



TEXAS RACING COMMISSION
P.O. Box 12080
Austin, TX 78711-2080
(512) 833-6699

April 14, 2022

Horseracing Integrity and Safety Authority
ATTN: Lisa Lazarus
401 West Main Street, Suite 222
Lexington, KY 40507

*Via Certified Mail Return Receipt Requested
via email feedback@hisaus.org and
john@mfirm.com*

Re: HISA Voluntary Implementation Agreements

Dear Ms. Lazarus:

The mission of the Texas Racing Commission is to ensure the safety and integrity of pari-mutuel horseracing in the State of Texas. As the government agency charged with the protection of the horses, licensed participants and the public that engage in and attend the sport in Texas, we agree that increased uniformity of safety standards among the states is an appropriate direction for the future of the sport. However, the Texas Racing Act¹ passed by our state legislature is the only authority our agency is obligated to follow to license participants and regulate horseracing in the State of Texas.

On March 27, 2022, the agency received correspondence from HISA Board member, Tom DiPasquale, with the attached draft "voluntary" agreement, stating the FTC 2000 series rules, taking effect on July 1, 2022, and governing racetrack safety and accreditation, provide in certain rules that the state commissions may volunteer to work with HISA to oversee implementation.

Our agency does not have the legal authority to volunteer to enforce federal statutes, nor the resources to assist you, even if we were enabled to do so. I have proposed, and again direct your attention to a viable alternative solution that may work for all racing commissions: a federal-state cooperative agreement grant program. This solution is a truly effective partnership answers the resourcing question we are all struggling with: How to create uniform standards given the resource constrained environment many racing commissions are facing? You can review the full proposed alternative solution in our FTC Comment filed on March 3, 2022.²

For the reasons stated above, the Texas Racing Commission declines to enter into a voluntary implementation agreement with the Horseracing Integrity and Safety Authority.

Sincerely,

Amy F. Cook
Executive Director

Enclosure (copy of HISA voluntary agreement)

cc: Texas Racing Commission Commissioners

¹ See the Texas Racing Act, codified in Subtitle A-1, Title 13, Texas Occupations Code

² <https://www.regulations.gov/comment/FTC-2022-0014-0006>

VOLUNTARY IMPLEMENTATION AGREEMENT

THIS VOLUNTARY IMPLEMENTATION AGREEMENT (this "Agreement") is entered into as of ___ day of _____ 2022 , with an effective date of July 1, 2022 (the "Effective Date"), by and between the Horseracing Integrity and Safety Authority, Inc. a Delaware nonprofit corporation whose mailing address is 401 West Main Street, Unit 222, Lexington, Kentucky 40507 (the "Authority"), and the _____ Commission, an agency of state government whose mailing address is _____ (the "Commission"). As used herein, the "Parties" shall mean the Authority and the Commission, collectively; and a "Party" shall mean either the Authority or the Commission individually.

WHEREAS the Authority is a private, independent, self-regulatory, nonprofit corporation that was recognized for the purpose of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces by the Horseracing Integrity and Safety Act of 2020 (the "Act");

WHEREAS the Commission is the independent agency of state government vested with jurisdiction to regulate the conduct of horse racing and pari-mutuel wagering on horse racing and related activities within the state of _____ (the "State");

WHEREAS 15 USC § 3054(e)(2) of the Act permits the Authority to enter into agreements with State racing commissions for services consistent with the enforcement of the racetrack safety program; and

WHEREAS the Authority has determined that the Commission has the ability to implement certain areas of the racing safety program in accordance with the rules, standards, and requirements established by the Authority.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Medical Director OR Intentionally Omitted¹. The Commission/Executive Director of the Commission names and appoints _____ as Medical Director of the State (the "Medical Director"). The Parties agree that the Medical Director shall carry out the duties and responsibilities of the Medical Director set forth in the Racetrack Safety Program, including but not limited to, the duties and responsibilities set forth in Rule 2132 of the Racetrack Safety Program. Any person named to replace the individual named as Medical Director herein shall possess the qualifications set forth in Rule 2132(a) Racetrack Safety Program.

¹ The Medical Director position is optional for the Commission to furnish. If the Commission does not elect to name and appoint a qualified individual, then the applicable jurisdiction can utilize the Authority's Medical Director program.

2. Safety Director. The Commission/Executive Director of the Commission names and appoints _____ as Safety Director of the State (the "Safety Director"). The Parties agree that the Safety Director shall carry out the duties and responsibilities of the Safety Director set forth in the Racetrack Safety Program, including but not limited to, the duties and responsibilities set forth in Rule 2131 of the Racetrack Safety Program. Any person named to replace the individual named as Safety Director herein shall possess the necessary qualifications to perform the duties and responsibilities set forth in Rule 2131 of the Racetrack Safety Program.

3. Stewards. The Commission/Executive Director of the Commission agrees that the stewards [tailor to specific jurisdictions] shall enforce the safety regulations set forth in the Rule 2200 Series of the Racetrack Safety Program. The Commission further agrees that the stewards shall also serve in the adjudicatory capacities set forth in the Rule 8000 Series (the Enforcement Rules).

