



**Purchase Order Terms and Conditions**

**Effective July 9, 2012**

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## **Purchase Order Terms and Conditions**

All Seller goods and services which are the subject of any purchase order issued by the Buyer (the "Purchase Order") will comply with the following Terms and Conditions.

### **1. Definitions:**

In addition to other defined terms set out in these Terms and Conditions, the following words have the following definitions:

(a) "Terms": The agreed upon methods and remedies by which two or more parties determine how goods and/or services are to be exchanged including delivery, price, hourly rates, payments, etc.

(b) "Conditions": Any stipulations or special circumstances regarding the goods and/or services and how they're to be completed before they are received and payment is approved.

(c) "Buyer": Specifically names Holdings Acquisition Co, L.P. dba Rivers Casino ("RC") as the Buyer in the transaction.

(d) "Seller": Specifically names the person, firm, company, limited liability company or corporation as the Seller in the transaction.

### **2. Acceptance:**

The Seller's acceptance of the Purchase Order and these Terms and Conditions will be deemed to occur upon the first of either: (a) the Seller acknowledges acceptance of the Purchase Order in writing or otherwise in accordance with generally accepted commercial practices; or (b) the Seller's shipment of goods and/or commencement of services, as applicable; unless the Seller otherwise states its objection in writing to the Buyer and such objection is accepted by the Buyer in writing before shipment of goods and/or commencement of services.

### **3. Purchase Prices, and Transportation Charges, Insurance, Taxes, Etc.:**

(a) The Purchase Order shall not be filled at higher purchase prices than specified in the Purchase Order, which purchase prices are determined FOB Buyer's destination specified on the Purchase Order and do not include any packing, handling, insurance, transportation, shipping, freight, customs, duties or tariffs beyond the place of shipment, all of which are the

Buyer's responsibility. Except as indicated on the Purchase Order, the purchase prices include all applicable federal, state and local taxes of any kind.

#### **4. Invoicing and Payment Terms:**

The Seller will issue an invoice each month or otherwise as the payment Terms or work schedule requires. Original bills of lading or other shipping documents must accompany the applicable invoice. Any applicable sales and/or use tax will be included as a separate item on the applicable invoice, and paid by the Buyer directly to the Seller who will be responsible for paying said tax to the appropriate taxing authorities.

The time period allowed for payment, as indicated on the Purchase Order, shall commence upon the Buyer's receipt of the Seller's correct invoice with all other required documents, or receipt of the goods and/or services, whichever is later, and the Terms of payment are net 30 (thirty) days, but the Seller will allow the Buyer a two percent (2%) discount on the invoiced amount for any invoice paid on a net 15 (fifteen) day basis.

#### **5. Audit:**

The Buyer reserves the right to, or to have an independent accounting or auditing firm, perform a financial and/or inventory audit of the Seller during or after performance of the Purchase Order in connection with, and based on the specifics of, the Purchase Order.

#### **6. Delivery and Risk of Loss:**

Delivery of the goods and services will occur, and title thereto, and risk of loss and damage thereto, will pass to the Buyer FOB Buyer's destination specified on the Purchase Order, subject to the Buyer's receipt and acceptance thereof as set forth in these Terms and Conditions. The Purchase Order number must appear on all packing slips and invoices. The Buyer'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. The Buyer does not accept any shipments Freight Collect.

#### **7. Shipment, Inspection and Buyer's Acceptance of Goods/Services:**

All goods must be shipped to **Rivers Casino, 777 Casino Drive Pittsburgh, PA 15212** and accepted by the Buyer's Receiving Department personnel, unless otherwise specified by the Buyer's Procurement Department. If goods are not shipped to and received by the Buyer's Receiving Department, the Buyer accepts no responsibility for them, and the Seller acknowledges and agrees that such goods may be returned and the Purchase Order cancelled by the Buyer. The written approval from the Buyer's Procurement Department (only) to bypass the Buyer's Receiving Department and have goods delivered elsewhere (as an exception) must be issued prior to the Seller's shipment. In any case, all goods must be received by the designated receiver in writing.

