



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

**FEB 18 2011**

Honorable Kimberly M. Vele  
President, Stockbridge-Munsee Community  
of Mohican Indians  
N8476 Moh He Con Nuck Road  
Bowler, Wisconsin 54416

Dear President Vele:

On January 5, 2011, the Department received the tribal-state compact (Compact) between the Stockbridge-Munsee Community Band of Mohican Indians (Tribe) and the State of New York (State), dated November 22, 2010. On January 25, 2011, the Director of the Office of Indian Gaming requested additional information from the Tribe and the State. Both the Tribe's and the State's responses were received on February 10 and 11, 2011, respectively.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710 (d)(8)(C), the Secretary may approve or disapprove the Compact within 45 days of its submission. If the Secretary does not approve or disapprove the Compact within 45 days, IGRA provides that the Compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710 (d)(8)(C).

## **DECISION**

We have completed our review of the Compact, along with the additional material submitted by the Tribe and the State. For the following reasons, the Compact is hereby disapproved.

## **ANALYSIS**

The Secretary may only disapprove a proposed Compact when it violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians. 25 U.S.C. § 2710 (d)(8)(B).

The Department is committed to upholding IGRA, which describes the provisions that may be negotiated in a Class III gaming compact. See 25 U.S.C. § 2710(d)(3)(C).

### *Restriction on Use of Trust Lands*

Section 14 of the Compact provides, in part: "Any such [trust] lands shall be utilized for gaming and only commercial activities traditionally associated with the operation or conduct of a casino facility." Compact at § 14.

The Department inquired as to why the Tribe and the State believed that the Compact's restriction against using the proposed Sullivan County trust lands for any purposes other than gaming and commercial activities traditionally associated with the operation or conduct of a casino facility was permissible. The Tribe responded that it believes it would not be advantageous to have a non-gaming-related development on the parcel.

While we respect the Tribe's right to determine the best use of lands that may be acquired in trust for its benefit, we find the restrictions violate IGRA because they exceed Congress's requirement that gaming compacts be the vehicle for "governing the conduct of gaming activities." *See* 25 U.S.C. § 2710 (d) (3) (A).

The IGRA lists provisions relating to gaming on Indian lands that may be included in a tribal-state gaming compact. 25 U.S.C. § 2710 (d) (3) (C)<sup>1</sup> None of these provisions permit using a gaming compact as a means to limit the use of newly-acquired trust lands only to gaming purposes. The purpose of IGRA is to foster economic development opportunities for tribes, and does not limit or restrict the use of Indian lands should a tribe later determine that a different use is desirable.

While we have previously approved gaming compacts limiting the location of tribal gaming facilities, we have not approved compacts restricting the use of all tribal trust lands within a state *only* to gaming and related commercial activities. The success of Indian gaming enterprises varies greatly among tribes, and we find that approving a provision like Section 14 opens the door to areas of negotiation we believe Congress never intended under IGRA. Moreover, our position is supported by IGRA's legislative history.<sup>2</sup>

- <sup>1</sup> Any Tribal-State gaming compact negotiated under subparagraph (A) may include provisions relating to –
- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
  - (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
  - (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
  - (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
  - (v) remedies for breach of contract;
  - (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
  - (vii) any other subjects that are directly related to the operation of gaming activities.

<sup>2</sup> See 134 Cong. Rec. S12643-01, at S12651:

Mr. EVANS. On the question of precedent, am I correct that the use of compacting methods in this bill are meant to be limited to tribal-state gaming compacts and that the use of compacts for this purpose is not to be construed to signal any new congressional policy encouraging the subjugation of tribal governments to state authority.

Mr. INOUE. The vice chairman is correct. No subjugation is intended. The bill contemplates that the two sovereigns address their respective concerns in the most equitable fashion. There is no intent on the part of Congress that the compacting methodology be used in such areas such as taxation, water rights, environmental regulation, and land use.

## RELATED QUESTIONS AND CONCERNS

### *Revenue Sharing*

The Department has outstanding questions regarding the Compact's revenue sharing and exclusivity provisions. We review revenue sharing requirements in gaming compacts with great scrutiny. Our analysis first looks to whether the State has offered meaningful concessions. We view this concept as one where the State concedes something it was not otherwise required to negotiate such as granting exclusive rights to operate Class III gaming or other benefits sharing a gaming-related nexus. We then examine whether the value of the concessions provides substantial economic benefits to the tribe that justifies the revenue sharing required.

We did not receive sufficient information to conduct this analysis in this instance, and therefore reserve the right to review this issue in any future compact submissions by the Tribe and the State.

