

## MUNICIPALITY CONTRIBUTION AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_

### **B E T W E E N:**

**ONTARIO LOTTERY AND GAMING CORPORATION**, a statutory corporation established under the *Ontario Lottery and Gaming Corporation Act, 1999* (Ontario) with its corporate office located at 4120 Yonge Street, Suite 420, Toronto, ON M2P 2B8, facsimile number 416-224-7003

(hereinafter referred to as “**OLG**”)

### **OF THE FIRST PART**

- and -

**THE CORPORATION OF THE CITY OF LONDON**, the City Clerk c/o City Clerk’s Office, with its administrative office located at 300 Dufferin Avenue, P.O. Box 5035, London, ON N6A 4L9, facsimile number 519-661-5308

(hereinafter referred to as the “**Municipality**”)

### **OF THE SECOND PART**

**WHEREAS** OLG has the authority to conduct and manage lottery schemes within the meaning of subsection 207(4) of the *Criminal Code* (Canada) and subject to the *Gaming Control Act, 1992* (Ontario) including slot machines as defined in s.198(3) (the “**Prescribed Slots**”);

**AND WHEREAS** OLG conducts and manages a gaming site at 900 King Street East, London, ON N5W 5K3 (the “**Location**”);

**AND WHEREAS** the parties acknowledge it would be in the public interest for the host Municipality of the Location to have access to funds which may be used, at the discretion of the Mayor and Council, for municipal purposes such as services relating to registering property, transit services and passenger transportation services;

**NOW THEREFORE**, in consideration of the respective covenants and agreements, representations, warranties and indemnities herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party hereto) the parties agree as follows:

## 1. Definitions

(1) As used herein, including the foregoing recitals, the following terms shall have the respective meanings indicated below:

- (a) “**Contribution**” has the meaning set forth in Section 3;
- (b) “**Effective Date**” means April 1, 2013 or such later date as OLG may specify;
- (c) “**Operating Year**” means each period from April 1<sup>st</sup> to March 31<sup>st</sup> inclusive, during the Term, to the end of the Term, except that the first Operating Year shall be the period beginning on the Effective Date and ending on the following March 31<sup>st</sup> and if this Agreement shall be terminated effective on a date other than March 31<sup>st</sup> in any year, then the period from April 1<sup>st</sup> of the calendar year in which such termination occurs (or April 1<sup>st</sup> of the immediately preceding calendar year if the date of termination occurs in January, February or March) to such effective date of termination shall be treated as an Operating Year;
- (d) “**Slots Revenue**” means, for any period, the sum of net revenue generated from slot machines at the Location, calculated in accordance with International Financial Reporting Standards or such other Canadian generally accepted accounting principles as OLG adopts from time to time in its sole discretion. For greater certainty, the Slots Revenue will not include any revenue whatsoever from other products or services provided by OLG at the Location in the Municipality other than the Prescribed Slots. Slots Revenue will be calculated in accordance with the rates identified in section 3; and
- (e) “**Term**” means the period of time referred to and described in Section 2 hereof.

## 2. Term and Termination

The term of this Agreement will become effective on the Effective Date and will terminate at the earliest of:

- (a) the date on which all Prescribed Slots are no longer conducted and managed by OLG in the Municipality at the Location;
- (b) the date on which any license, permit, approval, consent and/or other permission that may be required for the continued use and operation of the Prescribed Slots at the Location in the Municipality is no longer available, becomes invalid or ceases to have effect;
- (c) the effective date of written notice of termination provided by OLG to the Municipality, which effective date must be specified by OLG in such notice; provided, however, that such effective date shall be at least 30 days following the date of such notice. OLG will endeavour to provide more than 30 days’ notice, and, where not practicable to do so, OLG shall:

- (i) explain, in said notice, why it is not practicable to do so, subject to any confidentiality concerns, as well as setting out in such notice the length of the time period equal to the difference between: (A) 365 days; and (B) the number of days' notice actually given by OLG. For greater certainty, such time period shall not exceed 335 days; and
  - (ii) pay to the Municipality, in accordance with the timelines in Section 4, amounts which aggregate OLG's estimation of the Contribution that OLG would have paid in respect of the time period referred to in Subsection (c)(i) above had this Agreement not been terminated in accordance with this Section 2(c); and
- (d) the date mutually agreed to in writing between OLG and the Municipality (the "Effective Date of Termination").

### **3. Payments**

OLG shall pay to the Municipality, an amount equal to the following (the "Contribution"):

- (a) 5.25% for the 1st \$65 million of net Slot Revenue; plus
- (b) 3.00% on the next \$135 million of net Slot Revenue; plus
- (c) 2.50% on the next \$300 million of net Slot Revenue; plus
- (d) 0.50% on the remainder of net Slot Revenue.

Following the Effective Date, in the event any additional taxes, charges, conditions or requirements are imposed by the Municipality on OLG in respect of the continued operation of the Prescribed Slots at the Location in the Municipality, the Municipality acknowledges and agrees that OLG shall be entitled to amend the Contribution in a way that may reduce the Municipality's entitlement.

### **4. Timing of Payments**

(a) Subject to Section 4(b), within twenty-one (21) days of the end of each calendar quarter during the Term, OLG shall pay to the Municipality the Contribution to which the Municipality is entitled for such period. OLG will provide access to its most current audited consolidated financial statements once such are made public by the Ministry of Finance in public accounts.

(b) In the event the Effective Date of Termination of this Agreement occurs on or before the date that is twenty-one (21) days following the end of a calendar quarter, OLG shall, within fifteen (15) days of such Effective Date of Termination, pay to the Municipality the Contribution to which it is entitled in respect of the period beginning on the first day of the calendar quarter in which such termination took place up to and including the Effective Date of Termination.

