

**RACING INDUSTRY UNIFORM SIMULCAST WAGERING AGREEMENT, Version  
002**

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**RACING INDUSTRY UNIFORM SIMULCAST WAGERING AGREEMENT, Version 002**

**NOTE:** This document (Sections 1 through 18) contains standard language adopted by the Racing Industry in the United States and is designated as the “**RACING INDUSTRY UNIFORM SIMULCAST WAGERING AGREEMENT, VERSION 002**”. It is incorporated by reference in, and made an integral part of, racing industry simulcast agreements, including this Agreement. **No clauses in this document have been changed. Any changes to this document are contained within the Exhibits or Schedules to this Agreement.**

Included in the Exhibits and Schedules are additional clauses to this Agreement, agreed to by this Host Track and this Guest as constituting an integral part of this Agreement. To the extent there is conflicting language between the RACING INDUSTRY UNIFORM SIMULCAST WAGERING AGREEMENT, Version 002, and the Exhibits or Schedules, the Exhibits or Schedules will control. To the extent there is conflicting language between the Exhibits and Schedules, the Schedules will control. The Uniform Simulcast Wagering agreement, Version 002, and all Exhibits and Schedules, are deemed a part of this Agreement.

WHEREAS, Host Track plans to conduct live horse racing programs at its live race track (each race, a "Race" and collectively, the "Races"); and

WHEREAS, Guest Facility desires to acquire the non-exclusive right to receive the simultaneous audio-visual and data signals of the Races ["Signals"], and to accept pari-mutuel wagers on the Races; and

WHEREAS, Guest desires to acquire the right to participate in certain pari-mutuel wagering pools offered by Host; and

WHEREAS, Guest desires to acquire the right to commingle Guest's pari-mutuel pools with and into Host's pari-mutuel pools; and

WHEREAS Host desires to permit Guest to participate in such activities (herein collectively referred to as "Simulcasts") subject to the terms and conditions of this Agreement and all applicable laws and regulations;

NOW, THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

**1. Grant of Rights to Wager on Host Races and Receive Host Simulcasts**

(A) Host grants to Guest the right to receive and, except as otherwise permitted by Section 2 of this Agreement, to use only via closed circuit video and data systems on the premises set forth in Schedule A(1), live audio-visual and data signals of live programs of Host's Races (the "Signals") which are broadcast during Host's racing meet (the "Racing Meet"). Host further grants to Guest the limited right to accept wagers on the Races, and to commingle said wagers with and into Host's wagering pools.

(B) Such Races, Signals, and Racing Meet (or Meets) are set forth in Exhibit 2. Guest will not import any of Host's Signals other than those specified in Exhibit 2, and will accept pari-mutuel wagers only on those of Host's Races as are specified in Exhibit 2.

(C) During the term of this Agreement Guest agrees to use its best efforts to import the Signals of those Races specified in Schedule B, and to accept all of Host's pari-mutuel wagers on all such Races at the applicable takeout rates specified by Host, as set forth in Exhibit 3, and no other wagers or takeout rates, unless otherwise specifically agreed to by the Parties and set forth in Schedule C. Guest further agrees to use its best efforts to provide its patrons with facilities comparable to those provided during its own live races, including but not limited to closed-circuit video of the Races, the opportunity to wager, programs, and announcement of conditions and changes.

(D) The Races shall be conducted in accordance with the regulations of Host's Racing Commission. Should there be any change in Host's schedule or menu of Races, Signals, Racing Meets, pari-mutuel wagers or takeout rates, Host will immediately notify Guest of any such change.

(E) The foregoing limited and nonexclusive rights granted hereby shall not include a right to tape, copy or otherwise use the Signals for any other purpose. Except as expressly set forth in this Agreement, no retransmission, rebroadcast or other distribution of the Signals by Guest is permitted without the prior written permission of Host.

(F) The foregoing rights shall not prohibit Host from transmitting the Races from Host to any other entity located in the Host or Guest state or elsewhere.

## **2. Restrictions on Rights Granted; Secondary Recipients**

(A) Unless otherwise agreed upon by the Parties, Guest will not retransmit, rebroadcast or otherwise distribute the Signals to, nor permit the acceptance of wagers on, Host's Races to any person, entity or facility, including without limitation the use of such Signals or wagering as part of any cable television, telephone wagering, personal computer or interactive system, or at any location other than the premises specified in Schedule A(1).

(B) In its sole discretion, Host may allow Guest to retransmit, rebroadcast or otherwise distribute the Signals to additional facilities located within the same state as Guest ("Satellite Facilities"), or facilities located in a different state than Guest. In addition in its sole discretion, Host may allow Guest to distribute the Signals to cable television or other rebroadcasting systems, or to accept wagering on the Races through telephone wagering, personal computer or other interactive systems. Such Guest-state and other-state facilities and entities shall be referred to, collectively, as "Secondary Recipients". Any such permission by Host shall be in writing, shall be specific to the facilities or entities specified therein, and shall be deemed to be a part of Schedule A2 to this Agreement. Guest covenants that it shall ensure that all Secondary Recipients adhere to all terms of this Agreement.

(C) Host hereby grants to Guest the right to retransmit, rebroadcast or otherwise distribute the Signals to those Satellite Facilities, and only those Satellite Facilities, set forth in Schedule A(2) to this Agreement, and for wagers on the Races to be accepted at such Satellite Facilities and commingled into Guest's pari-mutuel pools, provided that the Satellite Facilities shall be prohibited from using the Signals in any way other than for use on their premises (as identified in Schedule A(2)), or wagering on the Races at their premises, in accordance with the limited rights granted Guest in Section 1 of this Agreement.

(D) Guest shall not retransmit, rebroadcast or in any other way distribute or disseminate the Signals, or permit wagers on the Races, to any person, entity or facility not located within the same state as Guest, or as part of a cable television, telephone wagering, personal computer or other rebroadcast or interactive system, unless, and only to the extent that Host's written consent has been given and has been set forth in Schedules A(3) or A(4) or as a further Schedule to this Agreement.

(E) Any redistribution of the Signals by Guest shall be encrypted in a manner approved in advance by Host. Host shall be provided with all information and equipment necessary to enable Host to decode such encrypted transmissions at all times, and Guest will be responsible for all reasonable costs associated with enabling Host to decode such transmissions.

(F) Any redistribution of the Signals by Guest shall be simultaneous with the transmission of the Signals by Host. Guest shall not alter or edit in any manner whatsoever the Signals as produced and transmitted by Guest, except that Host grants to Guest the right to delete those portions of the audio-visual signals that contain pre-race or post-race commentary and/or statements made by Host's track announcer without any other deletion or alteration.

(G) Except as specifically permitted pursuant to this Section, Guest and Secondary Recipients shall not record or duplicate the Signals in any manner whatsoever, nor permit others to do so.

(H) Guest shall be responsible for payment of all simulcast fees, decoder fees and reconciliation amounts and provisions of reconciliation statements owing to Host by Guest or its Secondary Recipients. For the purpose of computing the compensation payable to Host under this Agreement, said compensation shall be based upon the total amount wagered without any reduction due to any statutory or contractual obligations between Guest and its Secondary Recipients, or whether a Secondary Recipient has made payment to the Guest for wagers on the Races accepted by the Secondary Recipient. The execution of this Agreement by the Guest shall be equivalent to a guarantee of payment by the Guest of all compensation due to Host for any wagers taken and processed through the Guest Track's totalisator system irrespective of the origin of such wagers. Host's consent to the redistribution of the Signals and wagering on the Races by Guest's Secondary Recipients is conditioned upon compliance with this Subsection 2(H) of the Agreement.

### **3. Reservation of Rights**

Host reserves, for itself, its agents, assigns and licensees, any and all rights relating to the Signals (except as may be granted to Guest pursuant to Sections 1 and 2 of this Agreement), including but not limited to the sole and exclusive right to produce, exhibit, sell, license, transfer or transmit in any manner, still or motion pictures, radio and television broadcast, or any other similar media transmissions now known or hereafter developed of all events, including the Races, which occur on the premises of Host (including, without limitation, all activities occurring before, during and after the Races.) No rights in the trademarks, tradenames, service marks, service names, copyrighted material or other proprietary information of Host is granted to Guest or to Guest's Secondary Recipients, except as expressly set forth herein.

### **4. Transmission of Audio/Visual Signals; Content of Broadcasts**

(A) The audio-visual signals of the Races (including without limitation pre-race and post-race events) will be transmitted from Host to Guest by means of appropriate electronic equipment, including an uplink earth station device and encoding and decoding equipment for signal security purposes, selected by Host. Host will be responsible for providing at its cost the uplink device and transponder for transmitting the signals of the Races, and all technical services associated therewith. Guest shall be responsible for providing at its cost a compatible downlink device and decoder for receiving the signals of the Races, and all technical services associated therewith.

(B) Host has retained a contractor to provide encoding services in connection with the Signals. Information with regard to Host's contractor and the procedures for obtaining decoders may be found in Exhibit 4 to this Agreement.

(C) The Simulcasts of the Races shall be transmitted to Guest Track in the same manner as such Races are displayed on Host's closed-circuit television system.

(D) The Parties understand that the Races are to be televised via satellite transmission in accordance with contracts between Host and satellite transmission carriers who may have the right to preempt or cancel the transmission of the Races. In the event of such preemption or cancellation, or if such transmission does not take place for any other reason, Host shall not incur any liability to Guest or others.

(E) To the extent that any races simulcast to Host from other racetracks shall be a part of the Signals in accordance with Section 7, they shall be transmitted to the Guest Track in the same manner as such races are displayed on Host's closed-circuit television system.

(F) Host shall make available to Guest by the fastest means reasonably available at the time information becomes available to Host, the following:

(i) Scheduled post times for the Races, Race conditions, and racetrack conditions;

(ii) The name of each entry in the Races, including the owner, trainer, sex, color, breeding, weight, jockey or driver assignments, post position, saddle cloth or

head number, and whether the entries have been coupled in any way for wagering purposes;

- (iii) The name of each entry scratched from the Races;
- (iv) The "morning line" as established by Host;
- (v) Any jockey/driver, equipment, post time or other changes;
- (vi) The results of the Races with Host's payout prices;
- (vii) Any changes in the post time of the Races;
- (viii) A copy of any photo finish; and
- (ix) Such other information that Host believes may be necessary to Guest for the promotion and conduct of the Simulcasts as provided herein.

If Guest is desirous of receiving past performance information, Host will transmit or arrange for the transmission of such information, provided that Guest agrees to comply with conditions and fees, if any, required by the originators of past performance data.

Host shall use its best efforts to insure that all information delivered to Guest is accurate and given in a timely manner; provided, however, that Guest agrees that Host shall not be liable for any inaccuracy or incompleteness of the information furnished to Guest, or the failure of a third party to properly deliver the information furnished to Guest, except in the event of fraud or intentional inaccuracy by Host.

## **5. Term of the Agreement**

Unless terminated sooner as provided in this Agreement, this Agreement shall remain in effect until the end of the last Racing Meet set forth in Exhibit 2 (or as may be amended by Schedule B) and may be renewed thereafter by mutual consent of the Parties.

## **6. Transmission of Data Signals and Racing Information; Commingled Wagering Pools and Tote Interface**

(A) Wagering data and other information relating to the Races will be transferred between Guest and Host by means of telephone lines unless an alternate appropriate means (such as KU Band send/receive earth stations) is set forth in the Exhibits or Schedules to this Agreement (the "Wagering System" or "System".) Guest shall be solely responsible for all telephone line installation and costs resulting from the transfer of data from Guest to Host.

(If KU Band send/receive earth stations are employed, Host and Guest shall each be responsible for the cost, delivery and installation of their respective earth stations.)



