

CHARITABLE GAMING CENTRE MUNICIPALITY AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 2012

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*, with an office located at 4120 Yonge Street, Suite 500, Toronto, Ontario, M2P 2B8

(hereinafter referred to as “OLG”)

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF [INSERT HOST MUNICIPALITY], with its administrative office located at [INSERT DETAIL]

(hereinafter referred to as the “Municipality”)

OF THE SECOND PART

WHEREAS OLG has the authority to conduct and manage lottery schemes on behalf of the government of Her Majesty in right of Ontario pursuant to Section 207(1)(a) of the *Criminal Code* (Canada) and in accordance with the *Ontario Lottery and Gaming Corporation Act, 1999* (Ontario) and to enter into agreements with third parties regarding any lottery schemes conducted or managed by OLG on behalf of the Province.

In consideration of the respective 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

As used herein, the following terms shall have the respective meanings indicated below:

- (a) **“Bona Fide Member”** means a member, 18 years of age or over, in good standing of a Permittee and who has other activities, beyond participating in lottery events, within the Permittee organization and, for greater certainty, excludes a member of convenience;
- (b) **“Cash Equivalent”** means a tender or right that is convertible into cash, including gaming tokens and vouchers, but excluding Promotional Play;

- (c) **“Cash Equivalents Credits”** means the Cash Equivalents Receipts received in respect of Cash Equivalents that remain unplayed at the end of any business operating day;
- (d) **“Cash Equivalents Receipts”** means the aggregate amount of all cash actually collected or otherwise received from Players and other customers for the purchase of Cash Equivalents that may be used to play or for the opportunity to play any Charitable Game in the Charitable Gaming Centre;
- (e) **“Charity Assignment”**, means a predetermined allotment of time when individual charities are scheduled and are required to provide volunteer resources to execute roles and responsibilities as required under the policies and standards as prescribed by OLG in return for a share of the charities proceeds.
- (f) **“Charitable Gaming Centres”** means the lands and buildings, or area in the lands and buildings, located at the addresses in the Municipality set out in, and more particularly described in, Schedule B hereto (regardless of whether or not any of the words “charitable”, "bingo", “centre” or "hall" forms part of its name);
- (g) **“Charitable Gaming Centre Association”** or **“CGCA”** means, with respect to the Charitable Gaming Centres, an association formed by Permittees that, prior to the commencement of this Agreement, conducted regular bingo lottery events under the *Gaming Control Act, 1992* within the Charitable Gaming Centres, provided that OLG shall not be required to recognize more than one such CGCA in respect of each Charitable Gaming Centre.
- (h) **“Charitable Gaming Centre Service Provider”** or **“CGCSP”** means the service provider who has entered into a Charitable Gaming Centre Service Provider Agreement with OLG to provide operational services in a Charitable Gaming Centre;
- (i) **“Charitable Games”** or **“Charitable Gaming”** means paper and electronic lottery schemes of a social charitable nature, conducted and managed by OLG, tested and approved by AGCO and set out in Schedule A, but excluding OLG Lottery Games;
- (j) **“Charitable Organization”** means a charity or non-profit organization that meets the Permit Requirements and participates in assignments in a Charitable Gaming Centre;
- (k) **“Eligible Charity”** means a charitable organization which: (1) as of the day immediately preceding the Start Date, held a valid, unsuspended licence, issued by the Registrar of Alcohol and Gaming based on an authorization issued by the Municipality, to conduct and manage a charitable gaming lottery event at a Charitable Gaming Centre; or (2) had held such a valid, unsuspended licence for a period wholly within the preceding 12 month period preceding the Start Date or held a Permit under the existing OLG initiative;
- (l) **“Expired Cash Equivalents Liability Amount”** means the Cash Equivalents Credits in respect of those Cash Equivalents that expired in accordance with the Rules and

Regulations without such Cash Equivalents having been (i) redeemed by Players or other customers to play any Charitable Game at the Charitable Gaming Centre, or (ii) returned or cancelled for reimbursement to Players or other customers;