## **5. Entire Agreement**

This Agreement constitutes the entire agreement between the Municipality and OLG with respect to the matters herein and supersedes all prior agreements and understandings, oral or written, between the parties hereto or their respective representatives with respect thereto and shall not be modified or amended, except by written agreement signed by the parties hereto.

## **6. Further Assurances**

The parties agree to do, or cause to be done, all acts or things and execute all such further documents as may be necessary to implement and carry into effect this Agreement to its full extent.

## **7. Normal Costs of Development**

The parties acknowledge and agree that nothing herein shall operate to fetter any legislative or quasi-judicial jurisdiction of the Municipality, and in particular, it is understood and agreed by the parties that this Agreement does not preclude the Municipality from imposing upon occupants, owners or developers of the property at which the Prescribed Slots are located, normal development-related costs (including the costs of infrastructure improvements under local or regional jurisdiction) arising from the Prescribed Slots in the same manner and to the same extent as may be imposed by the Municipality on other occupants, owners or developers of land within the Municipality, and further that this Agreement does not preclude the Municipality from imposing such taxes, fees, charges, conditions or other requirements as may be imposed in accordance with applicable law upon owners, occupants, developers, properties or businesses in the Municipality (including, without limitation, realty taxes, development charges, conditions of site plan approval and sewer and water charges).

## **8. No Liability of OLG**

The Municipality acknowledges and agrees that none of OLG and any provincial agency, ministry or crown corporation, nor any of their respective officers, directors, employees, agents or representatives shall be liable to the Municipality for or in respect of any claims (including claims based in contract, tort or negligence, active or passive), any cause of action, demands, losses, liabilities or damages whatsoever (including consequential, exemplary, special, punitive and indirect damages) arising out of, in respect of, or relating indirectly or directly to this Agreement, the Prescribed Slots, the operation, cessation of operation or malfunction of any systems or equipment, or any injury to or death of any person. Furthermore, the Municipality releases OLG from any and all losses in respect of the foregoing.

## **9. Notice**

Any notice or other communication permitted or required to be given by OLG to the Municipality shall be given by either posting the same by prepaid registered mail or by facsimile addressed to the Municipality at the address or facsimile number, as applicable, appearing in this Agreement or by personal delivery to the Municipality. Any notice or other communication permitted or required to be given by the Municipality to OLG shall be given by either posting the same by prepaid registered mail or by facsimile addressed to OLG at the address or facsimile number, as applicable, appearing in this Agreement or by personal delivery to OLG. Any notice posted by pre-paid registered mail shall be deemed to have been received on the third business day following such mailing and any

notice personally delivered or sent by facsimile shall be deemed to have been received at 5:00 p.m. on the day so delivered or sent by facsimile (if such day is a business day and if such notice is sent prior to 5:00 p.m. on that day, and if not, on the next following business day). During periods of a postal strike or of a general interruption of postal services, any notice shall be given by personal delivery or facsimile hereunder and shall be deemed to have been received on the second business day following posting of the same.

#### **10. Relationship of Parties**

OLG acknowledges the Municipality's role as a host community of the Prescribed Slots at the Location. The Municipality acknowledges and agrees that the Municipality is not an employee, agent or representative, joint venturer, or partner of OLG, and the Municipality shall not represent itself to others as being authorized to assume, incur or create any obligation of any kind (express or implied) on behalf of (or in the name of) OLG or any other provincial agency, ministry or crown corporation, or purport to bind OLG or any other provincial agency, ministry or crown corporation in any respect. For greater certainty, the Municipality acknowledges that OLG has, and shall have, the sole right to determine, from time to time and at any time, the number and type of slot machines operated at the Location

#### **11. Severability**

If any covenant or term herein or the application thereof to any person or entity, or in any circumstance, to any extent is held invalid or unenforceable, the remainder of this Agreement or the application of the term, covenant or condition to any person, event or circumstance, other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law, except that if on the reasonable construction of this Agreement, as a whole, the applicability of the other provisions presumes the validity and enforceability of the particular provision, the other provisions will be deemed also to be invalid or unenforceable.

#### **12. Governing Law**

This Agreement shall be interpreted and the rights of the parties shall be governed by and construed in accordance with the laws of the Province of Ontario.

#### **13. Attornment**

Each party irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

#### **14. Recitals**

The recitals to this Agreement form part thereof and this Agreement is to be construed accordingly.

#### **15. Time**

Time shall in all respects be of the essence in this Agreement.

**16. Counterparts**

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

**17. Disclosure**

The parties acknowledge that OLG is a Crown Agency and that it is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended, and that the Municipality is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, and that, as a result, each party is required to observe certain legislative obligations with respect to the disclosure or non-disclosure of information, whether to government agencies or ministries, members of the public, or otherwise.

**18. Modifications**

Excluding an amendment permitted under s. 3, no amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party providing such waiver, and will be limited to the specific breach being waived.

**19. Assignment**

No transfer, sale or assignment by the Municipality of this Agreement or the Municipality's rights hereunder is valid without the prior written consent of OLG.

**20. Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

**21. Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

**[Remainder of Page Left Intentionally Blank]**

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first written above.

**ONTARIO LOTTERY AND GAMING CORPORATION**

Per: \_\_\_\_\_  
Name: Rod Phillips  
Title: President & Chief  
Executive Officer

I have the authority to bind OLG

**THE CORPORATION OF THE CITY OF LONDON**

Per: \_\_\_\_\_

Name:  
Title:

*c/s*

Per: \_\_\_\_\_

Name:  
Title: