



Purchase Order Terms and Conditions

Effective May 1, 2013

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**MIDWEST GAMING & ENTERTAINMENT, LLC (“RIVERS CASINO”)
TERMS AND CONDITIONS AGREEMENT/APPLIES TO AND MUST BE ATTACHED TO ALL
PURCHASE ORDERS ISSUED BY RIVERS CASINO OR PROPOSALS ISSUED BY A
VENDOR OF GOODS OR SERVICES TO RIVERS CASINO.**

Vendor: _____
Name: _____

Authorized Signature: _____ Printed Name: _____

MIDWEST GAMING & ENTERTAINMENT, LLC, a Delaware limited liability company d/b/a Rivers Casino (“Rivers Casino”)

Authorized Signature: _____ Printed Name: _____

DATE: _____, 201____

THESE TERMS AND CONDITIONS ARE MADE A PART OF RIVERS CASINO’S PURCHASE ORDER AND ANY AGREEMENT FOR GOODS OR SERVICES BETWEEN RIVERS CASINO AND A VENDOR AND SHALL SUPERCEDE ANY CONFLICTING TERMS AND CONDITIONS OF ANY PURCHASE ORDER, PROPOSAL OR CONTRACT SUBMITTED BY A VENDOR AND ARE HEREBY INCORPORATED INTO AND MADE A PART OF ANY AGREEMENT WITH A VENDOR AND NO CONTRACT SHALL BE ACCEPTED BY RIVERS CASINO UNLESS VENDOR AGREES TO THE BELOW TERMS.

1. STATEMENT OF INTENT.

Rivers Casino is contracting with you for certain materials or services to be used in Rivers Casino’s riverboat gambling facility. The Illinois Gaming Board strictly regulates gambling in the state of Illinois and therefore has strict requirements regarding the policies and procedures Rivers Casino and its suppliers use in the purchasing process. Accordingly, this document contains both (i) Rivers Casino’s terms and conditions regarding its order with you, and (ii) the requirements imposed upon Rivers Casino (and therefore you) as a result of Rivers Casino’s obligations to the Illinois Gaming Board.

2. APPLICABLE CONTRACT PROVISIONS.

a. Rivers Casino has previously communicated to you a Purchase Order to purchase a quantity of goods and/or services or you have communicated to Rivers Casino a vendor purchase order or proposal (the “Products”) at a defined price (“the Purchase Order” or “Order”). The Purchase Order, which will be a written or electronic document, may have also included particular specifications, shipping instructions and/or other requirements by Rivers Casino for the goods or services. These terms and conditions, together with any Purchase Order, or related written agreement issued by or accepted by Rivers Casino constitute the terms and conditions of any agreement by Rivers Casino to purchase from you (“Vendor”) the described Products or services. Acceptance of any shipment of the Products or receipt of services shall not be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Vendor.

b. Rivers Casino's Purchase Order shall become an "Agreement" upon acceptance by Vendor or Rivers Casino as the case may be. Vendor shall be deemed to have accepted Rivers Casino's Purchase Order by Vendor's commencement of delivery of the Products or services to Rivers Casino, by Vendor's written acceptance or confirmation of a Purchase Order, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. Rivers Casino hereby expressly objects to and rejects any such additional or different provisions (other than the amounts due or payment due dates of Vendor's invoices), and none of such provisions shall be deemed to be a part of any agreement between the parties unless specifically agreed to in writing by Rivers Casino.

c. The agreement between the parties shall consist of the Purchase Order, any related written agreement these Terms and Conditions, and any specifications, drawings, instructions and/or requirements conveyed by Rivers Casino to Vendor with regard to a Purchase Order for Products or services. Notwithstanding anything stated herein to the contrary, all the aforementioned documents and communications shall be incorporated herein as material terms of the Agreement between Rivers Casino and Vendor.

3. **SHIPPING INSTRUCTIONS.** Routing and shipping instructions of Rivers Casino must be followed. Notice of shipment shall be sent to Rivers Casino at the time of shipment, which shall state the number of the Order, the kind and amount of Products and the route by which the shipment is being made. Vendor shall ship the Products from the specified point of shipment no later than the specified shipment date and shall deliver the Products to Rivers Casino at the specified destination no later than the specified delivery date. All Products shall be shipped FOB destination and shall be suitably packed, marked and shipped in accordance with shipping instructions specified by Rivers Casino and the requirements of common carriers in such a manner to secure the lowest transportation cost. Vendor shall be liable for any difference in freight charges arising from the failure to: (a) follow the shipping instructions specified or (b) properly describe the shipment. Rivers Casino and Vendor mutually agree to assist each other in obtaining documents and other information necessary for the prosecution of claims against carriers. The Purchase Order number must appear on all packing slips and invoices. Rivers Casino's receipt of goods without the packing/delivery slips, or without the Purchase Order number being referenced on the packing/delivery slips, will be deemed invalid delivery and will not be accepted. Rivers Casino does not accept any shipments "Freight Collect".

