§ 208. Conditions of franchise award. 1. In consideration of the franchise and in accordance with its franchise agreement, the franchised corporation shall remit to the state, each year, no later than April fifth, a franchise fee payment. The franchise fee shall be calculated and equal to the lesser of paragraph (a) or (b) of this subdivision as follows: (a) adjusted net income, including all sources of audited generally accepted accounting principles net income as of December thirty-first (i) plus the amount of depreciation and amortization for such year as set forth on the statement of cash flows (ii) less the amount received by the franchised corporation for capital expenditures and (iii) less principal payments made for the repayment of debt; or (b) operating cash which is defined as cash available on December thirty-first (i) which excludes all restricted cash accounts, segregated accounts as per audited financial statements and cash on hand needed to fund the on-track pari-mutuel operations through the vault, (ii) less ninety days of operating expenses pursuant to generally accepted accounting principles which shall be an average calculated by dividing the current year's annual budget by the number of days in such year and multiplying that number by ninety.

2. As a condition of franchise acceptance, the franchised corporation and its predecessor shall irrevocably relinquish any present or future rights that it might have, or might claim, with respect to thoroughbred racing facilities and associated assets located in Queens county, Saratoga county and jointly located in Nassau and Queens counties whereat running races, steeplechases or race meetings and pari-mutuel betting on the outcome of the same have been conducted, including (a) all the land underlying the racetracks, (b) all improvements thereon and all physical assets thereon, and (c) all assets associated with the franchise and the operation of the racetracks, including, without limitation all rights to intellectual property and simulcasting now existing or hereafter created, and any and all franchise rights or interests in such assets including but not limited to leasehold improvements and interests. The franchised corporation shall take all appropriate action on the date of substantial consummation, as defined by the federal bankruptcy code, of the confirmed chapter eleven plan of reorganization of the non-profit racing association known as The New

York Racing Association, Inc. in the pending bankruptcy case in the Southern District of New York to ensure that the People of the State of New York are vested with unencumbered ownership in the real estate for the three racetracks, including all improvements thereon.

3. As a condition of franchise acceptance, the franchised corporation shall make application with the commission for live thoroughbred racing dates at thoroughbred racing facilities located in Queens county, Saratoga county and jointly located in Nassau and Queens counties in a manner substantially similar to the racing dates presently undertaken.

4. As a condition of franchise acceptance, the franchised corporation shall agree that it will conduct running races, steeplechases and race meetings in accordance with the provisions thereof and that all running races, steeplechases or race meetings conducted thereunder shall be subject to such reasonable rules and regulations from time to time prescribed by the gaming commission.

4-a. As a condition of franchise acceptance, the franchised corporation shall enter into a franchise agreement that shall require such franchised corporation to use its best efforts to satisfy performance standards, measured every four years by the franchise oversight board. Such performance standards shall relate to racing dates, New York bred horse races, horse stalls, jockey and equine safety, state concentrated animal feeding operation, backstretch conditions, the Saratoga training facility, handle and attendance, purses, expenses of the franchised corporation, and the communities surrounding Aqueduct racetrack, Belmont Park racetrack and the Saratoga race course. As a condition of franchise acceptance, the franchised corporation shall continue to lease for nominal consideration the ballfield property near the Aqueduct racetrack that includes lots 62, 118, 119, 127, 133, 135, 136 and 138 of block 11535; lots 73, 110 and 113 of block 11536; lots 5, 9, 10, 12, 14 and 110 of block 11551; and lot 204 of block 11562 in Queens County, as a ballfield for the appropriate community organization, and convey the parcel near the Aqueduct racetrack that includes lot 1 of blocks 11558 and 11560 in Queens county to the New York city public school construction authority

should such authority desire and commit to purchase such parcel at fair market value.

5. A franchise may be revoked and cancelled by the commission only for the reasons and in the manner prescribed under the provisions of sections two hundred twelve and two hundred forty-four of this article. The action of the commission in revoking a franchise shall be reviewable in the supreme court in the manner provided by and subject to the provisions of article seventy-eight of the civil practice law and rules.

