

## **BRITISH HORSERACING AUTHORITY**

### **GUIDELINES FOR THE DEVELOPMENT OF NEW RACECOURSES**

*Issued for New Racecourses wishing to participate in the fixture allocation process for the 2020 Fixture List.*

#### **INTERPRETATION**

For the purpose of these guidelines:

- (i) **New Racecourses** refer to any of the following:
  - a. New racecourse sites; or
  - b. Inactive racecourses with no recent history of staging fixtures.
- (ii) **Racecourse Applications** (or "Application") refers to applications made by New Racecourses (the "Applicant") wishing to participate in the fixture allocation process for fixtures to be staged in 2020.

For the avoidance of doubt, New Racecourses which do not wish to make an Application do not fall within the scope of these guidelines.

#### **GUIDELINES**

The purpose of these guidelines is to define the parameters which the British Horseracing Authority Limited ("**BHA**") may apply to the evaluation of Racecourse Applications and to outline the process that will apply if the Racecourse Application is approved. When evaluating a Racecourse 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 any relevant licensing authority in relation to the operation of the New Racecourse and seek any other relevant approvals.

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

#### **EVALUATION PROCESS**

1. Each Racecourse Application must be received by the BHA by 5.00pm on Tuesday 5 February 2019.
2. Each Racecourse Application must be accompanied by a non-refundable registration fee of **£20,000 plus VAT.**

3. Each Racecourse 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 Racecourse Application. The Board's decision will be made at or prior to the scheduled meeting of the Board in February 2019.

## **APPLICATION REQUIREMENTS**

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

1. The Applicant must provide evidence of its legal title (for example, freehold, leasehold or substantial contractual licence) and rights of access to the land on which the New Racecourse is situated.
2. The specification for the New Racecourse contained within the Racecourse Application must conform to standards laid down in the BHA's Racecourse Manual and any other standards required by the BHA from time to time.
3. Where applicable, the Applicant must provide evidence that planning approval which is not subject to material conditions has been secured.
4. Full clarification of the Applicant's corporate structure must be provided. The Applicant must be regarded as a suitable person (entity) to operate a racecourse in accordance with the Rules of Racing.
5. A copy of the Applicant's business plan must be provided as well as details and evidence of the financial resources that will be available to support it, including legally binding commitments from third parties to provide funding, where relevant. The business plan should include, but not be limited to, a current balance sheet, profit and loss account, separate cash flow statement, and details of the Applicant's capital structure including any debt and/or equity. Given that the number of fixtures that may be obtained by the Applicant will not be known at the time of application, Applicants are asked to set out how they will finance and support the business on best, central and worst case scenarios based upon different numbers of fixtures that may be allocated. The number of fixtures adopted for each scenario should be realistic.
6. The Applicant must demonstrate that there will be spectator and grandstand facilities at the New Racecourse which will be commensurate with its business plan.
7. The Applicant must 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:
  - 7.1 A Performance Bond must be provided to the BHA at least fourteen days prior to the publication of the 2020 Fixture List (specific date to be advised by the BHA). Failure by a New Racecourse to lodge a Performance Bond with the BHA by such time may result in the BHA reallocating to other racecourses any fixtures pre-allocated to it or 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 making up any shortfall in prize money which occurs as a result of reallocating fixtures originally allocated to the New Racecourse) 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 New Racecourse and the consequent inability to stage the relevant fixtures at the New Racecourse in accordance with the Rules of Racing.

7.2 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 with reference to the number of fixtures acquired through the fixture allocation process, 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 New Racecourse.

7.3 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 New Racecourse, 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.