(m) **“Expired Cash Equivalents Liability Amount”** means the Cash Equivalents Credits in respect of those Cash Equivalents that expired in accordance with the Rules and Regulations without such Cash Equivalents having been (i) redeemed by Players or other customers to play any Charitable Game at the Charitable Gaming Centre, or (ii) returned or cancelled for reimbursement to Players or other customers;

(n) **“Net Gaming Win”** means, for a specific period, Gaming Revenue, plus the Promotional Play Amount for such period, less:

(i) the aggregate amount of all paid Winnings; and

(ii) the aggregate amount of all cash and Cash Equivalents collected or otherwise received from Players and other customers and validly accrued in respect of the funding of progressive jackpot Charitable Games at a Charitable Gaming Centre, less the aggregate amount of all Winnings previously accrued from progressive jackpot Charitable Games at such Charitable Gaming Centre;

(o) **“OLG Lottery Game”** means any ticket lottery game conducted and managed by OLG now or in the future (other than a Charitable Game) and commonly referred to by OLG as a lottery game;

“Participation Requirements” means such requirements and criteria that a charitable organization must meet and maintain (including those relating to use of proceeds) as OLG may from time to time prescribe;

(p) **“Permit”** means a permit governed by the Permit Requirements set out in Appendix 1 hereto and supplied by the Municipality to an Eligible Charity which is receiving the permit on behalf of OLG, confirming that that Eligible Charity meets the Participation Requirements in respect of the Permit Period;

(q) **“Permit Application Form”** means the form annexed hereto as Appendix 2;

(r) **“Permittee”** means, with respect to any CGCA, a charitable organization which holds a valid Permit from the applicable Permitting Authority;

(s) **“Permitting Authority”** means the Municipality;

(t) **“Permit Period”** means the twelve (12)-month period commencing on the Start Date (or such shorter Permit Period as OLG may allow or that past practices for a given eligible charity may dictate) but in no event a period that extends beyond twelve (12) months after the Start Date,

subject to the discretion of the Permitting Authority;

(u) “**prescribe**”, “**prescribes**” or “**prescribed**” means specified, designated or approved in writing by OLG from time to time

(v) “**Registrar of Alcohol, Gaming and Racing**” means the Registrar of Alcohol, Gaming and Racing established under the *Alcohol and Gaming Regulation and Public Protection Act*, 1996 (Ontario) and includes such Deputy Registrars to whom the Registrar has delegated certain authority;

(w) “**Quarterly Amount**” has the meaning ascribed to it in Section 4 hereof;

(x) “**Start Date**” means, with respect to the Charitable Gaming Centre, such date as the CGCSP shall determine for the opening of the Charitable Gaming Centre to the general public and the operation of the Charitable Games therein. OLG shall provide the Municipality with written notification of the Start Date;

(y) “**Term**” means the period of time referred to and described in Section 2 hereof;

2. **Term**

(a) The initial term of this Agreement (the “**Initial Term**”) will commence on the Start Date and will continue until March 31, 2029, unless earlier terminated in accordance with the provisions of this Agreement.

(b) OLG shall have one option, exercisable in its sole discretion, to extend the Initial Term for an additional consecutive term of five years (the “**Extended Term**”, and together with the Initial Term, the “**Term**”) by providing to the Municipality written notice of the exercise of such extension option not later 60 days prior to the end of the initial term. All of the same terms and conditions of this Agreement will apply during the Extended Term.

(c) Notwithstanding Section 2(a) above, OLG may, at its option, terminate this Agreement if the Municipality fails to perform or observe any term, covenant or agreement contained herein; provided that OLG shall first provide written notice of its intent to terminate, and termination shall be effective only if the Municipality fails to remedy such failure to perform within thirty (30) days of receipt of notice.

(d) Notwithstanding Sections 2(a) and (b) , OLG may, at its option, terminate this Agreement for convenience by providing the Municipality with ninety (90) days’ written notice of termination.

3. **Financial Calculations**

OLG shall calculate the Net Gaming Win on a calendar quarter basis.

