

**THIRD AMENDMENT**  
**TO AMENDED AND RESTATED FUNDING AGREEMENT FOR LIVE HORSE RACING**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED FUNDING AGREEMENT FOR LIVE HORSE RACING (this “**Third Amendment**”) made as of the 26<sup>th</sup> day of January, 2021.

BETWEEN:

**ONTARIO LOTTERY AND GAMING CORPORATION,**

a corporation established pursuant to the *Ontario Lottery and Gaming Corporation Act, 1999*,

(hereinafter referred to as “**OLG**”)

- and -

**HORSE RACING ONTARIO,**

a non-share capital corporation incorporated under the laws of Canada,

(hereinafter referred to as “**Ontario Racing**”)

- and -

**ONTARIO RACING MANAGEMENT INC.,**

a corporation incorporated under the laws of the Province of Ontario,

(hereinafter referred to as “**ORM**”)

- and -

**WOODBINE ENTERTAINMENT GROUP,**

a non-share capital corporation incorporated under the laws of the Province of Ontario,

(hereinafter referred to as “**WEG**”)

WHEREAS OLG, Ontario Racing, ORM and WEG are parties to that certain Amended and Restated Funding Agreement for Live Horse Racing made effective as of April 1, 2019, as amended by the First Amendment to Amended and Restated Funding Agreement for Live Horse Racing made as of April 9, 2020, as further amended by the Second Amendment to Amended and Restated Funding Agreement for Live Horse Racing made as of December 16, 2020 (collectively, the “**Funding Agreement**”);

AND WHEREAS capitalized terms that are used but not defined in this Third Amendment have the respective meanings specified in the Funding Agreement;

AND WHEREAS the Parties entered into the Funding Agreement to implement a funding model in which payments are made by OLG to Ontario Racing, and Ontario Racing thereafter distributes the money received from OLG to or for the benefit of the OR Racetrack Members or other horse racing industry participants, in each case subject to the terms and conditions of the Funding Agreement (including with respect to the permitted uses of the funds comprising the Annual Payments) and the Organizational Documents of Ontario Racing, all in furtherance of the Funding Purpose, which includes the expectation that the funding of purses for live horse racing in Ontario and certain related costs and expenses pursuant to the Funding Agreement will help to build the foundation for a more stable and sustainable live horse racing industry in Ontario, with increased responsibility for the industry to become self-governing and manage its business towards such greater sustainability;

AND WHEREAS in response to the COVID-19 pandemic, racing at certain Member Racetracks was suspended as of November 23, 2020 and, in the future, racing at one or more Member Racetracks could from time to time be suspended or canceled again;

AND WHEREAS when live horse racing is suspended or canceled at one or more Member Racetracks, Ontario Racing cannot use the portions of the Annual Payment, which Ontario Racing is entitled to receive from OLG pursuant to the Funding Agreement, that are allocated to the funding of purses at such Member Racetracks for the benefit of the OR Racetrack Members as contemplated by the Funding Agreement and, as a result, the owners of race horses ("**Horsepeople Owners**") will not have the opportunity to collect purse winnings, which they ultimately rely on to support the health, welfare and training of their horses;

AND WHEREAS in order to ensure that horses are prepared to commence racing when Member Racetracks at which live horse racing has been suspended or canceled from time to time in response to the COVID-19 pandemic reopen and resume racing, Ontario Racing proposes to pay certain portions of the Annual Payment that are allocated to the funding of purses at such Member Racetracks directly to Horsepeople Owners to pay trainers' invoices in support of the health, welfare and training of horses (in particular, the costs of boarding, feed and training) during the suspension or cancellation of racing;

AND WHEREAS the Parties agree that the proposed payment of certain portions of the Annual Payment for the benefit of Horsepeople Owners is consistent with the Funding Purpose under the Funding Agreement and, therefore, they desire to amend the Funding Agreement as set forth in this Third Amendment;

NOW THEREFORE THIS THIRD AMENDMENT WITNESSES THAT in consideration of the respective covenants and agreements of the Parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree as follows:

