

**AGREEMENT**

This AGREEMENT (the “Agreement”) dated as of \_\_\_\_\_, is entered into by and between the COMMONWEALTH OF PENNSYLVANIA, acting by and through the DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT (“DCED”) and the TEAM PENNSYLVANIA FOUNDATION (the “Foundation”).

**BACKGROUND**

WHEREAS, the Foundation is structured as a charitable section 501(c)(3) organization. It is comprised of a network of organizations, agencies, firms, and individuals from both the public and private sectors from across the Commonwealth who support the Foundation’s mission of improving Pennsylvania’s competitiveness and economic prosperity. Central to the efforts of the Foundation’s mission is advancing this shared mission in conjunction with the Commonwealth .

WHEREAS, the Foundation integrates the private sector into the Commonwealth’s economic development efforts, reflecting an understanding that the advancing of the Commonwealth’s economic potential can be done more effectively through public/private partnerships that exist among business, state and local development efforts. The Foundation’s board, consists of a diverse group of business, government, education, organized labor and economic development professionals to lead the Foundation. The Governor of the Commonwealth serves as the Public Sector Co-Chair along with a Private Sector Co-Chair duly elected by the Board of Directors. The Secretary of DCED is a Director on the Foundation’s Board; and

WHEREAS, DCED funds and maintains the Commonwealth’s tourism office (the “Tourism Office”) whose mission is to promote domestic tourism and leisure travel to and within Pennsylvania. Its goal has been to promote interest in and awareness of Pennsylvania as a destination for travelers. The Tourism Office currently publishes the Pennsylvania Vacation Guide, manages the official state tourism website, and implements marketing campaigns.

WHEREAS, current economic challenges have severely impacted the amount of Commonwealth funding available for statewide tourism promotion and support. The level of state funding for the Tourism Office for fiscal year 2012-2013 is approximately \$3 million, down from approximately \$40 million in fiscal year 2001-2002. ; and

WHEREAS, the Tourism Office and the Foundation in coordination with the Pennsylvania Association of Travel and Tourism (“PATT”), tourist promotion agencies, tourism promotion regions, conventions and visitors’ bureaus, various tourism industry associations, and CEOs of for-profit tourism related industries, are exploring the possibility of implementing an initiative using their combined resources to develop a new **independent tourism entity** (“ITE”) to be incorporated in Pennsylvania as a not-for-profit corporation with federal and state tax-exempt status, that would both lead and fund the marketing of Pennsylvania as a leisure travel destination utilizing both private and public resources. A statewide survey of individuals involved in the travel and tourism industry was conducted, which resulted in 85% of survey respondents supporting the establishment of a statewide public/private tourism entity; and

WHEREAS, the Foundation and DCED, with recommendations from the Pennsylvania Department of Conservation and Natural Resources (“DCNR”) and PATT as interested parties, have established the following mission and vision for the ITE:

- Mission – To promote and increase tourism and leisure travel both to and within Pennsylvania.
- Vision - To make Pennsylvania the leading leisure travel destination in the mid-Atlantic region; and

WHEREAS, the parties contemplate that prior to the incorporation and independent operation of the ITE there will be an interim period of approximately three to four years (the “Incubation Period”) during which the parties will undertake organizational, marketing and development plans for the ITE and to establish sufficient financial resources and organizational structures for the stand-alone operation of the ITE, and shall include private sector contributions; and

WHEREAS, the parties further contemplate that promptly following the effective date of this Agreement, the Foundation will engage an independent consultant to provide professional services during the Incubation Period, funded by one or more grants by DCED to the Foundation, who will (a) develop and recommend to the parties for their approval, (i) a suitable nomination process for the establishment of a steering committee (the “Steering Committee”) to oversee the development of the ITE during the early stages of the Incubation Period, (ii) the proposed governance structure for the effective operation of the Steering Committee during the Incubation Period, and (iii) the initial marketing and development plans for carrying out the mission of the ITE; and (b) initiate fundraising efforts under the direction and supervision of the Foundation which has obtained tax exempt status under Section 501(c)(3) of the Internal Revenue Code ; and (c) work with the parties to achieve the operational and financial independence of the ITE and therefore, the termination of the Incubation Period; and

WHEREAS, the purpose of this Agreement is to formalize a working relationship between DCED and the Foundation during the Incubation Period; and

WHEREAS, the purpose and objective of this Agreement are consistent with Executive Order 2011-03, which directs all agencies under the Governor's jurisdiction to recognize the Foundation as a unique and trusted partner of the Commonwealth and to the extent permissible under applicable laws, policies and regulations, assist the Foundation in pursuing our common mission of creating and expanding opportunities for businesses and individuals to succeed in the Commonwealth.

NOW, THEREFORE, intending to be legally bound hereby, the parties agree as follows:

1. Objectives. Both parties agree to work cooperatively with one another to achieve the following objectives:

- (a) To develop an organizational plan for the ITE, including its governance and administrative infrastructure.
- (b) To develop a marketing plan that will address the details of how the ITE will market the Commonwealth, as a tourism and leisure travel destination, both within Pennsylvania and outside of Pennsylvania.
- (c) To develop a development plan that will address how the ITE will leverage both public and private support for the organization and activity of the ITE, so as to ensure the ITE's operational independence
- (d) To engage the tourism industry stakeholders in the development of the organizational, marketing and development plans for the ITE.
- (e) To actively engage the private sector to raise funds for the ITE.

2. Benefits. The parties to this Agreement concur that the benefits to be gained from this arrangement are:

- (a) An ongoing exchange of knowledge and collective leveraging of resources and expertise to advance the stated mission.
- (b) An environment which fosters collaboration between the public and private sectors and provides an open forum for public and private entities to exchange ideas and promote a common mission.
- (c) Increased marketing of the Commonwealth's travel and tourism industry.
- (d) Ability to augment limited Commonwealth resources with private resources.
- (e) Ability to convene and work collaboratively with multiple Commonwealth agencies and partners in the Pennsylvania travel and tourism industry.

- (f) Increased travel and tourism marketing visibility and media outreach efforts through a variety of mediums.
- (g) Tax deductible donations to the Foundation for the benefit of the ITE during the Incubation Period, because of the Foundation's charitable section 501(c)(3) status.
- (h) Formal creation of the ITE as a not-for-profit corporation recognized as exempt under Section 501 (c)(3) of the Internal Revenue Code.

3. Roles and Responsibilities.

- (a) In order to achieve the objectives set forth in this Agreement, the Foundation will:
  - (i) Work with DCED to prepare an annual budget including sources and uses during the Incubation Period related to the development of the ITE, (the "Budget"), as approved by both parties.
  - (ii) Prepare and submit applications for grant funding to DCED (the "DCED Grant") for operational and/or programmatic expenses of the Foundation related to the ITE during the Incubation Period, as set forth in the Budget. The operational expenses to be funded by the DCED Grant may include administrative costs for the Foundation as approved by DCED.
  - (iii) Retain the services of a consultant (the "Consultant") and provide appropriate office space and staff support to the Consultant pursuant to an consulting agreement to be entered into between the Foundation and the Consultant (the "Consultant Contract"), as approved by DCED. The Consultant shall serve as an independent contractor to the Foundation, and not as an employee of either DCED or the Foundation. The Consultant will work closely with the Steering Committee pursuant to the duties as generally described in a position description for the Consultant, as approved by both parties.
  - (iv) Work with the Consultant to develop a steering committee matrix, defining the makeup of the steering committee, and one or more position descriptions for the members of the Steering Committee, as approved by both parties.
  - (v) Work with the Consultant, DCED, DCNR, PATT, and the Governor's office in forming the Steering Committee, in accordance with a nomination process approved by both parties.
  - (vi) Work with the consultant and DCED to develop the Steering Committee's governance structure with the final approval of both parties.

- (vii) For any DCED Grants, upon receipt of DCED Grant funding, utilize the funds received in accordance with the executed and approved grant contract.
- (viii) Cooperate with DCED, the Steering Committee, and the Consultant in formulating the governance structure of the ITE as a non-profit corporation recognized as exempt under Section 501 (c)(3) of the Internal Revenue Code.
- (ix) Work with the Steering Committee, and the Consultant to identify and develop potential donors during the Incubation Period and assist the Consultant and the Steering Committee with general development advice and support relating to the development of the ITE. The Foundation shall also provide sufficient supervision and guidance to the Consultant and the Steering Committee to ensure compliance with The Solicitation of Funds for Charitable Purposes Act of Pennsylvania (the “Act”). The Foundation will provide fundraising event management services and expertise to the Consultant and Steering Committee during the Incubation Period.
- (x) Manage and track donor pledges, donor contributions, donor contact information and donation history; prepare donor invoicing; and prepare post-pledge and post-contribution acknowledgement letters and other correspondence
- (xi) Manage all vendor contracts and payments relating to the development of the ITE; grant final approval for all funds disbursed; disburse all payments to vendors; and provide DCED with detailed revenue and expense tracking reports and such other information related to the development of the ITE as DCED may request from time to time.
- (xii) Establish and manage one or more accounts for the deposit of all funds received by the Foundation during the Incubation Period related to the development of the ITE, which shall be segregated from all other accounts and funds of the Foundation.
- (xiii) Establish and register with the Commonwealth’s Department of State, one or more fictitious names to be approved jointly by both parties, which shall be used to identify the purpose of the funds held by the Foundation with respect to the ITE and to facilitate donor payments to such funds; or
- (xiv) Serve as a fiduciary for the receipt of any DCED Grants and donated private funds to be used during the Incubation Period for the development of the ITE (collectively, the “ITE Funds”). Upon the formation of the ITE, and payment of any outstanding liabilities and costs related to the establishment of the ITE, the Foundation will transfer to the ITE any unexpended and unencumbered ITE Funds held by the Foundation for the benefit of the ITE.

- (xv) Support DCED by providing timely and regular feedback when requested.
- (b) In order to achieve the objectives set forth in this Agreement, DCED will:
  - (i) Assist the Foundation in preparing an initial Budget to have final approval of both parties.
  - (ii) Review and, if in accordance with the DCED approved Budget, if funding is available, and if the Foundation is in compliance, to DCED's satisfaction, with its duties and obligations under this Agreement, approve applications submitted by the Foundation for the DCED Grants for operational expenses of the Foundation during the Incubation Period related to the ITE.
  - (iii) Review and, if acceptable to both parties, support the Foundation in their approval of the Consultant Contract.
  - (iv) Cooperate with the Foundation, the Consultant, DCNR, PATT, and the Governor's office in forming the Steering Committee and in approving its governance structure.
  - (v) Work with the Foundation, Consultant, and the Steering Committee regularly to identify funding opportunities for the ITE.
  - (vi) Assist the Foundation, Consultant, and the Steering Committee in marketing and branding projects and initiatives that are directly related to the ITE's mission.
  - (vii) Assist the Foundation, Consultant, and the Steering Committee in formulating the governance structure of the ITE as a non-profit corporation recognized as exempt under Section 501 (c)(3) of the Internal Revenue Code.
  - (viii) Support the Foundation staff, Consultant, and the Steering Committee by providing timely feedback, communications, access to tourism data, tourism industry contact lists, and office space when needed.

4. Representations, Warranties and Covenants by the Foundation.

- (a) The Foundation represents and warrants as of the date of this Agreement, as follows:
  - (i) The Foundation is duly organized and subsisting as a not-for-profit corporation under the laws of the Commonwealth.
  - (ii) The Foundation is registered as a charitable organization and is in good standing under the Act.

(iii) The Foundation is tax exempt under Section 501(a) as an organization described under Section 501(c)(3) of the Internal Revenue Code, as amended.

(b) The Foundation covenants and agrees that for the term of this Agreement, it shall do the following:

(i) Maintain its existence as a not-for-profit corporation under the laws of the Commonwealth.

(ii) Maintain its registration as a charitable organization under the Act and notify DCED if the Foundation receives notice from the Bureau of Charitable Organization that the Foundation is in violation of or has failed to maintain its registration under the Act.

(iii) Maintain its tax exempt status under Section 501(a) as an organization described under Section 501(c)(3) of the Internal Revenue Code and notify DCED if the Foundation receives notice from the Internal Revenue Service that the Foundation's exempt status has been withdrawn or modified.

5. Press Releases. All charitable solicitation donation requests and materials, press releases, and media pieces related to this Agreement and generated by the Foundation shall require the prior approval of DCED's Communication Office and the Tourism Office. All press releases and media pieces related to this Agreement and generated by DCED shall require the prior approval of the Foundation.

6. Effective Date of Agreement. This Agreement shall commence and be effective upon the full execution of the Agreement ("Effective Date"). A fully executed Agreement is one that has been signed by the Foundation and DCED and approved by the Office of General Counsel and the Office of Attorney General.

7. Termination.

(a) This Agreement shall terminate on the earlier of the following dates: (a) four years from the Effective Date of this Agreement; or (b) the termination of this Agreement by either party upon thirty (30) days prior written notification to the other party.

