

EXHIBIT Q
LICENSE AGREEMENT

INTELLECTUAL PROPERTY LICENSE AGREEMENT

INTELLECTUAL PROPERTY LICENSE AGREEMENT (the "*Agreement*"), dated as of September 12, 2008 ("*Effective Date*"), by and among the People of the State of New York (the "*State*"), acting by and through The New York State Franchise Oversight Board ("*FOB*"), and The New York Racing Association, Inc., a New York not-for-profit racing corporation ("*New NYRA*").

RECITALS

A. The New York Racing Association Inc., a New York private, non-profit racing association ("*Old NYRA*"), New NYRA, the State, The New York State Non-Profit Racing Association Oversight Board, and The New York State Division of the Lottery are parties to that certain State Settlement Agreement, dated as of September 12, 2008 (the "*Settlement Agreement*").

B. Pursuant to the Settlement Agreement, Old NYRA agreed that it would convey all of its right, title and interest in and to all intellectual property including, without limitation, trademarks, tradenames, service marks, other business or source identifiers, internet domain names, copyrights, patents, trade secrets and simulcasting rights, now existing or hereafter created and relating to the operation of the Racetracks (as defined herein) to the State; provided, however, that the State acting by and through the FOB shall enter into this Agreement providing for the grant of an exclusive license by the State to New NYRA of any and all such assets.

C. The Settlement Agreement requires execution and delivery of this Agreement by the Parties on the Effective Date, or as soon thereafter as (a) the Articles (as defined therein) have been accepted for filing by the Secretary of State of the State of New York and (b) the confirmation of such acceptance has been filed with the New York State Racing and Wagering Board and FOB.

D. New NYRA, the State and FOB are parties to that certain Franchise Agreement, dated as of September 12, 2008 (the "*Franchise Agreement*"), relating to, among other things, the governmental authority to conduct pari-mutuel and simulcast wagering with respect to thoroughbred racing at the Racetracks.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 **Definitions.**

(a) Unless otherwise defined herein, all capitalized terms used herein shall have the meaning ascribed thereto in the Settlement Agreement.

(b) The following definitions shall apply to and constitute part of this Agreement and all schedules, exhibits and annexes hereto:

Section 2. ***“Intellectual Property”*** means the Licensed Marks, the Simulcasting Rights, and all other intellectual property rights now existing or hereafter created, including any and all rights under patent, copyright, trade secret or trademark law or any similar statutory provision or common law doctrine in the United States or anywhere else in the world, and relating to the operation of the Racetracks, including, without limitation, that set forth on Exhibit A.

Section 3. ***“Licensed Marks”*** means all trademarks, tradenames, service marks, logos, trade dress, other business or source identifiers and internet domain names relating to the operation of the Racetracks, together with the goodwill connected therewith, symbolized thereby or pertaining thereto, including the marks set forth on Exhibit B.

Section 4. ***“Party”*** means the State, FOB and New NYRA individually, and ***“Parties”*** means the State, FOB and New NYRA collectively.

Section 5. ***“Products”*** and ***“Services”*** means, respectively, products developed, designed, offered, distributed, sold or otherwise commercialized and services performed, offered, distributed, rendered, sold or otherwise commercialized by New NYRA in any form whatsoever.

Section 6. ***“Racetracks”*** means the racing facilities known as Aqueduct Racetrack, Belmont Park, and Saratoga Race Course.

Section 7. ***“Simulcasting Rights”*** means all right, title and interest now existing or hereafter created in and to all telecasts and other transmissions of live audio, visual and/or data signals, and all other broadcasts, webcasts, video streams, transmissions and distributions of races conducted at the Racetracks or any portion thereof and content related thereto (including pre-race and post-race activities and events), and all rights to still photos, motion pictures, audio and/or visual recordings and all other recordings, copies or fixations of any of the foregoing in any and all media now existing or hereafter created.

Section 8. ***“Standards of Quality”*** means standards of quality, appearance, service and other standards that are equal to the standards associated with the Products and Services provided under the Licensed Marks by Old NYRA immediately prior to the Effective Date.