All goods must be shipped to Rivers Casino, 3000 S. River Road, Des Plaines, IL 60018 and accepted by the Rivers Casino's Receiving Department personnel, unless otherwise specified by the Rivers Casino's Procurement Department. If goods are not shipped to and received by the Rivers Casino's Receiving Department, Rivers Casino accepts no responsibility for them, and the Vendor acknowledges and agrees that such goods may be returned and the Purchase Order cancelled by Rivers Casino. The written approval from Rivers Casino's Procurement Department (only) to bypass Rivers Casino's Receiving Department and have goods delivered elsewhere (as an exception) must be issued prior to Vendor's shipment. In any case, all goods must be received by the designated receiver in writing.

4. **INVOICING.** Vendor shall render an invoice each month or otherwise as payment terms or work schedule dictates. Original bills of lading or other shipping documents must accompany the Vendor's invoice. No charges for packing or cartage will be accepted or paid unless otherwise specified on a Purchase Order, issued or accepted by Rivers Casino.

5. **TRANSPORTATION CHARGES.** Where prepaid transportation charges are chargeable to Rivers Casino, the amount of such charges and any tax paid thereon shall be set forth as separate items on the invoice. The carrier's original receipt showing payment of such charges shall be attached to the invoice.

6. **QUANTITY DELIVERED.** The quantity of Products delivered shall not be greater than the amount specified in the Purchase Order of Rivers Casino unless an additional amount is first ordered by Rivers Casino in writing on its "Revised Purchase Order." Rivers Casino may return excess quantities to Vendor at Vendor's expense and Rivers Casino's invoice shall be reduced accordingly.

7. **TIMELY DELIVERY.** Timely deliveries are of the essence for a Purchase Order. Rivers Casino may refuse to accept, or at Rivers Casino's option, may return at Vendor's expense, all Products made after the date or dates specified in a Purchase Order. If Products are not timely shipped and/or delivered to Rivers Casino, then Rivers Casino shall not be liable for payment of Products and shipping costs if Rivers Casino elects to refuse or return the Products.

8. **INSPECTION.** All Products specified in a Purchase Order are subject to Rivers Casino's inspection within a reasonable time after arrival at the ultimate destination. If, upon inspection, any Products are found to be non-conforming, defective, of inferior quality or workmanship, or fails to meet the specifications or any other requirements of this Purchase Order (hereinafter "Non-Conforming Goods"), then Rivers Casino may reject and return the Non-Conforming Goods to Vendor at Vendor's expense. Payment for Non-Conforming Goods shall not be an acceptance of such Products. Upon the return of Non-Conforming Goods Vendor shall reimburse Rivers Casino within fourteen (14) calendar days for: (a) any amounts paid by Rivers Casino on account of the purchase price of such Products and (b) any costs incurred by Rivers Casino in connection with the delivery or return of such Products.

Vendor shall promptly correct any Products that do not comply with the warranties set forth in these terms and conditions. If Rivers Casino requests Vendor to make any such correction and Vendor thereafter fails or indicates its inability or unwillingness to do so, then Rivers Casino may correct (or cause to be corrected) the noncompliance of or otherwise achieve compliance or Non-Conforming Goods by the most expeditious means available to it and charge to or otherwise recover from Vendor the cost thereof. If Rivers Casino rejects any Products that do not comply with the foregoing warranty, Vendor shall have a reasonable time to correct the noncompliance or Non-Conforming Goods; if Vendor fails to correct the noncompliance or Non-Conforming Goods within a reasonable time, Rivers Casino may cancel the Purchase Order as to the Non-Conforming Goods without any liability or obligation of, or cost to, Rivers Casino with respect to such Products and without prejudice to any other rights or remedies of Rivers Casino with respect to such noncompliance or Non-Conforming Goods (e.g., as to damages or cover).

9. **CANCELLATION.** Rivers Casino may at its option cancel any unshipped Products or services prior to the date of any service to be performed. If a Purchase Order covers standard stock merchandise, Rivers Casino's only obligation shall be to pay for and accept Products shipped prior to the date of cancellation. If a Purchase Order covers merchandise manufactured or fabricated to Rivers Casino's (as opposed to Vendor's) specifications, Vendor shall stop all performances hereunder immediately upon receipt of notice and Rivers Casino shall reimburse Vendor for the direct cost per item of Products incurred by Vendor on all items of Products which have been wholly or partially manufactured in connection with the Purchase Order prior to the receipt of notice of cancellation. Upon payment, title to all Products or partially completed Products shall pass to Rivers Casino.