### *Settlement of the Tribe's Pending Land Claim*

We are aware that the Compact is closely linked with the Tribe's and the State's proposed settlement agreement. That proposed agreement provides that the approval of the Compact is a condition precedent to the proposed agreement becoming effective.

The Department has outstanding questions regarding the unique relation of the Compact to the proposed settlement agreement.

The Department has issued separate correspondence to the Tribe and the State on that matter concluding that the Secretary cannot execute the proposed agreement.

As noted above, the Compact's restriction on the Tribe's use of proposed trust lands itself was a violation of IGRA, and a sufficient basis for our disapproval in this instance.

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And the Committee Report for IGRA, S. Rep. 100-446 at 14:

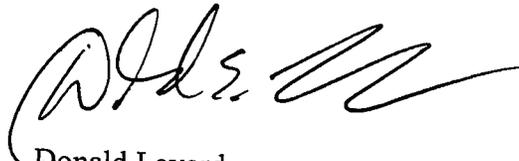
The Committee does not intend that compact be used as subterfuge for imposing state jurisdiction on tribal lands.

## CONCLUSION

Based on this analysis I find that the Compact is in violation of IGRA. Therefore, I hereby disapprove the Compact. I deeply regret that our decision could not be more favorable at this time.

A similar letter has been sent to the Honorable Andrew Cuomo, Governor of the State of New York.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Laverdure', with a stylized flourish at the end.

Donald Laverdure

Principal Deputy Assistant Secretary – Indian Affairs

**TRIBAL-STATE GAMING COMPACT**  
**BETWEEN THE**  
**STOCKBRIDGE-MUNSEE COMMUNITY**  
**BAND OF MOHICAN INDIANS**  
**AND THE**  
**STATE OF NEW YORK**

November 22, 2010

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TRIBAL-STATE GAMING COMPACT  
BETWEEN THE  
STOCKBRIDGE-MUNSEE COMMUNITY, BAND OF MOHICAN INDIANS  
AND THE  
STATE OF NEW YORK

This Tribal-State Gaming Compact is made and entered into between the Stockbridge-Munsee Community, Band of Mohican Indians ("Tribe"), a sovereign Indian Tribe, and the State of New York ("State"), under the provisions of the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* ("IGRA").

Whereas, in the exercise of its sovereignty, the Tribe has determined that undertaking class III gaming, in accordance with IGRA, would provide a means to promote the Tribe's economic development, self-sufficiency and strong Tribal government;

Whereas, under IGRA, class III gaming on Indian lands must be undertaken in accordance with a compact between a tribe and state, approved by the Secretary of the Interior;

Whereas, the Tribe has determined that entering a gaming compact is in the best interests of the Tribe and its members; and

Whereas, the State recognizes the sovereign rights of the Tribe to undertake gaming in accordance with IGRA, and

Whereas, the Tribe and the State have mutually agreed, pursuant to IGRA, to the following provisions governing the conduct of class III gaming activities on the lands of the Tribe in order to: protect the health, welfare and safety of the citizens of the Tribe and the State; develop and implement a means of regulation for the conduct of class III

gaming on Tribal lands to insure the fair and honest operation of such gaming activities; and maintain the integrity of all activities conducted in regard to class III gaming; and

NOW, THEREFORE, the STOCKBRIDGE-MUNSEE COMMUNITY, BAND OF MOHICAN INDIANS, and the STATE OF NEW YORK, in consideration of the mutual undertakings and agreements hereinafter set forth, do enter into a class III gaming compact as provided for herein.

## 1. DEFINITIONS

Unless the context clearly and specifically requires otherwise, words in the singular include the plural, and those in the plural include the singular, and words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

For purposes of this Compact:

- (a) "Appendix" means an appendix to this Compact, all of which are incorporated by reference herein. "Appendices" means more than one Appendix.
- (b) "Certified mail" means certified or registered mail, Federal Express, United Parcel Service, Express Mail or any similar mail delivery service generating a return receipt or a signature of the recipient, confirming delivery of that mail. Certified mail shall not include electronic mail.
- (c) "Class III gaming" has the meaning ascribed to such term in 25 U.S.C. § 2703(8).
- (d) "Class III gaming employee" means a natural person who renders class III gaming-related employee services, directly or indirectly, to the Tribal gaming operation or as otherwise defined in writing by the TGA and SGA.
- (e) "Class III gaming employee license" means a license issued by the TGA to a class III gaming employee pursuant to the procedures set forth in Appendix C.
- (f) "Class III gaming key employee" means a class III gaming employee in a

supervisory capacity empowered to make discretionary decisions that affect gaming operations or as otherwise agreed to in writing by the TGA and SGA.

