

REPORT TO: East Lothian Council

MEETING DATE: 24 April 2018

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Musselburgh Racecourse – Governance Review

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1 PURPOSE

- 1.1 To provide an update in connection with the implementation of the Governance Review, and to seek approval of the next steps.

2 RECOMMENDATIONS

It is recommended that the Council:

- 2.1 approves the replacement of the Minute of Agreement and authorises the Service Manager – Legal & Procurement to enter into the Minute of Agreement in the terms set out in Appendix A;
- 2.2 notes that the replacement Minute of Agreement makes changes to the Scheme of Administration for Musselburgh Racing Associated Committee (MRAC), particularly in relation to Remit and Powers, and Quorum; and delegates to the Chief Executive to make all necessary changes to the Scheme of Administration required as a consequence of approving the changes to the Minute of Agreement;
- 2.3 approves the appointment of Robert Miller-Bakewell and Ray Anderson Green, as the Lothians Racing Syndicate Limited representatives to become the non-council members of the MRAC, and to note that the Councillor representation as, approved by Council on 27 February 2018, is Councillors O'Donnell (Chair), Forrest, Mackie and Currie;
- 2.4 notes that a working group will be created, and approves the appointment of Councillors O'Donnell, Small and Currie to the working group, as detailed in section 3.7 of this report;

- 2.5 delegates to the Chief Executive to implement the recommendations from the working group and to report back to the next Council meeting in June; and
- 2.6 approves the Council incurring legal costs to assist in addressing the governance issues, including supporting the working group to deliver the optimum long-term operating model; and notes that some of these cost will be charged to the racecourse.

3 BACKGROUND

- 3.1 Following the last meeting of Council on 27 February 2018 in which the Musselburgh Racing Associated Committee was established, Council Officers have been in regular dialogue with representatives from both the British Horseracing Authority (BHA) and the Lothians Racing Syndicate Limited (LRS). Unfortunately, the BHA at present is not minded to extend the licence for Musselburgh Racecourse beyond the 7 April 2018.
- 3.2 There are currently two scheduled fixtures to be held at the racecourse on Thursday 3 and Friday 4 May 2018. The BHA have indicated that should they be unable to issue a licence on or before 25 April 2018 then it would begin to re-allocate these fixtures.
- 3.3 In the interest of preserving the licence, the Council and the LRS made a joint submission to the BHA on 18 April 2018. It is, at the time of writing this report, hoped that this will allow the BHA to consider the position in the context that the Council and the LRS are now working co-operatively with each other to progress matters and will take a favourable stance on issuing an extension to the licence.
- 3.4 The LRS have nominated their two representatives to sit on the Musselburgh Racing Associated Committee (MRAC). It was approved at the previous Council meeting on 27 February 2018 that LRS should nominate their representatives on the MRAC by 10 March 2018. The LRS had indicated who their representatives were at a meeting between the LRS and the Council on 9 March 2018, but with caveats. These points now have been addressed and this report looks to formally approve the appointment of these individuals, as set out in recommendation 2.3.
- 3.5 The LRS have also requested that prior to the first meeting of the MRAC that the Minute of Agreement between the Council and the LRS, and recorded in the Books of Council and Session on 10 December 2015, is varied. The new version of the Minute of Agreement, attached at Appendix A, is required to ensure that there remains a body capable of making decisions and remains compliant with legislation.
- 3.6 In terms of this proposal it is agreed that the racecourse staff will not require to transfer to the Council and that operational business can be appropriately managed through a combination of an appropriate Scheme of Delegation to the General Manager, and the MRAC.

- 3.7 It is also proposed within the replacement Minute of Agreement that a joint working group is established. This working group will comprise representatives from the Council, the LRS and the racecourse staff to work through the most appropriate long term operating model for the racecourse. This process would be supported by any additional parties which are deemed appropriate (such as Pinsent Masons LLP) to ensure the parties understand all of the issues and, through the working group, are able to agree a route forward. The working group will be required to assess the potential operating models and provide a recommendation as to the preferred operating model for the racecourse. It is in the best interest of the racecourse that the decision on the operating model chosen is unanimous. To achieve this the Council and up to three LRS representatives (acting reasonably) all need to agree the recommendation. Therefore, this report seeks authority for delegation to the Chief Executive to implement the recommendation from the working group. An update report will then be provided to the next Council meeting on 26 June 2018.
- 3.8 The current Minute of Agreement referred to at section 7.4 of this report is to be amended and accordingly replaced with the new Minute of Agreement as set out in Appendix A. This replacement Minute of Agreement also provides that once the preferred operating model has been identified, should that operating model be an ALEO or Third Party Operator, then the new Minute of Agreement will terminate at the point that the new operator takes over the operation of the racecourse. As part of the working group there will be consideration as to the whole operating model. This may include retaining MRAC in another capacity which could be as a supervisory role to an ALEO or third party operator.
- 3.9 In working up the solutions there has been a requirement to obtain additional legal advice from Pinsent Masons to ensure the delivery of an interim solution.

4 POLICY IMPLICATIONS

- 4.1 There are no policy implications arising from this report.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

6 RESOURCE IMPLICATIONS

- 6.1 Financial – as well as the costs to date there will be additional external legal and other advisor costs estimated to be around £55,000 arising from the requirement to support the working group. The net cost will be met

from the Resources and People Services budget as some of these costs will be charged to the racecourse.

- 6.2 Personnel - There would be no impact on the racecourse staff as they would, under these proposals, not be transferred to the Council.
- 6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 Minute of Council on 19 December 2017 (Private Report)
- 7.2 Minute of Council on 27 February 2018 (Private Report)
- 7.3 Members' Library Report, Governance Review – Musselburgh Racecourse. Members' Library Service Ref: 37/18. March 2018 Bulletin.
- 7.4 Minute of Agreement between East Lothian Council and Lothians Racing Syndicate Limited and recorded in the Books of Council and Session on 10 December 2015

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DATE	18 April 2018

MINUTE OF AGREEMENT

between

EAST LOTHIAN COUNCIL incorporated under the Local Government Etc. (Scotland) Act 1994 and having its principal office at John Muir House, Haddington, East Lothian, together with its statutory successors (hereinafter referred to as “the Council”)

and

LOTHIANS RACING SYNDICATE LIMITED, (Company Number: SC002032) incorporated under the Companies Acts and having its registered office at Musselburgh Racecourse, Linkfield Road, Musselburgh EH21 7RG (hereinafter referred to as “the Syndicate”)

Whereas, we, the Council and the Syndicate, CONSIDERING THAT:-

- (ONE) The area of land known historically as Musselburgh Links forms part of the common good land of the former Burgh of Musselburgh, now vested in the Council as administrators of the Common Good of the Burgh of Musselburgh, as successors to the Provost, Magistrates and Councillors of the former Burgh;
- (TWO) Horse racing has been organised upon Musselburgh Links since 1816 and for many of those years by a series of arrangements between the Council and their predecessors and the Syndicate and their predecessors; and
- (THREE) In order to secure the future of horse racing upon Musselburgh Links it is now considered expedient to replace the current Minute of Agreement between East Lothian Council and the Syndicate dated 22nd October 2015 and 3rd November 2015 ; THEREFORE, we, the Council and the Syndicate, HAVE AGREED as follows:-

1. The terms of this Minute of Agreement shall replace in their entirety, the terms of the Minute of Agreement between the Council and the Syndicate dated 22nd October 2015 and 3rd November 2015 and registered in the Books of Council and Session on 10 December 2015 together with any preceding Agreements between the Council and the Syndicate.

CONSTITUTION OF MUSSELBURGH RACING ASSOCIATED COMMITTEE

2. The business of Musselburgh Racecourse (hereinafter referred to as “the Racecourse”) shall be governed by the associated committee known as the Musselburgh Racing Associated Committee (hereinafter referred to as “MRAC”). The membership of MRAC shall comprise four Councillors nominated by the Council and two persons nominated by the Syndicate. MRAC shall operate the business of the Racecourse on a non-profit basis with all funds being reinvested in accordance with the terms of Clause 9(viii).

APPOINTMENT AND REMIT OF CHAIRMEN

3. The Chairman of the MRAC shall be appointed by the Council and the Chairman of the Racecourse shall be appointed by the Syndicate. The respective remits of the two Chairmen shall be as set out in the Terms of Reference attached as Appendix 1 to this Agreement but may be amended from time to time by the MRAC. For the avoidance of doubt, such amendment shall be an amendment in terms of Clause 5, and shall be considered a variation to this Agreement requiring the consent of both the Council and the syndicate. Both Chairmen shall work cooperatively in the best interests of Musselburgh Racecourse.