4. **Payment**

In consideration for the Municipality's role, OLG shall, in accordance with the procedures set out herein, pay to the Municipality, in respect of each calendar quarter an amount (the "**Quarterly Amount**") equal to the amount calculated in accordance with Schedule B, and such payment is inclusive of any applicable taxes payable by OLG. Within twenty-one (21) days of the end of each calendar quarter, OLG shall pay to the Municipality the Quarterly Amount in respect of such quarter.

5. **Municipality's Role**

The Municipality shall act as the Permitting Authority and shall supply Permits to the Eligible Charities to receive the Permits on behalf of OLG.

The service of supplying the Permits includes the Municipality's performance of the following:

- (a) reviewing and processing the Permit Application Form submitted to the Municipality by each Eligible Charity within the time limits prescribed by OLG;
- (b) notifying OLG in writing, no less than thirty (30) days prior to the Start Date, of the identity of any Eligible Charity that has not submitted a Permit Application Form to the Municipality;
- (c) notifying OLG in writing, no less than twenty (20) days prior to the Start Date of the identity of any Eligible Charity to whom the Municipality has not supplied a Permit;
- (d) where an Eligible Charity has submitted a properly completed Permit Application Form to the Municipality, the supply of a Permit in accordance with the provisions of paragraph (f) below to that Eligible Charity within twenty (20) days of receipt of Permit Application Form;
- (e) supplying Permits only in the form annexed hereto as Appendix 1;
- (f) when considering the issuance of new Permits or the renewal of Permits on or after the Start Date, the Municipality shall consider factors such as the number of bingo authorizations already issued, the Eligible Charity's financial need and community benefit, remaining consistent with the Participation Requirements;
- (g) monitoring each Permittee's compliance with the Permit Requirements set out in Appendix 1 annexed hereto and investigating any breaches of the Permit Requirements set out in Appendix 1;

(h) monitoring the CGCA's compliance with the distribution requirements of issued Permits by:

(i) ensuring monthly reports are received from the CGCA that certify members of the CGCA have acted in compliance with such distribution requirements; (ii) ensuring the CGCA has pooled and distributed funds electronically as set out in the respective Permits; (iii) reviewing CGCA Distribution reports (Appendix 3) submitted to the Municipality to ensure that the Permittees have received their share of Charitable Gaming proceeds only where they have a valid Permit and have fulfilled attendance requirements; (iv) upon request, ensuring Bona Fide Member attendance reports are received from CGCA and Bona Fide Member lists are received from CGCA; (v) validating that the Permittees have met attendance requirements including, at the Municipality's discretion, by conducting periodic checks and verifying that attendance reports submitted by CGCSP's match Bona Fide Member lists submitted by the CGCA (Sample attached as Appendix 5); (vi) notifying OLG as quickly as practicable (and, in any event, no less frequently than once per year) of the CGCA where it has not fulfilled, or is not fulfilling, the above requirements;

(i) not imposing any other requirements, terms or conditions on any Permittee, other than the Permit Requirements set out in Appendix 1, or as set out below:

The Municipality may place any or all of the following conditions on a Permit: (i) conditions transcribing the approved eligible use for the proceeds from the application form in line with the Participation Requirements; (ii) a requirement to provide the financial reports referred to in Appendix 4 on a monthly basis; (iii) other additional conditions which may be necessary and have received prior approval by OLG (including the conditions set out in the Participation Requirements);

(j) no later than sixty (60) days following the Start Date, refunding to each Eligible Charity any fees paid by it to the Municipality in respect of the unexpired term (pro-rated to the Start Date) of any licence issued by the Registrar of Alcohol, Gaming and Racing based on an authorization issued by the Municipality to the Eligible Charity to conduct and manage a bingo lottery event at the Charitable Gaming Centre;

(k) no later than the Start Date, retrieving from each Eligible Charity, and cancelling, the authorization referred to in subsection (j);