- (g) "Class III key gaming employee license" means a license issued by the TGA to a class III key gaming employee pursuant to the procedures set forth in Appendix C.
- (h) "Class III gaming services enterprise" means an entity or individual, other than a class III gaming employee, that provides gaming devices, gaming supplies, gaming services, or gaming equipment, directly or indirectly, to the Tribal gaming operation or as otherwise defined in writing by the TGA and SGA.
- (i) "Class III gaming services enterprise license" means a license issued by the TGA to a class III gaming services enterprise pursuant to the procedures set forth in Appendix C.
- (j) "Class III non-gaming employee" means a natural person who is not a class III gaming employee who renders services, directly or indirectly, to the Tribal gaming operation or as otherwise defined in writing by the TGA and SGA.
- (k) "Class III non-gaming employee license" means a license issued by the TGA to a class III non-gaming employee pursuant to the procedures set forth in Appendix D.
- (l) "Class III non-gaming services enterprise" means an entity or individual, other than a class III gaming services enterprise, that provides supplies, services or equipment, directly or indirectly, to the Tribal gaming

operation, gaming facility or as otherwise defined in writing by the TGA and SGA.

- (m) "Class III non-gaming services enterprise license" means a license issued by the TGA to a class III non-gaming services enterprise pursuant to the procedures set forth in Appendix D.
- (n) "Compact" means this Tribal-State Compact between the Tribe and the State and all appendices attached hereto.
- (o) "Division" means the New York State Division of Criminal Justice Services, its authorized officials, agents, and representatives acting in their official capacities.
- (p) "Enterprise" means any individual, trust, corporation, partnership, or other legal entity of any kind other than a business or entity wholly owned and operated by the Tribe; provided, however, that with respect to any corporation, the term "enterprise" shall include each other corporation or other legal entity which directly or indirectly controls a majority of the voting interests in such corporation; and further provided, that with respect to any partnership, trust, or other form of unincorporated business organization, the term "enterprise" shall include each corporation or other legal entity which controls a majority of the voting interests in such organization.
- (q) "Gaming device" or "gaming equipment" means any electronic, electrical, or mechanical contrivance or machine, device, material or implement which is designed, manufactured or used in the operation or conduct of any authorized class III game or activity or as otherwise defined in writing by the TGA and SGA.

- (r) "Gaming facility" means all areas within any building in which class III gaming, as authorized by this Compact, is conducted. Notwithstanding the foregoing, no area exclusively used for the conduct of class I or class II gaming shall be considered part of a gaming facility. The gaming facility shall be deemed to consist of public areas, non-public areas, restricted areas, gaming floor, and hotel.
- (1) Public areas shall mean areas of the gaming facility, including certain areas of the gaming floor, where members of the general public are permitted.
  - (2) Non-public areas shall mean areas of the gaming facility where employees of the Tribal gaming operation or Tribe are permitted, but are otherwise restricted from the general public. Visitors to non-public areas must be identified with a visitor's badge.
  - (3) Restricted areas shall mean areas of the gaming facility where members of the public are not generally permitted. Access to such areas shall be gained, whenever possible, through a locked door or other secured entrance. All natural persons whose employment requires access to restricted areas must first be licensed as required by this Compact unless a waiver of such license requirement is granted in writing by the TGA and SGA. Visitors to restricted areas must be identified with a visitor's badge and shall be escorted by licensed staff at all times.
  - (4) Gaming floor, which may include public, non-public and restricted areas, shall mean the one or more locations or rooms in the gaming facility that have been approved by the TGA and the SGA for the

conduct of class III gaming in accordance with the provisions of this Compact. All natural persons whose employment requires access to the gaming floor must first be licensed as a non-gaming employee, gaming employee or key gaming employee, as said employment requires. Visitors to restricted areas of the gaming floor must be identified with a visitor's badge and shall be escorted by licensed staff at all times.

- (5) Hotel means a single building, or two or more buildings which are physically connected in a manner deemed appropriate by the TGA and the SGA and which are operated as one casino-hotel facility. All natural persons whose employment relates to the operation of the hotel shall, at the discretion of the TGA, be required to obtain a non-gaming employee license or be subject to a background investigation conducted by or on behalf of the Tribe.
  
- (s) "Gaming services" means those services provided, directly or indirectly, to the Tribal gaming operation in connection with the conduct or operation of class III gaming.
  
- (t) "Gaming supplies" means any goods or supplies which are used in connection with the conduct or operation of any class III game or activity.
  
- (u) "Immediate family member" means the spouse, parent, or child of a person, or a parent or child of the spouse of that person.
  
- (v) "Material breach" means a material, uncured breach of this Compact or its appendices and constitutes grounds for termination pursuant to section 2 of this Compact.