REMIT AND POWERS OF MRAC

4. The remit of MRAC shall be to provide, organise, safeguard, maintain, develop and improve, or assist in the provision, organisation, safeguarding, maintenance, development and improvement of horse racing and facilities for horse racing at Musselburgh Links, to manage and organise horse racing thereon, to carry out the business of the Racecourse and to carry out such other related and ancillary function or functions as may be appropriate from time to time, to include all or any of the following:-
 - (i) to agree a strategy for the operation of Musselburgh Racecourse and to monitor progress and regularly review and update the strategy as and when required;
 - (ii) To approve revenue and capital budgets and year end accounts. In addition to monitor quarterly the financial position of the racecourse and to generally supervise the operation of the racecourse.
 - (iii) To approve, subject to the approval of the British Horse Racing Authority (or such other regulatory authority to which the duties of the British Horse Racing Authority shall devolve) the dates of race meetings to be held on the Racecourse.
 - (iv) to maximise the use of Racecourse infrastructure and associated income, except where this would detract from or interfere with the operation of the Racecourse for its primary purpose or contravene Common Good restrictions;
 - (v) To approve the amount of prize money to be paid in respect of racing events at such meetings.
 - (vi) To approve charges or admission for such race meetings and for the parking of motor cars on land in the control of the MRAC at times when such meetings are held.
 - (vii) To agree the recruitment and remuneration to be paid to persons employed in connection with such race meetings and generally in the operation of the Racecourse.
 - (viii) To make all arrangements in connection with such race meetings for the provision of meals and refreshments and catering generally, the letting and hiring of stands for the sale of any articles and the display of advertisements within all enclosures and for advertising and general publicity.
 - (ix) to approve any supplier contract of more than 12 months duration;
 - (x) to approve any individual capital expenditure relating to the Racecourse;

- (xi) to approve any substantial alteration in, or addition to, the nature of activities undertaken at the Racecourse, in particular where such change is outside of the agreed overall strategy set by the Committee
- (xii) to approve the disposal of any moveable assets associated directly with the Racecourse;
- (xiii) to approve any substantial alteration in, or addition to, the nature of activities undertaken at the Racecourse, in particular where such change is outside of the agreed overall strategy set by the Committee
- (xiv) To make all arrangements for the carrying out of improvements to any land managed by the MRAC and for the general maintenance and upkeep of said land and of any buildings, stands, rails, posts, fences and other apparatus erected thereon.
- (xv) To seek to maximise use of the infrastructure used for the purposes of the Racecourse and income therefrom for both racing and non-racing purposes, in so far as such use does not detract from or interfere with the operation of the Racecourse for its primary purpose of horse racing or contravene Common Good restrictions and does not otherwise cause disturbance to and widespread opposition from residents in the immediate vicinity of the Racecourse. For the avoidance of doubt no such resident or residents shall be able to rely on the terms of this paragraph as giving them any right, title or interest to object to, or raise any proceedings in respect of, any such purpose or activity.
- (xvi) To appoint a General Manager to oversee the operation of the Racecourse, declaring that such an appointment shall require the agreement of at least five of the members of the MRAC before it is approved, and to approve a Scheme of Delegation granting authority to the General Manager and other officers as the MRAC consider appropriate to ensure the efficient and effective operation of the Racecourse. For the avoidance of doubt there requires to be agreement of five members of the MRAC prior to dismissal of the General Manager.
- (xvii) In the event that the Council decides that the racecourse is best operated through an Arms-Length External Operator or a third party then, on appointment of the operator (but prior to the commencement of the transfer of the business to this operator) the General Manager's job title shall be changed to Chief Executive.

REMIT OF GENERAL MANAGER

- 5A .The Racecourse General Manager is responsible for reporting all executive and operational management matters to the MRAC within a timely fashion and within the overall strategy set by MRAC with delegated authority set by the Musselburgh Racing Associated Committee. In this context, the key operational responsibilities of the General Manager are set out below:
- (i) To act in accordance with the relevant policies and procedures of MRAC in force and as may be amended from time to time;
 - (ii) To develop and propose strategy, business plans and annual budgets to MRAC;
 - (iii) To provide leadership to the staff in pursuit of the strategy and business plans;
 - (iv) To keep the financial and operational performance under regular review and ensure that remedial action is taken where required;

- (v) To agree terms and conditions of supplier contracts within a general framework determined by the MRAC;
- (vi) To prepare an annual statement of conditions of the Racecourse infrastructure and recommendations for maintenance and/or additions; this to be completed by the end of the calendar year for consideration by the MRAC to be incorporated into next financial year's budget;
- (vii) To maintain and promote an effective system of risk management, including ensuring that there remains appropriate and adequate insurance coverage in place;
- (viii) To ensure the effective implementation of decisions made by the MRAC;
- (ix) To ensure that operations at the Racecourse are always carried out in compliance with all relevant legislation, in particular applying to the Common Good;
- (x) To report to the Musselburgh Racing Associated Committee through the Chairman of MRAC, and ensure that the MRAC is aware of any important racecourse issues.

5B Delegated Authority to General Manager of Musselburgh Racecourse ("General Manager")

The MRAC specifically delegates the following authorities to the General Manager:

- (i) To negotiate, subject to the approval of the British Horse Racing Authority (or such other regulatory authority to which the duties of the British Horse Racing Authority shall devolve) the dates of race meetings to be held on the Racecourse, including short notice fixtures offered by the BHA and to report back to the MRAC accordingly.
- (ii) To recommend to MRAC the amount of prize money to be paid in respect of racing events at such meetings.
- (iii) To supervise generally the collection of income and the disbursement of expenditure in connection with such race meetings.
- (iv) To recommend to MRAC charges or admission for such race meetings and for the parking of motor cars on land in the control of the MRAC at times when such meetings are held.
- (v) To recruit and remunerate, in accordance with racecourse policies, the persons employed in connection with such race meetings and generally in the operation of the Racecourse.
- (vi) To make all arrangements in connection with such race meetings for the provision of meals and refreshments and catering generally, the letting and hiring of stances for the sale of any articles and the display of advertisements within all enclosures and for advertising and general publicity.
- (vii) To make recommendations for the carrying out of improvements to any land managed by the MRAC and to make all arrangements for the general maintenance and upkeep of said land and of any buildings, stands, rails, posts, fences and other apparatus erected thereon.

- (viii) To seek to maximise use of the buildings used for the purposes of the Racecourse and income therefrom for non-racing purposes, in so far as such use does not detract from or interfere with the operation of the Racecourse for its primary purpose of horse racing and does not otherwise cause disturbance to and widespread opposition from residents in the immediate vicinity of the Racecourse. For the avoidance of doubt no such resident or residents shall be able to rely on the terms of this paragraph as giving them any right, title or interest to object to, or raise any proceedings in respect of, any such purpose or activity.

5C. The constitution and remit of MRAC under this Minute of Agreement shall not be amended without the agreement of at least five of the members of MRAC and any such amendment shall also require the approval of the Council before it is implemented.

PROCEDURE FOR MEETINGS OF MRAC

- 6.(i) The Council's Chief Executive or nominee will act as Secretary to MRAC.
- (ii) Meetings shall be called by notice issued by the Council's Chief Executive. The notice shall specify the agenda for the meeting and shall be accompanied by the relative reports to be discussed at the meeting.
- (iii) Meetings may also be called by written requisition of the Syndicate addressed and sent to the Council's Chief Executive specifying the agenda for the meeting. Where such a written requisition is made, the Council's Chief Executive shall, within 21 days, issue the notice calling the meeting and the other terms of this clause shall apply.
- (iv) The agenda shall, whenever possible, be issued seven days prior to the meeting.
- (v) The Chairman of MRAC or in the absence of the Chairman of the MRAC, a substitute nominated by the Council representatives on the MRAC, shall preside at all meetings of the MRAC.
- (vi) In considering any report, and prior to voting upon it, the committee shall have regard to the views of the General Manager of the Racecourse.

MINUTES

- 7. An officer of the Council shall be responsible for taking minutes of the meetings of MRAC and the minutes shall be submitted to the next convenient meeting of MRAC for approval. Notwithstanding this arrangement, a copy of the draft minutes shall be issued to all members of MRAC within 21 days of the meeting to which they refer.

QUORUM AND VOTING

- 8.(i) Four members comprising at least one Syndicate representative shall form a Quorum at meetings of MRAC.
- (ii) In the event of a vote being taken and tied, the Chairman or substitute Chairman of MRAC shall have a casting as well as a deliberative vote.

