement requested from Churchill Downs requesting a total of \$127,490. The repairs include roof replacement on Barn 1, roofing repairs on multiple other barns, asphalt repairs to the backside and trackside and air condition unit repair as well as heating repair to the dorm and barn room. This project meets the statutory requirements of KRS 30.3615 and 810 KAR 7:010. KHRC has confirmed that Churchill has the funds available for this request. Approval was recommended by KHRC staff.</p> <p>Chairman Landes inquired as to the balance in Churchill's backside account and asked that it be provided.</p>	<p>Chairman Rabinowitz called for a vote to approve Churchill Downs' application for monies from the backside improvement fund. Motion carried with no objections or abstentions.</p>
<p>Tab 5 Approval of Kentucky Downs LLC's request to transfer KTDF monies to Keeneland Association, Inc.</p>	<p>16 - 17</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Kentucky Downs LLC's request to transfer KTDF monies to Keeneland Association, Inc. Motion by Commissioner Shoop. Second by Commissioner Parke.</p> <p>Director of Incentives and Development, Drew Connors, was assigned the floor and advised that Kentucky Downs agreed to transfer \$1 million in the KTDF earnings to Keeneland in support of their upcoming 2023 spring race meet. This request is supported by the KTDF advisory committee and staff recommended approval.</p>	<p>Chairman Rabinowitz called for a vote to approve Kentucky Downs LLC's request to transfer KTDF monies to Keeneland Association, Inc. Motion carried with no objections or abstentions.</p>

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 6 Approval of Keeneland Association Inc.'s 2023 spring meet KTDF purse allotment request</p>	<p>18 - 19</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Keeneland Association Inc.'s 2023 spring meet KTDF purse allotment request. Motion by Commissioner Daniels. Second by Commissioner Parke.</p> <p>Director of Incentives and Development, Drew Connors, was assigned the floor. Mr. Connors explained that at the KTDF Advisory Panel Committee Meeting on January 31st it reviewed the Keeneland 2023 spring race meet KTDF allotment request which is April 7 through 28 with 15 days of racing. Keeneland proposed KTDF purses in the range of \$4.7 to 4.9 million. Approval was recommended by the KTDF Advisory Committee and KHRC staff.</p>	<p>Chairman Rabinowitz called for a vote to approve Keeneland Association Inc.'s 2023 spring meet KTDF purse allotment request. Motion carried with no objections or abstentions.</p>
<p>Tab 7 Approval of Churchill Downs Racetrack LLC's 2023 spring meet KTDF purse allotment request</p>	<p>19 – 21</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Churchill Downs Racetrack LLC's 2023 spring meet KTDF purse allotment request Motion by Commissioner Parke. Second by Commissioner Harbut.</p> <p>Director of Incentives and Development, Drew Connors, was assigned the floor and explained that at the January 31st KTDF Advisory Committee Meeting they reviewed the Churchill Downs 2023 purse allotment request. Their meet consists of 44 racing days April 29th through July 3rd. Churchill Downs is proposing KTDF purses in the range of \$9.5 to \$10 million. Approval was recommended by the KTDF Advisory Committee and KHRC staff.</p>	<p>Chairman Rabinowitz called for a vote to approve Churchill Downs Racetrack LLC's 2023 spring meet KTDF purse allotment request. Motion carried with no objections or abstentions.</p>

<p>Tab 8 Approval of Amendments to 810 KAR 7:040</p>	<p>21 - 26</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve the proposed amendment to 810 KAR 7:040. Motion by Commissioner Berry. Second by Commissioner Landes.</p> <p>Director of Incentives and Development, Drew Connors, and General Counsel, Jennifer Wolsing, were assigned the floor. Mr. Connors stated that the Kentucky Standardbred Development Fund and Kentucky Standard Breeders Incentive Fund advisory panel met and agreed upon the proposed amendments to 810 KAR 7:040. The amendments were to create an opportunity to participate in instances where the mare certificate of eligibility nomination was missed and allow for a yearling to late nominate during its yearling year, even if the mare was not nominated during the calendar year of its breeding season; and allowing a 3-year-old to participate, even if no sustaining payments were made as a 2-year-old. The Kentucky Standardbred Development Fund and Kentucky Standard Breeders Incentive Fund advisory panel as well as KHRC staff recommended approval.</p> <p>Commissioner Landes inquired as to the process for amending this regulation. Ms. Wolsing explained that once the KHRC approves and signatures are obtained then certain paperwork must be filled out to give an outline of what is changing in the regulation. One of the required signatures is Secretary Ray Perry and once he approves then it can be filed with LRC, the Legislative Research Commission. LRC will publish the regulation and then a public hearing is held and if there are comments, then there is a statement of consideration to be filed. The regulation then goes to ARRS. The regulation would then move on to Licensing and Occupation; they have 90 days to call the regulation. If 90 days pass and the regulation is not called and they do not find it deficient; then the regulation is in effect as the day it was before Licensing and Occupation. The entire process takes 7 to 9 months.</p>	<p>Chairman Rabinowitz called for a vote to approve the proposed amendment to 810 KAR 7:040. Motion carried with no objections or abstentions.</p>
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AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 9 Approval of Churchill Downs Racetrack LLC's proposed 2023 Spring Race Meet officials and date preference system</p>	<p>26 - 27</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Churchill Downs Racetrack LLC's proposed 2023 Spring Race Meet officials and date preference system. Motion by Commissioner Parke. Second by Commissioner Berry.</p> <p>Chief State Steward, Barbara Borden, was assigned the floor and explained that she received a letter from Churchill Downs requesting approval of the roster of officials that are provided in the meeting materials. The roster is the same group that has been in place for several years and there is no change to the date system. Approval was recommended by KHRC Staff.</p>	<p>Chairman Rabinowitz called for a vote to approve Churchill Downs Racetrack LLC's proposed 2023 Spring Race Meet officials and date preference system. Motion carried with no objections or abstentions.</p>

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 10 Approval Revolutionary Racing Kentucky LLC's proposed 2023 Spring Race meet officials and date preference system</p>	<p>27 - 32</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Revolutionary Racing Kentucky LLC's proposed 2023 Spring Race meet officials and date preference system. Motion by Commissioner May. Second by Commissioner Shoop.</p> <p>Chief State Steward, Barbara Borden, was assigned the floor and explained that Revolutionary Racing requested approval of the roster of racing officials and the date preference system for the Sandy Ridge Racetrack's 2023 spring meet that will be conducted at the Red Mile. Some officials still need to be determined, but as of right now the Kentucky State Steward is accredited and all officials will be licensed prior to the beginning of the meet. Approval was recommended by KHRC Staff.</p> <p>Commissioner Landes asked Mr. Palmisano about the optional race date on April 2nd at Turfway. Mr. Palmisano explained that the meet ends April 1st. Mr. Landes then inquired as to an adequate pool of horses being available and participation not being an issue.</p>	<p>Chairman Rabinowitz called for a vote to approve Revolutionary Racing Kentucky LLC's proposed 2023 Spring Race meet officials and date preference system. Motion carried with no objections or abstentions.</p>
		<p>John Marshall, the president of Revolutionary Racing, added that they are in the process of recruiting today with most interest from Louisiana and Oklahoma. They feel as though they have an adequate supply of horses to draw from. Mr. Marshall further advised that there is a condition book online.</p> <p>Chairman Rabinowitz inquired as to the construction at Sandy's Racing and Gaming Construction in Ashland. Mr. Marshall explained that they are about 70% complete with the engineering and moving to submit permits on March 2nd.</p>	