The delivery date and the routing of shipments shall be as, and other Terms not specified herein may be, provided on the Purchase Order. The Seller acknowledges and agrees that time is of the essence in the Purchase Order and these Terms and Conditions, and the Buyer may, at its

option, reject all goods received after the delivery date specified on the Purchase Order or return them, in any case, at the Seller's sole cost, expense and risk. The quantity of goods shipped shall not be greater than the quantity specified on the Purchase Order, and the Buyer may, at its option, reject such additional quantities or return them, in any case, at the Seller's sole cost, expense and risk unless the Buyer has previously issued a change order in writing to the Seller specifying such additional quantities.

Once the goods have been received or services completed in accordance with the Purchase Order and these Terms and Conditions, they are subject to the Buyer's right of inspection and acceptance within a reasonable period of time, which right shall be exercisable notwithstanding the Buyer's having paid for the goods and/or services prior to inspection and acceptance. The Buyer, by reason of its failure to inspect the goods or services, or its payment therefor, shall not be deemed to have accepted any such goods or services, or to have waived any of the Buyer's rights or remedies arising by virtue of such defects or non-conformity.

#### **8. Covenants 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 the Buyer. The Seller 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 the Buyer, or its subsidiaries or affiliates. The Seller's failure to abide by this specific Section of these Terms and Conditions shall be sufficient reason for the immediate termination, without further notice, of the Purchase Order and any other Buyer purchase order the Seller has pending from the Buyer. The Seller will also be liable for any civil or criminal penalties provided by the law (federal, state or local) for violating this specific Section. In addition, any attempt or completion of forcing a Kickback (per the definition defined within these Terms and Conditions) from a subcontractor or in connection with the Purchase Order shall be sufficient reason for the immediate termination, without further notice, of the Purchase Order and any other Buyer purchase order that the Seller has pending from the Buyer. The Seller will also be liable for any civil or criminal penalties provided by law (federal, state or local) for violating this Kickback provision.

#### **9. Gaming Procedures:**

The Seller hereby acknowledges that the Purchase Order is subject to the requirements of the Pennsylvania Gaming Control Board ("PGCB"), and the Seller is required to submit the appropriate PGCB application to the PGCB and cooperate in any investigation initiated by the PGCB.

The Seller agrees to timely obtain and maintain all permits or licenses required by the PGCB at its own cost and expense. As required by the statutes and regulations relating to gaming in Pennsylvania (collectively, the "Gaming Laws"), the Seller represents and warrants that it has obtained and continues to maintain all permits or licenses required by the PGCB or, if not yet obtained, that the Seller is aware of no reason that it will not be timely approved by the PGCB for such permit or licensure. In addition, the Seller agrees, at its own cost and expense, to comply with all Gaming Laws applicable to the Seller as a vendor to the Buyer as well as to

assist the Buyer, as necessary, in complying with the Gaming Laws. The Seller agrees to provide the Buyer with the date of any license issued in addition to the relevant expiration date.

Notwithstanding any other provision of the Purchaser Order or these Terms and Conditions (i) if the Seller fails to comply with the foregoing, such failure shall be a material breach of the Purchase Order or (ii) if the Seller is denied a required license or permit following the end of all applicable appeal periods or if the PGCB requires, for any reason whatsoever, the termination or suspension of the Purchase Order, in whole or in part, then, in any such case, the Purchase Order will be immediately terminated or so suspended, as applicable, without liability on the part of the Buyer or any qualified party to the Purchase Order or any other related agreement.

#### **10. Warranties, Standards and Other Representations:**

The Seller represents, warrants and agrees unto the Buyer as follows and acknowledges that the Buyer is relying upon these representations, warranties and agreements (which shall survive all inspections, acceptance and payment) in connection with the goods and/or services included in the Purchase Order:

(a) The Seller has full and marketable title to all goods, delivered free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims whatsoever

(b) All goods will be new, of first grade quality and free from defects in design, material and workmanship and all services will be performed and completed in a professional, workmanlike manner.

(c) The Seller shall perform services and provide goods in compliance and conformity with the following (collectively, the "Standards"): (i) the requirements of the PGCB, (ii) all applicable laws; (iii) such plans, standards, requirements, drawings, samples and other descriptions and specifications as defined and set forth in the Purchase Order and these Terms and Conditions, as may be furnished and adopted by the Buyer, and as the Buyer may advise the Seller from time to time; and (iv) all implied conditions and warranties as to fitness for a particular purpose and merchantability which exist or may exist at law and suitability for the use intended.

(d) 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.

(e) The Seller shall provide a full and comprehensive labor and material warranty for the goods and services provided pursuant to the Purchase Order for the period of not less than thirteen (13) months from the date of delivery.

(f) The goods furnished or services provided under the Purchase Order do not infringe on patent, trademark, trade name, copyright or other intellectual property rights.

The Buyer understands that the Seller may not be the manufacturer of the goods purchased by the Buyer under the Purchase Order. In such event, the Seller represents, warrants and agrees that any and all warranties of the applicable manufacturer of such good pass through to the Buyer and, to the extent assignable, hereby assigns to the Buyer any and all warranties received by the Seller from the applicable manufacturer of the goods. In connection therewith, the Seller agrees to cooperate and provide reasonable assistance, if requested, to the Buyer in obtaining the benefits of the applicable manufacturer's warranties.

#### **11. Hazardous Materials:**

In the event the Seller supplies hazardous materials in the course of its performance of the Purchase Order and these Terms and Conditions, the Seller shall provide the appropriate Seller'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.

#### **12. Insurance Requirements, including Workers' Compensation:**

At all times during the fulfillment of the Purchase Order, the Seller shall obtain and keep in force insurance, issued by a licensed company in the Commonwealth of Pennsylvania and with a minimum AM Best rating designated by the Buyer's Risk Management department, as required by law and as more particularly described on Exhibit A attached hereto. The Buyer reserves the right to require additional coverages or higher limits when the Buyer determines prudent. The Seller shall provide the Buyer with a certificate of insurance before commencing work, shipment of goods or performance of services the Purchase Order number and name the Buyer, and its officers, employees and agents, as additionally insured on the General Liability Policy all as more particularly described on Exhibit A attached hereto.

When work is to be performed hereunder on the Buyer's premises by the Seller's employees, the Seller acknowledges and agrees that it is the employer of such employees for the purpose of the Commonwealth of Pennsylvania Workers' Compensation Laws, as amended, and for all other purposes. The Seller agrees that it shall comply with the provisions of the Commonwealth of Pennsylvania Compensation Laws, as the case may be, in relation thereto and the other requirements of Exhibit A attached hereto. Certificates of such coverage with thirty (30) day cancellation or amendment notice shall be submitted to the Buyer prior to the commencement of any such work.

#### **13. The Buyer's Property:**

All items including samples, documents, drawings, specifications, tools, etc., provided or paid for by the Buyer shall remain the property of the Buyer and fall under the protection of Section 15 of these Terms and Conditions. The Seller is responsible and liable for damage to, or loss of, all items and shall return them to the Buyer upon completing the Purchase Order or provide compensation determined by the Buyer.

#### **14. Use of the Buyer's Name and Publicity:**

The Seller agrees not to use, disclose or refer to the Purchase Order, the name of the Buyer or any of the Buyer's trade names, trade marks, service marks, logos or the like in any advertising, publicity release, promotion or other written or oral disclosure without the prior written consent of the Buyer.