1. **Amendment to Section 1.1 (Definitions)**

Section 1.1 of the Funding Agreement is hereby amended as follows:

- (a) by adding the following term in alphabetical order:

**“Additional Closure Period”** means, in respect of a Member Racetrack, the period commencing on the date that live horse racing at such Member Racetrack is suspended or canceled in response to the requirements of Applicable Law relating to the COVID-19 pandemic, and ending on the date on which live horse racing at such Member Racetrack is permitted under Applicable Law to re-start; provided, however, that OLG may specify a later date by written notice to Ontario Racing;

- (b) by deleting the definition of “Horsepeople Owners’ Costs” and replacing it with the following definition:

**“Horsepeople Owners’ Costs”** means costs incurred by affected Horsepeople Owners to pay trainers’ invoices in support of the health, welfare and training of horses (in particular, the costs of boarding, feed and training) during a Closure Period or an Additional Closure Period so that they will be ready to race when live horse racing re-starts at the relevant Member Racetrack at which racing was suspended or cancelled;

**2. New Section 3.7 (COVID-19 Additional Closure Periods)**

The Funding Agreement is hereby amended by adding the following provisions to Article 3, as Section 3.7 (*COVID-19 Additional Closure Periods*):

- (a) In the event of any conflict or inconsistency between the provisions of this Section 3.7 and any other provision of this Agreement, during each Additional Closure Period, the provisions of this Section 3.7 will govern to the extent of such conflict or inconsistency.
- (b) Following the receipt by Ontario Racing from OLG of funds comprising the Racetracks Payment, the Additional Purse Enhancement Payment and the Transition Payment (or any of such funds), in each case that have been allocated under the then-current Approved Annual Business Plan to be paid to any or all of the OR Racetrack Members for those months (or parts thereof) during which any Additional Closure Period occurs, for the funding of purses for live horse races as Eligible Costs or Transition Payment Eligible Costs, as applicable (collectively, the **“Allocated Subject Funds”**), Ontario Racing may distribute the Allocated Subject Funds to Horsepeople Owners to be used only for the purpose of paying Horsepeople Owners’ Costs that are incurred during or in respect of the Additional Closure Period unless otherwise consented to by OLG, in writing.
- (c) Following the commencement of each Additional Closure Period, Ontario Racing shall submit to OLG a proposal for the distribution of Allocated Subject Funds to Horsepeople Owners, which proposal will be subject to OLG’s approval in its sole discretion. Ontario Racing shall only make payments of the Allocated Subject Funds to Horsepeople Owners pursuant to the process that has been approved by OLG from time to time. OLG confirms that the process set forth in Ontario Racing’s proposal attached as Exhibit 3.7 (*Proposal for Distribution of Funds to Horsepeople Owners*) is acceptable to OLG, provided that OLG reserves the

right to require reasonable changes thereto from time to time without the need to further amend this Agreement in respect thereof.

- (d) To the extent that Allocated Subject Funds are paid to Horsepeople Owners in accordance with this Section 3.7, the amounts otherwise allocated to OR Racetrack Members pursuant to the applicable Approved Annual Business Plan will be deemed to be reduced accordingly, notwithstanding anything to the contrary in Section 5.6 or Section 5.8 of this Agreement. The maximum amounts payable by Ontario Racing in respect of Horsepeople Owners' Costs will not exceed the amounts budgeted by Ontario Racing for the payment of Eligible Costs and Transition Payment Eligible Costs for and on behalf of, or for the benefit of, those OR Racetrack Members that are subject to the Additional Closure Period as contemplated in the applicable Approved Annual Business Plan, unless otherwise consented to by OLG, in writing. For greater certainty, nothing in this Section 3.7 will require OLG to pay to Ontario Racing any amount exceeding the applicable Annual Payment in respect of any Funding Year.
- (e) Prior to the payment of any portion of the Allocated Subject Funds to Ontario Racing for payment to Horsepeople Owners in respect of Horsepeople Owners' Costs, Ontario Racing shall provide to OLG a list of the intended recipients thereof and details of the use of such funds by such recipients, which must reflect the use contemplated in the definition of Horsepeople Owners' Costs (collectively, the "**Additional Distribution Information**"). At OLG's request, representatives of Ontario Racing shall meet with representative of OLG to discuss the Additional Distribution Information, and Ontario Racing shall promptly provide to OLG written clarifications of any information or details contained therein, and any additional information relating thereto, as OLG may reasonably request. OLG shall not be required to pay to Ontario Racing any funds that will be included in the Allocated Subject Funds until OLG is satisfied that the Additional Distribution Information is consistent with the intent and requirements of this Section 3.7. For greater certainty, OLG shall cooperate with Ontario Racing with respect to the timing for the payment of funds comprising the Allocated Subject Funds to Ontario Racing by OLG, which may occur multiple times per month.
- (f) Ontario Racing shall ensure that Horsepeople Owners who receive a payment of any portion of the Allocated Subject Funds use such funds for purposes contemplated in the definition of Horsepeople Owners' Costs and in a manner that is consistent with the Additional Distribution Information. In the event that any Horseperson Owner fails to do so, Ontario Racing shall cause such Horseperson Owner to repay such funds (the "**Misused Allocated Funds**") to Ontario Racing, and Ontario Racing shall thereafter pay such funds to OLG. To the extent that Misused Allocated Funds are not repaid to OLG, OLG will have the right (exercisable in its sole discretion) to decrease the amount of the Annual Payment in the next Funding Year by the amount of such Misused Allocated Funds that have not been repaid to OLG.
- (g) Ontario Racing shall ensure that Horsepeople Owners that receive funds comprising part of the Allocated Subject Funds agree to take such actions as may be required to enable Ontario Racing to audit the use of such funds if

Ontario Racing reasonably determines that it is necessary to do so in light of its obligations under Section 3.7(f).

- (h) On a monthly basis, or more frequently if requested by OLG (acting reasonably), Ontario Racing shall deliver a written report to OLG that identifies:
  - (i) as appropriate in the relevant circumstances, (A) the number of applications for funding received from Horsepeople Owners by Ontario Racing, the number of such applications that were approved by Ontario Racing, and the number of such applications that were rejected together with a summary of the reasons for such rejection, or (B) all of the Horsepeople Owners that Ontario Racing has identified as being qualified to receive a payment from the Allocated Subject Funds, together with details of the manner in which such identification was made; and
  - (ii) the name of each Horseperson Owner that is a recipient of a payment of Allocated Subject Funds from Ontario Racing, together with the name and address of the location from which such Horseperson Owner carries on its horse-related activities (e.g., name of stable). In addition, Ontario Racing shall post this list on its website on at least a monthly basis, unless otherwise consented to, in writing, by OLG. OLG may, but will not be obligated to, publish this list on OLG's website or by such other means as OLG determines from time to time.
- (i) Within a reasonable time specified by OLG following the end of each Additional Closure Period, or at such other time as OLG (acting reasonably) may request, Ontario Racing shall provide to OLG a written report that includes a summary reconciliation of (i) the actual use of Allocated Subject Funds received by Horsepeople Owners from Ontario Racing during such Additional Closure Period with (ii) the Additional Distribution Information, including an explanation of any material variances between intended and actual uses.
- (j) Ontario Racing shall cooperate to provide to OLG such additional information as OLG may reasonably request from time to time relating to the subject matter of this Section 3.7. OLG may, but will not be obligated to, publish on OLG's website or by such other means as OLG determines from time to time all of the information that is provided to OLG by or on behalf of Ontario Racing pursuant to this Section 3.7.
- (k) Except to the extent otherwise contemplated in this Section 3.7, all of the provisions of the Funding Agreement that apply in respect of the Annual Payment (or any portion thereof), Eligible Costs and Transition Payment Eligible Costs will apply in respect of the Allocated Subject Funds and Horsepeople Owners' Costs.

**3. Exhibit 3.7 – Proposal for Distribution of Funds to Horsepeople Owners**

The Funding Agreement is hereby amended by adding the document attached to this Third Amendment as Exhibit 3.7, as Exhibit 3.7 (*Proposal for Distribution of Funds to Horsepeople Owners*) to the Funding Agreement.