FINANCIAL ARRANGEMENTS

- 9.(i) All receipts and sums received by MRAC from whatever source in respect of race meetings and any other activities held at or associated with Musselburgh Racecourse or otherwise shall be credited to and form part of a fund to be kept under the general supervision and control of MRAC. All expenditure and liabilities incurred by or under the proper authority of MRAC in respect of such race meetings and other activities or otherwise shall be met out of that fund, including, for the avoidance of doubt, all rates, taxes, feuduty, Occupancy Payments (calculated in accordance with Clause 10 hereof) and insurance payable in respect of any land and buildings in the control of MRAC and all management and audit expenses in connection with the said race meetings and other activities.
- (ii) MRAC shall keep proper books of account in accordance with the accounting rules applicable to a subsidiary of a Scottish local authority and the British Horseracing Authority. It shall be the duty of MRAC to gather in all receipts and sums receivable falling to be credited to the fund and to meet all expenditure falling to be met from the fund.
- (iii) MRAC shall maintain a bank account for the purposes set out in Clause 9(ii) above.
- (iv) No payments shall be made out of the fund except on the specific instructions of MRAC or in accordance with the Scheme of Delegation established in accordance with Clause 4(ix) above. However, an amount to cover the reasonable auditing, company secretarial, and administrative expenses incurred by the Syndicate as a consequence of participating in the operation of the Racecourse, together with such other expenses as may be subsequently agreed by the MRAC from time to time shall be chargeable to the expenses of the Racecourse.
- (v) The financial period of MRAC shall end on the 31st of March each year.
- (vi) MRAC will consider, at or before the February meeting in each year, estimated accounts for the following financial period.
- (vii) The books of account of MRAC shall be made available for inspection by the Council and the Syndicate on request and shall be audited annually by an independent auditor appointed by MRAC. Draft accounts in a format consistent with the Council's group accounts shall be provided to the Council within two months of the end of each financial period. The audited accounts for each financial period shall be made available for inspection by MRAC not later than four months after the expiry of each financial period.
- (viii) All profits arising from the operation of racing and any other activities held at or associated with Musselburgh Racecourse shall be reinvested towards the improvement of horseracing at Musselburgh and the facilities available therefore. Neither the Council nor the Syndicate shall be entitled to withdraw any share of the profits made.

PROPERTY AND EQUIPMENT

- 10.(i) For the avoidance of doubt, the parties agree that all Racecourse assets, including fixed assets, equipment, plant, machinery and credit balances held by the MRAC from time to time are the property of the Council and ownership of same vests in the Council.

- (ii) Notwithstanding the terms of Clause 10(i) above, the parties acknowledge that the fixed assets, equipment, plant, machinery and credit balances are exclusively for use in connection with the operation of the Racecourse. MRAC shall prepare and submit to the Council an annual inventory of the equipment, plant and machinery showing any changes since the submission of the previous inventory. Any decisions on the sale or acquisition of equipment, plant or machinery shall be taken by MRAC. Any receipts generated from the sale of any equipment, plant and machinery shall be ring-fenced in the accounts and used by the MRAC as working capital. The cost of any maintenance and acquisition of new or replacement equipment, plant or machinery shall be met by the MRAC.
- (iii) The Council, in its capacity as administrator of the Musselburgh Common Good land and funds, confirms that the MRAC shall be entitled to enclose the Racecourse, or any part or parts of it, for a period of three consecutive days around the occasion of when a race meeting is scheduled to be held. During these periods, MRAC shall be entitled to determine the terms upon which individuals may access the Racecourse, including on payment of a charge. MRAC shall seek to minimise the periods and extent to which the Racecourse requires to be enclosed having regard to the safety and operational requirements of a race meeting.
- (iv) In exchange for the right to occupy the Racecourse and use the Racecourse assets, all as set out in this Agreement, MRAC shall pay to the Council an Occupancy Payment at a level to be determined in accordance with Clause 10(vi) below.
- (v) As the land upon which the Racecourse is located is part of Musselburgh Common Good land, the Council shall pay to the Musselburgh Common Good Fund such part of the Occupancy Payment received in terms of Clause 10(iv) above as is applicable to the occupancy of the Common Good land. The Council shall take advice from the independent valuer in assessing this sum if it considers this necessary.
- (vi) The Occupancy Payment payable under Clause 10(iv) above shall be of such amount as shall be intimated by the Council to MRAC following a reference to the independent valuer to assess an appropriate level of payment.
- (vii) The parties acknowledge that, part of the complex of buildings at the Racecourse includes buildings and facilities which are used by the Council. Officers of the Council and the General Manager of the Racecourse shall meet to agree a division of the use of these buildings prior to the instruction of the independent valuer in calculation of the Occupancy Payment in terms of Clause 10(vi). For the avoidance of doubt, notwithstanding the use of the stables cafeteria within the Racecourse on race days the Council shall be entirely responsible for the rental applicable to the stables cafeteria.
- (viii) The level of the Occupancy Payment shall be reviewed by an independent valuer every five years, with the first review taking place from 1st April 2018, notwithstanding the date or dates of this Agreement. The new Occupancy Payment, after review, shall be payable in terms of the foregoing Clauses, from the date of review without further authorisation. In instructing any such review, an independent valuer shall be advised of, and shall take account of, the terms of Clause 11 of this Minute of Agreement relating to maintenance and insurance obligations and shall disregard the value of any improvements and additions paid for by MRAC. A schedule of such improvements and additions shall be agreed between the MRAC and the Council and submitted to an independent valuer along with each request for a review of the Occupancy Payment.

MAINTENANCE AND INSURANCE OBLIGATIONS

11. MRAC shall be responsible for meeting the following costs:-
 - (i) Maintenance costs for all buildings and fixed assets, subject to the provisions of Clause 14 in respect of the New Stables Pavillion Complex;
 - (ii) Costs (including maintenance) for all equipment, plant and machinery;
 - (iii) All insurance premiums in respect of cover for buildings, contents, employer's liability and public liability and for any other insurable risks as determined by MRAC. The Council shall arrange all such insurance cover on behalf of MRAC and the premiums shall be reimbursed to the Council by MRAC.
12. Subject to Clause 14, MRAC accept the buildings and fixed assets as being in good condition and fit for purpose and will, at all times, maintain them in that condition and keep them wind and water tight.
13. Subject to Clause 14, an annual inspection of the buildings and fixed assets will be undertaken by a member of MRAC and an officer of the Council in order to determine what maintenance works are required in order to comply with the requirements of Clause 12. MRAC shall thereafter instruct and meet the cost of all such works as are identified. Should the Council and MRAC agree that it is appropriate, an independent architect or surveyor may be jointly instructed to carry out his own inspection and the cost of this inspection and report will be shared between the Council and MRAC.
14. The New Stables Pavilion Complex shall be maintained in accordance with the following procedure:-
 - (i) The Council shall be responsible for organising and carrying out, or procuring the carrying out, of any maintenance work that the Council considers is required;
 - (ii) Prior to carrying out or procuring the carrying out of any such maintenance work, the Council shall provide to MRAC a copy of the specification of the proposed maintenance work, including an estimate of the cost that will require to be met by MRAC.
 - (iii) MRAC shall be permitted a reasonable period to consider the terms of the specification and the estimated cost and to raise any questions or concerns that they may have regarding these matters. The Council shall endeavour to address any such questions or concerns with a view to reaching a mutually agreed position.
 - (iv) In the event that the parties cannot agree the position, either party may refer the matter to Arbitration in accordance with the provisions of Clause 19. Notwithstanding this, the Council may elect to carry out the maintenance work in the meantime if this is considered necessary to safeguard the fabric of the building.
15. In the event of any dispute between the parties as to whether any works or part of works are maintenance works, and thus the responsibility of MRAC, either the Council or MRAC may refer the matter to Arbitration in terms of Clause 19.

16. In the event that MRAC intend to undertake any new building works or alterations at the Racecourse they shall first advise the Council in writing of their intention to do so and shall not proceed with the works until they have received written consent to do so, such consent not to be unreasonably withheld.

INDEMNITY

- 17.(i) The Council shall indemnify the Syndicate and persons nominated by the Syndicate from time to time in respect of any liability they may incur in connection with or arising from the transactions undertaken and approved by MRAC.
- (ii) The Council shall indemnify the persons nominated by the Council from time to time in respect of any liability they may incur in connection with or arising from the transactions undertaken and approved by MRAC.