10. **TAX.** Except as indicated on the Purchase Order, the purchase price shall include all applicable federal, state and local taxes of any kind. Any applicable County and State Sales Tax and/or use tax shall be paid by Rivers Casino directly to Vendor and Vendor shall be responsible for paying said tax to the appropriate governmental taxing authorities. Excise tax, where applicable, shall be billed as a separate item on same invoice as the merchandise to which it is related is billed.

11. **WARRANTY.** In addition to express warranties and the warranties detailed in this RIDER AND ANY RELATED WRITTEN Agreement, Vendor warrants that the Products to be furnished under any Order shall fully conform to the specifications, drawings, samples or other description furnished or adopted by Rivers Casino and shall be fit and sufficient for the purpose intended, merchantable, of first grade quality and workmanship and free from defects AND THAT THE FURNISHED GOODS OR SERVICES DO NOT INFRINGE ON ANY PATENT, TRADEMARK, TRADE NAME, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. This warranty shall survive acceptance, payment AND TERMINATION OF ANY AGREEMENT BETWEEN THE PARTIES, and Vendor agrees to defend, indemnify and save Rivers Casino harmless from any loss, damage or expense whatsoever, including attorney's fees, resulting from any breach of said warranty or product liability. At Rivers Casino's option, Vendor shall replace, at Vendor's sole cost and expense, any Products found within twelve (12) months from acceptance BY RIVERS CASINO to be Non-Conforming Goods as defined above. Rivers Casino understands that Vendor may not be the manufacturer of the goods purchased by Rivers Casino hereunder. To the extent assignable, Vendor assigns to Rivers Casino any warranties received by Vendor from the applicable manufacturer of the goods and agrees to provide reasonable assistance, if requested, to RIVERS CASINO in obtaining the benefit of a manufacturer's warranty.

VENDOR FURTHER WARRANTS THAT ALL MATERIALS COVERED BY THE PURCHASE ORDER COMPLY WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS, ORDERS, DIRECTIONS AND POLICIES INCLUDING THOSE AFFECTING THE PRODUCTS, PROCESSING, PACKAGING, LABELING, CONTENTS, ADULTERATION OR SHIPMENT OF FOOD OR DRUG PRODUCTS IN THE UNITED STATES OF AMERICA. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, SUCH MATERIALS ARE NOT ADULTERATED OR MISBRANDED WITHIN THE MEANING OF APPLICABLE LAW, INCLUDING THE PURE FOOD AND DRUG ACT, NOT AN ARTICLE WHICH MAY BE INTRODUCED INTO INTERNATIONAL TRADE AND NOT ADULTERATED OR MISBRANDED WITHIN THE MEANING OF ANY FEDERAL, STATE OR LOCAL FOOD OR DRUG LAWS OR THE ORDINANCES WHICH ARE APPLICABLE TO SUCH SHIPMENT OR DELIVERY, TO THE EXTENT OF SUCH LAWS ARE APPLICABLE TO THE GOODS SOLD OR SERVICES PROVIDED PURSUANT TO THE PURCHASE ORDER.

12. **INDEMNITY.** Vendor will indemnify Rivers Casino and shall hold Rivers Casino harmless from any loss, liability, damage, or expense (including reasonable attorney's fees and costs), arising from infringement or claimed infringement of any patent, trademark or copyright arising out of the use or possession of the Products furnished by Vendor. Vendor further agrees to defend at Vendor's sole expense any and all suits charging such infringement. Vendor further agrees to indemnify and hold Rivers Casino harmless from any and all claims, demands, causes of actions, costs and expenses (including reasonable attorney's fees and costs) arising out of or in any manner related to its negligent or willful conduct as well as for the conduct of Vendor's agent, employees or contractors arising directly out of the subject matter of performance of the Order.

13. **LIENS.** All Products or services furnished hereunder shall be free of all liens, claims, encumbrances and retained title contracts. Vendor agrees to discharge any lien, claim or encumbrance, within ten (10) days after Rivers Casino receives notice of such lien, or any claim of lien is recorded, whichever occurs earlier.

14. **INSURANCE.** Vendor shall maintain insurance as required by law and in accordance with the following:

Vendor's Insurance. Vendor shall purchase and maintain at its own expense, during the term of this Agreement, the following insurance without interruption with a financially viable and reputable insurer satisfactory to Midwest Gaming & Entertainment, LLC ("Rivers Casino"):

- a. **Commercial General Liability** At a minimum, the following limits and coverages:
 - (i) \$1,000,000 each occurrence
 - (ii) \$1,000,000 personal and advertising injury
 - (iii) \$2,000,000 general aggregate
 - (iv) \$2,000,000 products-completed operations aggregate
 - (v) An additional insured endorsement naming the Additional Insured as defined herein as additional insured.