(B) Guest shall be responsible, at its sole cost and expense, to arrange for the transmission and interface of wagering data from Guest to Host, in a format consistent with Host's requirements, so as to produce common pari-mutuel wagering pools for the calculation of odds and the determination of payouts from such pools, which payouts shall be the same for all winning wagers irrespective of whether such wager is placed at the Host track or at the Guest facility. Guest shall be solely responsible for any and all totalisator interface fees resulting from wagers placed under the terms of this Agreement. Any additional charges that are charged to Host or Guest (including Guest's Secondary Recipients) by their respective totalisator companies for the processing of wagering information shall be the sole responsibility of the respective Parties.

(C) All odds and payouts on commingled wagers for the Races shall be computed in accordance with the data available for computation at the Host Track at the start of each Race or at the time each wagering pool closes, whichever is applicable. All payout computations shall be final regardless of mistakes in transmissions or failures to transmit or receive all wagers. Guest understands and agrees that it shall be solely responsible for all claims asserted in this regard for wagers placed with Guest or with Guest's Secondary Recipients.

(D) Guest shall offer wagering on the Races on the same number of betting interests in the Races as offered at Host Track, and shall offer and accept the same types of pari-mutuel wagers on the Races as are offered and accepted at Host Track. Guest shall offer and accept commingled wagers on the Races subject to the identical retention and breakage rates as pertain to the wagers at Host Track and subject to the rules of racing in effect for pari-mutuel pools in the Host's state. Guest represents and warrants that applicable state and local laws in Guest's state authorize such identical retention and breakage rates.

## **7. Simulcast Races Rebroadcast by Host to Guest Facility**

(A) Guest understands that Host Track may receive simulcast races from one or more other racetracks as part of Host's live race program at the Host Track. Subject to the approval of the racetrack(s) hosting such simulcast races, Host may rebroadcast such simulcast races as part of its Signals, subject to any required terms of rebroadcast as set forth in Exhibit 3(D).

(B) Guest Track may, at its option and subject to the approval of the host racetrack, choose whether to conduct wagering on such simulcast races and commingle such wagers into Host's pari-mutuel pools, and shall communicate such choice in writing to Host. Host will use its best efforts to make available to Guest all relevant racing information, and to insure that such information is accurate and given in a timely manner; provided, however, that Guest agrees that Host shall not be liable for any inaccuracy or incompleteness of the information.

(C) Guest understands that the fee percentage rate on such simulcast races may differ from the fee for Host's Races. If Guest chooses to conduct wagering on such simulcast races by means of commingling into Host's pools, Guest agrees to pay the simulcast fees contained in the simulcasting agreement between Host and the host track of such simulcasts, on all wagers placed on such simulcast races by the patrons of Guest or its Secondary Recipients. Guest further agrees to adhere to the terms of the

simulcasting agreement between Host and such host track. Guest shall be responsible for paying all such fees and expenses associated therewith directly to Host, in a time frame such that Host will have received all funds from Guest in the allotted time for payment for such simulcast races, and Host shall remit such amounts to the host track as part of Host's settlement process with that host track.

## **8. Compensation and Method of Payment**

(A) **Commissions** As Compensation for granting to Guest the right to receive the Signals and accept wagers on the Races as set forth herein, Guest shall pay to Host (in the manner set forth hereinafter) amounts as set forth in Exhibit 5 to this Agreement.

(B) **Payment** Guest shall send to Host, within four (4) days after the running of the last Race for a given week (for purposes of this section the "Race week" being defined as ending on a Sunday) (i) a statement of the total handle of each of the Races at the Guest Facility or at any other facility at which the Signals are received by Secondary Recipients, as well as an accounting of the handle for each type of wager (in the form of the computer generated Liability Report printout) signed by an officer of Guest; and (ii) payment in full to Host, for the Races in accordance with the amounts specified in Exhibit 5. All payments shall be in United States funds, by method of payment set forth in Exhibit 5. Host reserves the right to withhold transmission of the Signals in the event of late or non payment of amounts owing under this Agreement.

(C) **Verification** On or before the tenth (10th) day after the last day of each Racing Meet, Guest shall submit verification of the accounting of the handle certified by an officer of Guest. Guest shall maintain for a minimum of 24 months, at its offices, complete and accurate books and records relating to its conduct of pari-mutuel wagering on the Races, which records shall be made available to Host or its representatives upon request.

(D) **Limitation on Liability** Host's obligations under this Agreement are and shall be deemed to be satisfied in full by providing the Signals to Guest for reception at Guest's track in accordance with the terms hereof.

(E) **Expenses** Unless otherwise specifically set forth in this Agreement, each Party shall be solely responsible for all expenses incurred by it in the performance of this Agreement or the operations of its facility.

(F) **Money Room Adjustments** The Parties shall reconcile their return to bettors' accounts on a daily basis using information provided by Host's totalisator contractor. All money room adjustments (as reflected in the liability and/or prices or equivalent report generated by Host's totalisator company) owed to Host by Guest (and/or any Secondary Recipient) shall be due and payable by Guest within the earlier of (i) three (3) business days of written demand therefore by Host, or (ii) three (3) business days after the fifteenth (15<sup>th</sup>) day of each month and after the last day of each month.

(G) **Responsibility Concerning Secondary Recipients** In addition to any other remedies available to it under this Agreement or in equity or law, and notwithstanding any provision to the contrary in any of the Secondary Recipient

agreements, Guest shall be jointly and severally liable for any Commissions or Money Room adjustments owed to Host by any Secondary Recipient.

**9. Compliance with Government Laws and Regulations, including Interstate Horseracing Act**

(A) This Agreement is subject to the requirements of the Racing Commissions of the Host and Guest states. Any provision mandated by either Commission and required to be set forth herein, is specifically incorporated herein by reference.

(B) Guest agrees that the Races that are Simulcast shall meet the requirements and comply with the rules and regulations of Guest's Racing Commission. Guest agrees that it will satisfy all necessary requirements of the Interstate Horseracing Act of 1978 in the course of implementing this Agreement.

(C) The Parties hereto, including any Secondary Recipients, shall comply with the provisions of all applicable Federal, State and local laws and regulations in connection with their performance hereunder.

**10. Wagering System or Communications Problems**

(A) In the event of a Wagering System or communication failure after wagers have been accepted by Guest, Host shall accept - either through the System or through a "Manual Merge" - wagering information regarding the amount of wagers accepted by Guest on any given race, for at least 5 minutes past the actual start of the Race (or, in the case of multiple-race exotic wagers, for at least 5 minutes after the last Race of the group of Races is declared official.) Guest shall immediately transmit by fax the following information:

(i) the wagering information regarding the amount wagered on the Win, Place and Show horse;

(ii) the wagering information from such Race regarding the amount wagered in exotic pools on such horses (plus any other horses that figure in the payouts of an exotic pool for such Race);

(iii) the collective amount wagered in such Race, in each pool, on all other horses; and

(iv) the amount wagered in such Race, in the Win pool, on each other horse.

It is the intent of the Parties that the wagering information on all winning wagers be transmitted immediately so as to not unduly delay the commencement of the next Race, with the remaining information to be transmitted later that same day.

(B) In the event a System or communication failure cannot be rectified within the aforementioned time frame, or if for any reason Host or its Racing Commission determines that the merging of pool data from the Guest site to Host's pools may endanger Host's pools or cause an unreasonable delay in scheduled post times, Host may elect to abort Manual Merge procedures resulting in, among other things, the option by Host to remove Guest's partial wagering information from Host's pools, with no

obligation or liability on the part of Host or its Racing Commission. Host shall not be liable for any measures taken that may result in, or may be a result of, Guest's wagers not being accepted in the commingled pool, and in such event such wagers shall become the sole responsibility of Guest. If Guest notifies Host in a timely manner that the System or communication failures have been rectified, Host shall not unreasonably refuse to accept wagering information from Guest through the System.

(C) Host reserves the right to refuse to accept further wagering information if there have been intermittent System or communication failures. In such event, Host shall immediately inform Guest of its decision not to accept further wagering information through a Manual Merge so that Guest may taken appropriate action with regard to wagering at its facility.

(D) If for any reason Guest's (or any Secondary Recipient's) wagers cannot be commingled with Host's wagers for the pools related to any Race, Guest shall at its sole discretion (and in accordance with the laws and rules of its state) either cancel such wagers and make appropriate refunds, or otherwise determine how the payoffs for such pools shall be made, and shall immediately notify Host of the manner in which it is proceeding. If for any reason beyond the control of Guest, commingling is not available between Host and Guest (or any Secondary Recipient) Guest may choose not to import the Races from Host, and shall immediately notify Host of this decision; provided, however, that all other terms of this Agreement shall be in full force and effect.

(E) Guest agrees to adopt a policy to accommodate wagers excluded from Host's pools in the event of a System or communication failure. This policy shall be reduced to writing, a copy of which shall be provided Host, and posted in numerous conspicuous places throughout the Guest's facility.

## **11. Representations and Warranties**

In addition to the representations and warranties contained elsewhere in this Agreement, Host and Guest each represent that:

(A) It is a corporation (or other entity as set forth otherwise on Exhibit 1 or Schedule A to this Agreement), duly organized, validly existing and in good standing under the laws of the State in which its facility is located;

(B) It has all requisite power and authority to transact the business it transacts and to enter into this Agreement and perform its obligations herein;

(C) The execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate or other action and this Agreement is valid and legally binding on it;

(D) Its operation is duly licensed to conduct pari-mutuel wagering;

(E) It is in compliance with all applicable federal and state statutes, local laws and ordinances, and has obtained all requisite Federal and State governmental approvals to enter into this Agreement and perform its obligations hereunder;

(F) It has obtained, or will obtain prior to the transmission of the Signals or wagering on the Races at the Guest Facility pursuant to this Agreement, the approval of its Racing Commission and other requisite consents to enter into and perform this Agreement in compliance with the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.), and has satisfied all necessary requirements thereunder; and

(G) No other consents of any other person, entity or governmental authority are required to permit it to enter or consummate the transactions contemplated hereby.

## **12. Indemnification; Liability**

(A) Guest hereby agrees, for itself and each and every Secondary Recipient, to indemnify, save, defend and hold harmless Host and its officers, directors, agents and employees, and the successors and assigns of the foregoing, from and against the full amount of any and all liabilities, obligations, losses, damages, injuries, penalties, claims, actions, suits, costs, expenses and disbursements, including attorneys' fees, arising from or related to (i) the exercise by Guest and/or any Secondary Recipient of the rights conferred hereby and the use by Guest and/or any Secondary Recipient of the contemplated service; (ii) acts or omissions of Guest and/or any Secondary Recipient and/or their officers, directors, employees, agents or other representatives in connection with the performance of the Agreement; (iii) the reception, transmission or use of the Signals (and the information conveyed thereby) and other information, provided hereunder by Host or its contractors or sub-contractors, by Guest and/or any Secondary Recipient; (iv) the conduct of pari-mutuel wagering on the Races (including payouts thereunder) at any facility operated by Guest and/or any Secondary Recipient; (v) compliance by Guest and Secondary Recipients with all applicable federal, state, local and international laws and regulations, including without limitation the Interstate Horseracing Act of 1978; and/or (vi) Guest's breach of any of its representations and warranties contained in this Agreement. The applicability of this Section includes all cases in which either a customer of Guest or a federal, state or local government or agency shall make a claim, file a suit, or issue a ruling.

(B) Host does not guarantee the accuracy or completeness of the Signals or other information supplied. Host shall not be liable to Guest (or its Secondary Recipients) or its patrons or other individuals or entities whose claims are based upon the running of or wagering on the Races, in the event that for any reason any of the Races are not run, any of the Races are delayed, wagering on the Races fails to occur or is delayed, or transmission of the Races or the Signals fails to occur or is delayed. However, Host agrees to use its best efforts to assure the reliability, accuracy and timeliness of the Simulcasts. The liability of Host hereunder, if any, shall be limited to the amount of the Commissions paid to it pursuant to this Agreement.

## **13. Force Majeure**

Host shall not be liable to Guest, or any third party, for failure to run, or delay in the running of, the Races, or in the event any equipment, service or transmission cannot be provided by Host or its contractors or sub-contractors due to an act of God, fire, epidemic, casualty, act or decision of a governmental authority, injunction, technical difficulties, failure of satellite or other communications or electrical or telephone power transmission lines or facilities, boycott, strike or labor dispute, or any similar or dissimilar

cause beyond the control of Host or its contractors, sub-contractors, representatives and agents. In the event of such occurrence(s) Host may terminate this Agreement or suspend and defer its performance hereunder without incurring any further obligation or liability to Guest or entities or individuals whose claims are predicated upon the running of, or wagering on, the Races.

If any of the above events occur at Guest Track and prevent Guest from Simulcasting the Races, Guest may terminate this Agreement or defer or suspend its performance hereunder without incurring any further obligation or liability to Host.

#### **14. Inspection**

(A) Guest shall permit inspection of its simulcast facilities, books and records by a representative of Host or of Host's Racing Commission at any time when wagering is offered by Guest or a Secondary Recipient on the Races; Guest shall provide in its contracts with its Secondary Recipients that the same rights of inspection shall apply to the simulcast facilities, books and records of the Secondary Recipient.

(B) Host shall permit inspection of the totalisator facilities at the Host Track where Guest's wagers are subject to commingling, and related totalisator books and records, by a representative of Guest or of Guest's Racing Commission, at any time when wagering is being conduct by Guest on the Races.

#### **15. Trademarks and other Intellectual Property**

(A) Host is willing to grant to Guest (and through Guest, to Secondary Recipients) a non-exclusive royalty-free license for the limited use of the trademarks and service marks of Host as set forth in Exhibit 6, as well as the trademarks and service marks for those of Host's stakes races occurring during and which are subject to this Agreement (all trademarks and service marks hereinafter collectively referred to as "Marks"), in connection with Guest's advertising of the Simulcasts at Guest's facility, in Guest's program, subject to the following terms and conditions.

(B) At any time that Guest uses the Marks, Guest represents and warrants that it shall clearly indicate Host's ownership of the Marks by use of an accompanying trademark designation, as appropriate, and/or any other statement or indication of ownership as set forth in Exhibit 6, or as Host may direct.

(C) Guest understands that this is a limited license and that Guest is not permitted to and represents and warrants that it shall not use or authorize use of the Marks for any other purpose whatsoever without the prior written consent of Host, including but not limited to use in any promotion or use for any other commercial or collateral purpose such as souvenirs, T-shirts, or other items sold or sponsored by Guest.

(D) Guest represents and warrants that it shall not use or authorize use of any other of Host's logos, trademarks, service marks or copyrights without Host's prior written consent. Guest recognizes the value of the goodwill associated with Host's Marks, and marks which Host claims right to, and recognizes that such marks have secondary meaning in the mind of the public. Guest represents and warrants that it does

not have any claim, right, title or interest in any logos, trademarks, service marks or copyrights to which Host claims rights, except as provided herein.

(E) In the event that Guest has used or uses any logos, trademarks, service marks or copyrights in which Host claims rights at any time prior to or during or after the termination of this Agreement, Guest agrees that such use shall inure and accrue to the benefit of Host. Guest shall not be permitted to sublicense or assign its limited license of the Marks.

(F) Guest represents and warrants that it will not take or fail to take any action which could impair Host's or Host's other licensees' right in Host's logos, trademarks, service marks and copyrights, and that it shall indemnify Host for any liability arising from Guest's breach of this Section.

(G) Host specifically reserves any and all intellectual property rights not specifically granted herein.

## 16. Termination

(A) This Agreement shall be automatically terminated upon the bankruptcy, insolvency or dissolution of either party, or upon the failure to obtain or withdrawal of any approvals required by any applicable laws as to the transactions contemplated hereby.

(B) Either Host or Guest may terminate this Agreement five (5) days after written notice is given to the other Party.

(C) Notwithstanding anything to the contrary contained herein, Host shall have the right to terminate this Agreement (i) five days after written notice to Guest of non-payment of any moneys due to Host hereunder, or (ii) immediately upon written notice to Guest, if Guest or Secondary Recipient materially breaches any other obligation under this Agreement; and Host shall be entitled to avail itself of any right or remedy provided to it under this Agreement or at law or equity.