4. Regulatory Veterinarian. The Commission/Executive Director of the Commission names and appoints _____ as Regulatory Veterinarian of the State (the "Regulatory Veterinarian"). The Parties agree that the Regulatory Veterinarian shall carry out the duties and responsibilities of the Regulatory Veterinarian set forth in the Racetrack Safety Program, including but not limited to, the duties and responsibilities set forth in Rule 2135 of the Racetrack Safety Program. Any person named to replace the individual named as Regulatory Veterinarian herein shall possess the qualifications set forth in Rule 2134(a) Racetrack Safety Program.

5. Emergency Warning Systems. The Commission agrees to inspect and approve the racetrack emergency warning systems in use on all racing and training tracks at each racetrack under the jurisdiction of the Commission, as set forth in Rule 2153 of the Racetrack Safety Program. The Commission further agrees to provide the Authority with periodic reports concerning the racetrack emergency warning systems on forms prescribed by the Authority.

6. Trainers Test. The Commission agrees to require the use of the Authority's uniform National Trainers Test, as set forth in Rule 2181. Upon request by the Authority, the Commission shall provide documentation of satisfactory completion of the test for individual licensees.

7. Training Opportunities. The Commission agrees to identify existing, or provide locally, training opportunities for all Racetrack employees having roles in Racetrack safety or direct contact with Covered Horses, as set forth in Rule 2182 of the Racetrack Safety Program. The Commission further agrees that the Authority may request and review information pertaining to the training opportunities available to racetrack employees as specified in Rule 2182 of the Racetrack Safety Program.

8. Testing Program. The Commission agrees to maintain a testing program for drugs and alcohol for Jockeys, as set forth in Rule 2191 of the Racetrack Safety Program. The Commission further agrees to submit the protocol for the testing program to the Authority. Upon request by the Authority, the Commission shall share with the Authority information pertaining to positive tests of individual Jockeys and shall make periodic reports concerning the testing program as directed by and on forms prescribed by the Authority.

9. Concussion Management. The Commission agrees to implement a concussion management program for Jockeys, as set forth in Rule 2192 of the Racetrack Safety Program. The Commission further agrees to submit the protocol for the concussion management program to the Authority.

10. Scope of Work. The scope of work and reporting obligations under this Agreement are those set forth in the Rule 2000 Series, "Racetrack Safety and Accreditation." The Commission agrees to provide performance metrics in reasonable detail and at reasonable intervals on forms to be prescribed by the Authority.

11. Term and Termination.

(a) This Agreement shall be effective (the "Effective Date") on the first business day following the full execution of this Agreement by the Parties, or if further approvals are required under applicable state law, the later to occur of: (i) the approval of this Agreement by the [REDACTED] Commission, and (ii) the approval of any other state agency, commission, board or authority for which approval is required under state law. If the Effective Date does not occur on or before July 1, 2022, this Agreement shall terminate and be of no force or effect. If the Effective Date does occur on or before July 1, 2022, the agreement shall terminate upon the effective date of the Authority's Anti-Doping and Medication Protocol.

(b) This Agreement may be terminated by either Party upon one hundred twenty (120) days written notice.

(c) If either Party defaults in a material obligation under this Agreement and continues in default for a period of 30 days after written notice of default is given to it by the other Party, the other Party may terminate and cancel this Agreement, immediately upon written notice of termination given to the defaulting Party.

12. Notices. All notices required to be provided hereunder shall be in writing and shall be deemed delivered if (a) sent by facsimile, upon confirmation of faxing, (b) if sent by overnight courier, by the date after mailing, (c) if by hand delivery, upon actual receipt or (d) if by certified mail, return receipt requested and postage prepaid, on the third business day after deposit in the mails, to the addressee set forth below (with a copy emailed to the email addresses set forth below) or at such other location as such Party notifies the other pursuant to this provision.

If to the Authority:

401 West Main Street, Unit 222
Lexington, Kentucky 40507
Attention: Lisa Lazarus
lisa.lazarus@hisaus.org

with a copy to:

Ransdell Roach & Royse PLLC
176 Pasadena Drive, Building One
Lexington, Kentucky 40502
Attention: John C. Roach
john@rrrfirm.com

If to Commission:

Attention: _____

with a copy to:

Attention: _____

13. **Severability.** If any part of this Agreement is determined to be invalid or illegal by any court or agency of competent jurisdiction, then that part shall be limited or curtailed to the extent necessary to make such provision valid, and all other remaining terms of this Agreement shall remain in full force and effect.

14. **Amendment and Waiver.** This Agreement may be modified or amended only in a writing signed by both Parties. A Party's failure to act hereunder shall not indicate a waiver of its rights hereto. No waiver of any provision of this Agreement shall be valid unless made in writing and signed by the waiving Party. The failure of either Party to require the performance of any term or obligation of this Agreement or the waiver by either Party of any breach of this Agreement shall not prevent any subsequent enforcement of such term and shall not be deemed a waiver of any subsequent breach.

15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Any

signature page delivered by facsimile, telecopy machine, portable document format (.pdf) or email shall be binding to the same extent as an original

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof.

17. Headings: Interpretation. The headings in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, as appropriate.

18. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the state of Kentucky, without regard to its conflicts of laws principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Services Agreement as of date first written above.

HORSERACING INTEGRITY AND SAFETY AUTHORITY, INC.

By: _____
Name: _____
Title: _____



By: _____
Name: _____
Title: _____