(l) not supplying any Permit to any person or organization that is not an Eligible Charity; for greater certainty, if an Eligible Charity is under investigation by the Municipality or the AGCO as of the day immediately preceding the Start Date, then the Municipality shall: (i) ensure that the Permit supplied to such Eligible Charity is conditional upon the outcome of such investigation; and (ii) inform OLG of the outcome of such investigation as soon as practicable after it has been completed;

(m) not supplying any more concurrently valid permits than the total number of eligible charities that held a valid licence or Permit as of the day immediately preceding the Start Date or as

OLG may specify;

- (n) in the event that the number of eligible charities that have been supplied with permits by the Municipality as of the Start Date decreases, the Municipality may supply additional permits (up to the maximum allowable number of permits) to applying charitable organizations that meet the Participation Requirements;
- (o) not issuing to any person or organization any authorization to conduct and manage a bingo lottery event at the Charitable Gaming Centre during the Permit Period;
- (p) ensuring charity compliance through the following mechanism:
 - (i) notifying OLG as soon as practicable after the Municipality becomes aware that an Eligible Charity has contravened, or is about to contravene, any of the Participation Requirements or Permit Requirements;
 - (ii) cancelling, suspending, revoking or terminating a charity's Permit where it fails to meet the requirements of that Permit and subject to the following conditions:
 - (1) the Municipality has first investigated the alleged contravention and has, in good faith, attempted to resolve any issues with the charity and the corresponding CGCA (or any agent acting on their behalf); (2) the Municipality immediately (within two (2) working days) of cancelling, suspending, revoking or terminating a charity's Permit, has informed OLG, indicating the charity involved and why the Permit was cancelled, revoked, terminated or suspended; (3) OLG reserves the right to reverse, in whole or in part, any decision made by the Municipality with respect to the cancellation, revocation, termination or suspension of any Permit;
 - (iii) cancelling, revoking, terminating or suspending a Permit immediately upon OLG's direction to the Municipality to that effect;
 - (iv) forwarding to OLG any suggestions or possible improvements to the enforcement process for discussion;
 - (v) informing the CGCA of the situation in order to ensure good communication.
- (q) for the purposes of supporting the Charitable Gaming Program objectives of supporting and encouraging innovation and encouraging cooperation among Charitable Gaming stakeholders, sharing with OLG any possible improvements, innovations, best practices or issues of potential benefit or interest;
- (r) maintaining books and records consisting of Permit applications, copies of Permits, the CGCA's monthly reports, each Permittee's report in accordance with Appendix 4 hereto and the Municipality's investigation notes, recommendations and reports pursuant to this Agreement, and causing such books and records to be made available to OLG;
- (s) monitoring each Eligible Charity's use of proceeds from the Charitable Games, and, within thirty (30) days of the receipt of the financial report annexed hereto as Appendix 4, furnishing to OLG a written report with respect thereto, such report to be in such format as

may be prescribed by OLG (but, in any event, listing each Eligible Charity's name and, beside each name, the Municipality's confirmation that there have been no breaches of the Participation Requirements by the Eligible Charity revealed by the Municipality during the reporting period);

- (t) if requested by OLG, providing to OLG such copies of any Permit Application Form and other materials submitted by an Eligible Charity in connection with such Permit Application Form; and
- (u) for greater certainty, not charging any fees (including administrative fees) for any of the foregoing.

6. Representations and Warranties

The Municipality hereby covenants, represents and warrants as follows and acknowledges that OLG is relying thereon in connection with entering into this Agreement:

- (a) that it has the right and capacity to enter into this Agreement and to perform its obligations hereunder;
- (b) that each Eligible Charity meets at the time of issuing the Permit, and is expected by the Municipality to continue meeting, the Participation Requirements; and
- (c) that, in addition to subsection (b), prior to the Start Date, the Municipality, in previously having decided to issue an authorization to the Eligible Charity to conduct and manage a bingo lottery event at the Charitable Gaming Centre, took into account factors such as the number of authorizations already issued, the Eligible Charity's financial need and community benefit, remaining consistent with the Participation Requirements.