(D) Any termination of this Agreement shall not affect any outstanding obligations or indemnities of the Parties hereto.

## 17. Miscellaneous

(A) **Breakage** Breakage shall be allocated between Host and Guest (including Guest's Secondary Recipients), proportionately, on the basis of their respective handles, calculated by multiplying total breakage by a fraction which uses Host's or Guest's handle as the numerator and the total combined handle as the denominator.

(B) **Minus Pools** Minus Pools shall be allocated between Host and Guest (including Guest's Secondary Recipients), proportionately, on the basis of their respective handles, calculated by multiplying the amount of the Minus Pool liability by a fraction which uses Host's or Guest's handle as the numerator and the total combined handle as the denominator.

(C) **Uncashed Pari-Mutuel Tickets** After the close of the Host Racing Meet, Guest shall retain and cash "outs" tickets in accordance with the laws of Guest's state.

(D) **Stop Wagering** Guest (and Secondary Recipients) understands that it must stop accepting wagers on the Races on or before the start of the race. The start of the race shall be determined in accordance with the standard set forth in Exhibit 3.

(E) **Recovery of Expenses** In the event of any litigation between the Parties to enforce any of the provisions of this Agreement or as a result of a breach of any representations and warranties contained in this Agreement, the unsuccessful Party to such litigation agrees to pay the successful Party all costs and expenses, including reasonable attorney's fees and costs, incurred by the successful Party, all of which shall be included in the judgment in such litigation.

(F) **Governing Law** This Agreement shall be deemed to have been entered into in the State in which Host is licensed (as set forth above), and the validity, interpretation and legal effect of this Agreement shall be governed by the laws of that State. The Parties consent and agree to the jurisdiction of the Courts of that State and the Federal Court located in that State.

(G) **Entire Agreement; Amendment** This Agreement, including the Exhibits and Schedules hereto, contains the entire understanding of the Parties hereto relating to the subject matter hereof, supersedes any and all prior or contemporaneous agreements or understandings, either oral or written, and may not be changed or terminated orally. This Agreement may be amended only by a written Agreement signed by the Parties.

(H) **Captions** The captions of the sections and subsections in this Agreement are inserted for convenience only and shall not affect the construction or interpretation thereof.

(I) **Counterparts and Duplicate Originals** This Agreement and all amendments hereto may be executed in several counterparts and each counterpart shall constitute a duplicate original of the same instrument.

(J) **Severability** Any provision hereof prohibited by or unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting any other provision of this Agreement or the enforcement thereof in any other jurisdiction.

(K) **Waiver; Remedies** A waiver by one Party of a breach by the other Party shall not be considered a waiver of any or all subsequent breaches by the noncomplying Party. The Parties hereto shall have all remedies for breach of this Agreement available to them provided by law and equity.

(L) **Third Parties** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties, the Host and Guest Racing Commissions, and their respective successors and permitted transferees and assigns,



nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any Party to this Agreement. However, whenever this Agreement requires or contemplates action by a third party, such action shall not be an obligation of a Party to this Agreement unless expressly stated herein, but only a condition of the obligations of the Parties hereto.

(M) **Time** The Parties expressly agree that time is of the essence of the Agreement.

(N) **Assignment** This Agreement and the rights of the Parties hereto may not be conveyed, assigned or transferred to any other person without the written consent of the Parties.

(O) **Notices** Any notice hereunder shall be deemed sufficiently given by one Party to another if in writing and delivered at the addresses set forth on Exhibit 1 and Schedule A to this Agreement, or at such other address as any Party may furnish. Notice shall be deemed delivered (i) upon actual delivery, if delivery is made in person or by courier, or (ii) on the third day after deposit in the United States Mail if in a sealed envelope, registered or certified, with postage prepaid, addressed to the person to whom such notice is being given.

## 18. Further Assurances

Each of the parties agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by another Party to perfect or evidence its rights hereunder. Each Party will promptly notify the other of any information delivered to or obtained by such Party which would prevent the consummation of any transactions contemplated by this Agreement, or would indicate a breach of this Agreement by any Party.