

Issued on 07 May 2024



INVITATION TO TENDER

**to provide consultancy services to
the British Horseracing Authority
Limited**

BHA Regulatory Funding Review



INTRODUCTION

ITT Purpose



- This Invitation to Tender (“ITT”) is being issued to Tenderers for the purpose of inviting Tenderers to submit a Proposal to the BHA for selection as a supplier of the Services.
- The ITT sets out details of the BHA Regulatory Funding Review (the “**Review**”).
- This ITT is provided to Tenderers for their sole use and for the sole purpose of assisting them to prepare and submit a Proposal in accordance with the requirements of the BHA in relation to this tender process. The information set out in this ITT is being made available on condition that it is used only in connection with the tender process and for no other purpose whatsoever.
- The BHA has taken all reasonable care to ensure that the information presented in this ITT is true and accurate in all material respects at the time of drafting. However, this ITT is not purported to be comprehensive nor to have been independently verified and the BHA does not accept any liability or responsibility for the accuracy, adequacy or completeness of the information set out within it nor shall it be assumed that such information will remain unchanged. The BHA reserves the right to abandon, amend or vary this ITT and any information contained herein at any time by means of written notice to each of the Tenderers.



Overview

A short overview of the contents of each section is set out below:

- ***Section One: Purpose of the Review and industry role of BHA and HBLB***
 - This section provides details of purpose of the Review, together with a brief description of the respective roles of the BHA and HBLB in the horseracing industry.
- ***Section Two: Statement of Requirements***
 - This section of the ITT sets out the detailed requirements of the BHA for the Services.
- ***Section Three: Instructions To Tenderers***
 - This section of the ITT describes the nature of the tender process, the anticipated timetable, the format in which Proposals are to be submitted and the information that Tenderers are required to include within their Proposals. Please note details of the conditions of tender are set out in Appendix 2, Tenderers should ensure they are comfortable with these conditions.
- ***Section Four: Award Criteria and Pricing Requirements***
 - The criteria by which Tenderers' bids will be assessed is set out here.
 - The Tenderer must provide a pricing proposal in response to the Statement of Requirements in accordance with the pricing requirements set out in this section.
- ***Section Five: Services Agreement pro forma***
 - This section sets out the standard form Services Agreement which will form the basis of the definitive agreement between the BHA and the chosen supplier. The Tenderer will be deemed to have accepted all of the provisions and the principles contained in this agreement unless they clearly identify any objections or qualifications to these provisions and principles.

Please note the Service Agreement is set out in Appendix 3.



The British Horseracing Authority

- The British Horseracing Authority (“BHA”) is responsible for the governance, administration and regulation of horseracing in Britain.
- Horseracing is the second biggest sport in the UK by a variety of measures and has a core direct economic footprint of over £1.5bn. It has a complex stakeholder landscape, encompassing diverse sporting, leisure, betting and rural activities and interests.
- Details of the BHA’s wide ranging regulatory and governance activities can be found on [What we do | British Horseracing Authority](#).
- There is no formal definition of what is regulatory, or governance activities and the BHA is required to anticipate and respond to evolving threats and challenges, by example recently particularly in areas of equine welfare and participant safeguarding,
- A summary of the BHA profit and loss over years 2018-2022 is set out in Appendix 5 which shows:
 - Total expenditure of £37m in 2022 (£34m in 2018)
 - Average employees of 294 of which c.75% are exclusively involved in regulatory activities with the remainder a mixture of governance activities and shared services.
- Of the regulated focused employees around 60% are racecourse officials to service c,1,500 annual fixtures. A typical fixture has a BHA officials' team of 10-12, but the biggest fixtures have larger teams.
- The BHA is funded primarily by a combination of payments from Britain’s 59 racecourses (largely levied via a per fixture charge) and the c.8,000 racehorse owners (for a wide of charges including registration, colours etc) and small amounts from participants, such as trainers.
- While the HBLB does not fund the BHA directly for regulation, it provides per fixture grants of c.£19m to racecourses which in turn the racecourses use to pay c.80% of the payments from racecourses to the BHA.



The Horserace Betting Levy Board

- HBLB is a UK statutory body that was established by the Betting Levy Act 1961. It is a non-departmental public body (NDPB), and its sponsoring Government department is the Department for Culture, Media and Sport.
- It is among the most important contributors to horseracing's finances via the collection of a statutory levy from the horseracing business of bookmakers, paid at 10% of the gross profit on their British horserace betting business. This currently generates around £100m Levy per year.
- The large majority of levy income is expended in direct support of horseracing. Its biggest payments are prize money grants (c.£70m) and support of regulation (£19m).
- Levy collected by HBLB under statutory authority is classified by Government as public money. This requires HBLB's compliance with or regard to a range of public sector reporting requirements and management responsibilities.

SECTION 2 - STATEMENT OF REQUIREMENTS

The Review consists of three Phases, with Phase 1 to be completed by the BHA to assist the selected Supplier as below.

Key work in each is shown in the table with detailed requirements set out below.

Please note that there are strong linkages between Phase 2 and 3, hence the timings shown are indicative, the Tenderers should indicate in their bid the degree to which they would carry out Phases 2 and 3 in parallel (in full or in part).

Phase	Description	Key Work	Indicative Timing
1	Desk-top review of BHA regulatory activity	TO BE PERFORMED BY THE BHA <ul style="list-style-type: none"> Financial analysis: Documentation of regulation approach; and Summary of previous relevant report Enable scope of Phase 2&3 Appendix 4 sets out the expected Phase 1 outputs that will be made available to the Supplier 	April to May
2	Assessment and Evaluation of BHA's Regulatory and Integrity Cost Base	<ul style="list-style-type: none"> Review of Phase 1 provided outputs BHA management meetings Raceday visits Targeted international racing benchmarking and other sports/regulators KPI development identify areas for improvement or optimisation and to make recommendations to increase impact or reduce costs Interim reporting 	June to August
3	Optimised Funding Model	<ul style="list-style-type: none"> Consider impact of Phase 2 findings Work closely with BHA and HBLB representatives Taxation implications to be considered Robust, transparent and proportionate regulatory activities funding model to be recommended Final Reporting (by 7 October) 	June to October

Methodology

- This ITT is not prescriptive regarding the Review methodology; hence it is for the Tenderer to set this out and explain the benefits of approach. As set out in Section 4, the methodology is one of the awarding criteria.
- There are however some factors the Tenderer should consider:
 - Meetings with industry bodies can be arranged if judged appropriate, it is noted the level of industry consultations is expected to be significantly less than if the Rules of Racing were being changed.
 - There are periods during the Review that are particularly busy for BHA staff, notably Royal Ascot (18-22 June).



Reporting

- Day to day reporting and communication with the BHA Review team, led by Alan Switzer.
- In addition to a Review Steering Group has established which the Supplier will be asked to attend for most/all meetings. It has the following features:
 - Comprised of BHA and HBLB representatives (five people in total).
 - Purpose to provide oversight, guidance, and decision-making authority throughout the Review life cycle.
 - Monthly meetings.
- It is also anticipated the final report will be presented to the HBLB and BHA Board meetings (expected to be 27 October but reporting earlier – likely 7 October).
- The Supplier may also be required to attend a small number of additional meetings with relevant industry bodies/committees.

Outputs

The following outputs are expected, but Tenderers have the opportunity to propose variations to the suggested outputs below:

- Interim report following the substantive completion of Phase 2.
- Final report.

The interim and final reports will remain confidential to the BHA and HBLB. An Executive Summary and the recommendations will be shared with stakeholders and may be made public, decision to taken in due course depending on the nature of findings and recommendations.





DETAILED REQUIREMENTS – PHASES 2 & 3

PHASE 2 - ASSESSMENT AND EVALUATION OF BHA'S REGULATORY AND INTEGRITY COST BASE

The work will involve meetings with BHA executives and team leaders. Racing's regulatory activities at race fixtures are both complex and unique hence it is assumed the Supplier will attend 1-2 race meetings to understand these activities.

Primary areas of focus

- Structure – is the operating model and associated organization structure of the BHA's regulatory activities effective and efficient, particularly within the context of the agreed industry strategy around fixtures?
- Risk identification and management– informed by Phase 1 analysis, how does the BHA determine the appropriate level of resources (people and activities) to respond to respective regulatory risks? For each area requiring BHA regulatory activity are there any improvements that could be made (e.g., use of technology)?
- Assess the BHA's regulatory model ability to deal with and adapt to key racing and market trends and hence make any recommended changes including by considering factors below (not an exhaustive list):
 - The ongoing need to protect Racing's social license, notably in regard to equine welfare and safeguarding of our people
 - Assessing the required level of integrity for different types of fixtures, i.e., terrestrial TV vs not, Premier Racing fixtures vs Core fixtures, high prize money vs low prize money, 1st fixture vs 4th fixture (as related to betting)
 - Evolving betting market risks including rise of illegal betting operators
 - Consideration of the potential for use of technology to enable further remote (i.e., off course) regulatory activities including stewarding and judging. Such consideration would need to consider the impact on risk, operational costs and any capital requirements. It is noted significant work has previously been carried out in this area and hence the review of this work is expected to form the initial basis of work in this area.

- Consider the relationship between BHA raceday officials and other stakeholders (including racecourses and RaceTech) and any recommend any improvements in efficiency including any changes in responsibility for key roles.
 - Technology – does the BHA deploy technology appropriately to mitigate regulatory risk and are there any opportunities in this respect? Note there is an existing BHA technology project in respect of bet monitoring which the Supplier should coordinate with.
- Definition of regulatory activities – how should the BHA and HBLB determine what BHA activities are regulatory and which are governance/other?
 - Pay levels and contracting model (including related raceday scheduling considerations) - as there are ongoing multi-discipline internal projects considering these important areas, the Supplier is not expected to carry out detailed work in these areas but should have an understanding of the work and be available to provide independent/critical friend views, including how they interact/relate to the recommendations in other areas.
 - Horizon scanning for evolving and new significant risks and the BHA's appropriate response, this may include identification of areas requiring future capital or other investment, from either BHA and/or other Racing stakeholders.
 - Targeted benchmarking of the regulatory model and key operational features of a maximum four major racing territories, expected to consist of a mix of publicly available and discussions with appropriate benchmark representatives. The Supplier will get further direction upon appointment.
 - Tenderers should provide details of any proposed benchmarking with other UK sporting regulators and/or other industry regulators. It is not expected this is detailed benchmarking, instead focused on any relevant operational or funding considerations. By way of a guide the proposed benchmarking should not exceed more than five consulting days. Note both international racing and sports/regulator work should consider any funding model learnings.
 - Recommend a clear set of manageable and relevant KPIs / measures (qualitative and quantitative) for HBLB and BHA to adopt that provide appropriate insight and assurance as to the use of HBLB funding and against which the BHA should report its performance on an ongoing basis.



Excluded items

The following areas/topics are excluded due to either being either very specialist, subject of an ongoing or recent internal and/or external reviews or other factors.

- Structure and composition of the Judicial Panel - extensive external and recently completed internal review.
- Rules of Racing - a very specialist area and hence for the BHA in conjunction with stakeholders to determine.
- LGC anti-doping contract - absolute spend levels are committed, although it may be appropriate to consider how the overall spend is allocated (e.g., by type of test).

PHASE 3 - OPTIMISED FUNDING MODEL

To consider and determine the optimum funding model for the BHA's total regulatory activities. This should be considered from first principles (with due regard to appropriate legal and financial considerations) to address and incorporate any outputs or recommendations made under Phase 2.

It is important to note that in parallel with this Review the BHA will be performing a review of the funding model for non-regulatory activities. The Supplier will therefore be required to work particularly closely with the BHA and HBLB in this Phase.

Specific aspects to be considered:

- How should the funding be monitored and reported on, including the use of KPIs (as identified in Phase 2)?
- Lessons from Phase 2 benchmarking.
- The impact of the changing mix of regulatory, governance and shared services of the BHA, including on appropriate balance of HBLB funding of regulatory activities compared to other fundings sources – whether from racecourses and/or participants or other sources.
- Implication of the Horseracing Industry Strategy, including the People Strategy.
- Capital investment – how should any required capital investment by BHA or other Racing stakeholders be dealt with?
- The HBLB funding calendar including the current consideration of significant changes.
- Multi-year – examination of the potential for multi-year awards including how such awards would be managed for changing circumstances, unexpected adverse events, emerging threats etc.
- Option of direct funding of BHA by the HBLB (compared to current indirect approach via the racecourses).
- Taxation – when considering alternative models, the high-level taxation implications should be addressed including corporate taxation and recoverability of VAT with view to funding model being tax efficient for the sport. Please note detailed tax advice is not expected at this stage.



SECTION 3: INSTRUCTIONS TO TENDERERS

TENDER PROCESS

Process overview

The tender process leading to the award of supplier status is intended to take place in the following phases subsequent to the publication of this ITT. A summary of the key activities within each phase of the tender process is set out below:

1. Proposal Stages

- **Stage One** of the tender process will begin with the publication of this ITT and conclude with the submission of Proposals by Tenderers. The principal activities within this phase include:
 - a Tender Questionnaire to be returned by 16 May if the Tenderer intends to tender (Appendix 1). It is important to note that all Tenderers may not be invited to continue in the tender process following the submission of the Tender Questionnaire;
 - following receipt of satisfactory Tender Questionnaire, the option for a Tenderer to have a 30-minute telephone call with members of the BHA Review team – from issue of ITT to 17 May;
 - Clarification questions submitted via email to regulatorytender@britishhorseracing.com by 17 May, responses provided to Tenderers that have submitted satisfactory Tender Questionnaires by 22 May;
 - the preparation and submission of Proposals by Tenderers 29 May.

- **Stage Two** of the tender process will involve:
 - Evaluation of submitted Proposals;
 - Selection of Shortlisted Proposals (expected 2-3 Tenderers) – successful firms expected to be notified by 31 May;
 - Presentation of Shortlisted Tenderers to Review Steering Group consisting of representatives of BHA and HBLB. Expectation that this will be in person presentation and take place week commencing 3 June. Tenders to have opportunity to provide best and final offers;
 - Selection of preferred bidder by the BHA by 7 June;
 - Financial/commercial/contractual meetings with Tenderer to discuss, negotiate and develop the contractual documentation associated with the tender process.

This stage shall continue until the BHA is satisfied that it has identified and defined its requirements with sufficient precision to enable selection of the supplier that it requires.

Indicative timetable

Event	Target Date
Issue ITT	7 May
Tender Questionnaire to be submitted	17 May
Clarification questions submitted	22 May
Clarification questions - responses circulated	17 May
Submission of Proposals for those suppliers with satisfactory Tender Questionnaires	29 May
Evaluation of Proposals to determine shortlisted Proposals	31 May
Shortlisted Tenderers to present to Steering Group	w/c 3 June
Appointment of supplier and contract sign off	7 June
Final report from chosen supplier	7 October

Tender Questionnaire and Proposal submission

- Tenderers are required to submit their Tender Questionnaires to regulatorytender@britishhorseracing.com by no later than 4pm on 17 May 2024.
- Proposals and any other supporting documentation shall be submitted to regulatorytender@britishhorseracing.com by no later than 4pm on 29 May 2024.
- All Proposals and the contents of the same will become the property of the BHA on receipt. The BHA may, at its own absolute discretion, extend the date for the submission of Proposals. Any extension so granted will be notified to all Tenderers as soon as possible.
- The BHA reserves the right to seek clarification of any aspect of any Proposal at any time. Where the BHA requires a Tenderer to clarify its Proposal then a request for clarification shall be submitted in writing to the individual identified in the Proposal as the authorised representative of the Tenderer. Unless otherwise stated, Tenderers will be required to respond to any and all requests for clarification in writing within three working days of the date of issue of the relevant request for clarification.



Clarification Requests

- The BHA will respond to all reasonable requests for clarification of any aspect of this ITT. It is stressed that except in respect of minor points of detail or clarification, all clarification requests must be submitted in writing and that written responses must be secured as a prerequisite to a Tenderer placing any reliance upon any responses. All clarification requests must be submitted electronically to regulatorytender@britishhorseracing.com.
- If the BHA believes that the response to a clarification request is likely to be of general interest to all Tenderers, then the response will be issued to all Tenderers on a uniform basis unless expressly stated otherwise. If a Tenderer wishes the BHA to treat a matter as confidential then this must be stated, and the BHA will consider all such requests and will contact the Tenderer concerned if reluctant to comply with the request. If in the opinion of the BHA a clarification request is not considered confidential, then the Tenderer will have the opportunity to withdraw the request.
- Information given orally will not be considered valid unless and until it has been confirmed specifically in writing. No want or lack of knowledge will be excused following the submission of a Proposal should a Tenderer fail to comply with this provision. In addition, no contractual reliance shall be placed on queries and responses. The BHA will use its reasonable endeavours to give complete and accurate answers to clarification requests but will not give any express or implied warranty as to the accuracy of information supplied.

Information Requirements

Introduction

All Proposals submitted must be fully paginated with an index, annotated and cross-referenced as appropriate. Any additional submissions must be numbered, and a list should be included within the index.

Submission structure

Tenderers must provide their Proposal, containing all of the information requested in this ITT. There is no prescribed structure or page limits, but Tenderers are encouraged to restrict their bids to a reasonable size.

Other confirmations

Tenderers are required to confirm that they will be able to meet the timetable set out in the Indicative Timetable section above. Tenderers are also required to provide full details of the form and timing of any due diligence that will need to be conducted by the Tenderer.

SECTION 4: AWARD CRITERIA AND PRICING

Award Criteria

The table below sets out the criteria and associated weighting that will be used to assess the bids. The scoring will be used to determine the shortlisted Tenderers and will then be updated following the Tenderers presentations to determine the preferred Supplier.

Criteria	Details	Weighting
Experience (including team)	<p>Relevant experience and expertise including of the operations and funding of regulators from sport and other industries.</p> <p>Previous work in British and other major racing nations and other sports regulators/entities.</p> <p>Previous projects involving consideration of skilled specialist workforce, the appropriate use and opportunities of technology and assessment/management of risk.</p> <p>A proposed team made up of individuals with relevant skills and experience and ideally having worked on projects identified by the Tenderer as particularly relevant.</p> <p>A team that demonstrates the ability to work collaboratively and flexibly with clients and other parties.</p>	40
Understanding of the Review	<p>Demonstrate a deep understanding of the Review, encompassing its purpose, the nature of the entities involved (notably BHA and HBLB), the dynamic nature of the regulatory environment and need for recommendations to be made in context of long-term sustainability of the sport (including societal pressures).</p>	20
Methodology	<p>Clarity and feasibility of the proposed approach, with a range of tools and where appropriate innovation.</p> <p>Able to evidence how practical recommendations will be identified, at least some capable of being implemented for the 2025 funding cycle.</p>	20
Value for money	<p>The pricing information required is set out below, and it is noted the strong preference for a fixed price contract.</p> <p>While the relative bid pricing between Tenderers will form part of the scoring, the assessment will also consider the proposed team in context of the stated fee.</p>	20
	TOTAL	100

Pricing

1. Tenderers must provide full details of the costs associated with this Proposal.
2. While tenderers are free to propose pricing on a fixed price or time rate basis the BHA's very strong preference is for a fixed price, and this will be reflected in the scoring of value for money.
3. It would be helpful for the BHA to see costs broken down as far as possible to ensure transparency of pricing i.e. by position/ rate.
4. Any costs not highlighted in the Proposal will not be accepted at a later date. Please therefore include the full costs for all services offered, whether core or ancillary.
5. Pricing should remain valid for at least 60 days from the due date of tender return.
6. Prices should be quoted in GBP and excluding VAT.
7. Any assumptions/ dependencies identified by the Tenderer in developing its pricing proposal must be clearly stated in the Proposal together with the consequences of the assumptions and/ or dependencies not being fulfilled. The Proposal shall not be subject to any unstated assumptions.

SECTION 5: SERVICES AGREEMENT

The Services Agreement set out in Appendix 3 included in represents the minimum contract obligations that will form the basis of the definitive agreement between the BHA and successful supplier. Such Services Agreement may be amended and expanded as deemed necessary at the BHA's sole discretion depending on the outcome of the ITT process.

A data protection clause will be added once the scale of supplier processing is understood more fully during the ITT process.

Unless stated otherwise in the Proposal, the Tenderer shall be deemed to have accepted all of the provisions of the Services Agreement.

APPENDICES

APPENDIX 1 - TENDER QUESTIONNAIRE

APPENDIX 2 - CONDITIONS OF TENDER PROCESS

APPENDIX 3 - BHA SERVICES AGREEMENT

APPENDIX 4 - PHASE 1 DESK-TOP REVIEW OUTPUTS

APPENDIX 5 - SUMMARY BHA FINANCIALS 2018-2022



APPENDIX 1 – TENDER QUESTIONNAIRE

Tenderer Notes

Purpose

The purpose of this questionnaire is to assist the BHA in managing the tender process for the provision of consultancy services.

Please answer every question. If the question does not apply to you, please write "N/A". If you do not know the answer, please write "Not known".

In respect of the Conflicts of Interest questions, it is understood that identification of any such relationships can take some time and hence bidders can submit an initial form making clear the process is underway and provide an updated form in advance of submitting a Proposal.

1	BASIC DETAILS OF YOUR ORGANISATION		
1.1	Name of the organisation in whose name the tender would be submitted:		
1.2	Contact name for enquiries about this bid:		
1.3	Contact position (Job Title):		
1.4	Address: Post Code:		
1.5	Telephone number:		
1.6	E-mail address:		
1.7	Company Registration number (if this applies):		
1.8	Is your organisation: (Please tick one)	i) a public limited company	
		ii) a limited company	
		iii) a partnership	

		iv) a limited liability partnership	
		iv) a sole trader	
		v) other (please specify)	
2	CONFLICT OF INTEREST		
2.1	Please confirm that you have carried out a conflict of interest search and the results of that search: (please tick one)	(i) no conflicts would arise from you being engaged to deliver the Services;	
		(ii) further checks and consents are required;	
		(iii) other. (please provide details)	
2.2	Please identify if there are any other relationships your firm or relevant staff have with the BHA or other third parties which should be taken into consideration.		

APPENDIX 2 - CONDITIONS OF TENDER PROCESS

Glossary of Terms

BHA means the British Horseracing Authority Limited;

Proposal means the formal proposal submitted in response to this ITT where the Tenderers respond formally to the Statement of Requirements, make such proposals as they consider may enhance their bid to be selected as supplier and provide any comments on the Services Agreement;

Services means the supply of the services detailed in the Statement of Requirements;

Services Agreement means the agreement to be entered into between the BHA and the Tenderer;

Statement of Requirements means the specific requirements for the Services as set out in Section Two of this ITT;

Tenderer means the person or persons, firm or firms, or company or companies that have been provided with a copy of this ITT and are now invited to tender.

1. The following conditions apply to this tender process:

Applicable law

- 1.1 This ITT shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any matter or dispute arising out of or in connection with this document and the tender process.

Costs

- 1.2 Each Tenderer will be liable for its own costs and expenses in relation to the preparation and submission of any Proposal and the conduct of any discussions with the BHA during the tender process. For the avoidance of doubt, the BHA has no obligation whatsoever to reimburse any Tenderer in respect of any costs or any economic or other loss incurred by it either in the preparation and submission of any Proposal or arising from clarifications and discussions with the BHA in connection with its participation in the tender process, regardless of whether or not the Tenderer is successful in the tender process.

Conflict of Interest

- 1.3 The Tenderer must declare any potential conflict of interest that may impact or be perceived to impact on its ability to provide the Services.

Canvassing

- 1.4 Direct or indirect canvassing by any Tenderer or its advisers in relation to the tender process or any attempt to obtain information from any of the agents or employees of the BHA or their appointed advisers concerning another Tenderer or the tender

process, that has not been invited by the BHA, may result in disqualification from further participation in the tender process.

Collusion

- 1.5 Any attempt by any Tenderer or its advisers to influence the tender process in any way will result in disqualification from further participation in the tender process. In particular, Tenderers and their advisers shall not directly or indirectly at any time:
- fix or adjust the amount or content of any Proposal in accordance with any agreement or arrangement with any other person, other than in good faith where such other person is a proposed partner or adviser; or
 - communicate to any person other than the BHA, or seek or obtain from such other person, information about the content of any Proposal other than in good faith to obtain quotations for supplies, services or finance.

Confidentiality

- 1.6 The Tenderer agrees to keep confidential all information which has either been designated as confidential by the BHA in writing or that ought to be considered confidential including commercially sensitive information, information which relates to the business and affairs of the BHA (and their employees, service providers, agents, professional advisers and representatives) and all information which the Tenderer receives or obtains as a result of its involvement in the tender process (“**Confidential Information**”).
- 1.7 Accordingly, the release of Confidential Information to the Tenderer during the tender process is conditional upon:
- 1.7.1 the Tenderer taking all steps necessary to prevent the Confidential Information from being disclosed to the public or any third party or coming by any means into the possession of any third party;
 - 1.7.2 this confidentiality undertaking being binding upon the Tenderer and all of its officers, employees, servants, agents or professional advisers (together "Relevant Persons");
 - 1.7.3 the Tenderer using the Confidential Information solely for the purpose of evaluating whether or not to enter into an agreement with the BHA in relation to the subject of this tender process or to perform any obligations which the Tenderers may undertake with the BHA relating to the subject of this tender process, and neither the Tenderer nor any Relevant Person shall use any of the Confidential Information for any other purpose whatsoever;
 - 1.7.4 the Tenderer not using or disclosing or permitting the disclosure by any person of any of the Confidential Information for the benefit of any third party;
 - 1.7.5 the Confidential Information and its circulation shall be restricted to circulation and disclosure to individuals whose access to such Confidential Information is strictly necessary for the purpose as set out above;
 - 1.7.6 the Tenderer keeping all materials containing Confidential Information in a secure place and returning them to the BHA immediately on termination of

the discussions relating to this tender process or upon the request of the BHA; and

1.7.7 the Tenderer undertaking to indemnify and keep the BHA at all times fully indemnified from and against any loss, actions, proceedings, claims, demands, costs, (including, without prejudice to the generality of this provision, legal costs of the BHA), awards and damages howsoever arising directly or indirectly as a result of any breach or non-performance by the Tenderer or any Relevant Persons of any of the confidentiality obligations in this Section.

1.8 In the event that the Tenderer is unable to comply with the foregoing, the Tenderer should notify the BHA immediately following receipt of this ITT and, in the event of any inability by the Tenderer and the BHA to agree confidentiality terms, the BHA shall be entitled to require the Tenderer to withdraw from this tender process.

1.9 This provision shall not apply to any Confidential Information received by the Tenderer from the BHA: (a) which is or becomes public knowledge (otherwise than by a breach of this provision); or (b) which was in the possession of the Tenderer, without restriction on its disclosure, before receiving it from the BHA; or (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (d) is independently developed without access to the Confidential Information.

Copyright

1.10 Tenderers are reminded that the copyright in the documentation and any other materials supplied by the BHA and/or its advisers in this tender process, in whatever format, belongs to the BHA or their appointed advisers. Such documentation and materials may not, either in whole or in part, be copied, reproduced, distributed or otherwise made available to any other third party or used without the prior written consent of the BHA except in relation to the preparation of Proposals in the course of the tender process. All documentation supplied by the BHA in relation to this tender process must be returned on demand, without any copies being retained by the Tenderer.

Disqualification

1.11 A Tenderer that contravenes any of the terms and conditions set out in this ITT may, at the sole discretion of the BHA, be disqualified and prohibited from any further participation in the tender process.

Publicity

1.12 No publicity in relation to the tender process or the award of a contract will be permitted unless and until the BHA has given express prior written consent to the relevant communication. In particular, no statements should be made to the press or other similar organisations regarding the nature of the tender process, its contents or any proposals relating thereto without the express prior written consent of the BHA.

- 1.13 The BHA retains the right to publicise or otherwise disclose to any third party, information in relation to the tender process, the list of Tenderers applying to become a supplier and the award of supplier status at any time.

Third Parties

- 1.14 Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

Disclaimer

- 1.15 Each Tenderer must rely on its own enquiries and on the ensuing Services Agreement, as and when finally executed, subject to such limitations and restrictions as may be specified in such Services Agreement. Neither the issue of any documentation in the tender process nor any of the information presented in it should be regarded as a commitment or representation on the part of the BHA or any other person to enter into a contractual arrangement.
- 1.16 Although it is currently anticipated that the remainder of the tender process will take place in accordance with the provisions of this ITT, the BHA reserves the right to vary, amend or terminate the tender process by notice in writing at any time. Under no circumstances will the BHA or their appointed advisers accept any liability arising out of or in respect of the tender process, the award procedure or any variation or amendment to the tender process. No implied or quasi contract between the BHA and the Tenderers will arise as a result of this ITT or other document or instructions issued to Tenderers in the context of this tender process.
- 1.17 Neither the BHA nor any of their appointed advisers will be liable or responsible for any opinion, statement, or conclusion contained in, or any omission from, this ITT or for any other written or oral communication transmitted or otherwise made available to any Tenderer during the tender process. No representation or warranty is made in respect of such statements, opinions or conclusions, and neither the BHA nor their appointed advisers shall accept any liability for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of any reliance upon such statements, opinions or conclusions. In the absence of any express written warranties or representations as provided for in the Services Agreement neither the information in this ITT nor any other information provided by the BHA or their appointed advisers shall be deemed to constitute a contract or be used in construing any such contract.
- 1.18 The only information that shall have any legal effect or on which any person may rely will be the information specifically and expressly represented or warranted in writing to the Tenderer. For the avoidance of doubt, only the terms of the Services Agreement as and when executed will have any legal effect in connection with the matters to which this tender process relates.
- 1.19 Nothing contained in this ITT or any information supplied by or on behalf of the BHA during the tender process is, or shall be relied on, as a representation of fact or promise as to the future. Any summaries or descriptions of documents or contractual arrangements set out in any part of this ITT or tender process cannot be and are not intended to be comprehensive, nor any substitute for the underlying documentation

(whether already existing or to be drafted in the future), and are in all respects qualified by reference thereto.

- 1.20 The BHA does not make any commitment to award supplier status to a Tenderer as a result of this tender process or otherwise, nor to accept any Proposal. Nothing in this tender process shall be deemed or construed to constitute a warranty or representation or contract that the tender process will be conducted in accordance with the timetable or procedures set out in this ITT or subsequently during the tender process.

Definitions

- 1.21 Capitalised words and expressions used in this ITT shall have the meanings assigned to them in the Glossary of Terms above unless the context specifically requires otherwise. It should also be noted that references to the singular include the plural and vice versa.

Acceptance

- 1.22 The participation in the tender process by each Tenderer shall constitute and imply its agreement to and full acceptance of the provisions of this ITT. Any attempt to qualify any of the provisions of this ITT may result in a Tenderer being disqualified.

APPENDIX 3 – BHA SERVICES AGREEMENT

Dated

(1) BRITISH HORSERACING AUTHORITY LIMITED

and

(2) THE SUPPLIER

SERVICES AGREEMENT

SUBJECT TO CONTRACT – NOT CAPABLE OF ACCEPTANCE

THIS AGREEMENT IS MADE ON

PARTIES

- (1) **BRITISH HORSERACING AUTHORITY LIMITED** a company incorporated in England and Wales under registration number 2813358, whose registered office is at Holborn Gate, 26 Southampton Buildings, London, WC2A 1AN (the **Customer**); and
- (2) [**SUPPLIER**] a company incorporated in [England and Wales] under registration number [*to be inserted*], whose registered office is at [*full address to be inserted*] (the **Supplier**),

each a **Party** and together the **Parties**.

BACKGROUND

- (A) The Customer is the governing and regulatory body for horseracing in Great Britain and wishes to conduct a review of [TBD].
- (B) The Supplier is in the business of [*insert details*]. The Customer wishes to engage the Supplier to provide certain Services to the Customer on the terms and conditions of this Agreement.

AGREED PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms and expressions shall have the following meaning:

Applicable Law means all applicable laws, regulations, rules, codes of practice, guidelines, directions and decrees imposed by law or any competent authority in any jurisdiction within the United Kingdom;

Charges means the charges set out in Schedule 2 and payable to the Supplier in accordance with the provisions of Clause 6 (Charges);

Confidential Information means in relation to each Party, all information of a confidential nature relating to the business and/or operations of that Party (whether such information is disclosed in writing, by delivery of items, orally, by visual presentation, by means of providing access to such information (when, for example, the information is contained on a database or otherwise) including but not limited to:

- (a) any such information subsisting in any Intellectual Property Rights of either Party;
- (b) any such information which is commercially sensitive or price sensitive;
- (c) the business, finances, systems or other affairs of the other Party; and
- (d) the provisions and subject matter of this Agreement;

Customer Materials means all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services;

Deliverables means any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in Schedule 1 and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services;

Effective Date means [the date of signature of this Agreement] or [*other date to be inserted*];

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a nationally recognised company engaged in the same type of activity under the same or similar circumstances;

Intellectual Property Rights means (i) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, knowhow and Confidential Information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) all applications, extensions and renewals in relation to any such rights;

Services means the services described in Schedule 1;

Term means the duration of this Agreement;

VAT means value added tax as defined in the Value Added Tax Act 1994 (and legislation supplemental to it) and including any other tax from time to time replacing it or of a similar fiscal nature, or its equivalent charged in other jurisdictions, and any interest or penalties in respect thereof.

- 1.2 References to **Schedules** are to the schedules of this Agreement, references to **Clauses** are to clauses in the main body of this Agreement and references to **Paragraphs** are to paragraphs of the Schedules.
- 1.3 The Clause and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 1.5 Any reference to persons includes natural persons, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations, local authorities, governments, states, foundations and trusts (in each case whether or not having separate legal personality) and any agency of any of the above.
- 1.6 Any phrase introduced by the expressions "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7 Any reference to a statute, statutory provision or subordinate legislation (**Legislation**) (except where the context otherwise requires) shall be: (a) deemed to include any bye laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that Legislation; and (b) construed as referring to any Legislation which replaces, re-enacts, amends or consolidates such Legislation (with or without modification) at any time.

1.8 In the event of any conflict or inconsistency between a Clause of the main body of this Agreement and a Paragraph of any of the Schedules to this Agreement, the Clause(s) of this Agreement shall take priority as between them to the extent that is necessary to resolve the conflict or inconsistency.

2. **COMMENCEMENT AND TERM**

2.1 This Agreement shall commence on the Effective Date and shall continue until the Services are complete in accordance with Schedule 1 whereupon it will automatically terminate unless it is terminated previously in accordance with the provisions of Clause 11 (Termination).

3. **SUPPLY OF THE SERVICES**

3.1 The Supplier shall provide the Services and Deliverables:

3.1.1 in accordance with Schedule 1;

3.1.2 using all due skill and care;

3.1.3 in accordance with Good Industry Practice;

3.1.4 in accordance with the instructions of the Customer and the Customer's authorised representatives from time to time.

4. **PERSONNEL**

Personnel issues

4.1 The Supplier shall procure that there shall at all times be a sufficient number of staff engaged in the provision of the Services with the requisite level of skill, experience, training and accreditation.

4.2 The Supplier shall use suitable, appropriately qualified, experienced and competent personnel in the provision of the Services and shall procure that all such persons conduct themselves in a courteous and professional manner.

4.3 The Customer shall have the right to refuse admission to, or order the removal from the performance of, the Services of any person employed or engaged by the Supplier who, in the reasonable opinion of the Customer:

4.3.1 is not a fit and proper person to be on the premises or engaged in the provision of the Services; or

4.3.2 is not performing properly or effectively their role in the performance of the Services.

4.4 Action taken under Clause 4.3 shall forthwith be confirmed in writing by the Customer to the Supplier and shall not relieve the Supplier of any of its obligations under this Agreement.

5. **BHA RESPONSIBILITIES**

5.1 The Customer shall use reasonable endeavours to:

5.1.1 provide the Supplier with access to information within the Customer's possession and control which is reasonably required by the Supplier for the purpose of providing the Services;

5.1.2 make available to the Supplier on reasonable notice for consultation and guidance staff who are familiar with the organisation and operations of the Customer to the extent reasonably necessary for the provision of the Services; and

5.1.3 co-operate with the Supplier to such extent as is reasonably practicable and necessary to enable the Supplier to provide the Services.

6. **CHARGES**

6.1 In consideration of the satisfactory provision of the Services, the Customer shall pay the Charges in the manner and at the times set out in this Clause 6 and Schedule 2.

6.2 [PROVISION ON EXPENSES TBD WITH SUPPLIER].

6.3 The Charges shall be invoiced as set out in Schedule 2 and the Customer shall pay all sums due to the Supplier within thirty (30) days of the date of receipt a valid invoice.

6.4 All sums due to the Supplier under this Agreement are exclusive of VAT thereon, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Customer against receipt from the Supplier of a valid VAT invoice in respect thereof.

6.5 If the Customer fails to make payment in accordance with this Clause 6 then the Supplier shall be entitled to charge interest on the overdue amount at a rate of two percent (2%) above the base rate of Barclays Bank plc from time to time in force from the date on which such amount fell due until payment, whether before or after judgment.

6.6 The Supplier shall, except as otherwise expressly provided for in this Agreement, be responsible at its own cost for providing the facilities, personnel and other resources, including any consumables, as required by the Supplier in providing the Services.

6.7 If following receipt of any invoice the Customer notifies the Supplier in writing of a bona fide dispute concerning the Charges payable under such invoice (indicating in such notice the basis for its dispute), then the Customer shall pay any undisputed amount but shall be entitled to withhold the amount in dispute pending resolution. For the avoidance of doubt, the Supplier's obligations to provide the Services shall in no way be affected by any dispute in relation to the Charges or payment of them.

7. **WARRANTIES**

- 7.1 The Supplier represents and warrants to the Customer that:
- 7.1.1 it has all requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated therein;
 - 7.1.2 the entering into and performance of its obligations under this Agreement have been duly authorised by all necessary corporate action on its part;
 - 7.1.3 it has obtained all consents, permissions and licences necessary to enable it to perform its obligations under this Agreement;
 - 7.1.4 it shall perform the Services in accordance with the provisions of this Agreement;
 - 7.1.5 it will at all times act in good faith towards the Customer and shall not make and shall procure that none of its employees, officers or agents make any defamatory or derogatory statements about, or take part in any activities in any manner which might be considered to be derogatory or detrimental to the reputation of the Customer, the sport of horseracing or the persons competing, officiating, performing or participating at or in horseracing events;
 - 7.1.6 it shall co-operate fully and in good faith with the Customer, the Customer's employees, authorised representatives and agents, and any third party suppliers to the Customer;
 - 7.1.7 it will not publicly associate itself with the Customer except in accordance with the terms of this Agreement; and
 - 7.1.8 the receipt and use of the Services and the Deliverables (excluding the Customer Materials) by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 7.2 If there is a breach of any of the warranties in Clause 7.1 above, the Supplier shall ensure that the breach is remedied as a matter of urgency at no cost to the Customer. Failure to remedy (if capable of remedy) such a breach in order to comply with Clause 7.1 above within seven (7) days of notification by the Customer shall constitute

a breach of this Agreement entitling the Customer to terminate this Agreement in accordance with Clause 11 (Termination).

8. **INTELLECTUAL PROPERTY**

8.1 In relation to the Customer Materials:

8.1.1 the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

8.1.2 the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term for the purpose of providing the Services to the Customer.

8.2 The Customer shall own all right, title and interest, including Intellectual Property Rights, in and to any Deliverables.

8.3 To the extent that any such right, title and interest in and to any Deliverables does not vest in the Customer by operation of Applicable Law, the Supplier hereby irrevocably assigns to the Customer as at the date of creation all of its rights, title and interest (including all Intellectual Property Rights) in and to any such Deliverable without further consideration and such assignment shall also be an assignment (in respect of any copyright existing therein) of future copyright pursuant to section 91 of the Copyright, Designs and Patents Act 1988 or equivalent provision in any relevant jurisdiction.

9. **INDEMNITIES**

9.1 The Supplier shall indemnify and keep indemnified the Customer, its employees and its agents against any costs, claims, damages, losses, expenses and fines, including legal fees, costs and other expenses reasonably incurred in connection with such costs, claims, damages, losses, expenses and fines which the Customer suffers which arise as a result of:

9.1.1 any use by the Supplier of any of the Customer's Intellectual Property Rights in breach of the provisions of this Agreement;

9.1.2 any claim that the use by the Customer of any Intellectual Property Rights in the Deliverables in accordance with the terms of this Agreement infringes the Intellectual Property Rights of any third party;

9.1.3 any claim brought against the Customer in respect of injury, death, loss or damage of any type suffered by a third party where such injury, death, loss or damage has resulted from any act(s), omission(s) and/or negligence of the Supplier or any of its subcontractors, employees or agents; or

9.1.4 any breach of confidentiality by the Supplier including any breach of Clause 10 (Confidentiality).

10. **CONFIDENTIALITY**

10.1 Each Party undertakes to keep confidential any Confidential Information relating to the other Party which it obtains under or in connection with this Agreement and not to use

such information or disclose it to any other person, other than as permitted under this Clause 10.

10.2 The restriction contained in Clause 10.1 shall continue to apply for the Term and for a period of two years after the expiry or termination of this Agreement.

10.3 Each Party may disclose any Confidential Information which relates to the other Party to:

10.3.1 any of its directors, employees, advisers and agents; or

10.3.2 where necessary for the provision of the Services, any subcontractor of the Supplier,

provided that such information is disclosed solely for the purposes of this Agreement and provided that the disclosing Party ensures that such recipient executes a confidentiality undertaking in favour of the other Party on terms which are no less restrictive than those set out in this Clause 10.

10.4 Clause 10.1 shall not apply to the disclosure of Confidential Information:

10.4.1 with the consent of the person to whom the information relates; or

10.4.2 if and to the extent:

(a) required by Applicable Law; or

(b) required by any competent regulatory authority or recognised stock exchange; or

(c) that such information is in the public domain other than through breach of this Clause 10,

provided that any Confidential Information shall only be disclosed pursuant to Clauses 10.4.2 (a) or 10.4.2 (b) above by either Party after notification to the Party to which the information relates if such notification is practicable in the circumstances.

11. **TERMINATION**

11.1 The Customer may (without prejudice to its other rights and remedies) terminate this Agreement either in whole or in part by giving written notice to the Supplier:

11.1.1 if the Supplier commits a material breach of this Agreement and (in the case of a remediable breach) fails to remedy the breach within a reasonable period of time specified by the Customer but in any event within thirty days of being notified in writing of the breach; or

11.1.2 if the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or

- 11.1.3 if the Supplier becomes unable to pay its debts (within the meaning of section 123(1)(e) or (2) of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent; or
- 11.1.4 if a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Supplier; or
- 11.1.5 if an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed to the Supplier and/or over all or any part of the assets of the Supplier; or
- 11.1.6 if the Supplier enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or
- 11.1.7 if anything equivalent to any of the events or circumstances stated in Clauses 11.1.3 to 11.1.6 inclusive occurs in any applicable jurisdiction; or
- 11.1.8 in accordance with Clause 7.2 (Breach of Warranty); or
- 11.1.9 in accordance with Clause 14 (Force Majeure),

and any such termination shall take effect either immediately or at such other date as may be specified in the notice.

12. **CONSEQUENCES OF TERMINATION**

12.1 On expiry or termination of this Agreement:

- 12.1.1 each Party shall return to the other all Confidential Information of the other which it may have in its possession or at the other Party's request, destroy the same; and
- 12.1.2 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all of the Customer Materials;
- 12.1.3 the rights and obligations of the Parties under this Agreement which are intended to continue beyond the termination or expiry of this Agreement (including those under this Clause 12 and Clauses 1 (Definition and Interpretation), 8 (Intellectual Property), 9 (Indemnities), 10 (Confidentiality), 13 (Limitation of Liability), 19 (General) and 20 (Governing Law and Jurisdiction)) shall survive the termination or expiry of this Agreement.

13. **LIMITATION OF LIABILITY**

13.1 Nothing in this Agreement shall operate to limit or exclude either Party's liability to the other for:

- 13.1.1 death or personal injury caused by that Party's negligence;
- 13.1.2 fraudulent misrepresentation or fraudulent concealment; or

- 13.1.3 any liability which cannot be limited or excluded by Applicable Law.
- 13.2 Nothing in this Agreement shall operate to limit or exclude the Supplier's liability to the Customer for:
 - 13.2.1 any loss of or damage to property owned by the Customer or any other property owned by third parties where such loss or damage has resulted from any act(s) and/or omission(s) by the Supplier or any of its subcontractors, employees or agents;
 - 13.2.2 any wilful default or abandonment in respect of this Agreement by the Supplier;
 - 13.2.3 any liability under Clause 9 (Indemnities); or
 - 13.2.4 any liability under Clause 10 (Confidentiality).
- 13.3 Subject to Clauses 13.1 and 13.2 above, the Supplier's total aggregate liability for all claims arising under or in connection with this Agreement regardless of form of action and whether in contract, tort, warranty, or other legal or equitable grounds (including in each case negligence), shall under no circumstances exceed the sum of two hundred percent (200%) of the Charges.

14. **FORCE MAJEURE**

- 14.1 For the purposes of this Clause 14, a **Force Majeure Event** means an event the occurrence of which is beyond the reasonable control of either Party to this Agreement, including (without limitation) the following: Act of God, war, epidemic or pandemic, explosions, fires, floods, tempests, earthquake, insurrection, riot, civil disturbance, rebellion, strike, lock-out or labour dispute but not a strike, lock-out or labour dispute involving the Party relying on this Clause 14.
- 14.2 If a Force Majeure Event occurs which prevents a Party to this Agreement (the **Affected Party**) from performing any of its obligations to the other (the **Other Party**), or causes a delay in performance, the Affected Party shall not be liable to the Other Party and shall be released from its obligations to the extent that its ability to perform such obligations has been affected by the Force Majeure Event, provided that:
 - 14.2.1 in the case of the Supplier, the lack of ability to perform the obligations caused by the Force Majeure Event could not have been prevented by reasonable precautions;
 - 14.2.2 the Affected Party notifies the Other Party in writing as soon as reasonably practical of the occurrence of the Force Majeure Event and the nature and likely duration of its impact upon the Other Party;
 - 14.2.3 the Affected Party takes all reasonable steps to mitigate the impact of the Force Majeure Event on the Other Party and in particular continues to perform those obligations affected by the Force Majeure Event but whose performance has not been rendered impossible to the highest standard reasonably practicable in the circumstances; and

14.2.4 the Affected Party resumes normal performance of all affected obligations as soon as the impact of the Force Majeure Event ceases, and notifies the Other Party in writing of such resumption.

14.3 If the impact of the Force Majeure Event upon the Affected Party prevents it from performing a substantial part of its obligations under this Agreement, the Other Party may, by written notice, terminate this Agreement either in whole or in part (in respect of all or some of those Services which have been affected by the Force Majeure Event) with immediate effect and without liability to the Affected Party.

15. ANNOUNCEMENTS AND PUBLICITY

15.1 Unless specifically agreed in writing by the Parties under the terms of this Agreement or required by Applicable Law, by relevant regulations, or by a recognised stock exchange, neither Party may make any public announcement or undertake in any publicity or advertising in respect of the subject matter of this Agreement. No announcement which is permitted under this Clause 15 shall be made by either Party without the prior written approval of the other Party as to its form and content (such approval not to be unreasonably withheld or delayed).

15.2 Each Party shall take all reasonable steps to ensure the observance of the provisions of Clause 15.1 above by all employees, agents, subcontractors and consultants (including professional advisers) of that Party.

16. ASSIGNMENT

16.1 Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17. NOTICES

17.1 Except as otherwise expressly provided, any notice or other communication from any Party (**Sender**) to the other Party (**Recipient**) which is required to be given under this Agreement (**Notice**) must be in writing (which for these purposes includes e-mail), signed by or on behalf of the Sender (or in the case of an e-mail, bears the name of the sender), and be addressed to the officer of the Recipient whose details are set out in Clause 17.3 below.

17.2 The Sender may either:

17.2.1 deliver the Notice, or arrange for its delivery, by hand and retain satisfactory proof of delivery; or

17.2.2 send the Notice by recorded delivery or registered post and retain a receipt of delivery or sending; or

17.2.3 send the Notice by e-mail and retain an e-mail confirming receipt.

17.3 The details of the Parties for the purpose of Notices are as follows:

BHA:

For the attention of:

Address:

E-mail address:

Supplier:

For the attention of: *[insert name and position]*

Address: *[insert address]*

E-mail address: *[insert e-mail address]*

Each Party may alter the above details which relate to itself and shall notify the other of any such change by a Notice in accordance with this Clause 17.

17.4 Any Notice shall be deemed to have been served:

17.4.1 if delivered by hand, at the time and date of delivery; or

17.4.2 if sent by recorded delivery or registered post, 48 hours from the date of posting (such date as evidenced by postal receipt etc.); or

17.4.3 if sent by e-mail, when the sender receives a reply e-mail confirming delivery.

18. ENTIRE AGREEMENT

18.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings or collateral contracts of any nature made by the Parties, whether oral or written, in relation to such subject matter.

18.2 Each Party acknowledges that in entering into this Agreement it is not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other Party in relation to the subject matter of this Agreement, except for those rights and remedies available under this Agreement.

19. GENERAL

19.1 No variation of this Agreement shall be effective unless made in writing and signed by their duly authorised representatives.

19.2 The rights, powers and remedies provided in this Agreement are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by Applicable Law, or otherwise.

- 19.3 Nothing in this Agreement shall (except as expressly provided) be deemed to constitute a partnership, or create a relationship of principal and agent for any purpose between the Parties.
- 19.4 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents or deeds) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Agreement.
- 19.5 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by Applicable Law shall not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
- 19.6 Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, and execution of this Agreement.
- 19.7 This Agreement may be entered into by the Parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument. This Agreement shall not take effect until it has been executed by both Parties.
- 19.8 A person who is not a party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- 19.9 If any provision, or part of a provision, of this Agreement, is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise stipulated under Applicable Law. The Parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the provision, or part-provision, in question.

20. **GOVERNING LAW AND JURISDICTION**

- 20.1 This Agreement and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with English law.
- 20.2 The Parties agree to submit any dispute arising in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales (including any dispute or claim relating to non-contractual obligations).

IN WITNESS of which this Agreement has been entered into on the date written above.

**BRITISH HORSERACING AUTHORITY [THE SUPPLIER]
LIMITED**

Signed By: _____

Signed By: _____

Full Name: _____

Full Name: _____

Position: _____

Position: _____

**Schedule 1
Services**

The intention is for this schedule to be populated with the relevant information from the Statement of Requirements and the Supplier's tender.

Schedule 2
Charges

The intention is for this schedule to be populated with the relevant information from the Supplier's tender.

APPENDIX 4 - PHASE 1 DESK-TOP REVIEW

On appointment, it is expected the following documents/analysis will be provided to the appointed Supplier.

- High level summary of BHA P&L over 10 years (e.g. revenue split by HBLB (incl. indirect), participant, other and costs wages, activities, headcount)
- Detailed analysis of BHA revenue, expenditure, headcount 2018 to 2024 (budget) split by people and activity costs and department/function, direct and shared
 - Identification of significant fixed costs
 - Set out by year key outputs (e.g. fixtures serviced, equine drug testing etc., ongoing cases)
 - Set out by year significant regulatory operational changes and one-offs/projects
- Confirmation of BHA's current regulatory operating model (and interaction with business services and governance areas) and organization structure – including major changes as a result of the Strategy & Structures project
- Timeline and summary of previous reviews (external and internal) of regulatory expenditure including status of any recommendations (e.g. full implemented, in process or reasons for non-implementation)
- Document the overarching approach to regulation including:
 - Role of key bodies (e.g. integrity committee, judicial panel)
 - Non-BHA organisations involved in regulations (e.g. RaceTech., LGC, Weatherbys, racecourse employees)
- Operation of the Strategic Risk Model (including setting out current risk profile)
- Creation of a long list of the KPIs/ measures collected and used by the regulatory teams – to be an input into the 2024 regulatory expenditure monitoring process, and support Consultant on recommendations of focused set of meaningful KPIs for BHA/HBLB to measure performance.

APPENDIX 5 – SUMMARY BHA FINANCIALS 2018-2022

	2018	2019	2020	2021	2022
Turnover	34,414	34,898	32,524	35,118	36,671
<i>Growth - year on year</i>	4%	1%	(7%)	8%	4%
Wages and salaries	13,339	15,055	15,543	15,548	16,441
<i>Growth - year on year</i>	3%	13%	3%	0%	6%
Other operating costs	19,877	19,331	16,619	17,382	18,795
<i>Growth - year on year</i>	6%	(3%)	(14%)	5%	8%
Operating profit per stats	1,198	512	362	2,188	1,435
Employees					
Directors	10	10	10	10	9
Permanent staff	240	256	257	250	259
Sessional staff	17	15	14	14	18
Equine welfare board (incl. paid members)					
Industry People Board					
Total	267	281	284	279	294