#### **15. Confidentiality:**

The Seller may receive or have access to confidential information, proprietary and other sensitive information of the Buyer, including but not limited to, organization, financial, accounting information and financial records, business plans, 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 the Company's confidential information and trade secrets (collectively, "Confidential Information"). "Confidential Information" also includes confidential, proprietary and sensitive information provided to the Buyer by clients, customers, vendors and other stakeholders that is shared with the Buyer in confidence. Confidential Information is a special and valuable asset that is owned by the Buyer, is regularly used in the operation of the Buyer's business and must be the subject of adequate measures, including without limitation, agreements of this nature to protect its confidentiality. The Seller is authorized to use the Confidential Information solely in connection with its performance of the Purchase Order and will not directly or indirectly use the Confidential Information beyond the scope of the authority granted by the Buyer or reproduce, copy, disseminate, disclose or in any way reveal the Confidential Information or any part thereof, except (i) to those directors, employees, subcontractors, agents and representatives who have a need to know and who have agreed in writing to maintain the confidentiality of the Confidential Information as required in these Terms and Conditions or (ii) upon the prior express written approval of the Buyer. The Seller will, upon the Buyer's written instruction, either return or certify the destruction of the Confidential Information to the Buyer.

The Seller acknowledges and agrees that any breach of the Terms of this Section 15 would cause irreparable harm to the Buyer, and agrees that the Buyer shall be entitled to injunctive relief 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. The Seller'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.

#### **16. Buyer Remedies and Seller Indemnification:**

(a) Buyer Remedies. Goods or services which are defective or otherwise non-conforming, including without limitation, non-conforming delivery thereof, shall, at the Buyer's option, be subject to the following:

(i) Held by the Buyer at the Seller's sole cost, expense and risk awaiting disposal instructions from the Seller, or be returned to the Seller for full credit or replacement at the Seller's sole cost, expense and risk, including transportation charges both ways. No such goods or services, however, may be replaced without a formal replacement purchase order issued by the Buyer. Upon the return of any such goods or services, the Seller shall reimburse the Buyer within fourteen (14) calendar days for: (1) any amounts paid by the Buyer on account of the purchase price of such goods and/or services and (2) any costs incurred by the Buyer in connection with the delivery or return of such goods and/or services.

(ii) Promptly corrected by the Seller at the Seller's sole cost, expense and risk as the Buyer may request and, if the Seller thereafter fails or indicates its inability or unwillingness to do so, then the Buyer may (1) correct (or cause to be corrected) the noncompliance or otherwise achieve compliance by the most expeditious means the Buyer determines appropriate, in its sole judgment, and charge to or otherwise recover from the Seller the cost thereof, or (2) cancel the Purchase Order as to such goods or services without any liability or obligation of, or cost to, the Buyer with respect to such goods or services.

(b) Seller Indemnification. Notwithstanding any breach or default by the Buyer, whether fundamental or otherwise, the Seller assumes the entire responsibility and liability for, and agrees to indemnify, defend and hold harmless the Buyer, its partners, shareholders, affiliates, directors, employees, customers, invitees and users of the goods or services subject to the Purchase Order and these Terms and Conditions, from and against any and all losses, expenses (including without limitation, legal and professional fees), costs (including without limitation, court costs), damages (including direct, indirect, consequential and incidental damages), demands, liabilities, suits and claims (including in connection with or arising out of any actual or alleged personal injury, including death) or damage or destruction to property (including loss of use) by whomever suffered, sustained or alleged to have been sustained by reason of (a) any act, error, or omission, whether negligent or not, of the Seller or any of its directors, employees, agents, representatives, suppliers, subcontractors and consultants, (b) any defect, whether latent or apparent, in any good or service of the Seller provided to the Buyer under the Purchase Order or hereunder; (c) any breach of warranty, any of these Terms or Conditions, or any obligation of the Seller in the Purchase Order; or (d) any injury, loss or damage of any nature or kind whatsoever, to or sustained by the Seller, or any of its partners, shareholders, affiliates, directors, employees, customers, invitees or users of such goods or services.

(c) Remedies Cumulative. The rights and remedies provided to Buyer in the Purchase Order and these Terms and Conditions shall be cumulative, and in addition to any other rights and remedies provided by law or in equity, and any exercise of one or more such rights and remedies shall be without prejudice to any other rights or remedies of the Buyer with respect to such defect or non-conformity.

