

## BRITISH HORSERACING AUTHORITY

### GUIDELINES FOR THE CONVERSION OF EXISTING RACETRACKS

*Issued for Converting Racetracks wishing to participate as Converted Racetracks in the fixture allocation process for the 2018 Fixture List.*

#### **INTERPRETATION**

For the purpose of these guidelines:

- (i) **Converted Racetracks** refer to new, additional or materially altered racetracks within or on existing BHA-licensed sites.
- (ii) **Converting Racetrack Applications** (or "Application") refers to applications made by Converted Racetracks (the "Applicant") wishing to participate in the fixture allocation process for fixtures to be staged in 2018.

#### **GUIDELINES**

The purpose of these guidelines is to define the parameters which the British Horseracing Authority Limited ("**BHA**") may apply to the evaluation of Converting Racetrack Applications and to set out the process that will be followed after receipt of a Converting Racetrack Application. When evaluating a Converting Racetrack Application, the BHA may also take in account any other relevant facts and circumstances.

In addition to complying with these guidelines Applicants must also liaise with their licensing authority in relation to the operation of the Converted Racetrack and seek any other relevant approvals.

These guidelines apply to all Converting Racetrack Applications and supersede any guidelines previously issued by the BHA including under its former name, The British Horseracing Board Limited.

#### **EVALUATION PROCESS**

1. Any potential Applicant should notify the BHA by 5:00pm on Tuesday 7 February 2017 of its intention ("**Notice of Intention**") to make a Converting Racetrack Application and the basis upon which the Application will be made.
2. Following receipt of such Notice of Intention the executive of the BHA will have sole discretion to disapply these guidelines and determine that an Application is not necessary. For example, it may be considered that the intended alteration is not material and consequently no Application is necessary and the Applicant can move to participation in the fixture allocation process. In considering whether an Application will need to be made the BHA will consult with the Applicant, any relevant

third parties, and will consult with, and disclose documents and information to, external advisers as it deems necessary. It will be in the sole discretion of the executive whether an Application is necessary.

3. All Converting Racetrack Applications must be received by the BHA by 5.00 p.m. on Friday 24 February 2017.
4. Each Converting Racetrack Application will be considered by the executive and the board of directors of the BHA ("**Board**"), who shall consult with, and disclose documents and information to, external advisers as they deem necessary. The Board will at its sole discretion decide whether or not to approve such Converting Racetrack Application. The Board's decision will be made at or prior to the scheduled meeting of the Board in April 2017.
5. Following a decision to approve the Converting Racetrack Application the Applicant will be entitled to participate in the fixture allocation process as approved by the Board at the relevant time.
6. The Board will not guarantee the allocation of any fixtures, including the conversion of existing Racecourse Fixtures, and the Converting Racetrack Application will be at the commercial and financial risk of the Applicant.

## **APPLICATION REQUIREMENTS**

In order for a Converting Racetrack Application to be considered, Applicants must have addressed any matters raised by the BHA that are specific to the Converting Racetrack Application, and also satisfy the following requirements:

1. The specification for the Converted Racetrack contained within the Converting Racetrack Application must conform to standards laid down in the BHA's Racecourse Manual.
2. Where applicable, the Applicant must provide evidence that any necessary planning approval for converting the existing racetrack, which is not subject to material conditions, has been secured.
3. If the Applicant fails to complete the construction or completion of a Converted Racetrack no later than six weeks prior to the date of the first fixture to be staged by the Applicant at the Converted Racetrack and consequently is, in the view of the BHA, unable to stage any relevant fixtures in accordance with the Rules of Racing at the Converted Racetrack then:
  - 3.1 The Applicant must (if necessary and possible) propose alternative Racecourse Fixture allocation arrangements to the BHA that, subject to the approval of the BHA (not to be unreasonably delayed, and in accordance with BHA policy at the time), would allow the Applicant to make alternative arrangements for the allocation of Racecourse Fixtures at an alternative BHA licensed racetrack. If the BHA does not approve any reallocation proposal then the BHA shall be entitled to reallocate (in accordance with BHA policy at the time) all or any of the Racecourse Fixtures as necessary to ensure that all Racecourse Fixtures are operated; and

3.2 The BHA will remove any BHA Fixtures previously allocated to the Converted Racetrack and may reallocate any such fixtures to an alternative BHA licensed racetrack in accordance with BHA policy at the relevant time.