Section 1.2 **Other Terms.** Other terms may be defined elsewhere in this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement. As used in this Agreement, any reference to any federal, state, local, or foreign law, including any applicable law, will be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “*include*,” “*includes*,” and “*including*” will be deemed to be followed by “*without limitation*.” Pronouns in masculine, feminine, or neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “*this Agreement*,” “*herein*,” “*hereof*,” “*hereby*,” “*hereunder*,” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

Section 1.3 **Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Agreement.

ARTICLE II

LICENSE GRANT

Section 2.1 **License Grant.** Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date and continuing for the Term, the the State acting by and through the FOB hereby grants to New NYRA an exclusive, sublicensable, worldwide, non-transferable, irrevocable, fully paid-up, royalty-free license to use the Intellectual Property in connection with the operation of the Racetracks, including, without limitation, the use, management and operation thereof, and any Products and Services whatsoever, but in all events in conformity with the Standards of Quality. For the avoidance of doubt, the foregoing license includes the right to display the Licensed Marks in advertising and promotional materials, on letterhead, business cards, invoices, communications and other materials used by New NYRA in the ordinary course of its business and to use the Intellectual Property in materials, web sites, general publicity, instruction books and other literature relating to the Products and Services. For the further avoidance of doubt, the foregoing license includes the right to freely grant sublicenses to third parties, at New NYRA’s sole and absolute discretion; provided that sublicenses of Licensed Marks require the sublicensees to comply with the Standards of Quality and that New NYRA reasonably enforces such requirements.

Section 2.2 **VLT License.** Notwithstanding the exclusivity provisions of Section 2.1, the State shall have the right to grant to an entity operating video lottery terminals at the Aqueduct Racetrack an exclusive license to use the AQUEDUCT trademark, Aqueduct logo and images of the Aqueduct Racetrack solely in connection with the operation, advertising, marketing and promotion of such video lottery terminal business; provided that the license to use images of the Racetracks shall not include any copyright license with respect to photographs, artwork or other depictions of the Racetracks assigned by Old NYRA to the State or assigned hereunder by New NYRA or a sublicensee of New NYRA to the State. The State shall ensure that such license: (a) requires the operator to comply with the Standards of Quality and to refrain

from using the AQUEDUCT trademark in connection with any goods or services other than video lottery terminal gaming or in connection with any location other than the video lottery terminal facility at the Aqueduct Racetrack; and (b) is not sublicensable or assignable by the licensee without the express written consent of New NYRA, which consent may be withheld in New NYRA's sole and absolute discretion, except that the operator may grant sublicenses in the ordinary course of business to suppliers and other vendors for the provision to the operator of goods and services in connection with the Aqueduct Racetrack video lottery terminal location (and not, for avoidance of doubt, provision of goods and services to third parties or for any location other than the Aqueduct Racetrack video lottery terminal location).

Section 2.3 Real Estate Developer License. Notwithstanding the exclusivity provisions of Section 2.1, the State shall have the right to grant (i) to one or more developers of real estate at the Aqueduct Racetrack an exclusive license to use the AQUEDUCT trademark, Aqueduct logo and images of the Aqueduct Racetrack solely in connection with the operation, advertising, marketing and promotion of such real estate development; and (ii) to one or more developers of real estate at the Belmont Racetrack an exclusive license to use the BELMONT trademark, Belmont logo and images of the Belmont Racetrack solely in connection with the operation, advertising, marketing and promotion of such real estate development; provided that, with respect to each of the licenses described in the foregoing clauses (i) and (ii), the license to use images of the Racetracks shall not include any copyright license with respect to photographs, artwork or other depictions of the Racetracks assigned by Old NYRA to the State or assigned hereunder by New NYRA or a sublicensee of New NYRA to the State. The State shall ensure that such license: (a) requires each developer to comply with the Standards of Quality and to refrain from using the AQUEDUCT or BELMONT trademark in connection with any goods or services other than the real estate development at the Aqueduct Racetrack or Belmont Racetrack, respectively; and (b) is not sublicensable or assignable by the licensee without the express written consent of New NYRA, which consent may be withheld in New NYRA's sole and absolute discretion, except that each real estate developer may grant sublicenses in the ordinary course of business to suppliers and other vendors for the provision of goods and services in connection with the respective real estate development (and not, for avoidance of doubt, provision of goods and services to third parties or for any location other than the respective Aqueduct Racetrack and Belmont Racetrack real estate development).