8. All Racecourse Applications must be made in good faith.

## **FIXTURE ALLOCATION PROCESS FOLLOWING APPROVAL OF A NEW RACECOURSE**

Following any approval of a Racecourse Application the New Racecourse will be entitled to participate in the fixture allocation process as agreed by the Board at the relevant time. In accordance with the fixture allocation process a New Racecourse may be pre-allocated a number of BHA Fixtures to be determined by the Board at its sole discretion. Thereafter, the number of any additional BHA Fixtures that may be allocated to the New Racecourse will be decided in accordance with the Fixture Allocation Policy for BHA Fixtures in place at the time. At the time of application the Board cannot guarantee whether any BHA Fixtures will be allocated to the New Racecourse, and/or if so, how many.

Where an Applicant or any Affiliate<sup>1</sup> thereof has previously closed a racecourse and reallocated fixtures to another racecourse, the Board will take this into account when considering whether there should be any allocation of fixtures to the New Racecourse in relation to which the Racecourse Application is made.

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<sup>1</sup> "Affiliate" means any person controlling, controlled by or under common control with a specified person.

For these purposes, "control" means the power of a person (directly or indirectly) to direct or cause the direction of the management and policies or any other person or the ownership (directly or indirectly) of not less than fifty per cent (50%) of the equity or capital of, or the voting power in, any other person.

"person" means any firm, partnership, company, corporation, individual and any other legal entity, whether incorporated or unincorporated.

In the event that, having had its Racecourse Application approved, a New Racecourse 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 it 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. In such a situation, the BHA may, at its sole discretion, waive the registration fee in whole or in part for any such subsequent application.

In the event that, having had its Racecourse Application approved, a New Racecourse elects to enter the 2020 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 New Racecourse from participating in any subsequent fixture allocation process. In such situations, the New Racecourse 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 New Racecourse to participate.

### **NEW RACECOURSE ASSESSMENT OF COMPLETION PROCESS**

The BHA will inspect the New Racecourse no later than six weeks prior to its first programmed fixture in 2020. The BHA will, at its sole discretion, determine whether the New Racecourse 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 New Racecourse is not complete, it may reallocate the first programmed fixture, together with any further fixtures scheduled to take place at the New Racecourse 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 New Racecourse to reassess whether the New Racecourse is complete. Ordinarily this will be no less than one month after the first inspection.

This rolling process will continue until the New Racecourse is complete, as determined by the BHA, or until all fixtures originally allocated to the New Racecourse in 2020 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 2020**

*[To be lodged at least fourteen days prior to the publication of the 2020 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 Racecourse Owner]*, company number *[company number of Racecourse Owner]*, having its registered office at *[address]* (hereinafter called the **Racecourse Owner**) has made an application to you for the allocation of fixtures between *[date of the earliest fixture allocated to the New Racecourse in 2020]* and *[date of latest fixture allocated to the New Racecourse in 2020]* in the British Horseracing Authority's fixture list for 2020 to a new racetrack at *[name of the New Racecourse]* (hereinafter called the **New Racecourse**).

We further understand that it is a requirement of the British Horseracing Authority that the Racecourse 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 New Racecourse in 2020]* (the "**Completion Date**") that the New Racecourse 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 New Racecourse in 2020]*.

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 New Racecourse) associated with subsequently reallocating fixtures allocated to the New Racecourse in the event of the Racecourse*

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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 racecourse project no later than six weeks prior to the date of the first fixture to be staged by the Applicant at the New Racecourse. This amount will not exceed £15,000 for each fixture allocated to the New Racecourse.] ([amount in numbers])* is issued by the Racecourse Owner's bank in connection with any failure by the Racecourse 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 New Racecourse in 2020]*, 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 New Racecourse) to reallocate the 2020 fixtures between *[the date of the earliest fixture allocated to the New Racecourse in 2020]* and *[the date of final fixture allocated to the New Racecourse in 2020]* which are currently allocated to the New Racecourse.

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 Racecourse 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 Racecourse Owner has failed (in the opinion of the British Horseracing Authority acting at its sole discretion) to satisfy the British Horseracing Authority that the New Racecourse 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 2021 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 Racecourse 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*]