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>Tab 11 Approval of Keeneland Association Inc.'s proposed 2023 Spring Race Meet officials and date preference system</p>	<p>32 - 33</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve Keeneland Association Inc.'s proposed 2023 Spring Race Meet officials and date preference system. Motion by Commissioner Parke. Second by Commissioner Daniels.</p> <p>Chief State Steward, Barbara Borden, was assigned the floor and explained that Keeneland was seeking approval of their roster of racing officials and their date preference system. The roster is the same group that has been in place for several years and there is no change to the date system. Approval was recommended by KHRC Staff.</p>	<p>Chairman Rabinowitz called for a vote to approve Keeneland Association Inc.'s proposed 2023 Spring Race Meet officials and date preference system. Motion carried with no objections or abstentions.</p>
<p>Tab 12 Approval of Western Kentucky Development LLC d/b/a Oak Grove Racing and Gaming proposed 2023 Spring Meet officials</p>	<p>33 - 35</p>	<p>Chairman Rabinowitz requested a motion from the Commission to approve the Western Kentucky Development LLC d/b/a Oak Grove Racing and Gaming proposed 2023 Spring Meet officials. Motion by Commissioner Landes. Second by Commissioner Harbut.</p> <p>Associate Judge Patricia Cooksey was assigned the floor and discussed the requests for approval of the roster of racing officials for the 2023 spring meet. The judges have been accredited by the Racing Officials Accreditation Program and all officials will be licensed. Approval was recommended by KHRC staff.</p>	<p>Chairman Rabinowitz called for a vote to approve the Western Kentucky Development LLC d/b/a Oak Grove Racing and Gaming proposed 2023 Spring Meet officials. Motion carried with no objections or abstentions.</p>

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
Tab 13 Reports a. Thoroughbred Rulings b. Standardbred Rulings c. Veterinary Division	35 – 45 35 - 36 36 36 - 40	a. Chief State Steward, Barbara Borden, presented the Thoroughbred Rulings for the entire year of 2022 as provided in the meeting materials. There were 141 rulings issued. The rulings for 2023 were also presented. b. Associate Judge, Patricia Cooksey, presented the Standardbred Rulings and an update regarding Peter M. Wrenn, who has paid his fine in full and stated that all the others were paid except Patricia Brewer. c. Equine Medical Director, Dr. Bruce Howard, was assigned the floor and presented that there was 1547 starts at Turfway and 342 post-race samples were collected. There were 26 Veterinary scratches and 18 of those were pre-race exams in the morning and 8 were track scratches of which 5 were for soundness and the other 3 were for gate or paddock incidents or injuries. 45 total horses were put on the KHRC's vet list. There were 134 claimed horses, and 9 ambulance runs.	No action taken. Informational items only.

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
<p>d. Pari-Mutuel Wagering Division</p> <p>e. Litigation</p>	<p>40 - 41</p> <p>41</p>	<p>A chart was also provided with racing fatalities that goes back to 2007 and finishes with the numbers through 2022. Commissioner Parke noted that the race start number had increased and the fatality number has decreased. Dr. Howard advised that the number of starts are increasing coming out of Covid and he commended the field staff for the regulation changes that have been made.</p> <p>d. Pari-mutuel wagering and compliance Assistant Director, Andy Conway, was assigned the floor to present the report. November and December 2022 saw similar performances with respect to the previous year. The Breeders' Cup wagers totaled over \$20 Million with just under \$17 Million being returned back to the public as winnings and settlement leaving a little over \$3 Million in commission.</p> <p>e. Litigation and Regulation report is for informational purposes only.</p>	
<p>III. Executive Session The meeting on February 21, 2023 convened under closed session pursuant to KRS 61.810(1)(c) to discuss pending litigation (CONFIDENTIAL)</p>	<p>41</p>	<p>Chairman Rabinowitz requested a motion from the Commission to convene in closed session to discuss proposed or pending litigation against or on behalf of the agency, as permitted by KRS Chapter 61.810(1)(c). Parke.</p> <p style="text-align: center;"><u>EXECUTIVE SESSION</u></p>	<p>Chairman Rabinowitz called for a vote for the Commission to convene in closed session. Motion carried with no objections or abstentions.</p>

AGENDA ITEM	TRANSCRIPT PAGE NUMBER(S)	DISCUSSION / CONCLUSIONS / RECOMMENDATIONS	ACTION TAKEN
	42 - 43	<p>Chairman Rabinowitz requested a motion from the Commission to reconvene in open session. Motion by Commissioner Shoop. Second by Commissioner May.</p> <p style="text-align: center;"><u>RECONVENED TO OPEN SESSION</u></p>	Chairman Rabinowitz called for a vote for the Commission to reconvene in open session. Motion carried with no objections or abstentions.
IV. Other Business	43	Chairman Rabinowitz requested a motion from the Commission to address a recommended final order in KRS 13B administrative action Corrales v. KHRC, administrative number 21-TB-009. Motion by Commissioner Harbut. Second by Commissioner Landes.	Chairman Rabinowitz called for a vote for the Commission to issue a final order dismissing. Motion carried with no objections or abstentions.
	43 – 44	Chairman Rabinowitz requested a motion from the Commission to address a recommended final order on the appellant’s notice of withdrawal of his appeal in KRS 13B administrative action Eckley v. KHRC, administrative number 22-SB-006. Motion by Commissioner Shoop. Second by Commissioner Daniels.	Chairman Rabinowitz called for a vote for the Commission to issue a final order dismissing. Motion carried with no objections or abstentions.
	44 - 45	Chairman Rabinowitz requested a motion from the Commission to address a recommended final order in KRS 13B administrative action Emerson v. KHRC, administrative number 22-SB-007. Motion by Commissioner Parke. Second by Commissioner Berry.	Chairman Rabinowitz called for a vote for the Commission to issue a final order dismissing.

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			Motion carried with no objections or abstentions.
V. Adjournment	45	With no other business, Chairman Rabinowitz requested a motion to adjourn the February 21, 2023 Kentucky Horse Racing Commission Meeting. Motion by Commissioner Parke. Second by Commissioner Berry. Meeting adjourned.	Chairman Rabinowitz called for a vote to adjourn. Motion carried with no objections or abstentions.

NOTE: The meeting materials and any amendments and/or supplements thereto, subject to any applicable exemptions, and the official Transcript are incorporated by reference as if set forth fully herein.



PUBLIC PROTECTION CABINET

Andy Beshear
GOVERNOR

**Kentucky Horse Racing
Commission**

Ray A. Perry
SECRETARY

Jacqueline Coleman
LIEUTENANT GOVERNOR

4063 Iron Works Parkway, Building B
Lexington, KY 40511
Phone: (859) 246-2040
Fax: (859) 246-2039

Jamie Eads
EXECUTIVE DIRECTOR

Jonathan Rabinowitz
CHAIRMAN

TO: Kentucky Horse Racing Commission
FROM: Jennifer Wolsing, General Counsel
Travers Manley, Deputy General Counsel
DATE March 17, 2023

RE: **LEXINGTON TROTS BREEDERS ASSOCIATION, LLC’S REQUEST TO AMEND SECTION R OF ITS 2023 APPLICATION TO CONDUCT LIVE HORSE RACING, SIMULCASTING AND PARI-MUTUEL WAGERING**

In its application for a license to conduct live horse racing, simulcasting and pari-mutuel wagering, Lexington Trots Breeders Association, LLC d/b/a Red Mile sought and received an award of 2023 race dates, including October 1, 2023. Red Mile has requested to conduct this awarded race date on an alternate date of September 28, 2023. The proposed amendment to Red Mile’s application is supported by the Kentucky Harness Horsemen’s Association. This race date will be conducted during Red Mile’s 2023 race meet and does not conflict with another harness track’s race meet.

The KHRC staff recommends approval of this amendment.

COMMISSION ACTION

- _____ Approve
- _____ Defer
- _____ Deny



Lexington Trots Breeders Association, llc

March 3, 2023

Mr. Jonathan Rabinowitz, Chair
Kentucky Horse Racing Commission
4063 Iron Works Parkway, Building B
Lexington, Kentucky 40511

Dear Mr. Rabinowitz and Commissioners,

The Red Mile requests permission to change a portion of its race dates for 2023. This change only affects three days, as follows:

- Rather than the previously approved Friday September 29th, Saturday September 30th, and Sunday October 1st;
- We are requesting to move one day up, racing Thursday, September 28th, Friday September 29th, and Saturday September 30th.

All other dates remain as previously approved. Post time of 1pm remains the same for all race dates.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shannon M. Cobb', with a large, sweeping flourish extending to the right.

Shannon M. Cobb
COO/CFO

Cc: Joe Costa
Jamie H. Eads
Jennifer Wolsing
Travers Manley

Lexington Trots Breeders Assn., llc * 1101 Winbak Way * Lexington, KY 40504
Phone: (859)255-0752 * Fax: (859)231-0217



March 17, 2023

KHRC

Attn: Travers Manley, Deputy General Counsel

4063 Iron Works Pkwy

Building B

Lexington, KY 40511

Dear Mr. Manley,

The Kentucky Harness Horsemen's Association approves of a date change requested by The Red Mile to change a specific racing date from October 01, 2023 to September 28, 2023.

Thanks,

Amanda Stephens

Executive Secretary



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET

Kentucky Horse Racing Commission
4063 Iron Works Parkway, Building B
Lexington, KY 40511
Phone: (859) 246-2040
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Ray A. Perry
SECRETARY

Jamie Eads
EXECUTIVE DIRECTOR

Jonathan Rabinowitz
CHAIRMAN

TO: Kentucky Horse Racing Commission
Jamie Eads, Executive Director
FROM: Waqas Ahmed, Deputy Executive Director
Jennifer Wolsing, General Counsel
Travers Manley, Deputy General Counsel
DATE March 17, 2023

RE: **VOLUNTARY IMPLEMENTATION AGREEMENT WITH HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC. AND HORSERACING INTEGRITY AND WELFARE UNIT**

On March 27, 2023, the Horseracing Integrity and Safety Authority (the "Authority") anticipates the launch of its Anti-Doping and Medication Control ("ADMC") Program throughout the United States. That program will be implemented and enforced by the Horseracing Integrity and Welfare Unit ("HIWU").

The Kentucky Horse Racing Commission currently provides services to the Authority regarding matters of track safety. However, that agreement will expire when the Authority begins its ADMC Program.

The attached Voluntary Implementation Agreement will continue that partnership and will also allow the Commission to provide ADMC services to the Horseracing Authority and to work collaboratively with both the Authority and HIWU on ADMC matters.

The KHRC staff recommends approval of the proposed Voluntary Implementation Agreement.

COMMISSION ACTION

_____ Approve

_____ Defer

_____ Deny

VOLUNTARY IMPLEMENTATION AGREEMENT

THIS VOLUNTARY IMPLEMENTATION AGREEMENT (this “Agreement”) is entered into as of the ___ day of _____ 2023, by and among the Horseracing Integrity and Safety Authority, Inc., a Delaware non-profit corporation whose mailing address is 401 West Main Street, Unit 222, Lexington, Kentucky 40507 (the “Authority”), the Horseracing Integrity & Welfare Unit, a division of Drug Free Sport, LLC (“Drug Free Sport”), a Delaware limited liability company whose mailing address is 2537 Madison Avenue, Kansas City, Missouri 64108 (the “Agency”), and the Kentucky Horse Racing Commission, an agency of the Kentucky state government whose mailing address is 4063 Iron Works Pkwy., Building B, Lexington, KY 40511 (the “Commission”). As used herein, the “Parties” shall mean the Authority, the Agency, and the Commission, collectively; and a “Party” shall mean the Authority, the Agency, or the Commission individually.

WHEREAS the Authority is a private, independent, self-regulatory, nonprofit corporation that was recognized for the purpose of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for Covered Horses, Covered Persons, and Covered Horseraces by the Horseracing Integrity and Safety Act of 2020 (the “Act”). Any individuals, events, or other matters under the purview of the Kentucky Horse Racing Commission prior to enactment of the Act, and not superseded by the Act, shall continue as regulated by the Kentucky Horse Racing Commission;

WHEREAS Drug Free Sport, a worldwide leader in the sport drug testing industry who administers comprehensive drug testing programs, manages national and international collections, and develops drug testing policies for a wide range of organizations around the world, created an entity to act as the anti-doping and medication control enforcement agency under the Act and to develop and enforce an independent and uniform thoroughbred anti-doping and medication control program (“ADMC Program”);

WHEREAS the Agency was created to act as the anti-doping and medication control enforcement agency under the Act and to develop and enforce the ADMC Program;

WHEREAS the Commission is the independent agency of state government vested with jurisdiction to regulate the conduct of horse racing and pari-mutuel wagering on horse racing and related activities within the state of Kentucky (the “State”);

WHEREAS 15 USC § 3054(e)(2)(A)(i) of the Act permits the Authority to enter into agreements with State racing commissions for services consistent with the enforcement of the racetrack safety program (the “Racetrack Safety Program”);

WHEREAS 15 USC § 3054(e)(2)(A)(ii) of the Act permits the Agency to enter into agreements with State racing commissions for services consistent with the enforcement of the ADMC Program, and 15 USC § 3060 permits the Authority to enter into agreements with State racing commissions for services consistent with the enforcement of the ADMC Program;

WHEREAS the Authority has determined that the Commission has the ability to implement certain areas of the Racetrack Safety Program in accordance with the rules, standards, and requirements established by the Act and the Authority; and

WHEREAS the Authority and the Agency have determined that the Commission has the ability to implement certain areas of the ADMC Program in accordance with the rules, standards, and requirements established by the Act, the Authority, and the Agency.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

I. Racetrack Safety Program

A. Medical Director. The Executive Director of the Commission shall utilize the Authority's Medical Director in connection with implementation of the Racetrack Safety Program. The Authority and the Commission agree that the Authority's Medical Director shall carry out the duties and responsibilities of the Medical Director set forth in the Racetrack Safety Program, including, but not limited to, the duties and responsibilities set forth in Rule 2132 of the Racetrack Safety Program. Any person named to replace the individual named as the Authority's Medical Director herein shall possess the qualifications set forth in Rule 2132(a) Racetrack Safety Program.

B. Safety Director. The Executive Director of the Commission names and appoints Barbara Borden and Dr. Bruce Howard as Safety Directors of the State (the "Safety Director"). The Authority and the Commission agree that the Safety Directors shall carry out the duties and responsibilities of the Safety Director set forth in the Racetrack Safety Program, as directed in training provided by the Authority. These duties include, but are not limited to, the duties and responsibilities set forth in Rule 2131 of the Racetrack Safety Program. Any person named by the Commission's Executive Director to replace the individuals named as Safety Director herein shall possess the necessary qualifications to perform the duties and responsibilities set forth in Rule 2131 of the Racetrack Safety Program.

C. Stewards. The Executive Director of the Commission agrees that the Commission's stewards shall enforce the safety regulations set forth in the Rule 2200 Series of the Racetrack Safety Program, as directed in training provided by the Authority. The Commission further agrees that the Commission's stewards for Covered Races shall also serve in the adjudicatory capacities directed in training provided by the Authority regarding the Rule Series 8000, "Enforcement Rules."

D. Regulatory Veterinarian. The Executive Director of the Commission names and appoints Dr. Nick Smith and Dr. Bruce Howard as Regulatory Veterinarians of the State (the "Regulatory Veterinarians"). The Authority and the Commission agree that the Regulatory Veterinarians shall carry out the duties and responsibilities of the Regulatory Veterinarians set forth in the Racetrack Safety Program, as directed in training provided by the Authority. These duties include, but are not limited to, the duties and responsibilities set forth in Rule 2135 of the Racetrack Safety Program. Any person named by the Commission's Executive Director to replace any of the individuals named as Regulatory Veterinarians herein shall possess the qualifications set forth in Rule 2134(a) Racetrack Safety Program.

E. Emergency Warning Systems. The Commission agrees to inspect and approve the racetrack emergency warning systems in use on all racing and training tracks at each racetrack under the jurisdiction of the Commission, as directed in training provided by the Authority regarding Rule 2153 of the Racetrack Safety Program. The Commission further agrees to provide the Authority with periodic reports concerning the racetrack emergency warning systems on forms that shall be prescribed by the Authority.

F. Trainers Test. The Commission agrees to continue to require the use of its Kentucky state trainers test, which meets or exceeds the requirements set forth in Rule 2181 of the Racetrack Safety Program. Upon request by the Authority, the Commission shall provide documentation of satisfactory completion of the test for individual licensees. Upon the Authority's request, the Commission shall make its Kentucky state trainers' test available for review by the Authority.

G. Training Opportunities. At least once per year, the Commission agrees to identify existing local training opportunities, of which the Commission is aware, for all Racetrack employees having roles in racetrack safety or direct contact with Covered Horses, as set forth in Rule 2182 of the Racetrack Safety Program. The Commission further agrees that the Authority may request and review information pertaining to the training opportunities available to racetrack employees as specified in Rule 2182 of the Racetrack Safety Program.

H. Testing Program. The Commission agrees to maintain a testing program for drugs and alcohol for Jockeys, as directed in training provided by the Authority regarding Rule 2191 of the Racetrack Safety Program. The Commission further agrees to submit the protocol for the testing program to the Authority upon request. Upon request by the Authority, the Commission shall share with the Authority information pertaining to positive tests of individual Jockeys and shall make periodic reports concerning the testing program as directed by and on forms prescribed by the Authority.

I. Concussion Management. The Commission agrees to implement a concussion management program for Jockeys, as directed in training provided by the Authority regarding Rule 2192 of the Racetrack Safety Program. The Commission further agrees to submit the protocol for the concussion management program to the Authority upon request.

J. Racetrack Safety Program Scope of Work. The scope of work and reporting obligations for the Racetrack Safety Program under this Agreement are those set forth in training provided by the Authority regarding the Rule 2000 Series, "Racetrack Safety and Accreditation," and any additional policies and procedures implemented by the Authority which are consistent with the Act and any regulations approved by the Federal Trade Commission pursuant to the Act ("HISA Policies"). Copies of HISA Policies shall be communicated to the Commission in a manner that allows for timely implementation by the Commission, which may involve regulatory changes that are subject to review by appropriate administrative or legislative bodies. The Commission and the Authority shall work together to achieve an agreement on the Commission's role in implementing and administering any and all Authority policies that are not promulgated as regulations approved by the Federal Trade Commission. The Commission agrees to provide performance metrics in reasonable detail, upon request by the Authority, and on forms prescribed by the Authority. The Parties agree to meet and confer on a regular basis, and at least quarterly, to discuss and collaborate on the effective and efficient implementation and administration of the Racetrack Safety Program and the duties and responsibilities set forth in this Section.

K. Indemnification. The Authority expressly agrees to indemnify and hold harmless the Commission and its agents or employees from and against any and all claims, loss, damages, injury, liability and costs, including but not limited to reasonable attorneys' fees and court costs, resulting from, arising out of, or in any way connected with the Racetrack Safety Program Scope of Work as defined in this Agreement, except to the extent that such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by, or result from, the willful misconduct of the Commission or its employees or agents. Any enforcement actions related to the Racetrack Safety Program Scope of Work shall be the responsibility of and shall be defended by the Authority. Any appeals or challenges to actions taken by Commission agents or employees when enforcing the Act or federal rules or regulations promulgated pursuant to the Act shall proceed pursuant to the enforcement rules of the Act and shall be defended by the Authority. Notwithstanding anything set forth in this Agreement to the contrary, this Agreement shall not be construed to waive any immunity under applicable state law, including, but not limited to, sovereign or qualified immunity, possessed by the Commission and its agents or employees.

L. Authority Protocols Policies, Procedures, and Forms. The Authority shall provide the Commission with a copy of all existing amended and new training materials, regulations, policies, procedures, and forms. This

notification shall be provided to the Commission's Deputy Executive Director Waqas Ahmed, or his successor, within seventy-two (72) hours of implementation. The Commission shall be afforded a reasonable time to implement any such changes once notice of a new regulation, protocol, or procedure is provided to the Commission by the Authority.

M. Reimbursement for Investigations. The Authority agrees to reimburse the Commission for any actual costs or expenses incurred in connection with any Authority investigation conducted in the State pursuant to the Racetrack Safety portion of this Agreement, which were incurred over and above typical duties that would have been performed in the course of their Commission employment. This reimbursement is contemplated for at least the following potential costs: the cost of using Commission employees as investigators or as witnesses at a hearing or trial (including witness preparation and testimony), as well as the travel, copying, and other resources utilized or expensed in performing these tasks. The Commission agrees to invoice the Authority quarterly for such costs and expenses.

N. If at any time during the term of this Agreement, the Authority, with good cause, believes that the Commission or any individual State Personnel is not satisfying the requirements set forth in this Agreement, it shall notify the Commission's Executive Director with specificity and particularity of the reasons for its good faith basis in writing. The Commission agrees to take any necessary action to promptly correct the non-compliant conduct or prevent any future non-compliance to the satisfaction of the Authority. Any action by the Authority under this subsection shall in no way affect the employment status of any individual and shall in no way impair the Commission's right to continue to employ such individual.

II. ADMC Program

A. ADMC Program Testing.

(1) The Commission agrees that the personnel currently used to conduct equine sample collections for thoroughbred race horses in the State (including, but not limited to, its employees and/or contractors) shall conduct sample collections in the State for, and under the authority of, the Agency. All sample collection shall comply with training as directed and provided by the Agency regarding the Rule Series 3000, "Equine Anti-Doping and Controlled Medication Protocol," including, but not limited to, the regulations under Rule 3130 (Testing & Investigations), and Rule Series 5000, "Equine Testing and Investigation Standards," of the ADMC Program. Compliant sample collection shall include, but shall not be limited to, Post-Race Samples, Post-Work Samples, TCO2 testing, testing of Claimed Horses, and Out-of-Competition Samples (the "Agency Samples"). Pursuant to Rule 5450, the Agency shall authorize these personnel (the "Agency-Authorized Collection Personnel") to conduct sample collections for the ADMC Program.

(2) Testing Liaison. The Executive Director of the Commission names and appoints Dr. Bruce Howard and Dr. Nick Smith as HIWU Testing Liaisons of the State (the "Testing Liaisons"). The Agency and the Commission agree that the HIWU Testing Liaisons shall be the point-of-contact with the Agency for (a) the scheduling of the collections of Agency Samples by Agency-Authorized Collection Personnel, (b) any problems or issues that arise during collections of Agency Samples by Agency-Authorized Collection Personnel, and (c) the delivery of any notice required under Rule Series 3000, "Equine Anti-Doping and Controlled Medication Protocol," to individuals present at racetracks or training facilities in the State and under the jurisdiction of the Commission, as directed by training provided by the Agency. Any person named to replace one of the individuals named as the HIWU Testing Liaisons shall be confirmed in written notice to the Agency.

(3) The Commission agrees that Agency-Authorized Collection Personnel shall comply with the policies, procedures and instructions of the Agency while collecting Agency Samples in the State. The Commission shall not be involved in the physical collection of Agency Samples. This prohibition on Commission involvement includes instructing or directing Agency-Authorized Sample Collection Personnel on how to conduct any portion of a sample collection. However, the Commission may schedule Agency-Authorized Collection Personnel's time and work assignments, monitor State Sample Collection Personnel, and address employee hiring, corrective actions or discipline. The Commission agrees that only Agency-Authorized Collection Personnel, Dr. Bruce Howard, and Dr. Nick Smith (as HIWU Testing Liaisons) shall be involved in the physical collection of Agency Samples, including giving directions and instructions to other Agency-Authorized Collection Personnel with respect to how to conduct any portion of a Sample collection.

(4) The Commission understands that, under the Act, its employees and contractors shall not test Covered Horses in the State, unless it is at the direction of the Agency or has been authorized in advance and in writing by the Agency. No testing shall occur under the ADMC Program prior to the effective date of the ADMC Program (the "Program Effective Date"). The Program Effective Date will not occur if the Authority does not have jurisdiction under the Act.

B. ADMC Program Investigations.

(1) The Commission agrees that personnel currently used to conduct investigations in the State, including, but not limited to, its employees and/or contractors, (the "State Investigative Personnel") shall conduct investigations in the State for, and at the direction of, the Agency. All investigations pursuant to this Agreement (the "Agency Investigations") shall comply with training as directed by the Agency, regarding the Rule Series 3000, "Equine Anti-Doping and Controlled Medication Protocol," including, but not limited to, the regulations under Rule 3130 (Testing & Investigations). All investigations pursuant to this Agreement shall also comply with training provided by the Authority regarding the Rule Series 5000, "Equine Testing and Investigation Standards," including the regulations under Rule 5700 (Standards for Investigations).

(2) Investigations Liaison. The Executive Director of the Commission names and appoints Paul Brooker as the Investigations Liaison of the State (the "Investigations Liaison"). The Agency and the Commission agree that the Investigations Liaison shall be the point-of-contact with the Agency for the scheduling of any investigatory work requested by the Agency pursuant to subsection (1) above. Any person named to replace the individual named as Investigations Liaison shall be confirmed by written notice to the Agency. In connection with Agency Investigations, the Investigations Liaison and State Investigative Personnel shall be deemed designees of the Authority pursuant to Rule 8400 (Investigatory Powers).

(3) The Commission agrees that State Investigative Personnel shall comply with the Agency's policies, procedures and instructions while conducting Agency Investigations, as directed in training provided by the Authority. The Commission further agrees that the Commission shall not, in any way, be involved in decision-making in connection with these Agency Investigations, including, but not limited to, instructing or directing such State Investigative Personnel on which individuals or horses should be investigated, or when or where to conduct any portion of an Agency Investigation. However, the Commission reserves the right to address personnel issues, including, but not limited to, scheduling State Investigative Personnel's time and work assignments, as well as employee hiring, corrective actions or discipline.

(4) The Commission understands that, under the Act, the Commission shall not conduct any investigation in the State covered by the ADMC Program, including, but not limited to, any interviews or searches

of any kind, relating to any Covered Horse unless it is at the direction of the Agency. No Agency Investigations shall occur pursuant to this Agreement prior to the Program Effective Date.

C. Access to Racetracks.

The Commission agrees that any individual who presents a credential or letter of authorization issued by the Agency shall be permitted access to any participating racetrack in the State at which Covered Horses compete, and such access shall include all areas of the racetracks, including, but not limited to, the backside. The Agency agrees to provide to the other Parties an example credential or letter of authorization to facilitate enforcement of this Section. Any changes to such credential or letter of authorization shall be communicated by the Agency to the other Parties.

D. Regulatory Veterinarian.

As set forth in Section I.D supra, the Executive Director of the Commission names and appoints Dr. Bruce Howard and Dr. Nick Smith as the Regulatory Veterinarians of the State (“Regulatory Veterinarians”). The Parties agree that the Regulatory Veterinarians shall carry out the duties and responsibilities of the Regulatory Veterinarians set forth in the ADMC Program as directed in training provided by the Agency, including, but not limited to, the duties and responsibilities set forth in Rule Series 3000, “Equine Anti-Doping and Controlled Medication Protocol,” and Rule Series 5000, “Equine Testing and Investigation Standards.” Any person named by the Executive Director of the Commission to replace any of the individuals named as Regulatory Veterinarians herein shall possess the qualifications set forth in Rule 2134(a) of the Racetrack Safety Program under the Act, and such replacement requires the prior written approval of the Agency.

E. Additional Testing.

(1) In addition to any Agency Samples collected at the direction of the Agency, the Commission may, under Rule 3132 (Authority to Test), request additional samples be collected from Covered Horses present in the State. Any such request must be made in writing to the Agency (attention: Kate Mittelstadt, Chief of Operations at HIWU@hiwu.org) and must include specific details of the requested testing (e.g., sample types, dates, location, rationale).

(2) Under Rule 3132 (Authority to Test), the Agency may, in its absolute discretion, approve or reject the request to collect and test additional samples. If the request is rejected, the Commission agrees that the requested testing shall not be conducted by any person, organization, or entity within its authority or control. If the request is granted, (i) the Agency shall determine which sample collection personnel shall conduct the testing (i.e., Agency-Authorized Collection Personnel or personnel retained by the Agency); (ii) the collections shall comply with Rule Series 3000, “Equine Anti-Doping and Controlled Medication Protocol,” and Rule Series 5000, “Equine Testing and Investigation Standards”; and (iii) all of the results of such testing shall be sent to, and processed by, the Agency pursuant to Rule Series 3000, “Equine Anti-Doping and Controlled Medication Protocol,” including all of the regulations in Rules 3240 and 3340 (Results Management).

(3) For each calendar year in which additional testing in the State is approved and conducted pursuant to this Section II.E, the Commission shall either cover expenses or transmit expenses as needed for such additional testing: the actual cost for collection personnel, equipment, shipping, and laboratory expenses.

F. Testing Laboratories.

(1) For the 2023 calendar year, the Commission agrees that all Agency Samples shall be sent to, and the Agency Samples which are “A” samples shall be analyzed by, the University of Kentucky Equine Analytical

Chemistry Laboratory, located at 427 Gluck Research Center, 1400 Nicholasville Rd., Lexington, KY 40546 (the “State-Appointed Testing Laboratory”). For each subsequent year of this Agreement, the Commission shall appoint the State-Appointed Testing Laboratory by September 30 of the prior year by providing written notice of the appointment to the Agency. (For example, the Commission shall appoint the State-Appointed Testing Laboratory by September 30, 2023 for use in 2024.) If the Commission does not appoint a State-Appointed Testing Laboratory by the September 30 deadline, then the Commission’s State-Appointed Testing Laboratory shall remain unchanged from the prior year. If the State-Appointed Testing Laboratory loses accreditation during a year, then the Commission or its designee shall appoint a new accredited State-Appointed Testing Laboratory within ten (10) business days. The State-Appointed Testing Laboratory shall be a laboratory accredited by the Agency and appointed by the Commission or its designee.

(2) The Commission understands that, under the Act, any analysis performed on Agency Samples that are “B” Samples shall be sent to, and analyzed by, a laboratory selected by the Agency that is different from the State-Appointed Testing Laboratory.

(3) Notwithstanding any laboratory selection made by the Commission pursuant to subsection (1) above, if the laboratory selected by the Commission cannot adequately analyze any Agency Sample for any specific substance or method requested by the Agency, the Commission understands that, under the Act, the Agency shall have the Samples (both “A” and “B”) sent to a different laboratory of the Agency’s choosing. The Commission also understands that the Agency has the authority to direct further analysis on all Agency Samples at its discretion.

G. Reimbursement for Investigations. The Agency agrees to reimburse the Commission for any actual costs or expenses incurred in connection with any Agency Investigation in the State conducted pursuant to Section II.B above. This reimbursement is contemplated for at least the following potential costs: the cost of using Commission employees as investigators or as witnesses at a hearing or trial (including witness preparation and testimony), as well as the travel, copying, and other expenses necessarily incurred in service of this Agreement. The Commission agrees to invoice the Agency quarterly for such costs and expenses.

H. Training Opportunities. At least once per year, the Commission agrees to work in conjunction with the Agency to ensure that training opportunities are available for all Agency-Authorized Collection Personnel and State Investigations Personnel to be organized in conjunction with the Agency, as required under Rule 5450. The Commission shall provide a suitable location or locations for all necessary trainings. The Agency shall facilitate and deliver all necessary trainings. If one or more Commission employees are unable to attend a scheduled training, the Agency shall use its best efforts to facilitate and deliver at least one (1) additional annual training to accommodate said employees. The Commission further agrees that the Agency may review information pertaining to the training opportunities available to Agency-Authorized Collection Personnel and State Investigations Personnel.

I. Arbitration Procedures. The Commission understands that, under the Act, any anti-doping rule or controlled medication rule violations alleged to have occurred in the State shall be processed pursuant to Rule Series 7000, “Arbitration Procedures.” Under these regulations, alleged anti-doping rule violations shall be heard by the Arbitral Body and alleged controlled medication rule violations shall be heard by the Internal Adjudication Panel. The Commission agrees that its employees, consultants, and other agents (including, but not limited to, Agency-Authorized Collection Personnel and State Investigative Personnel) shall cooperate with any process or proceeding conducted pursuant to the Arbitration Procedures, including, but not limited to, providing documents and testimony in connection with the case or matter.

J. ADMC Program Scope of Work.

(1) The scope of work and reporting obligations for the ADMC Program (“State Requirements”) under this Agreement are those set forth in the training provided by the Agency regarding Rule Series 3000, “Equine Anti-Doping and Controlled Medication Protocol”; Rule Series 5000, “Equine Testing and Investigation Standards”; any additional policies and procedures implemented by the Agency that are consistent with the Act; and any regulations approved by the Federal Trade Commission pursuant to the Act (“HIWU Policies”). Copies of HIWU Policies shall be communicated to the Commission in a manner to allow for timely implementation by the Commission, which may involve regulatory changes that are subject to review by appropriate administrative or legislative bodies. The Commission and the Agency shall work together to achieve an agreement on the Commission’s role in implementing and administering any and all Agency policies that are not promulgated as regulations approved by the Federal Trade Commission. The HIWU Policies shall include a process that is part of the Test Distribution Plan that shall permit Commission Stewards to select Covered Horses for Post-Race testing, with or without input from the Regulatory Veterinarians. General State Requirements are set forth on Exhibit A to this Agreement. The Parties agree to meet and confer on a regular basis, and at least quarterly, to discuss and collaborate on the effective and efficient implementation and administration of the ADMC Program and the duties and responsibilities set forth in this Section.

(2) The Commission understands that Agency-Authorized Collection Personnel shall acquire and maintain professional certification from the Agency in order to be permitted to conduct collections of Agency Samples. As directed in training provided by the Agency, the Commission agrees to provide information relating to the compliance of its Agency-Authorized Collection Personnel with the Rule Series 3000, “Equine Anti-Doping and Controlled Medication Protocol,” Rule Series 5000, “Equine Testing and Investigation Standards,” and HIWU Policies upon request by the Agency and on forms to be specified by the Agency.

(3) The Commission agrees to provide the Agency with (a) a certification or affidavit confirming that all Agency-Authorized Collection Personnel have satisfactorily completed a criminal background check within a completion date no earlier than one (1) year before the Program Effective Date, and (b) completed conflict of interest statements (in a form specified by the Agency) from all Agency-Authorized Collection Personnel. The Commission understands that the requirements of subsections (a) and (b) are a condition of certification of Agency-Authorized Collection Personnel by the Agency.

(4) If at any time during the term of this Agreement, the Agency, with good cause, believes that the Commission or any individual Agency-Authorized Collection Personnel or State Investigative Personnel is not satisfying the requirements set forth in this Agreement, it shall notify the Commission’s Executive Director of the reasons for its good faith basis in writing, with specificity and particularity. The Commission agrees to take any necessary action to promptly correct the non-compliant conduct or prevent any future non-compliance to the satisfaction of the Agency. If the individual at issue continues to be non-compliant, or if the initial conduct was so egregious as to warrant removal from the individual’s position as Agency-Authorized Collection Personnel or State Investigative Personnel (as determined by the Agency in its sole discretion), then the Agency may revoke the individual’s certification and require the Commission to cease assigning said individual to perform further services under this Agreement. The Commission shall promptly comply with such request. Any action by the Agency under this subsection shall in no way affect the employment status of any individual and shall in no way

impair the Commission's right to continue to employ such individual. The Agency acknowledges that Agency-Authorized Collection Personnel and State Investigative Personnel are not employees of the Agency.

K. Information Sharing.

(1) The Commission agrees that Equine Medical Director Dr. Bruce Howard, State Veterinarian Dr. Nick Smith, Chief Steward Barbara Borden, and/or Commission General Counsel Jennifer Wolsing shall provide the Agency, on a timely basis, with any information, documentation, or evidence that these individuals receive or discover relating to known or probable violations of the ADMC Program. The Commission further agrees that it will advise its Commissioners to inform the Agency of known or probable violations of the ADMC Program.

(2) The Agency agrees that it shall provide the Commission, on a timely basis, with any information, documentation, or evidence that it receives or discovers relating to known or probable violations of the State's laws, regulations, or rules, which are not preempted by the Act.

(3) In addition to any notifications required by the Act to be made by the Agency to the Commission, the Agency shall notify the Commission of negative tests from the Agency Samples that are "A" Samples for a specific Race Day within three (3) business days of the Agency's receipt of those results from the State-Appointed Testing Laboratory. This notification shall be made by email to Equine Medical Director Dr. Bruce Howard (bruce.howard@ky.gov) and Chief Steward Barbara Borden (barbara.borden@ky.gov) or their respective successors. This notification shall not be made for a specific Race Day until all of the results for that day have been received by the Agency.

L. Confidentiality.

(1) The Commission agrees that the content of any notices, including Equine Anti-Doping ("EAD") Notices under Rule 3245 and Equine Controlled Medication ("ECM") Notices under Rule 3345, received by it from the Agency pursuant to the Rule Series 3000, "Equine Anti-Doping and Controlled Medication Protocol," (the "Confidential Information") shall not be publicly disclosed by the Commission or its officers, directors, employees, or agents unless and until (a) that information has been publicly disclosed by the Agency pursuant to the requirements of the Act, or (b) the Agency has given written consent for the information to be disclosed. In addition, the Commission agrees not to disclose the Confidential Information to any person other than to such of its officers, directors, employees, or agents who have a need to know and who agree to be bound by the confidentiality provisions hereof. The Commission agrees that it shall be responsible for any breach of this Agreement by its officers, directors, employees, or agents, in that the Commission shall take prompt action to correct the non-compliant conduct or prevent any future non-compliance, as set forth in Section J.(4). Likewise, the Agency agrees that any such notices shall bear a watermark or other marking agreed upon by the Parties denoting the confidential and proprietary nature of the document.

(2) The Parties agree that the Commission is required to comply with the requirements of the Kentucky Open Records Act, as set forth in KRS 61.870, *et seq.* The Open Records Act's requirements supersede any contractual requirements set forth in this Agreement. Notwithstanding the foregoing, the Parties acknowledge that KRS 61.878(1)(k) permits withholding of certain information deemed confidential pursuant to the regulations promulgated under the Horseracing Integrity and Safety Act of 2020 (the "Act"), including Rule 3610 (Confidentiality and Reporting), and Section 3054(b) of the Act, which states that the Act preempts any provision of state law with respect to matters within the jurisdiction of the Authority. Upon receipt of an Open Records Request seeking the disclosure of documents relating to Rule 3610 and Section 3054(b) of the ADMC Program, the Commission agrees to provide the Authority and/or the Agency with appropriate notification and opportunity to challenge the disclosure of such records. The Commission shall only disclose records that are confidential

under Section 3054(b) of the Horseracing Integrity and Safety Act of 2020 and/or Authority Rule 3610, in the event of (a) a Court Order requiring same, following the exhaustion of all appeals; or (b) permission from the Agency or Authority after notification.

M. Indemnification. The Authority expressly agrees to indemnify and hold harmless the Commission and its employees or agents from and against any and all claims, losses, damages, injury, liability and costs, including, but not limited to, reasonable attorneys' fees and court costs, resulting from, or arising out of, or in any way connected with, the ADMC Program Scope of Work as defined in Section II.K above, except to the extent that such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by, or result from, the willful misconduct of the Commission or its employees or agents. Any enforcement actions related to the ADMC Program Scope of Work shall be the responsibility of, and shall be defended by, the Authority and the Agency. Any appeals or challenges to actions taken by Commission employees or agents when enforcing the Act or federal rules or regulations promulgated pursuant to the Act shall proceed pursuant to the enforcement rules of the Act and shall be defended by the Authority and the Agency. Notwithstanding anything set forth in this Agreement to the contrary, this Agreement shall not be construed to waive any immunity under applicable state law, including, but not limited to, sovereign or qualified immunity, possessed by the Commission and its employees or agents.

N. HIWU Regulations, Policies, Procedures, and Forms. The Agency shall provide the Commission with a copy of all existing, amended, and new training materials, regulations, policies, procedures, and forms. This notification shall be provided to Commission Deputy Executive Director Waqas Ahmed or his successor within twenty-four (24) hours of implementation. The Commission shall be afforded a reasonable time to implement any such changes once notice of a new regulation, protocol, or procedure is provided to the Commission by the Agency.

III. General Provisions

A. Term and Termination

(1) This Agreement shall be effective on the Program Effective Date. If the Agreement requires further approvals of any other agency, commission, board or authority under applicable state law, and such approval does not occur on or before the Program Effective Date, this Agreement shall terminate and be of no force or effect. This Agreement shall terminate on December 31, 2023, unless the Parties agree in writing, on or before November 30, 2023, to extend the term of the Agreement beyond that date.

(2) This Agreement may be terminated by any Party upon one hundred twenty (120) days written notice to each Party or its successor. This Agreement may be terminated immediately by the Commission if either (a) the Horseracing Integrity and Safety Act of 2020 (as amended) is found unconstitutional by a court of competent jurisdiction, with all appeals being exhausted; or (b) the Horseracing Integrity and Safety Authority or the Horseracing Integrity & Welfare Unit is enjoined or restrained from operation by a court of competent jurisdiction.

(3) This Agreement may be terminated by the Agency upon sixty (60) days written notice if the Agency has determined, in good faith, that the Commission, Agency-Authorized Collection Personnel, or State Investigative Personnel have (a) failed to substantially comply with the requirements of Rule Series 3000, "Equine Anti-Doping and Controlled Medication Protocol," Rule Series 5000, "Equine Testing and Investigation Standards," or any HIWU Policy; and (b) failed to achieve compliance within thirty (30) days after written notice

of this breach was provided to the Commission pursuant to Section III.B. of this Agreement. Any written notice provided pursuant to this subsection shall include the basis for the Agency's determination.

(4) If any Party defaults in a material obligation under this Agreement and continues in default for a period of thirty (30) days after written notice of default is given to it by another Party, the other Party may terminate and cancel this Agreement, immediately upon written notice of termination given to the defaulting Party. The written notice of default shall include specific citations to events related to the defaulting Party's obligations in service of this Agreement.

(5) If this Agreement is terminated pursuant to this Section III.A, (a) the certification of all Agency-Authorized Collection Personnel shall be revoked by the Agency, and (b) the Agency shall, pursuant to the Act, take direct control of all anti-doping and controlled medication testing and investigative operations in the State with respect to Covered Horses.

B. Notices. All notices required to be provided hereunder shall be in writing and shall be deemed delivered if (1) if sent by overnight courier with signature confirmation of the receiving party's authorized personnel as set forth below, by the date after mailing to the addressees set forth below or their successors (with a copy emailed to the email addresses set forth below or their successors), (2) if provided by hand delivery, upon actual receipt or (3) if sent by certified mail, return receipt requested and postage prepaid, on the third business day after deposit in the mail, to the addressees set forth below or their successors (with a copy emailed to the email addresses set forth below or their successors) or at such other location as such Party notifies the other pursuant to this provision.

If to the Authority:

401 West Main Street, Unit 222 Lexington,
Kentucky 40507
Attention: Lisa Lazarus
lisa.lazarus@hisaus.org

with a copy to:

Ransdell Roach & Royse PLLC
176 Pasadena Drive, Building One
Lexington, Kentucky 40502
Attention: John C. Roach
john@rrrfirm.com

If to the Agency:

4801 Main Street, Suite 350
Kansas City, MO 64112
Attention: Ben Mosier, Executive Director
bmosier@hiwu.org

with a copy to:
Michelle Pujals,

HIWU General Counsel
mpujals@hiwu.org

If to the Commission:
Kentucky Horse Racing Commission
4063 Iron Works Pkwy., Building B
Lexington, KY 40511
Attention: Executive Director Jamie Eads
jamie.eads@ky.gov

with a copy to:

Kentucky Horse Racing Commission
4063 Iron Works Pkwy., Building B
Lexington, KY 40511
Attention: Deputy Executive Director Waqas Ahmed
waqas.ahmed@ky.gov

C. Severability. If any part of this Agreement is determined to be invalid or illegal by any court or agency of competent jurisdiction, then that part shall be limited or curtailed to the extent necessary to make such provision valid, and all other remaining terms of this Agreement shall remain in full force and effect. If such an event occurs and the Parties are unable to make the provision or the Agreement valid or legal, then any unused funds paid to the Authority shall be returned to the racetracks.

D. Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof.

E. Amendment and Waiver. This Agreement may be modified or amended only in a writing signed by all Parties. A Party's failure to act hereunder shall not indicate a waiver of its rights hereto. No waiver of any provision of this Agreement shall be valid unless made in writing and signed by the waiving Party. The failure of any Party to require the performance of any term or obligation of this Agreement or the waiver by any Party of any breach of this Agreement shall not prevent any subsequent enforcement of such term and shall not be deemed a waiver of any subsequent breach.

F. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the state of Kentucky, without regard to its conflicts of laws principles. Any dispute concerning this Agreement will be heard in the U.S. District Court for the Eastern District of Kentucky.

G. Assignability. The Agency may assign this Agreement to an affiliate, a successor in connection with a merger, acquisition, or consolidation, or to the purchaser in connection with the sale of all or substantially all of Service Provider's assets without consent of the Commission but with appropriate notice to the Commission of no less than ten (10) business days. This Agreement and all of the terms and provisions hereof shall be binding upon, enforceable against, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

H. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Any signature page delivered by

facsimile, telecopy machine, portable document format (.pdf) or email shall be binding to the same extent as an original.

I. Headings; Interpretation. The headings in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, as appropriate.

J. Reimbursement. The Authority and Agency expressly agree the Commission may seek reimbursement for any costs and/or expenses incurred as part of its administration and enforcement of the ADMC Program and Racetrack Safety Program directly from the racetracks licensed by the Commission. The Authority and Agency expressly agree they will not argue or allege such reimbursement is prohibited by 15 U.S.C. 3052.

IN WITNESS WHEREOF, the undersigned have executed this Voluntary Implementation Agreement as of date first written above.

HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.

By: _____

Name: Lisa Lazarus
Title: Chief Executive Officer

HORSERACING INTEGRITY & WELFARE UNIT,
A DIVISION OF DRUG FREE SPORT, LLC

By: _____

Name: Ben Mosier
Title: Executive Director

KENTUCKY HORSE RACING COMMISSION

By: _____

Name: Jonathan Rabinowitz
Title: Chairman, Kentucky Horse Racing Commission

EXHIBIT A

STATE REQUIREMENTS

The State Requirements set forth below are general in nature and for illustrative purposes only. The specific requirements shall be set forth in the HIWU Policies.

- Race Day Agency-Authorized Collection Personnel (at a minimum, 1 Veterinarian, 1 Veterinarian Tech, 1 Test Barn Supervisor, and 5 assistants)
- Security guard for Test Barn, which may include track security
- Agency-Authorized Collection Personnel for Veterinarians' List and Post-Workout Testing (including at least 1 Veterinarian)
- Scheduling of personnel for Race Day, Veterinarians' List and Post-Workout Testing
- Notification (within 48 hours) to Agency of Veterinarians' List and Post-Workout Testing; the specific requirements for notification will be set forth in HIWU Policies
- Agency-Authorized Collection Personnel for Out-of-Competition Testing (if applicable)
- Coordination of shipping of Agency Samples to selected laboratories
- State Investigative Personnel for service of notices and accompanying searches
- State Investigative Personnel for other tasks as requested by the Agency and agreed upon by the Commission
- Coordination of Stewards to assist with directing the selection of Covered Horses to the Test Barn on Race Days pursuant to HIWU Policies
- Coordination of training and maintaining certification of Agency-Authorized Collection Personnel
- Coordination of training of State Investigative Personnel
- Minimum employment and workers' compensation insurance policies required by law
- Required work permits/authorizations for Agency-Authorized Collection Personnel and State Investigative Personnel