Section 2.4 Quality Control. New NYRA shall use the Licensed Marks only (i) in connection with the operation and conduct of the Racetracks in accordance with standards of quality at least as high as the Standards of Quality and (ii) with Products and Services designed, developed, marketed, promoted, distributed, sold or otherwise commercialized by New NYRA in accordance with standards of quality at least as high as the Standards of Quality. The State shall have the right to review whether New NYRA's use of the Licensed Marks is in accordance with the Standards of Quality. The State and FOB agree that in no event shall New NYRA be required to comply with standards of quality more stringent than the Standards of Quality, the sufficiency of which the State and FOB hereby acknowledge; although New NYRA may, in its sole discretion, choose to use a higher quality standard. New NYRA shall, upon the State's reasonable request at any time, provide to the State a reasonable number of representative samples of advertising and other material bearing the Licensed Marks or any other Intellectual Property and such other information as the State may reasonably request regarding the Licensed Products and Services.

Section 2.5 **Use and Designation of the Licensed Marks.** New NYRA shall comply with all applicable laws and regulations, including those pertaining to the proper use and designation of trademarks and pertaining to the marketing, distribution, promotion, sale and delivery of Products and Services and the exploitation of the Simulcasting Rights.

ARTICLE III

ASSIGNMENT

Section 3.1 **Assignment by New NYRA.** New NYRA hereby sells, conveys, assigns and transfers to the State acting by and through the FOB, and New NYRA shall ensure that each sublicense granted by it under the License Agreement shall provide that the sublicensee thereby sells, conveys, assigns and transfers to the State acting by and through the FOB, without payment of any further compensation and free and clear of all liens, licenses or other encumbrances of any kind, (i) any right, title or interest in or to the Intellectual Property that may be acquired by New NYRA during the Term; (ii) all worldwide right, title and interest in and to any and all intellectual property that is derivative of any Intellectual Property licensed to New NYRA hereunder; provided, however, that to the extent that it is not commercially practical to require a sublicensee to assign such derivative intellectual property to the State, New NYRA shall not be required to do so; and (iii) all Simulcasting Rights created or arising on or after the Effective Date of this Agreement, all of the foregoing to be held and enjoyed by the State acting by and through the FOB for its own use and enjoyment and the use and enjoyment of its successors, assigns or other legal representatives in perpetuity.

Section 3.2 **Further Assurances.** Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement. Without limiting the foregoing, New NYRA shall, and shall cause its sublicensees to, cooperate with the State acting by and through the FOB as the FOB may request to document and enforce the State's rights in and to all intellectual property assigned hereunder, including by executing assignments for recordal with the trademark, patent or copyright offices of any jurisdiction, as well as any and all other documents requested by FOB to document and enforce such rights.

ARTICLE IV

COMPENSATION

Section 4.1 **Compensation.** In consideration of the license grant and use of the Intellectual Property pursuant to this Agreement, during the Term, and on an annual basis, but in no event later than April 5th of any calendar year, New NYRA shall remit to the State a payment equal to One Dollar (\$1.00).

ARTICLE V

PROTECTION OF INTELLECTUAL PROPERTY

Section 5.1 Ownership and Rights.

(a) New NYRA admits the validity of, and the State's ownership of all worldwide right, title and interest in and to, the Intellectual Property and acknowledges and agrees that any and all trademark rights accruing from New NYRA's use of the Licensed Marks shall inure to the benefit of the State.

(b) New NYRA shall not, directly or indirectly, at any time during the Term or at any time thereafter, (i) challenge, or assist any person in challenging, anywhere in the world, the State's ownership or the validity or enforceability of the Intellectual Property or any application or registration therefor; or (ii) apply for registration of the Intellectual Property or any variants or derivatives thereof in the name of any entity other than the State.

Section 5.2 No Right to Bind the State. New NYRA has no right, and shall not represent that it has any right, to bind or obligate the State in any way.

Section 5.3 Prosecution and Maintenance.

(a) New NYRA shall have the exclusive right, at its sole discretion and expense, to prepare, file, prosecute and maintain on behalf of the State any and all applications, registrations, renewals and extensions relating to the Intellectual Property; provided that, if New NYRA fails to prepare, file, prosecute or maintain any such application, registration, renewal or extension within a reasonable time after FOB's request, FOB may take such action on its own behalf and at its own expense. The State shall be the owner of record of all the Intellectual Property.