(d) Survival. The Seller's obligations under this Section shall survive the termination or expiration of the Purchase Order.



## **17. Changes, Cancellation and Termination:**

Without limiting Section 16 hereof or any other provision set forth in these Terms and Conditions, the Buyer has the right, in its discretion, to change, postpone, cancel or terminate the Purchase Order, in whole or in part, as follows:

(a) Without Cause. Without cause, for any or no reason, including the Buyer's convenience, upon prior written notification to the Seller issued prior to the Seller's shipment of the goods or commencement of the services subject to and in accordance with the Purchase Order, as applicable. In such event the only obligation and liability of the Buyer to the Seller shall be the Buyer's payment only for those goods and/or services so shipped to the Buyer prior to such notice, subject to receipt, acceptance and no subsequent rejection by the Buyer, as well as preparation work agreed upon by both the Buyer and the Seller in writing.

(b) With Cause. Immediately for cause, without liability, and without limiting any of its other rights or remedies, upon written notice to the Seller in the event there occurs any of the following: (i) The Seller fails to register or is no longer registered, as appropriate, with the PGCB, (ii) The Seller is in breach of, or attempts to breach, any of its obligations under the Purchase Order of these Terms and Conditions, with respect to the specified delivery date, the Standards, or any other material representation, warranty, covenant or agreement of the Seller thereunder or hereunder, (iii) An action or claim is commenced or is proceeding against the Seller that may, in the Buyer's reasonable opinion, harm the continued business operations of the Buyer, (iv) Either party is unable to carry out its obligations under the Purchase Order or these Terms and Conditions by reason of an event of "Force Majeure", meaning any bona fide delay or state of affairs beyond the control of the affected party (other than as a result of financial incapacity) which shall cause such party to be unable to fulfill or to be delayed or restricted in the fulfillment of any obligation, or (v) Either: (A) the Seller is unable to pay its debts when due or is otherwise insolvent, or (B) any action or proceeding is commenced by or against the Seller under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors, or (C) the Seller is ordered or adjudged to be bankrupt, or (D) a receiver or trustee is appointed to take possession of all or substantially all of the Seller's assets, or (E) the Seller enters into any scheme or compositions with its creditors or makes any assignment for the benefit of its creditors, or (F) the Seller is dissolved, liquidated or wound up. If an event described in the foregoing clause (v) of this Section occurs, the Buyer may, at the Buyer's sole election, pay the Seller its actual, direct out-of-pocket costs incurred in connection with the Seller's performance under, and in accordance with, the Purchase Order and these Terms and Conditions as of the date of any such cancellation or termination by the Buyer, as approved by the Buyer, in which event any goods related thereto shall be the property of the Buyer and the Seller shall safely hold the same, subject to the Buyer's shipping instructions.

## **18. Independent Contractor:**

The Seller 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 the Buyer, and has no employment or implied employment status through the Buyer 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.

**19. Force Majeure:**

In the event of interruption of the Buyer's business 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 Buyer's control, the Buyer shall have the option of cancelling undelivered orders in whole or in part.

**20. Precedence:**

Subject to Section 26 below, 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 hereto,

Third, any Specifications, and

Fourth, all other attachments incorporated in the Purchase Order by reference.

**21. Governing Law:**

The Purchase Order 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 Commonwealth of Pennsylvania, excluding its conflict of laws rules. 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 and these Terms and Conditions.

**22. Arbitration:**

Any dispute, controversy, or claim arising hereunder, or relating to the Buyer's purchase from the Seller 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 CPR Institute for appointment of a mediator. The mediation shall take place as soon as commercially practicable in Pittsburgh, Pennsylvania 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 to be held in Pittsburgh, Pennsylvania, in accordance with the Rules for Non-Administered Arbitration of the CPR Institute ("CPR Rules") in effect at the time the Dispute arises, subject to the following (which shall control if conflicting with the CPR Rules):

- (i) The arbitration shall be conducted by three (3) arbitrators (the "Arbitrators") each of whom shall be considered neutral. 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 CPR Institute 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 Commonwealth of Pennsylvania 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 Arbitrators 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 attorneys 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 Pittsburgh, Pennsylvania in order to prevent irreparable harm pending the conclusion of the mediation and arbitration procedures set forth above.

### **23. 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 attorneys' 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.

### **24. Designated Venue:**

The Seller hereby irrevocably consents to the exclusive jurisdiction of any state or federal court located in Pittsburgh County in the Commonwealth of Pennsylvania for the purposes of all legal proceedings arising out of or relating to the Purchase Order or these Terms and Conditions and waives any objection to such jurisdiction and venue, provided that nothing contained in the Purchase Order or these Terms and Conditions will prevent the Buyer from bringing any action, enforcing any award or judgment against any security or against any property of the Seller within any other county, state or other foreign or domestic jurisdiction. The Buyer and the Seller agree that the venue provided above is the most convenient forum for both the Buyer and the Seller, and the Seller waives any objection to venue and any objection based on a more convenient

forum in any action arising from the Purchase Order or these Terms and Conditions.

**25. WAIVER OF JURY TRIAL:**

**EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THE PURCHASE ORDER OR THESE TERMS AND CONDITIONS OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN OR THEREIN, AND AGREE TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER. THE BUYER AND THE SELLER ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

**26. Miscellaneous:**

(a) Waivers. The waiver of any breach or default, or any Term, Condition or provision hereof or of the Purchase Order shall not be construed to be a waiver of any other breach, default, Term, Condition or provision hereof or thereof, nor shall such waiver be deemed a waiver of a subsequent breach or default of the same Term, Condition or provision.

(b) Assignment, Binding Effect. The Seller may not assign or delegate its duties, rights or obligations within the Purchase Order, in whole or in part, by operation of law or otherwise, without the prior express written consent of the Buyer. Subject to the foregoing, the Purchase Order and these Terms and Conditions are binding upon, and inure to the benefit of, the parties hereto and their respective successors, assigns, heirs and personal representatives.

(c) Severability, Errors. In the event and to the extent any provision of the Purchase Order or these Terms and Conditions is held invalid or unenforceable by a court of competent jurisdiction, the remainder thereof and hereof shall continue in full force and effect, and such invalid or unenforceable provision shall be construed to the maximum extent so valid and enforceable giving effect to the intent of the parties. Stenographic and clerical errors, whether in mathematical computations or otherwise, made by the Buyer on the Purchase Order or any other forms delivered to the Seller shall be subject to corrections.

(d) Entire Agreement, Amendments. The entire understanding and agreement of the parties with respect to the transactions contemplated by the Purchase Order is contained in the Purchase Order, these Terms and Conditions, the Standards, and any other documents referred to therein or herein, all of which are hereby incorporated by reference, and any prior or contemporaneous negotiations, proposals, understandings, agreements and representations, whether oral or written, shall be deemed superseded by the Purchase Order, these Terms and Conditions, the Standards and such other documents. Any amendment, modification or supplement to the Purchase Order or these Terms and Conditions, , to be valid, must be in writing and executed by both parties. No printed or other terms or conditions appearing on any Seller sales order acknowledgment, shipment release, invoice or other document issued by the Seller will govern any sale under the Purchase Order or these Terms and Conditions unless otherwise agreed pursuant to this Section.

(e) Equal Employment Opportunity. The Seller 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.

**27. Contact Locations:**

All notices, directions and other communications to the Buyer under the Purchase Order and these Terms and Conditions shall be, by telephone or in writing, delivered or sent to the Buyer at the addresses and numbers set forth below, or in accordance with any subsequent unrevoked written direction from the Buyer to the Seller, effective when received by the Buyer except, in the case of telephonic notices, when confirmed in writing no later than the next day by letter, e-mail or facsimile transmission.

Procurement

Rivers Casino  
777 Casino Drive  
Pittsburgh, PA 15212  
412.566.4470

Accounts Payable

Rivers Casino  
777 Casino Drive  
Pittsburgh, PA 15212  
412.566.4543

## EXHIBIT A

### RIVERS CASINO INSURANCE REQUIREMENTS

A. The Seller's Insurance. The Seller's performance of the Purchase Order shall purchase and maintain at its own expense, during the performance of the Purchase Order, the following insurance without interruption with a financially viable and reputable insurer satisfactory to the Buyer, with minimum financial ratings as further defined in Section C. 1 below.

1. **Commercial General Liability** will include coverage written on "occurrence" policy forms, including coverage for premises/operations, products/completed operations, broad form property damage, blanket contractual liability, liquor liability and special events or activities at the Buyer (to the extent insurable), independent contractors, and personal injury, with no exceptions for explosion, collapse and underground perils. 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

The commercial general liability policy shall also include a severability of interest clause with no limitations or exclusions for cross liability under the liability policy.

An additional insured endorsement acceptable to the Buyer, naming the Additional Insureds (as defined on Schedule 1 attached hereto) as additional insureds.

2. **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 the Seller or its subcontractors, including each of the following:

- (a) A combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (b) Coverage for upset, overturn and collision coverage related to pollution events (applying to the vehicle, trailer or other attachments to vehicle and extend to cargo/waste carried and to subcontractors or others providing services to the Seller).
- (c) An additional insured endorsement acceptable to the Buyer, naming the Additional Insureds (as defined on Schedule 1 attached hereto) as additional insureds.

3. **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 the Seller. Such insurance shall contain a provision that it will not be more restrictive than the primary insurance.

An additional insured endorsement acceptable to the Buyer, naming the Additional Insureds (as defined on Schedule 1 attached hereto) as additional insureds.

4. **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 Pennsylvania, 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) the Buyer 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.
5. **Professional Liability insurance**, if the Seller 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 Commonwealth of Pennsylvania.

- B. **Subcontractors' Insurance.** The Seller shall not permit any subcontractors (which term, for purposes of this Exhibit, includes subcontractors of any tier) to commence work on or relating to the Project until such Subcontractor has complied with the insurance requirements set forth herein as if it were the "Seller" hereunder. The requirements of this Section with respect to subcontractors shall not, however, create a contractual relationship between the Buyer and any subcontractor, and any approvals, waivers, or additional requirements of the Buyer that are required or permitted herein shall be communicated through the Seller. Instead, the Seller shall be responsible to the Buyer for any subcontractor's failure to comply with these requirements as they apply to such subcontractor.

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

1. Except as otherwise agreed in writing by the Buyer, each policy shall be issued by insurance carriers of recognized good standing, duly authorized to transact that class of insurance in the Commonwealth of Pennsylvania, 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 Insurance Guide and Key Ratings. Coverage under blanket policies may be extended by endorsement, provided that the insurers meet these requirements.
2. No policy shall have more than a \$25,000 deductible or retention for any occurrence, except for mandatory deductibles or retentions where required by law, or when required by insurers in accordance with common industry practice for specific catastrophic perils. The Seller shall be responsible for paying, without reimbursement from the Buyer, all costs not covered because of such deductibles or retentions.
3. The Buyer shall immediately be notified of any cancellation, non-renewal, or such material change as may adversely affect any required insurance policy or coverage. Each policy shall contain a provision obligating the insurer to send at least thirty (30) days' prior written notice to the Buyer and any party required hereunder to be included as an additional insured or loss payee, notifying such party of the intent to cancel or make such change. If the Seller shall fail to certify required insurance coverage to the Buyer as set forth above, before commencing work hereunder, the Buyer may, at its option and without waiving any rights under the Purchase Order or these Terms and Conditions, place insurance of the character, nature and limits described above to cover the operations of the Seller, paying the premiums for the same and charging same to the Seller.
4. 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 the Seller'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.
5. Each policy shall contain a provision that the waiver of subrogation provided herein is allowed by such policy.
6. Each policy, to the extent commercially available must:
  - i. add Holdings Acquisitions Co, L.P., L.P., Rush Street Gaming Management LLC., High Penn Oversight, L.P., the Administrative Agent and other Secured Parties (as defined on Schedule 1) as additional insureds (with the exception of workers compensation)
  - ii. be primary with respect to insurance provided for the benefit of the Administrative Agent and other Secured Parties.



- iii. waive rights of subrogation against the Administrative Agent and other Secured Parties; and
- iv. continue in full force and effect until obligations of all contractors are fulfilled.

- D. Evidence of Required Coverage. The Seller shall provide the Buyer with certificates issued by the Seller's insurance carrier acceptable to the Buyer showing such policies in force for a specified period. The Buyer may request a certified copy of each such policy required to be obtained and maintained by the Seller, in which case the Seller shall, within a reasonable period of time (not to exceed 30 (thirty) days), provide such certified copies. Evidence of any renewal insurance shall be delivered to the Buyer not less than 30 (thirty) days prior to the expiration date on the term of the policy. Each policy and certificate shall be subject to reasonable approval by the Buyer. The Buyer'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 River Casino's right to require such evidence in the future.
- E. Amendments. Any reduction or waiver of any of the insurance requirements may be made only by a written document signed by the Buyer and the Seller which expressly amends the pertinent described portions of the Purchase Order and these Terms and Conditions.
- F. Waiver of Subrogation. To the extent (but only to the extent) that the Buyer or the Seller realizes the proceeds of insurance related to, and subsequent to, a claim for which coverage by insurance exists, the recovering party claiming the loss waives its right against the other party for that loss (and such waiver by the Seller shall also extend to the other Additional Insureds (as defined on Schedule 1 attached hereto)). The Seller shall require similar waivers from its subcontractors of every tier, and all agents and employees of the Seller and such subcontractors, by appropriate agreements, written where legally required for validity, in favor of the Additional Insureds. A waiver of subrogation shall be effective as to a person or entity even though that person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- G. Additional Coverage. Without the prior written consent of the Buyer, neither the Seller nor any subcontractor may carry separate additional insurance that is concurrent in form, or contributing in the event of loss, with any insurance required hereunder.

## SCHEDULE I

### LIST OF ADDITIONAL INSUREDS

HOLDINGS ACQUISITION CO, L.P., RIVERS PITTSBURGH BORROWER, L.P., and each of their 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 the other entities listed below that are parties to Rivers Pittsburgh Borrower, L.P.'s loan agreements, and other entities Rivers Casino may from time to time require to be listed as additional insureds, the “**Additional Insureds**”)

#### **Loan Related Additional Insureds:**

Wilmington Trust, National Association, in its capacity as the Collateral Trustee, Wells Fargo Gaming Capital, LLC, in its capacity as Administrative Agent, the Lenders and any other Secured Parties, their successors and/or assigns, each as defined in that certain First Lien Revolving Credit and Term Loan Agreement (as amended and restated) dated on or about June 6, 2012 by and among Rivers Pittsburgh Borrower, L.P., as Borrower, Wells Fargo Gaming Capital, LLC, as Administrative Agent, and the Lenders party thereto from time to time.

### FOREIGN SALES PROVISIONS (not US domestic supply)

#### **1. Foreign Supplies:**

A copy of the Seller's commercial invoice or the fair market value of the subject goods must accompany all the Seller's shipments. Absence of an invoice at the border may require return of the shipment at the Seller's sole cost, expense and risk. The Seller 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].

**2. Canada – U.S. Free Trade Agreement:** It is the Seller'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.

#### **3. Other Export/Import Requirements:**

The Seller 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 the Buyer; (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 Seller 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.

**4. Governing Law; English Language:**

The Purchase Order 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 Commonwealth of Pennsylvania, 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 and these Terms and Conditions. The Purchase Order 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.

**5. Agent for Service of Process:**

Within thirty (30) days of the [\_\_\_\_\_ **date**] the Seller shall appoint \_\_\_\_\_ at its address located in \_\_\_\_\_, in the State of \_\_\_\_\_, United States of America, as its registered agent for service of process within the United States of America.