7. 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.

8. No Liability of OLG

The Municipality acknowledges that OLG and any provincial agency, ministry or crown corporation shall not be liable to the Municipality for any loss, direct, indirect or consequential damages or injury relating to the operation of the Charitable Games or the Charitable Gaming Centres, including but not limited to loss of fees resulting from the operation or malfunction of equipment.

9. Notice

- (a) Any notice permitted or required to be given by OLG to the Municipality may be given by posting the same by prepaid registered mail; by personal delivery to the Municipality; or by telefax addressed to the Municipality at the address appearing in this Agreement. Any notice permitted or required to be given by the Municipality to OLG may be given by delivering and leaving the same in an envelope addressed to OLG to the attention of the Vice-President, Charitable Gaming at the address appearing in this Agreement or by posting the same by prepaid registered mail addressed to OLG to the attention of the Vice-President, Charitable Gaming, at the address appearing in this Agreement or by email to rgray@olg.ca. OLG may designate in writing, by notice given in the aforesaid manner, that notices to OLG be given at such other address, to the attention of such other person or office and/or to another email address, as OLG may specify in such notice. Any notice delivered to the Municipality or at the address of OLG appearing in this Agreement shall be deemed to have been received at the time of so delivering and leaving the notice. Except during periods of a postal strike or of a general interruption of postal services, any notice given by prepaid registered mail shall be deemed to have been received on the second business day following posting of the same.

- (b) Except as provided in Section (a) above 1, any other communication or delivery (including reports and other routine communications) required or permitted to be given or provided by the Municipality under this Agreement or the OLG Policies will be in writing and will be delivered by such means and addressed to such person or persons as OLG may, acting reasonably, prescribe in writing to the Municipality from time to time (which means may include delivery by personal delivery, email, courier, registered mail, the use of data sites or secure file transfer protocols, or other means of electronic communication or collaboration software), or, failing which prescription by OLG, the provisions of Section 9(a) will apply in respect thereof.

10. Relationship of Parties

The Municipality acknowledges 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.

11. Severability

If any covenant or term hereof or the application thereof to any person, 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 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 and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of such Province.

13. Time

Time shall in all respects be of the essence of this Agreement. The time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties.

14. 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.

15. 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*, and that the Municipality is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, and that, as a result, either party may be required to observe certain obligations with respect to the disclosure or non-disclosure of information, whether to government agencies or ministries or otherwise.

16. Waiver

No waiver or any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any provision hereof and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

17. Modifications

If the parties shall deem it necessary or expedient to make any alteration in or addition to this Agreement, they may do so by a written agreement between them which shall be supplemental hereto and form part hereof.

18. 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, which consent shall not be unreasonably withheld. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

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

ONTARIO LOTTERY AND GAMING CORPORATION

per: _____

Name: _____

Title: _____

I have the authority to bind the Corporation

per: _____

Name: _____

Title: _____

I have the authority to bind the Corporation

THE CORPORATION OF THE CITY OF [insert municipality]

per: _____

1. Name: _____

Title: _____

per: _____

2. Name: _____

Title: _____

Schedule A

Charitable Games

For the purposes of this Agreement, Charitable Games are lottery schemes that are permitted to be offered at Charitable Gaming Sites pursuant to Ontario Regulation 81/12 made under the *Ontario Lottery and Gaming Corporation Act, 1999*, including the following:

- session play paper bingo games
- session play electronic bingo games
- paper break-open ticket lottery games
- electronic break-open ticket dispensers
- personal play electronic bingo
- personal play electronic break-open tickets
- personal play electronic instant games
- electronic shutterboard games

For greater certainty, the Charitable Games do not include OLG Lottery Games

Schedule B

Name and Address of the Charitable Gaming Centre:

[INSERT NAME AND ADDRESS OF CHARITABLE GAMING CENTRE(S)]

Quarterly Amount Payable to Municipality:

Three (2.79) % of unaudited Net Gaming Win at the above-listed Charitable Gaming Centre (s),
subject to OLG adjustments.