(b) The State acting by and through the FOB shall, at New NYRA's expense, cooperate fully and in good faith with New NYRA for the purpose of securing, preserving and protecting the Parties' rights in and to the Intellectual Property. At the request of New NYRA, and at New NYRA's expense, the State and FOB shall execute and deliver to New NYRA any and all documents and do all other reasonable acts and things which New NYRA deems necessary or appropriate to make fully effective or to implement the provisions of this Agreement relating to the ownership, registration, maintenance or renewal of the Intellectual Property.

Section 5.4 Infringement.

(a) Third Party Infringement. If either Party becomes aware of any actual or threatened material infringement, misappropriation or other violation by a third party of the Intellectual Property anywhere in the world, FOB shall promptly notify New NYRA in writing. New NYRA shall have the exclusive right, but not the obligation, at its own expense, to bring an infringement action against any such third party ("*Action*"). The State acting by and through the FOB shall provide necessary information and reasonable assistance, at New NYRA's expense, to New NYRA or its authorized representatives in the event that New NYRA decides

that proceedings should be commenced. In such instance, New NYRA shall have full control over the conduct of any Action, including settlement thereof, except that New NYRA shall not agree without the State's prior written consent to any settlement or consent judgment that would bind the State or that would materially adversely affect the value of the Intellectual Property. The State and FOB shall have the right to provide comments with respect to any such Action, which New NYRA shall consider in good faith. New NYRA has the right to (and the rights granted hereunder shall include the right to) sue, counterclaim, and recover for past, present and future infringement, misappropriation or other violation of the rights licensed under this Agreement (whether before or after the Effective Date) and is entitled to recover all income, royalties, damages and payments now or hereafter due or payable in and to all causes of action (either in law or in equity). Nothing in this Agreement shall require, or be deemed to require, New NYRA to enforce the Intellectual Property against others. In the event New NYRA brings an Action, New NYRA shall be entitled to keep all monies derived from litigation or legal proceedings or from settlement relating thereto.

(b) Action by the State. Notwithstanding the provisions of Section 5.4(a) hereof, if FOB notifies New NYRA of infringement of the Intellectual Property and (i) should New NYRA have at that time failed to adopt and maintain a program reasonably policing the Intellectual Property (taking into account the degree of the infringement, the magnitude of infringing sales, the industry in which New NYRA operates and possible counterclaims by the infringer) or (ii) should the relevant infringement be reasonably likely to have a material adverse impact on the value of the Intellectual Property if not challenged; then the State may take action against such infringement should New NYRA fail to bring an Action against the infringement within a reasonable time after FOB's request. In the event that the State decides that proceedings should be commenced, (a) New NYRA shall provide necessary information and reasonable assistance, at the State's expense, to the State or its authorized representatives, (b) the State shall have full control over the conduct of any Action, including settlement thereof, except that the State shall not agree without New NYRA's prior written consent, such consent not to be unreasonably withheld, to any portion of a settlement that would materially restrict New NYRA's use of or rights under the Intellectual Property before the expiration or termination of this Agreement, (c) New NYRA shall have the right to provide comments with respect to any such Action, which the State shall consider in good faith, and (d) the State shall be entitled to keep all monies derived from litigation or legal proceedings or from settlement relating thereto.

(c) Defense of Third Party Claims. If the State acting by and through the FOB becomes aware of any actual or threatened suit, action or proceeding against either Party or both Parties [or any Affiliate of either], alleging infringement, misappropriation or other violation of the intellectual property rights of a third party with respect to New NYRA's use of the Intellectual Property ("*Third Party Claim*"), FOB shall promptly notify New NYRA in writing. New NYRA shall have full control over the conduct of any Third Party Claim, including settlement thereof, except that New NYRA shall not agree without the State's prior written consent to any settlement or consent judgment that would bind the State or that would materially adversely affect the value of the Intellectual Property.

Section 5.5 Encumbrances. New NYRA shall have the right to grant liens on or security interests in or otherwise encumber its rights hereunder to secure debts or obligations, the repayment with respect to which would not extend beyond the Term.

Section 5.6 **Disclaimer of Warranties.** The license granted by the State to New NYRA hereunder is provided "AS IS."