**4. Effect of Third Amendment on Funding Agreement**

Except as modified by this Third Amendment, the Funding Agreement remains unchanged and in full force and effect.

**5. Publishing of Third Amendment**

Ontario Racing, ORM and WEG acknowledge that OLG is required to publish this Third Amendment on its website pursuant to *Ontario Regulation 265/18: Payments to Support Live Horse Racing In Ontario*, made pursuant to the *Ontario Lottery and Gaming Corporation Act, 1999*.

**6. Counterparts**

This Third Amendment may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument.

**7. Electronic Delivery**

Delivery of an executed copy of this Third Amendment by any means of electronic communication capable of producing a copy will be deemed to be execution and delivery of this Third Amendment as of the date set forth on page one of this Third Amendment.

[The next page is the signature page.]

Parties. IN WITNESS WHEREOF this Third Amendment has been executed by the

**ONTARIO LOTTERY AND GAMING CORPORATION**

by (signed) *Lori Sullivan*  
Name: Lori Sullivan  
Title: EVP, Chief Operating Officer

(signed) *Tina MacMillan*  
Name: Tina MacMillan  
Title: Senior Director, Horse Racing

**HORSE RACING ONTARIO**

by (signed) *John Hayes*  
Name: John Hayes  
Title: Chair

(signed) *Sue Leslie*  
Name: Sue Leslie  
Title: Board Member

**ONTARIO RACING MANAGEMENT INC.**

by (signed) *Jonathan Zammit*  
Name: Jonathan Zammit  
Title: Executive Director ORM

(signed) *Katherine Curry*  
Name: Katherine Curry  
Title: VP, Legal & Compliance

**WOODBINE ENTERTAINMENT GROUP**

by (signed) *James Jonathan Lawson*  
Name: James Jonathan Lawson  
Title: CEO

(signed) *Jessica Buckley*  
Name: Jessica Buckley  
Title: SVP Sbred & TBred Racing

**EXHIBIT 3.7**  
**PROPOSAL FOR DISTRIBUTION OF FUNDS TO HORSEPEOPLE OWNERS**

**Proposal**

The cancellation of the remaining twelve live thoroughbred race days at Woodbine Racetrack in response to COVID-19 pandemic-related mitigation measures announced by the Government of Ontario in November 2020, which took effect at 12:01 a.m. on Monday November 23, 2020, means that approximately \$5,500,000 of available purse monies will not flow to horse people. The last live racing card at Woodbine Racetrack was conducted on Sunday, November 22<sup>nd</sup>, 2020.

Purse winnings are the sole source of income for most owners, trainers, and other members of the horse racing industry. This income is used to pay staff, pay vendors and other indirect industry participants (farriers, veterinarians, etc.), but most importantly, to reinvest into the welfare and carrying cost of the horses. This is of particular importance at this point in the thoroughbred racing season as the last remaining race days would typically represent the final opportunities for horse owners to earn the income needed to provide and care for their horses over the winter break. Racing, and therefore the chance to earn income from racing, in Ontario will not resume until April of 2021 at the earliest for thoroughbred horse owners.

Therefore, in order to ensure the wellbeing of horses over the winter season (some 1,600 thoroughbreds in Ontario), this proposal is seeking, similar to that of the arrangements that were implemented in the Spring of 2020 in response to COVID-19-related mitigation measures that resulted in the cessation of live horse racing, to allocate undistributed purse funds provided for under the Long-Term Funding Agreement related to the cancelled days to horse people in the form of industry payments.

This proposal outlines the total amount of funds available under the Long-Term Funding Agreement that correspond to the cancelled days that are available for distribution, the eligibility requirements to receive such payments pursuant to the proposed arrangement, and the process by which these payments will be distributed to qualified horse people.

One of the greatest risks currently facing the thoroughbred racing industry in Ontario is the deterioration of horse supply. Distributing the portion of funds under the Long-Term Funding Agreement that correspond to the cancelled days at Woodbine Racetrack in the form of payments to horse people will help them to maintain their horses during the winter break and return to racing in the Spring of 2021, thus reducing further risk to the deteriorating thoroughbred horse supply.

It is understood by the members of the Thoroughbred COVID-19 Task Force that funds utilized for the proposed arrangements will no longer be available for other uses (i.e. purses). It is the intention of the Thoroughbred COVID-19 Task Force that race dates which are cancelled due to COVID-19, and for which the purse funds have been re-directed and paid to horse people, will not be replaced and no purses will be payable in relation thereto. The Thoroughbred COVID-19 Task Force understands that Woodbine Racetrack will have to agree that these funds do not carry forward for purse distributions if this proposal is implemented.



### **Eligibility Requirements**

In order for horse people be eligible for financial payments pursuant to this program, the Thoroughbred COVID-19 Task Force proposes that their horses must meet one of the following requirements based on the location of the horse(s):

- Horses must have been stabled on the Woodbine backstretch as of the last live racing day – November 22, 2020, as verified through the Woodbine Stall Office stall allocation listing, or
- For horses stabled off the racetrack in the Province of Ontario that would normally ship to Woodbine to race, must have performed one of the following during the period commencing on November 1, 2020 and ending on November 21, 2020:
  - Raced at Woodbine Racetrack with the race result being verifiable via Equibase historical charting information.
  - Recorded an official workout at Woodbine Racetrack, verifiable either through Equibase workout information, or official clocking reports produced by the Woodbine Race Office.

### **Sources of Funds**

The amount funds to be distributed in the form of payments to horse people represents the undistributed purse amounts provided for under the Long-Term Funding Agreement what were not paid in the form of purses as a result of the cessation live racing from and after November 23, 2020. The total amount of available funds that can be allocated toward such payments is \$2,932, 330, determined as follows:

- |  |                    |
|--|--------------------|
| • FY2021 LTFA amounts allocated to WEG       | \$25,488,720       |
| • Amounts used for purses up to Nov 22, 2020 | \$22,556,390       |
| • <b>Amounts available for distribution</b>  | <b>\$2,932,330</b> |

### **Use of Funds**

Based on the eligibility requirements above, the Thoroughbred COVID-19 Task Force estimates that there would be approximately 1,600 horses (1,500 stabled at Woodbine as of November 22, 2020, and approximately 100 horses stabled off the track in the Province of Ontario that should ship in to race at Woodbine) that would meet the eligibility criteria to receive payments under the proposed program.

Consistent with the program implemented in the Spring of 2020 following the cessation of live horse racing in Ontario in response to the COVID-19 pandemic, average monthly training costs for a thoroughbred racehorse is approximately \$3,000/mo. The amount due to each eligible horse would be approximately \$1,500/horse, consistent with the amount allocated to thoroughbred horses under the program from the Spring of 2020.

Thus, based on the criteria set out above, the estimated total cost of the Thoroughbred Horse People Payments Program would be approximately **\$2,400,000** (1,600 horses x \$1,500/horse).

### **Association Fees**

A portion of purses in the amount of 1.5% will be distributed in the form of associations fees as is customary with purse winnings and paid to the Horsemen Benevolent Protection Association (HBPA). These fees are the main source of funding for the HBPA and are used to fund wellness benefits such as paying of benefit program premiums, benevolence activities, and overall quality of life improvements for horse people in Ontario. Because these payments are used to ease the various hardships of those in the horse racing industry through monetary assistance, it is the intention of Ontario Racing to continue paying these fees as part of the proposed funding arrangements. Total association fees to be paid would equal \$36,000 (\$2,400,000 x 1.5%)

#### *Estimated Total Program Cost:*

Thoroughbred Payments	\$2,400,000
Association Fees	\$36,000
<b>Total:</b>	<b>\$2,436,000</b>

### **Excess Funds**

Ontario Racing forecasts that the excess funds remaining from undistributed purses as provided by the Long-Term Funding Agreement as a result of the cessation of live racing at Woodbine Racetrack, net of payments to Thoroughbred horse people and association fees, will be approximately \$496,330. These monies will be incorporated into the purse planning amounts for Woodbine Racetrack for the fiscal year commencing on April 1, 2021 and ending on March 31, 2022, and distributed to horse people during the 2021 thoroughbred racing season via purses available for races.

### **Distribution Process**

It is the intention of the Thoroughbred COVID-19 Task Force to ensure funds are paid and distributed to the eligible thoroughbred horse people in a timely and efficient manner and to ensure they are used for the upkeep for Thoroughbred horses as the winter off season approaches. To that end, in order to facilitate an expedited distribution of the approved funds, Ontario Racing Management intends to leverage the Thoroughbred Horse Person's Bookkeeper's office at Woodbine Racetrack. Ontario Racing Management will transfer the approved pool of funds itemized by person and amount to WEG's purse account for transfer into each qualified horse person's account per the approved listing showing qualified horse, owner, and approved payment amount. The Woodbine Thoroughbred Horseperson's Bookkeeper's office will then be able to facilitate distribution either by cheque or electronic funds transfer to the appropriate horse person.

### **Future Considerations**

Given the uncertainty regarding the ongoing COVID-19 pandemic and the risk of cancellation of live racing at other tracks within the Ontario, Ontario Racing would like to be in a position to provide assistance to impacted horse persons in a timely manner as soon there is confirmation of a cessation of live racing as a result of COVID-19 pandemic-related measures being implemented. Being able to react in a timely manner will better enable owners and related horse people to provide the best care for their horses in the absence of not being able to compete for purse money which is their primary source of income. Much of the purse income earned by owners is reinvested back into the wellbeing of their horses. The wellbeing of Ontario's racehorses is at risk when the means to acquire the necessary funds to look after these horses through purse winnings is not available to them.

Therefore, Ontario Racing also requests that, in the event of the cessation of some or all live racing in the Province of Ontario in response to COVID-19 pandemic related mitigation measures, Ontario Racing can reallocate undistributed purse money under the Long-Term Funding Agreement in the form of payments to eligible horse people.

The framework to be utilized will be consistent with that of the program implemented in the Spring of 2020 and the Thoroughbred Horse People Payments Program as proposed above. The framework to distribute these funds will involve, but is not limited to, the following steps:

- Formation of a “Task Force” which is a committee comprised of Ontario Racing Board members, the independent Chair, and the Executive Director of Ontario Racing Management to assess the COVID-19 pandemic-related mitigation measures and the impact to live racing and determine what temporary measures can be put in place for the benefit of horse people by completing the following sub processes:
  - ✓ Identifying the amount of undistributed purse money that is available for payments as a result of newly announced measures (source of relief funds).
  - ✓ Determining suitable eligibility criteria in order to determine which and how many horses could potentially qualify for payments. The validation of eligibility shall be based on objective and verifiable data to ensure a thorough and independent validation of eligibility is performed, preferably with third party data sources (i.e. Equibase or similar race information – i.e. Standardbred Canada listing of qualified horses).
  - ✓ Outline an efficient and timely distribution method to ensure qualified horse people receive funds as soon as possible (use of funds).
  - ✓ Report to the Board of Ontario Racing the details of any program(s) and eligibility criteria and the associated impact on purses and race days moving forward.
  - ✓ Obtain approval from the Board of Ontario Racing to the Task Force’s proposal for paying undistributed purse money to horse people.
  - ✓ Obtain approval from OLG to the Task Force’s proposal for paying undistributed purse money to horse people, as approved by Ontario Racing’s Board.
  - ✓ Complete all required reporting and reconciling processes and ensure that information related to any approved program(s) is provided to the Board of Ontario Racing, OLG and other stakeholders (e.g., Ministry of Finance, etc.) in a timely manner.

The framework noted above allows Ontario Racing to redirect undistributed purse money under the Long-Term Funding Agreement into programs for the benefit of horse people who are impacted by the cessation of live horse racing in the event of future COVID-19 pandemic-related restrictions that adversely impact the availability of race days at some or all racetracks in Ontario.