TERM AND TERMINATION

- 18.(i) These presents shall take effect from the last date of execution hereof and shall subsist until terminated by: (a) the written agreement of the parties hereto; or (b) automatically on the date that the transfer of the business, to either an arms-length external organisation of the Council or through an appropriate procurement process to a third party, is completed.

Alternative Operation of the Racecourse

19. The Council shall work with the Syndicate to consider the future operation of the racecourse. The parties shall work proactively to consider the most appropriate operating model. A working group will be established comprising the Council, Syndicate and racecourse staff to consider the most appropriate long term operation model for the racecourse. The parties acknowledge that the ultimate decision as to the preferred model shall be made by the Council.
- 20 In the event that the Council makes a decision for the Racecourse to be operated by an external third party then:
- (i) the Council and the Syndicate shall use reasonable endeavours to progress a formal procurement as soon as practicable following the decision of Council for the operation of the racecourse to be carried out by an independent third party operator.
 - (ii) the Council and the Syndicate shall proactively work together in agreeing the specification which will form the basis of the procurement. Such agreement of the specification by the Syndicate shall not be unreasonably delayed or withheld.
 - (iii) The Council shall not be obliged to procure an operator who will operate the racecourse on a not for profit model

ARBITRATION

21. In the event of any dispute or difference arising between the parties in regard to the construction or effect of this Agreement or any Clause contained herein or the rights, duties or liabilities of either party hereunder, the dispute or difference shall be determined by a single

arbiter to be agreed between the parties. If the parties cannot agree the identity of an arbiter within a reasonable period, the matter shall be settled by reference to the President of the Law Society of Scotland on the application of either party. The whole fees of any arbiter shall be borne and paid by the parties in such shares as shall be determined by the arbiter and, failing such a determination, in equal shares. The parties agree that the decision of an arbiter on any dispute or difference shall be binding on both parties.

The Council and the Syndicate consent to registration hereof for preservation and execution: **IN WITNESS WHEREOF**

Appendix 1: TERMS OF REFERENCE THE MUSSELBURGH RACING ASSOCIATED COMMITTEE (MRAC)

The Chairman of MRAC (To be appointed by the Council)

1. Act as Chairman to the MRAC*
2. Call meetings of the MRAC as and when appropriate
3. Sign the minutes of the meetings
4. Signatory for Commercial Agreements & Statutory Licences as, and when, required
5. Sit on the Racecourse Remuneration Committee along with a MRAC member from the LRS
6. Jointly, with the other Members of MRAC, be responsible for the entertainment of racecourse guests and VIPs
7. Represent MRAC at Racecourse events

*For the avoidance of doubt the General Manager reports to the MRAC through the Chairman of the Committee.

The Racecourse Chairman (RC) (To be appointed by the LRS Directors)

The Racecourse Chairman, in his absence, may delegate the following duties to another LRS Director, failing whom the General Manager, failing whom a senior steward.

1. Act as Racecourse Chairman on Race days. This role includes, but is not exclusive to, hosting and entertaining the following customer/supplier groups:
 - BHA Local Stewards
 - Owners
 - Trainers
 - Leisure/Racing Industry Trade Association Representatives
 - Racing Industry Officials
 - VIPs from any of these customer/supplier groups or similar
 - Sponsors
 - Media
2. Act as the Racecourse Chairman at Racecourse Events. This role includes, but is not exclusive to, the following:
 - Opening ceremonies
 - Dinners
 - Functions
 - Racecourse Visits

3. Represent the Racecourse and the MRAC at Leisure/Racing Industry Level. This role includes, but is not exclusive to, the following:
 - The Racecourse Association
 - The British Horseracing Authority
 - The Horserace Betting Levy Board
 - The Tote
4. Represent the Racecourse and the MRAC at Trade Association Forums, or their equivalent, and Leisure/Racing Industry AGMs.
5. Represent the Racecourse and the MRAC at Leisure/Racing Industry social occasions, when required.
6. Represent the Racecourse and the MRAC, as a Director on the Board of Scottish Racing Limited.
7. Represent the Racecourse and the MRAC on Industry Committees, working groups or their equivalent, when required.
8. Assist the Managing Executive with commercial decisions on Race days. This role includes, but is not exclusive to, the following (in the interests of public safety):
 - Abandoning the Racemeeting
 - Early closure of the Bars and Food Outlets
 - Evacuating all, or parts of, the Racecourse