(b) Upon termination of this Agreement, the Foundation shall within a reasonable period of time provide DCED and the ITE with a full and accurate statement of the Foundation's remaining assets and liabilities relating to the ITE (and shall continue to provide the DCED and the ITE with quarterly statements of all such existing assets and liabilities). Including without limitation all monies remaining in the segregated accounts(s), unpaid vendor invoices and unpaid pledges for charitable contributions and such other information and records as requested by DCED or ITE relating to the ITE or this Agreement, and shall make all reasonable efforts to

collect all amounts due to the Foundation and to fulfill all remaining obligations related to the ITE and its establishment.

(c) Notwithstanding the termination of this Agreement, all of the responsibilities, duties, restrictions, covenants, indemnifications, RTKL notifications, notices and other terms of this Agreement, shall continue to apply after termination of this Agreement until such time as the monies in the segregated account(s) have been spent down and there is a zero balance in the segregated account(s) or the parties otherwise agree in writing.

(d) Following the termination of this Agreement, the Foundation shall discontinue using all fictitious names associated with the ITE or the development of the ITE during the Incubation Period and shall file all applicable termination statements with the Pennsylvania Department of State.

8. Indemnification. The Foundation shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Foundation and its employees and agents under this Agreement and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands. The Foundation's duty to indemnify the Commonwealth is a continuing duty that survives the expiration and termination of this Agreement.

9. Right-To-Know Law.

(a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement. For the purpose of these provisions, the term "the Commonwealth" shall refer to the Department of Community and Economic Development.

(b) If the Commonwealth needs the Foundation's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Foundation using the legal contact information provided in this Agreement. The Foundation, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

(c) Upon written notification from the Commonwealth that it requires the Foundation's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Foundation's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Foundation shall:

(i) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the



Foundation's possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

(ii) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.

(d) If the Foundation considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Foundation considers exempt from production under the RTKL, the Foundation must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Foundation explaining why the requested material is exempt from public disclosure under the RTKL.

(e) The Commonwealth will rely upon the written statement from the Foundation in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Foundation shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

(f) If the Foundation fails to provide the Requested Information within the time period required by these provisions, the Foundation shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Foundation's failure, including any statutory damages assessed against the Commonwealth.

(g) The Commonwealth will reimburse the Foundation for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

(h) The Foundation at its sole expense may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts; however, the Foundation shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Foundation's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Foundation agrees to

waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

(i) The Foundation's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Foundation has Requested Information in its possession.

10. Miscellaneous.

(a) Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given when delivered in person, or mailed by first class mail postage prepaid, or sent by e-mail in either case after acknowledgement of receipt by the other party to:

If to Foundation to:  
Matthew A. Zieger  
President & CEO  
Team Pennsylvania Foundation  
100 Pine Street, 9<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel. (717) 233-1375  
e-mail: matt@teampa.com

If to DCED to:  
Deputy Secretary of Office of Innovation and Investment  
Department of Community and Economic Development  
400 North Street  
Commonwealth Keystone Building, 4<sup>th</sup> Floor  
Harrisburg, PA 17120  
Tel. (717) 720-1358  
Fax (717) 787-6825  
e-mail: cnewhouse@pa.gov

(b) Amendments. Amendments to this Agreement shall become effective only upon the execution of a written instrument signed by both parties and approved by the Office of General Counsel and the Office of Attorney General.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

(d) Headings. The headings herein have been included for convenience of reference only and shall not be considered in interpreting this Agreement.

(e) Integration. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and shall supersede all oral agreements and prior writings with respect to the subject matter hereof.

(f) Successors and Assigns. This Agreement may not be assigned without the prior written approval of the parties.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

TEAM PENNSYLVANIA FOUNDATION

COMMONWEALTH OF PENNSYLVANIA,  
Acting by and through the  
DEPARTMENT OF COMMUNITY &  
ECONOMIC DEVELOPMENT

By: \_\_\_\_\_  
Matthew Zieger, President & CEO (Date)

By: \_\_\_\_\_  
C. Alan Walker, Secretary (Date)

FEIN 23-2876177

Approved as to Form and Legality

\_\_\_\_\_  
Counsel for DCED (Date)

\_\_\_\_\_  
Office of General Counsel (Date)

\_\_\_\_\_  
Office of Attorney Counsel (Date)