6. (a) All contracts entered into by the franchised corporation for the procurement of goods or services shall be pursuant to a competitive bidding purchasing policy approved by the franchise oversight board.

(b) In its review of the contracts pursuant to this section in any contract in excess of one hundred thousand dollars, the franchise oversight board may review the character and fitness of the entity or its principals entering into contracts with a franchised corporation and provided further the oversight board may require such information as it deems necessary including the power to subpoena such books, records, and other pertinent information related to the contracts from the contractor or vendor of any contract.

7. Notwithstanding the provisions of section seven of the general business law, or any other inconsistent provision of general, special or local law, the commission shall specify annually the dates on which, and the hour of the first post time for days during which, such franchised corporation may operate at the places and for the full number of days specified in its franchise.

8. The commission shall permit the franchised corporation to conduct pari-mutuel betting in the manner and subject to the conditions prescribed by this chapter, at the racetracks described in such racing franchise for the duration of such racing franchise.

9. (a) The franchised corporation shall maintain a separate account for all funds held on deposit in trust by the corporation for individual horsemen's accounts. Purse funds shall be paid by the corporation as

required to meet its purse payment obligations. Funds held in horsemen's accounts shall only be released or applied as requested and directed by the individual horseman. Through calendar year two thousand twenty-seven the New York Jockey Injury Compensation Fund, Inc. may use up to two million dollars from the account established pursuant to this subdivision to pay the annual costs required by section two hundred twenty-one of this article.

(b) Unless otherwise permitted by written agreement with the horsemen's organization recognized pursuant to section two hundred twenty-eight of this article the franchised corporation shall fund purses in an amount (on an annual basis and not a per-race basis) in excess of that required by this chapter, so as to reduce the purse cushion at the end of each calendar year by the amount set forth below:

Year	Reduction of Purse Cushion for Calendar Year	Maximum Purse Cushion at Year End Not to Exceed
2008	$0	$20.0 million
2009	$1.0 million	$19.0 million
2010	$1.0 million	$18.0 million
2011	$2.0 million	$16.0 million
2012	$2.0 million	$14.0 million
2013	$3.0 million	$11.0 million
2014	$3.0 million	$8.0 million
2015	$2.0 million	$6.0 million

Thereafter the maximum purse cushion at year end shall not exceed $6.0 million.

(c) The franchised corporation shall establish and maintain a separate account for funds to be held on deposit in trust by the franchised corporation for the horsemen's organization recognized pursuant to section two hundred twenty-eight of this article. Starting in two thousand eighteen and annually thereafter, funds from the account established pursuant to this subdivision shall be deposited in the separate account established under this paragraph in an amount to be agreed upon by the franchised corporation and the horsemen's organization recognized pursuant to section two hundred twenty-eight of this article. Funds held in this account shall be used by such recognized horsemen's organization solely as collateral to secure workers' compensation insurance coverage, including through the New York

Jockey Injury Compensation Fund, Inc. Such coverage shall include high deductible programs and forms of self-insurance.

(d) In the event the horsemen's organization recognized pursuant to section two hundred twenty-eight of this article determines that the funds are no longer needed as collateral to secure workers' compensation insurance coverage, then, upon agreement by the franchised corporation and such appropriately recognized horsemen's organization, funds in the separate account established under paragraph (c) of this subdivision shall be returned to the account established pursuant to paragraph (a) of this subdivision.

(e) The account shall be subject to annual audit by a certified public accountant approved and paid by the appropriately recognized horsemen's organization.

* 10. It is incumbent upon the franchised corporation to ensure the health and safety of its equine participants. To accomplish that goal, the franchised corporation shall, by September first, two thousand twenty-five, make a one-time contribution of two million dollars to the Harry M. Zweig memorial fund, established under section seven hundred one of this chapter, for the sole purpose of off-setting the cost of purchasing screening and imaging equipment for the research project as specified in subdivision seven of section seven hundred four of this chapter. The Harry M. Zweig memorial fund shall hold such money in an escrow account until such time as it is necessary to purchase the equipment required to conduct the research. The money in the escrow account shall not be used for any purposes other than purchasing equipment to be used for such research.

* NB Repealed September 1, 2028