4. In addition, the Applicant must, if requested by the BHA, undertake that a bank or other financial institution acceptable to the BHA will provide to the BHA a performance bond in the form specified by the BHA and as set out at Appendix 1 ("**Performance Bond**") on the following terms:

4.1 A Performance Bond must be provided to the BHA at least fourteen days prior to the publication of the 2018 Fixture List (specific date to be advised by the BHA). Failure by a Converted Racetrack to lodge a Performance Bond with the BHA by such time may result in the BHA reallocating to other racetracks any of the Converted Racetrack's Racecourse Fixtures or any BHA Fixtures it has obtained through the fixture allocation process. The purpose of the Performance Bond is to indemnify the BHA for any specific losses, costs and expenses incurred by it (including, but not limited to, making up any shortfall in prize money which occurs as a result of reallocating fixtures originally allocated to the Converted Racetrack) as a consequence of any failure by the Applicant to complete an approved racetrack project no later than six weeks prior to the date of the first fixture to be staged by the Applicant at the Converted Racetrack and, as such, there is a consequent inability to stage the relevant fixtures at the Converted Racetrack in accordance with the Rules of Racing.

4.2 The Applicant will be informed by the BHA following the allocation of all fixtures of the amount to be covered under the Performance Bond. This will be calculated, at the sole discretion of the BHA, with reference to the number of fixtures allocated to the Converted Racetrack, and the BHA's expectation of the losses, costs and expenses that would be incurred by the BHA (including making up any shortfall in prize money) if it was necessary to subsequently reallocate fixtures. This amount will not exceed £15,000 for each fixture allocated to the Converted Racetrack.

4.3 If an Applicant is unable to complete an approved racetrack project at least six weeks prior to the date of the first fixture to be staged at the Converted Racetrack, payments to the BHA under the Performance Bond will become due. Such non-completion will allow the BHA to make demands for such amounts as it considers, at its sole discretion, to be reasonable and appropriate in the circumstances up to the total amount prescribed under the Performance Bond.

4.4 If, having had its Converting Racetrack Application approved, a Converted Racetrack either elects not to enter the relevant fixture allocation process, or ceases to comply with any of the requirements set out above in these guidelines, or the BHA reasonably considers that the Converted Racetrack is not capable of continuing to comply with such requirements, it will be removed from that year's fixture allocation process and/or (as relevant) any fixtures allocated to it will be reallocated elsewhere, and it will need to re-apply to the BHA should it wish to enter the fixture allocation process in respect of any subsequent year.

4.5 If, having had its Converting Racetrack Application approved, a Converted Racetrack elects to enter the 2018 fixture allocation process and is allocated fixtures, and is subsequently unable to stage any of the allocated fixtures programmed to take place prior to the commencement of a fixture allocation

process for a subsequent year or ceases to comply with any of the requirements set out above in these guidelines, the BHA may prohibit the Converted Racetrack from participating in any subsequent fixture allocation process until such time as the BHA is satisfied that the approved racetrack project is complete. In such situations, the Converted Racetrack will need to re-apply to the BHA to participate in any subsequent fixture allocation process, and the BHA may, at its sole discretion, refuse to allow such Converted Racetrack to participate.

5. All Converting Racetrack Applications must be made in good faith.

### **CONVERTED RACETRACK ASSESSMENT OF COMPLETION PROCESS**

The BHA will inspect the Converted Racetrack no later than six weeks prior to its first programmed fixture in 2018. The BHA will, at its sole discretion, determine whether the Converted Racetrack is complete and complies in all material respects with the relevant Rules of Racing, and is, therefore, able to stage its first programmed fixture. If the BHA determines that the Converted Racetrack is not complete then the procedure under Clause 3 (Application Requirements above) will be followed. If the BHA does not approve such alternative proposed reallocation arrangements then the BHA will be entitled to reallocate the first programmed fixture, together with any further relevant fixtures scheduled to take place at the Converted Racetrack between the date of the first programmed fixture and six weeks after the date of the next BHA visit, to an alternative racecourse, at its sole discretion. The BHA will identify a date to revisit the Converted Racetrack to reassess whether the Converted Racetrack is complete. Ordinarily this will be no less than one month after the first inspection.

This rolling process will continue until the Converted Racetrack is complete, as determined by the BHA, or until all fixtures originally allocated to the Converted Racetrack in 2018 have been reallocated to alternative racecourses or withdrawn from the fixture list, whichever occurs sooner.

*[To be printed on headed paper of the Applicant's Bank]*

**FORM OF PERFORMANCE BOND FOR FIXTURES IN 2018**

*[To be lodged at least fourteen days prior to the publication of the 2018 Fixture List – the specific date to be advised by the BHA]*

To: British Horseracing Authority Limited

We, *[name of bank<sup>1</sup>]* of *[address of bank]* understand that *[name of Racetrack Owner]*, company number *[company number of Racetrack Owner]*, having its registered office at *[address]* (hereinafter called the **Racetrack Owner**) has made an application to you for the allocation of fixtures between *[date of the earliest fixture allocated to the Converted Racetrack in 2017]* and *[date of latest fixture allocated to the Converted Racetrack in 2017]* in the British Horseracing Authority's fixture list for 2018 to a Converted Racetrack at *[name of the Converted Racetrack]* (hereinafter called the **Converted Racetrack**).

We further understand that it is a requirement of the British Horseracing Authority that the Racetrack Owner satisfies the British Horseracing Authority (such decision to be within the sole discretion of the British Horseracing Authority) on *[date – being six weeks prior to the earliest fixture allocated to the Converted Racetrack in 2018]* (the "**Completion Date**") that the Converted Racetrack will be able to stage all fixtures allocated to it by the British Horseracing Authority commencing from *[date of the earliest fixture allocated to the Converted Racetrack in 2018]*.

It is a requirement of the British Horseracing Authority that a Performance Bond for the sum of *[amount in words – as calculated by the British Horseracing Authority following the allocation of all fixtures with reference to the number of fixtures acquired through the fixture allocation process and the British Horseracing Authority's expectation of the losses, costs and expenses that would be incurred by the British Horseracing Authority (including making up any shortfall in prize money which occurs as a result of reallocating fixtures originally allocated to the Converted Racetrack) associated with subsequently reallocating fixtures allocated to the Converted Racetrack in the event of the Racetrack*

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<sup>1</sup> Note that the bank or financial institution must be acceptable to the BHA, acting at its sole discretion. The BHA also reserves the right, acting at its sole discretion, to accept a performance from some other person, body or institution.

*Owner failing to complete its approved racetrack project no later than six weeks prior to the date of the first fixture to be staged by the Applicant at the Converted Racetrack. This amount will not exceed £15,000 for each fixture allocated to the Converted Racetrack.] ([amount in numbers])* is issued by the Racetrack Owner's bank in connection with any failure by the Racetrack Owner to satisfy the British Horseracing Authority on the Completion Date of its ability to stage fixtures from *[date of the earliest fixture allocated to the Converted Racetrack in 2018]*, as such failure will cause the British Horseracing Authority to incur losses, costs and expenses (including making up any shortfall in prize money which occurs as a result of reallocating fixtures originally allocated to the Converted Racetrack) to reallocate the 2018 fixtures between *[the date of the earliest fixture allocated to the Converted Racetrack in 2018]* and *[the date of final fixture allocated to the Converted Racetrack in 2018]* which are currently allocated to the Converted Racetrack.

In consideration of the above, we hereby irrevocably and unconditionally agree to pay to you, on your first written demand, an amount or amounts in sterling, specified by you in such demand, not exceeding in aggregate *[amount in words – as confirmed by the British Horseracing Authority] ([amount in numbers])*, waiving all rights of objection and defence and without reference to the Racetrack Owner. Such sum shall be paid within five business days of such demand being made by you.

Any demand for payment hereunder must be received at the address for service below and must state that the Racetrack Owner has failed (in the opinion of the British Horseracing Authority acting at its sole discretion) to satisfy the British Horseracing Authority that the Converted Racetrack will be able to stage a fixture by the required date and as a result of such failure has caused losses, costs and expenses to be incurred by the British Horseracing Authority and therefore the amount demanded is due to you. Our obligation hereunder is a primary obligation to you to pay the sum demanded on receipt of such demand, and receipt by us of such demand shall be accepted by us as satisfactory evidence that the amount claimed is due to you hereunder.

This Performance Bond is valid for written demands received by us on or before 31 January 2019 after which date our liability to you hereunder will cease and this Performance Bond will be of no further effect whether returned to us for cancellation or not. Any notice given hereunder shall be served by delivering it personally or sending it by pre-paid recorded delivery. Any such notice shall be deemed to have been received, if delivered personally, at the time of delivery and in the case of pre-paid recorded delivery, 48 hours from the date of posting.

Our obligation hereunder is personal to you and may only be assigned with our prior written consent.

Your rights hereunder shall not be affected by the invalidity, illegality or unenforceability for any reason of any agreement between the Racetrack Owner and you.

This Performance Bond shall be governed by and construed in accordance with English law and only English courts shall have jurisdiction hereunder.

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Signed and delivered on the date written below as a deed by

[                                      ]

by its duly authorised signatory

Date:

Address for service: [*address for service*]