- b. **Business automobile liability coverage** to include owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Vendor or its subcontractors, including each of the following:
 - (i) A combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 - (ii) An additional insured endorsement acceptable to Rivers Casino, naming the Additional Insured (as defined in this Agreement) as additional insured.

- c. **Umbrella (excess) liability** insurance with a limit of \$5,000,000 each occurrence in excess of the general liability, employer's liability and business automobile liability coverages required of Vendor. Such insurance shall contain a provision that it will not be more restrictive than the primary insurance.

- d. **Workers' Compensation Insurance.** Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time in Illinois, and shall include the following:
 - (a) Coverage A (Workers' Compensation) - Statutory

 - (b) Coverage B (Employer's Liability)
At a minimum, the following limits and coverages:
 - (i) \$1,000,000 for each accident, for bodily injury by accident
 - (ii) \$1,000,000 for each employee, for bodily injury by disease
 - (iii) \$1,000,000 for each disease policy limit

(c) An endorsement that waives all subrogation rights the insurer may have to recover damages against (i) Rivers Casino and its agents, officers, directors, affiliates, and employees, and (ii) parties with respect to which waivers of subrogation are required by contracts executed in connection with the Project, to the extent such damages are covered by the workers' compensation insurance.

- e. **Professional Liability insurance**, if Vendor performs any professional design services, such insurance shall (a) have minimum limits of \$2,000,000 per claim and in the aggregate and (b) be kept in effect and continue for a period equivalent to the statute of repose for the State of Illinois.

Additional Requirements for All Policies. The following provisions shall apply with respect to all insurance coverage required under Sections A and B:

- a. Except as otherwise agreed in writing by Rivers Casino, each policy shall be issued by insurance carriers of recognized good standing, duly authorized to transact that class of insurance in the State of Illinois, having a general policyholder's rating of not less than an "A-" and financial rating of not less than "X" in the most current Best's Key Rating Guide. Coverage under blanket policies may be extended by endorsement, provided that the insurers meet these requirements.
- b. Rivers Casino shall immediately be notified of any cancellation, non-renewal, or such material change as may adversely affect any required insurance policy or coverage by Vendor or its insurance carrier.
- c. Each policy that requires that the Additional Insured be named as additional insured shall provide that any loss otherwise payable to an Additional Insured thereunder shall be paid notwithstanding any act or negligence on the part of any Additional Insured which might, absent such provision, result in a forfeiture of all or part of such insurance payment.
- e. If any of these coverages are required to remain in force after final payment, all additional certificates evidencing continuation of such coverage shall be submitted with Vendor's final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time that such coverage must be maintained.
- f. Each policy shall contain a provision or endorsement that the waiver of subrogation provided herein is allowed by such policy and is primary and non-contributory coverage with respect to all insurance provided for the benefit of Rivers Casino and all Additional Insured.
- g. Vendor shall be responsible for paying without reimbursement from Rivers Casino all costs not covered because of any deductibles or retentions.

Evidence of Required Coverage. At the request of Rivers Casino, Vendor shall provide Rivers Casino with certificates issued by Vendor's insurance carrier acceptable to Rivers Casino showing such policies in force for a specified period. Rivers Casino may request a certified copy of each such policy required to be obtained and maintained by Vendor, in which case Vendor shall, within a reasonable period of time (not to exceed 30 days),

provide such certified copies. Evidence of any renewal insurance shall be delivered to Rivers Casino not less than 30 days prior to the expiration date on the term of the policy. Each policy and certificate shall be subject to reasonable approval by Rivers Casino. Rivers Casino's failure to require any party to produce evidence of insurance coverage shall not be construed as a waiver of such party's obligation to carry insurance required hereunder, nor shall it operate as a waiver of Rivers Casino's right to require such evidence in the future.

Amendments. Any reduction or waiver of any of the insurance requirements may be made only by a written document signed by Rivers Casino and Vendor which expressly amends the pertinent described portions of this Agreement.

Waiver of Subrogation. Vendor agrees that it, its insurer(s), and anyone claiming by, through, or under Vendor shall not have a claim, right of action, or right of subrogation against Rivers Casino or the Additional Insured based on any loss or liability insured under the foregoing insurance.

15. **ADDITIONAL INSURED.** Midwest Gaming & Entertainment, LLC and each of its respective, related or affiliated entities, parents, subsidiaries, holding entities, partnerships, joint ventures, limited liability companies, and assigns of every tier and each of their respective members, managers, partners, officers, directors, shareholders, and employees (collectively, with any of the other entities listed below that are parties to Midwest Gaming & Entertainment, LLC's loan agreements, and other entities Rivers Casino may from time to time require to be listed as additional insured, the ("**Additional Insured**") and Vendor hereby agrees to name same as Additional Insured, including but not limited to, the following:

Loan Related Additional Insureds:

1. Midwest Gaming Holdings, LLC
2. Midwest Gaming Borrower, LLC
3. Midwest Gaming Finance Corp.
4. Devon Parcel, LLC
5. Development Management Associates, LLC

16. **DELAYED DELIVERY.** In the event a location where certain Products are to be provided is not ready to receive delivery, then Vendor, upon receiving at least three (3) days notice, will hold said Products for a reasonable period at no cost to Rivers Casino.

17. **NO ASSIGNMENT.** Any Purchase Order and/or money due hereunder may not be assigned without written authorization by any officer of the Rivers Casino and any attempted assignment without such written consent shall be void. Subject to the foregoing restriction on assignment and delegation by Vendor, any Purchase Order shall be fully binding upon, inure to the benefit of and be enforceable by Vendor, Rivers Casino, and their respective successors, assigns, and legal representatives.

18. **RESPONSIBILITY PRIOR TO ACCEPTANCE.** Responsibility for damage or injury to Products to be furnished under any Purchase Order from any cause whatsoever shall rest with Vendor until final receipt and acceptance thereof by Rivers Casino, and in case of materials to be installed, until completion of installation and acceptance thereof by Rivers Casino.

19. **ENTIRE AGREEMENT.** Any Purchase Order and related written agreement when

signed by Rivers Casino and bearing an order number is the only purchase order that shall be recognized by Rivers Casino as authority for charging Products or services to its account. Any written Purchase Order supersedes all previous communication and negotiation and constitutes the sole and entire agreement between the parties unless there is also a formal written agreement related to a Purchase Order signed by the parties. In that case, the formal written agreement, which shall include these terms and conditions, shall constitute the sole and entire agreement of the parties. If there is a conflict between the terms of a Purchase Order, a written agreement and the Vendor's invoice, the items of the Purchase Order will control absent a written agreement between the parties that provides otherwise. Rivers Casino may from time to time make changes in the requirements of a Purchase Order (including, but not limited to, additions to or deletions from any goods, changes in quantities, specifications and changes in shipment and delivery dates) by giving Vendor written notice of such changes.

20. **BREACH.** If Vendor fails to make delivery of all or any of the products or perform all or any of the services specified in a Purchase Order within the time specified or shall otherwise fail to perform all the material terms of a Purchase Order or any formal written agreement, then Rivers Casino may, at its option and without prejudice to any of its other rights, cancel a Purchase Order in whole or in part. The rights, remedies and warranties afforded to Rivers Casino pursuant to any provision of a Purchase Order are in addition to and do not in any way limit any other rights, remedies, or warranties afforded to Rivers Casino by any other provisions of a Purchase Order, by any of Vendor's subcontractors or suppliers or by law.

21. **NO WAIVER. NO OTHER TERMS.** No waiver or modification of the terms and conditions contained in a Purchase Order issued by Rivers Casino shall be binding on Rivers Casino unless in writing signed by the Chief Executive Officer of Rivers Casino. No waiver of a breach of any provision of a Purchase Order shall constitute a waiver of any other breach of a Purchase Order.

22. **WARRANTY AS TO REBATE/COVENANT AGAINST KICKBACKS.** A "Kickback" shall be defined as any cash, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind in exchange for favorable treatment regarding obtaining or retaining any Purchase Order servicing Rivers Casino. Vendor agrees that its directors, employees, agents and representatives have not and will not provide or attempt to provide, either directly or indirectly, any Kickback to any employees of Rivers Casino, or its subsidiaries or affiliates. Further, Vendor hereby warrants that it has not and will not pay any rebate, commission, salary or any remuneration or reward, indirectly or in any form whatsoever ("Rebates") to any officer, employee, agent, or representative employed by or on behalf of Rivers Casino for such person's personal use and/or benefit, rather any such Rebates shall be for the sole benefit of and shall directly benefit Rivers Casino. Any violation of such warranty shall be considered a material breach of this agreement and cause for immediate termination of this or any other Purchase Order between Rivers Casino and Vendor.

23. **NON-EXCLUSIVITY; NO COMMITMENT.** Vendor acknowledges and agrees that any Purchase Order and any related written agreement will in no way prohibit Rivers Casino from purchasing the same or similar Products or services as those purchased under its Purchase Order with Vendor from anyone it chooses.

24. **CONFIDENTIALITY.** All information, including but not limited to, oral statements, computer software, files, and databases, accounting information and financial records, business plans, new products, lists of key personnel, customers, clients, vendors, suppliers, distributors and consultants, the identity of players' club members and any data related to players' club

members, price lists and pricing information, advertising and promotional materials, training manuals, handbooks, video and audio tapes or files, and other documents or media that contain Rivers Casino's confidential information and trade secrets and sensitive and proprietary information provided to Vendor by clients, customers, Vendors and other stakeholders of Rivers Casino that is shared with Vendor in confidence and trade secrets in existence during this Agreement, and other material or data supplied by Rivers Casino to the Vendor or obtained by Vendor in any manner related to any Purchase Order is confidential and privileged ("Confidential Information"). Confidential Information shall only be used by the Vendor in its performance under this Agreement and shall not be disclosed by the Vendor except to those employees and independent contractors who have a need to know and who have agreed in writing to maintain the confidentiality of the Confidential Information as required herein. The Vendor shall (i) not reproduce or copy the Confidential Information in whole or in part, except as authorized in this Agreement or when requested by Rivers Casino; (ii) at Rivers Casino's written instruction, return or destroy the Confidential Information upon the termination of this Agreement or when requested to do so; or (iii) disclose the Confidential Information pursuant to a requirement of the Illinois Gaming Board, a duly empowered governmental agency or court of competent jurisdiction, after due written notice and adequate opportunity to intervene is given to Rivers Casino unless legally prohibited.

The obligations of confidentiality shall survive the termination of this Agreement.

Vendor acknowledges and agrees that any breach of the terms of this Section 24 would cause irreparable harm to Rivers Casino, and agrees that Rivers Casino shall be entitled to injunctive relief, without the necessity of bond, and other applicable equitable remedies with respect to any such actual or threatened breach, in addition to whatever remedies may be otherwise available under the Purchase Order, these Terms and Conditions or at law. Vendor's obligations, including those of its current and future directors, employees, subcontractors, agents and representatives, under this Section shall survive the termination or expiration of the Purchase Order.

25. **PUBLICITY.** Vendor shall not disclose, use, or refer to any Purchase Order or related written agreement, or the trade names, trademarks, or service marks of Rivers Casino, in any advertising, publicity releases, promotional materials, or other materials without the prior written consent of Rivers Casino.

26. **ARBITRATION.** Any dispute, controversy, or claim arising hereunder, or relating to Rivers Casino's purchase from the Vendor of goods or services or support bundled with such goods ("Dispute"), which the parties are not able to resolve themselves shall first be submitted to non-binding mediation. The parties shall cooperate in choosing a mutually agreeable mediator and if they cannot do so they shall apply to the American Arbitration Association (AAA) mediation services or another nationally recognized mediation forum when the Dispute arises, if the American Arbitration Association ceases operation of its mediation services and shall abide by the rules of same. The mediation shall take place as soon as commercially practicable in Des Plaines, Illinois and the costs of the mediator shall be borne equally by the parties. The mediation shall be confidential and shall be considered a compromise negotiation under the Federal Rules of Evidence and any similar state rules of evidence and any laws regulating mediations. If the mediation does not resolve the Dispute within sixty (60) days of the initial request for mediation, then the parties shall enter into final and binding arbitration with the American Arbitration Association, or another nationally recognized arbitration forum when the Dispute arises, if the American Arbitration Association ceases operation of its arbitration services and shall abide by the rules of same, to be held in Des Plaines, Illinois, in accordance

with the rules of the American Arbitration Association in effect at the time the Dispute arises, subject to the following:

- (i) The arbitration shall be conducted by one (1) or three (3) arbitrators as the Rules of the American Arbitration Association may provide or as agreed to between the parties (the "Arbitrators") any and all of whom shall be considered neutral. In the event three (3) arbitrators are used, they shall be selected as follows: each party shall select one arbitrator who in turn shall select a third arbitrator. In the event the first two arbitrators selected cannot agree on the third arbitrator, then the parties shall apply to the American Arbitration Association for appointment of the third arbitrator. Subject to the following sentence, the Arbitrators shall conduct such evidentiary or other hearings as such Arbitrators deem necessary or appropriate as soon as commercially reasonable and thereafter shall make a final determination as soon as practicable. The Arbitrators shall apply the substantive law of the State of Illinois without regard to its conflicts of law provisions. The Arbitrators shall have no power to award punitive or exemplary damages.
- (ii) Either party to the arbitration may seek to have judgment upon the award rendered by the Arbitrator(s) entered in any court having jurisdiction thereof.

Each party agrees that it will not file any suit, motion, petition or otherwise commence any legal action for any matter which is required to be submitted to mediation and arbitration as contemplated herein except in connection with the enforcement of an award rendered by the Arbitrators or enforcing the dispute resolution provisions of these Terms and Conditions. Upon the entry of any order dismissing or staying any action filed contrary to the preceding sentence, the party which filed such action shall promptly pay to the other party the reasonable attorney's fees, costs and expenses incurred by such other party prior to the entry of such order. Notwithstanding the foregoing, the parties agree that any party may seek injunctive relief from the state courts located in Cook County, Illinois in order to prevent irreparable harm, without the necessity of bond, pending the conclusion of any mediation and arbitration procedures set forth above.

27. GOVERNING LAW AND GOVERNMENTAL REGULATIONS. The law of the State of Illinois shall govern the respective rights and obligations of the parties, without regard to its rules relating to conflicts of law. The terms set forth above shall not be construed to limit any rights that Rivers Casino may have pursuant to the Uniform Commercial Code or other similar laws governing the relationship between the Rivers Casino and the Vendor. Each party to this Agreement hereby submits to and hereby irrevocably waives any objection it may now or hereafter have to the jurisdiction and venue of the United States District Court for the Northern District of Illinois, and the Cook County Circuit Court, State of Illinois, for the purposes of all legal proceedings arising out of or relating to this Agreement.

28. WAIVER OF JURY TRIAL. Each party waives the right to a trial by jury in any dispute in connection with or relating to this Agreement or any matters described or contemplated herein or therein, and agrees to take any and all action necessary or appropriate to effect such waiver.

29. PREVAILING PARTY. In any litigation or arbitration between the parties hereto, the prevailing party thereunder shall be entitled to receive reimbursement from the non-prevailing

party for all costs and expenses, including reasonable attorney's fees, incurred in such litigation or arbitration. The term "prevailing party" shall mean that party whose position is substantially upheld in the arbitration or in a final judgment rendered in such litigation (as the case may be), or, if the final judgment is appealed, that party whose position is substantially upheld by the decision of the final appellate body to consider the appeal.

30. **COMPLIANCE WITH LAWS.** Vendor hereby acknowledges that any Purchase Order or related written agreement between the parties is subject to the Illinois Riverboat Gambling Act (230 ILCS 10/ et seq.) and the rules and requirements of the Illinois Gaming Board (collectively, the "Gaming Laws"), and may be disclosed to and subject to approval of the Illinois Gaming Board. Vendor represents and warrants that it (together with its subsidiaries, affiliated businesses, officers, and owners) is and will continue to be throughout the term of any Purchase Order suitable to conduct business with an Illinois gaming company. Vendor agrees, at its own cost and expense, to provide Rivers Casino (or any designated agent of Rivers Casino) and the Illinois Gaming Board with such background information and documentation as is requested by Rivers Casino or the Illinois Gaming Board, and to submit to any investigation into its business, owners, or officers, in order to determine that Vendor is suitable to conduct business with an Illinois gaming company. Vendor agrees, at its own cost and expense, to comply with all Gaming Laws and to assist Rivers Casino, as necessary, in complying with the Gaming Laws. Vendor agrees that Rivers Casino may immediately terminate any Purchase Order or related written agreement, in whole or in part, without liability on the part of Rivers Casino or any qualified party to any Purchase Order or any related agreement, if the Illinois Gaming Board disapproves of any Purchase Order or any part hereof or if Rivers Casino determines, in its good faith opinion, that Vendor is not suitable to conduct business with an Illinois gaming company.

31. **EQUAL EMPLOYMENT OPPORTUNITY.** Vendor warrants it is committed to providing equal opportunity to all prospective and existing employees and contractors with whom it conducts business. This commitment includes attempting in a good faith, legal and nondiscriminatory manner to recruit and promote employees and employ contractors without regard to race, national origin, sex, age, sexual orientation, culture, religion or disability.

32. **GENERAL.** Any failure by either party to enforce strict performance by the other party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of a Purchase Order or related written agreement.

In the event that any provision of a Purchase Order or related written agreement is held invalid or unenforceable by any court of competent jurisdiction, the remainder of a Purchase Order or related written agreement, including these terms and conditions; shall continue in full force and effect.

This Rider with a Purchase Order and related written agreement, if any constitutes the entire agreement between Rivers Casino and the Vendor and supersedes all statements, representations, assertions or guarantees, which may have been made by either party or their agents or representatives prior to the execution of a Purchase Order or related written agreement. No modifications to the Purchase Order or related written agreement, if any shall be binding on either party unless made in writing and executed by both parties. Neither party may assign or transfer a Purchase Order or related written agreement without the other party's prior written consent, which shall not be unreasonably withheld.

A Purchase Order or other agreement may be executed in two or more counterparts, each of

which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of a Purchase Order or related written agreement made by reliable means (e.g., photocopy, facsimile) is considered an original.

Vendor is a natural person, or business corporation or other entity, that provides goods and/or services for the purposes of the Purchase Order as an independent contractor to Rivers Casino, and has no employment or implied employment status through Rivers Casino nor any relationship as principal and agent, joint venture or partnership. Neither party shall have the right to enter into any contract or commitment in the name of or on behalf of the other party, nor to bind the other party in any respect whatsoever.

33. **NOTICES.** Any and all notices, service of process, demands, directives, directions, requests, consents, approvals, designations, waivers and other communications required or desired hereunder to Rivers Casino shall be in writing and shall be deemed effective upon personal delivery or one day after deposit with an overnight delivery service that maintain records of the time, place and recipient of delivery or three days after mailing by certified mail, return receipt requested, postage prepaid, to the Vendor at such address and such individual as Vendor shall provide to Rivers Casino from time to time or Rivers Casino at the following (or to such addresses or persons as Rivers Casino may direct from time to time):

If to Rivers Casino, then to:

Rivers Casino
3000 S. River Drive
Des Plaines, Illinois 60018
Attn: Legal Counsel's office

With a copy to:

Rivers Casino
c/o LAMB PARTNERS
900 N. Michigan Avenue, Suite 1900
Chicago, Illinois, 60611
Attn: Legal Department

34. **FORCE MAJEURE.** In the event of interruption of the business of Rivers Casino in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, so-called "acts of God", governmental action, or any causes beyond the control of Rivers Casino, Rivers Casino shall have the option of cancelling undelivered orders in whole or in part.

35. **PRECEDENCE.** In the event and to the extent of any conflict or inconsistency between the Purchase Order, these Terms and Conditions and any other documents, agreements, instruments, terms or conditions, the following shall govern and control in the following order of priority:

First, any Terms and Conditions on the face of the Purchase Order,

Second, these Terms and Conditions and the exhibits and attachments to this Rider,

Third, any Specifications, and

Fourth, all other attachments or related written agreements incorporated in the Purchase Order by reference.

36. **HAZARDOUS MATERIALS.** In the event the Vendor supplies hazardous materials in the course of its performance of the Purchase Order, any related written agreement and these Terms and Conditions, the Vendor shall provide the appropriate Vendor's Material Safety Data Sheets before or at the time of delivery of such hazardous materials. The packaging, handling and transportation of hazardous materials shall comply with the applicable federal, state and local laws and regulations.

37. **FOREIGN SALES PROVISIONS (NOT US DOMESTIC SUPPLY).**

A. **Foreign Supplies:** A copy of the Vendor's commercial invoice or the fair market value of the subject goods must accompany all the Vendor's shipments. Absence of an invoice at the border may require return of the shipment at the Vendor's sole cost, expense and risk. The Vendor shall be solely responsible to pay all freight and shipping charges, insurance, import, export, and customs taxes, duties, or tariffs, and any and all other fees, fines or levies imposed upon or costs incurred in the loading, shipment, carriage, unloading, import, export, inspection or approval of the goods. All amounts payable under the Purchase Order and these Terms and Conditions shall be payable in U.S. Dollars.

B. **Canada – U.S. Free Trade Agreement:** It is the Vendor's (Exporter's) responsibility to provide the Consignee (Importer) with a Certificate of Origin attesting that duty rate reductions apply only when satisfying one of the Canada - U.S. Free Trade Agreement's Rules of Origin.

C. **Other Export/Import Requirements:** The Vendor acknowledges and agrees (i) that it is responsible for (a) the import of the goods and services into the United States of America, (b) any customs duties, value added tax and other taxes and duties assessed against the goods and/or services, (c) customs clearance and (d) making any other arrangements as necessary to provide for the delivery of the goods and services to Rivers Casino; (ii) to obtain and maintain all required approvals, licenses and permits, under all decrees, statutes, rules and regulations of the government of United States of America and agencies or instrumentalities thereof presently in effect or which may be in effect hereafter in connection with its performance of the Purchase Order and these Terms and Conditions; and (iii) to strictly comply with, and shall take any action which will cause the Vendor to be in compliance with of any laws, regulations, or executive orders in effect in the United States of America; in each case as amended or in effect from time to time.

D. **Governing Law; English Language:** The Purchase Order any related written agreement and these Terms and Conditions will be interpreted and the rights and liabilities of the parties hereto determined in accordance with the laws of the State of Illinois, U.S.A., excluding its conflict of laws rules and excluding the U.N. Convention on Contracts for the International Sale of Goods. To the fullest extent permitted by law, each party unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs the Purchase Order any related written agreement and these Terms and Conditions. The Purchase Order any related written agreement and these Terms and Conditions are made in the English language between parties fluent in that language. The English language, and no other, shall govern the interpretation of the words and phrases used herein.