ARTICLE VI

TERM AND TERMINATION

Section 6.1 **Term.** This Agreement shall commence on the Effective Date and shall be in effect for the term of the Franchise as provided in the Franchise Agreement (the "***Term***"), as the same may be extended by legislation or otherwise. For avoidance of doubt, neither Party shall have the right to terminate this Agreement for any reason whatsoever; **provided, however,** that this Agreement shall terminate automatically upon termination of the Franchise Agreement in accordance with the terms, and subject to the conditions, set forth therein. Upon any expiration or termination of this Agreement, all rights granted to New NYRA by the State under this Agreement shall automatically revert to the State.

ARTICLE VII

MISCELLANEOUS

Section 7.1 **Amendments.** This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party to be affected by such modification, amendment or supplement.

Section 7.2 **Good Faith Negotiations.** The Parties recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly and at arm's length; that this Agreement is made and executed by and of each Party's own free will; that each knows all of the relevant facts and his or its rights in connection therewith, and that he or it has not been improperly influenced or induced to enter into this Agreement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any Party to this Agreement.

Section 7.3 **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the Parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof; and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns.

Section 7.4 **Governing Law; Retention of Jurisdiction; Service of Process.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any principles of conflicts of law. Any legal action, suit or proceeding between New NYRA and either of the FOB or the State with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in

any court of competent jurisdiction within the State of New York. The Parties hereby agree and consent that service of process therein may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 7.10 hereof, unless another address has been designated by such Party in a notice given to the other Parties in accordance with Section 7.10 hereof.

Section 7.5 **Specific Performance.** It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including without limitation any failure by New NYRA to comply with the Standards of Quality.

Section 7.6 **Headings.** The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 7.7 **Binding Agreement; Successors and Assigns; Joint and Several Obligations.** This Agreement shall be binding upon the Parties only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, administrators, constituents and representatives. The agreements, representations, covenants and obligations of the Parties under this Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Agreement by another.

Section 7.8 **State Appendix.** New York State Appendix A, attached hereto, is incorporated herein and made a part of this Agreement.

Section 7.9 **Entire Agreement.** This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party's prior representation, promise or warranty (oral or otherwise) except for those that may be expressly set forth in this Agreement.

Section 7.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

Section 7.11 **Notices.** All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (i), when personally delivered by courier service or messenger, (ii) upon actual receipt (as

established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first business day thereafter if transmitted by facsimile or telecopier with confirmation of receipt, or (iii) three (3) Business Days after being duly deposited in the mail, by certified or registered mail, postage prepaid-return receipt requested, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing, to the following Parties:

If to New NYRA, to:

The New York Racing Association, Inc.
Aqueduct Racetrack
110-00 Rockaway Boulevard
South Ozone Park, New York 11417
Attention: General Counsel
Telecopy: (718) 835-2432

with a copy to:

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Attention: Brian S. Rosen, Esq.
Telecopy: (212) 310-8007

If to FOB, to:

Franchise Oversight Board
c/o Executive Chamber
The Capitol
Albany, New York 12224
Attention: Counsel
Telecopy: (518) 486-9652

with a copy to:

Empire State Development Corporation
633 Third Avenue
New York, New York 10017
Attention: President
Telecopy: (212) 803-3715

- and -

State of New York State Office of General Services
Legal Services Bureau
41st Floor, Corning Tower
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, NY 12242
Telecopy: (518) 473-4973

- and -

Office of the Attorney General of the State of New York
The Capitol
Albany, New York 12224
Attention: Contract Division
Telecopy: (518) 402-6604

- and -

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Alan W. Kornberg, Esq.
Telecopy: (212) 757-3990

Section 7.12 **Further Assurances**. Each of the Parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

[Remainder of this page left intentionally blank]

EXECUTION COPY

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

THE PEOPLE OF THE STATE OF NEW
YORK by and through the New York State
Franchise Oversight Board

By: _____
Name:
Title:

THE NEW YORK RACING
ASSOCIATION, INC.

By: _____
Name: C. Steven Duncker
Title: Chairman

Approved as to form by:

THE OFFICE OF THE ATTORNEY
GENERAL OF THE STATE OF NEW
YORK

By: _____
Name:
Title: