

FIRST AMENDMENT
TO AMENDED AND RESTATED FUNDING AGREEMENT FOR LIVE HORSE RACING

THIS FIRST AMENDMENT TO AMENDED AND RESTATED FUNDING AGREEMENT FOR LIVE HORSE RACING (this “**First Amendment**”) made as of the 9th day of April, 2020.

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 (the “**Funding Agreement**”);

AND WHEREAS capitalized terms that are used but not defined in this First 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 the Member Racetracks was suspended as of March 20, 2020, and subsequently the government of Ontario passed *Ontario Regulation 82/20: Order Under Subsection 7.0.2(4) – Closure of Places of Non-essential Businesses* under the *Emergency Management and Civil Protection Act*, which regulation mandates, subject to certain exceptions, the closure of all places of non-essential business (which would include the Member Racetracks) for a period of undefined duration that began at 11:59 p.m. on March 24, 2020;

AND WHEREAS as a result of the suspension of live horse racing, 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 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 reopen, Ontario Racing (after consultation with the OR Racetrack Members) proposes to pay certain portions of the Annual Payment that are allocated to the funding of purses at 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 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 First Amendment;

NOW THEREFORE THIS AGREEMENT 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 by adding the following terms in alphabetical order:

“**Closure Period**” means the period commencing on March 20, 2020 and ending on the earlier of (a) May 31, 2020, (b) the date on which live horse racing in Ontario is permitted to re-start, and (c) the date on which the 2020 racing season is canceled in its entirety; provided, however, that in the circumstances of each of the foregoing clauses (a), (b) and (c), OLG may specify a later date by written notice to Ontario Racing;

“**Horsepeople Owners**” means the owners of race horses in Ontario, and
“**Horseperson Owner**” means any one of such owners;

“**Horsepeople Owners’ Costs**” means costs incurred by 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) so that they will be ready to race when live horse racing in Ontario re-starts at Member Racetracks;

2. **New Section 3.6 (COVID-19 Closure Period)**

The Funding Agreement is hereby amended by adding the following provisions to Article 3, as Section 3.6 (*COVID-19 Closure Period*):

- (a) In the event of any conflict or inconsistency between the provisions of this Section 3.6 and any other provision of this Agreement, during the Closure Period, the provisions of this Section 3.6 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, in each case that have been allocated under the then-current Approved Annual Business Plan to be paid to OR Racetrack Members for those months (or parts thereof) during which the Closure Period occurs, for the funding of purses for live horse races as Eligible Costs or Transition Payment Eligible Costs, as applicable (collectively, the “**Subject Funds**”), Ontario Racing may distribute the 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 Closure Period unless otherwise consented to by OLG, in writing.
- (c) Ontario Racing shall only make payments of the Subject Funds to Horsepeople Owners pursuant to a process that is reasonably acceptable to OLG from time to time. OLG confirms that the process set forth in Ontario Racing’s proposal attached as Exhibit 3.6 (*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 Subject Funds are paid to Horsepeople Owners in accordance with this Section 3.6, the amounts otherwise allocated to OR Racetrack Members during the first two Funding Years commencing on the Commencement Date will be deemed to be reduced accordingly, notwithstanding anything to the contrary in Section 5.6 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, the OR

Racetrack Members as contemplated in the applicable Approved Annual Business Plan, unless otherwise consented to by OLG, in writing. For greater certainty, nothing in this Section 3.6 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 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 "**Distribution Information**"). At OLG's request, representatives of Ontario Racing shall meet with representative of OLG to discuss the 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 Subject Funds until OLG is satisfied that the Distribution Information is consistent with the intent and requirements of this Section 3.6. For greater certainty, OLG shall cooperate with Ontario Racing with respect to the timing for the payment of funds comprising the 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 Subject Funds use such funds for purposes contemplated in the definition of Horsepeople Owners' Costs and in a manner that is consistent with the 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 Funds**") to Ontario Racing, and Ontario Racing shall thereafter pay such funds to OLG. To the extent that Misused 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 Funds that have not been repaid to OLG.
- (g) Ontario Racing shall ensure that Horsepeople Owners that receive funds comprising part of the 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 3.6(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) 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; and
 - (ii) the name of each Horseperson Owner that is a recipient of a payment of 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 the 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 the actual use of Subject Funds received by Horsepeople Owners from Ontario Racing with the 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 3.6. 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 3.6.
- (k) Notwithstanding anything to the contrary in this Section 3.6, Ontario Racing shall not make any payment of Subject Funds to Horsepeople Owners until such time as each OR Racetrack Member has consented, in writing, in form and substance reasonably satisfactory to OLG, to the allocation of the funds comprising the Subject Funds under the applicable Approved Annual Business Plan to Horsepeople Owners for purposes of paying Horsepeople Owners' Costs, notwithstanding the provisions of Section 5.6 of the Funding Agreement.
- (l) Except to the extent otherwise contemplated in this Section 3.6, 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 Subject Funds and Horsepeople Owners' Costs.

3. Exhibit 3.6 – Proposal for Distribution of Funds to Horsepeople Owners

The Funding Agreement is hereby amended by adding the document attached to this First Amendment as Exhibit 3.6, as Exhibit 3.6 (*Proposal for Distribution of Funds to Horsepeople Owners*) to the Funding Agreement.

4. Effect of Amendment on Funding Agreement

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

5. Publishing of First Amendment

Ontario Racing, ORM and WEG acknowledge that OLG is required to publish this First 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 First 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 First Amendment by any means of electronic communication capable of producing a copy will be deemed to be execution and delivery of this First Amendment as of the date set forth on page one of this First Amendment.

[The next page is the signature page.]

EXHIBIT 3.6
PROPOSAL FOR DISTRIBUTION OF FUNDS TO HORSEPEOPLE OWNERS

Ontario Racing Task Force
COVID-19 Proposal

Ontario Racing wants to ensure that funds are available for horsepeople who will not have the benefit of purse winnings as a result of the cancellation of live racing in Ontario due to the COVID-19 pandemic. In particular, in the absence of purse winnings, owners require funds to make payments to their trainers, who must in turn pay their staff including, for example, grooms.

In an effort to respond to concerns among industry participants, below is the proposal of the Ontario Racing Task Force for the periods of (1) the last week of March, 2020, and (2) April and May, 2020. The Ontario Racing Task Force includes representatives of all Ontario horsepeople, and this proposal represents an unprecedented level of co-operation between the three breeds of racehorses in Ontario in an effort to ensure their industry will be prepared for racing to begin when racetracks reopen.

It is important, once business operations are able to resume, that horseracing activities be re-activated as soon as possible. In order to ensure that horses are ready to go as soon as racing operations re-commence, it is necessary that they be fit to race immediately. This will enable the horseracing industry to start generating revenue as quickly as possible.

Given the important needs described above, set out below is a proposal to re-allocate the use of certain funds that have been, or will be, paid to Ontario Racing by OLG pursuant to the Amended and Restated Funding Agreement for Live Horse Racing made effective as of April 1, 2019 (as amended, the "**Funding Agreement**") to which they, among others, are parties. Ontario Racing originally allocated the funds that are the subject of such proposal to the funding of purses at racetracks that subsequently have been affected by closures in response to the COVID-19 pandemic. Those funds would ultimately have benefited horsepeople through purse winnings. The proposal below instead contemplates the allocation and payment of such funds directly to horsepeople across all breeds for the months of April and May.

Allocating funds across all breeds will help to ensure that horses in Ontario will be race-ready as soon as the restrictions on racing are lifted so that revenue generation may recommence as soon as possible. This approach reflects the fact that all horses are currently in training for racing purposes, and all are currently incurring training fees and associated costs, but with an unknown future. Therefore, all breeds need to encourage participants and owners to remain in the industry so that it will be possible to re-commence racing this season. It also reflects the reality that due to the COVID-19 restrictions, staffing levels have been dramatically reduced, so the calculation and distribution of funds needs to be as simple as possible in order to ensure that such funds may be disbursed as accurately and efficiently as possible.

Members of the Task Force understand that funds distributed under this proposal will no longer be available for their originally intended uses (i.e., purses). The Task Force intends that race dates that are cancelled due to COVID-19, and for which the purse funds have been re-directed to horsepeople, will not be replaced and no purses will be payable in relation thereto. The approved race date calendar will come into effect as of the date of re-commencement of racing. The Task Force does not intend to re-schedule lost race dates. The Task Force understands

that the racetrack members of Ontario Racing must agree in writing to this requirement since these funds would otherwise have been paid to them to be used for purses.

Purse Funds

Once cancellation fees have been paid to all horses drawn in to race during the week of March 19 – 24, \$1,391,376 of purse-related amounts available under the Funding Agreement for the 2019-2020 fiscal year will not have been paid out, which amount can be broken down as follows:

Racetracks Payment	\$1,522,160
Additional Purse Enhancement Payment	\$110,356
Transition Payments (Purses Only)	\$18,060
Less March 19-24 Hitching Fees	(\$259,200)
Total	\$1,391,376

Under the current payment schedule provided under the Proposed Annual Business Plan that Ontario Racing submitted to OLG pursuant to the Funding Agreement (which assumed live racing to be conducted as usual), \$4,846,555 of purse-related amounts would be available in April, and \$8,414,589 would be available in May, which amounts can be broken down as follows:

April	Racetracks Payment	\$4,618,630
	Additional Purse Enhancement Payment	\$242,110
	Transition Payments (Purse Only)	\$39,620
	Total (net of association fees)	\$4,900,360
May	Racetracks Payment	\$7,849,640
	Additional Purse Enhancement Payment	\$372,680
	Transition Payments (Purse Only)	\$320,410
	Total (net of association fees)	\$8,542,730

This leaves a total available amount (April + May) of: **\$13,443,090**

The Task Force intends to split payment of the total amount of funds that are available to Ontario Racing pursuant to the Funding Agreement for April and May equally between both months, so that 50% of the total amount would be paid out in April, and 50% in May.

Eligibility Requirements

In order to be eligible to receive funds pursuant to this proposal, owners must complete an application which must be submitted to Ontario Racing Management Inc. (“ORM”). Eligibility requirements to be contained in the application include the following:

- Horses must be trained and raced by an Ontario-based trainer with a valid AGCO license

- Certification that the horse is resident in Ontario, or has completed a Stall Application for the 2020 race season, or is otherwise verified to be coming to Ontario for the 2020 race season
- The horse's first start following the resumption of racing in Ontario must be at an Ontario track, unless otherwise approved by Ontario Racing
- Horses must be at least 3 years old, and either have not yet raced or have raced since January 1, 2019

Further, each owner will be required to certify that any financial aid provided pursuant to the application will be used for payment of trainers' invoices.

Application Process

ORM, on behalf of Ontario Racing, will forward copies of all applications to the applicable Horsepersons' Association: HBPA, COSA or QROOI. The Associations will validate the information contained in each application, utilizing breed databases, membership information, stall allocation lists, etc. Upon receipt of written confirmation from the applicable Association that the information contained in the application is correct, ORM will compile a summary of validated applications received and submit to OLG for payment.

Documented proof of entry into Ontario will be required to be provided for horses who return to Ontario. Owners of horses which do not return to Ontario on or before the commencement of the 2020 Ontario race season, and/or which do not make their first start upon season re-commencement in Ontario, will be deemed to have been ineligible to receive funds pursuant to this arrangement, and any funds previously provided to the owner in this regard must be re-paid to ORM immediately. ORM will be responsible for accounting for any re-paid sums to OLG within sixty (60) days of the re-commencement of the racing season.

Week of March 25 – 31, 2020

There were 1,652 Standardbred horses qualified to race during the week of March 25-31, 2020. Therefore, similar to the cancellation fees granted to the Standardbred horsepeople for the week of March 19-24, these horses will receive \$300 each.

The funding associated with this period is as follows:

Horses (1,652 x \$300)	\$495,600
Drivers (5% of purse due to drivers)	\$24,780
Trainers (5% of purse due to trainers)	\$24,780
Total	\$545,160

Funds for drivers are requested for the last week of March only because we believe that, commencing in April, drivers/jockeys will be entitled to apply for EI under the expanded government programs. The requested funding for March is calculated based upon drivers who were eligible to drive, and therefore could have driven in races during the applicable period.

With respect to trainers, the funding provided for in April and May, as described below, will be applied to trainers' invoices; as such, no separate funding for trainers will be required.

If this proposal is implemented, the purse-related amounts available from OLG under the Funding Agreement for the 2019-2020 fiscal year described above will be reduced by \$545,160,

leaving a balance of \$845,216. This balance will be held in reserve, to be used as Standardbred purse funds once racing resumes. Specific make-up tactics applicable to this amount will be identified, and will be the subject of a proposed amendment to the Annual Business Plan previously approved by OLG once racing resumes.

April & May, 2020

In April and May, there will be an estimated 5,525 racehorses in Ontario which would otherwise be racing at Ontario tracks. Of these, 3,000 are Standardbreds, 2,250 are Thoroughbreds, and 275 are Quarter Horses. These numbers are estimates only, and are based on factors such as past history and stall applications. Exact numbers will be available once the application process is complete.

The approximate costs per month to keep and train a racehorse are as follows: \$3,000 for Thoroughbreds, \$2,000 for Standardbreds, and \$1,500 for Quarter Horses. These costs include board, feed and training fees. Veterinary, blacksmith, shipping, and other fees are not included in this estimate.

This proposal contemplates using funds comprising the Racetracks Payment, the Additional Purse Enhancement Funds and Transition Payment available under the Funding Agreement to fund 50% of the costs of keeping and training racehorses for all three breeds for the months of April and May. This will result in the following payments per month for this 2-month period:

Thoroughbreds	\$1,500 per horse x 2,250 horses	\$3,375,000
Standardbreds	\$1,000 per horse x 3,000 horses	\$3,000,000
Quarter Horses	\$750 per horse x 275 horses	\$206,250
Total (per month)		\$6,581,250
Total (2 months)		\$13,162,500

Should racing in Ontario not re-commence by May 31, 2020, the Task Force will present a revised proposal which would then include 2-year-old racehorses as well (2-year-olds would start racing in June under normal circumstances).

Association Fees

The pooled purse funds described above are net of required Horseperson's Association fees that would be payable to the Associations under normal operating circumstances. The fee percentage assumed is 1.5% of purse funds which is consistent with normal payment terms. These fees are the main source of funding for the Horseperson's groups which are used for paying benefits, benevolence activities, and overall quality of life improvements for horsepeople in Ontario. Because these payments are used to ease various hardships of those in the horse racing industry through monetary assistance, Ontario Racing intends to continue paying these fees in the same way as it would have if the funds were being used to fund purses as originally intended, even though such purse funds will instead be allocated directly to owners.

Race Date Calendar

It is the intention of the Task Force that the current race date calendar remain unchanged. Races which were scheduled to be run during the affected period will be foregone, and will not

be replaced. Horses which would have raced on the foregone race dates will have the opportunity to race in originally-scheduled races at their respective levels, if applicable.

Remaining Funds

Should there be any funds not utilized as described herein, the Task Force recommends that such funds be added to the purses of races which take place once the COVID-19 racing restrictions are lifted given that these funds were originally intended to fund purses. These funds would be allocated to purses on a fair and equitable basis, taking into consideration factors such as breed of horse, number of race dates, level of racing and generation of revenue. Specific make-up tactics applicable to any remaining funds will be identified, and will be the subject of a proposed amendment to the Annual Business Plan once racing resumes.