- (w) "Principal" means with respect to any enterprise: each of its officers and directors; each of its principal management employees; each of its owners or partners if an unincorporated business; each of its shareholders who owns more than ten (10) percent of the shares of the corporation if a corporation; and each person other than a banking institution or institutional investor, as such terms are defined within Appendix C, who has provided financing for the enterprise constituting more than ten (10) percent of the total financing of the enterprise.
- (x) "Section", "sections", "subsections" or other like terms used to delineate provisions in the Compact equate to the terms "paragraph", "paragraphs" or "subparagraphs" or other like terms used to delineate provisions in the Appendices, and the terms "paragraph", "paragraphs" or "subparagraphs" or other like terms used to delineate provisions in the Appendices equate to the terms "section", "sections", "subsections" or other like terms used to delineate provisions in the Compact.
- (y) "Slot machines" are devices constructed and operated as defined within Appendices A and B. Such devices shall not include any video lottery gaming device as operated by or on behalf of the New York State Division of the Lottery or any successor agency pursuant to authorization of Chapter 383 of the Laws of 2001, as amended.
- (z) "State" means the State of New York, acting through the Governor as chief executive officer and such other officials, agents or representatives he or she duly authorizes, acting in their official capacities.
- (aa) "State contribution" has the meaning set forth in subsection 15(d).
- (bb) "State gaming agency" or "SGA" means the New York State Racing and

Wagering Board, its authorized officials, agents and representatives acting in their official capacities, or such other agency of the State as the State may from time to time designate by written notice to the Tribe as the State agency responsible for the regulation of class III gaming jointly with the TGA.

- (cc) "State law enforcement agency" means the New York Division of State Police or such law enforcement agency as the State may from time to time designate by written notice to the Tribe.
- (dd) "Tribe" means the Stockbridge-Munsee Community, Band of Mohican Indians, its authorized officials, agents and representatives acting in their official capacities.
- (ee) "Tribal gaming agency" or "TGA" means the Mohican Gaming Commission or such other agency of the Tribe as the Tribe may from time to time designate by written notice to the State as the Tribal agency responsible for the regulation of class III gaming jointly with the SGA.
- (ff) "Tribal gaming operation" means any enterprise, business or activity operated or authorized by the Tribe to operate or conduct any form of class III gaming pursuant to this Compact.

## 2. TERM OF COMPACT

- (a) Effective date. This Compact shall be effective after publication of notice of approval or notice that the Compact is taking effect by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B) provided the Compact has first been executed by the Tribe and the Governor of the State of New York or his duly appointed representative.
- (b) Termination date. Gaming activities governed by this Compact shall terminate fifteen (15) years following the date marking the commencement of gaming activity unless renewed pursuant to subsection 2(c) below or terminated pursuant to subsection 2(d) below.
- (c) Renewal.
- (1) Unless either the Tribe or State delineates its objections in writing delivered to the other no later than one hundred twenty (120) days prior to the expiration of the fifteen (15) year term established pursuant to section 2(b) above, the term of this Compact shall be renewed automatically for an additional period of fifteen (15) years.
  - (2) In the event either the Tribe or State does timely object to the automatic renewal of the term of this Compact, the Tribe and State shall meet promptly following the receipt of such written delineated objection and use their reasonable best efforts to address the objecting party's concerns through good faith negotiations. In the event the objecting party's concerns cannot be resolved within a period of one hundred twenty (120) days following the commencement of such negotiations, the party may submit only the

issue of the other party's good faith in the renewal negotiations to the Party Dispute Resolution provisions set forth in section 19; provided, however, that during the pendency of dispute resolution, the terms of this Compact shall remain in effect.

(d) Early termination.

- (1) This Compact's applicability may be terminated by the Governor of the State or the Tribe, at their discretion, at any time if any of the following occurs:
  - a. The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, ("IGRA") is repealed;
  - b. The Tribe adopts a resolution revoking Tribal authority to conduct class III gaming; or
  - c. The other party commits a material breach.
- (2) To effectuate the elective termination, notice shall be served upon the Tribe or the State in accordance with section 24 and shall be effective no earlier than three (3) months following the date of service unless an earlier date is required by law.

### **3. SOVEREIGN IMMUNITY**

Except as specifically provided herein, neither the State nor the Tribe waives its sovereign immunity, under State, Tribal or federal law, by entering into this Compact.

#### **4. AUTHORIZED CLASS III GAMING**

The Tribe shall only conduct those approved games specifically listed in Appendix A, in accordance with the specifications set forth in Appendices A and B.

## 5. TRIBAL REGULATORY AUTHORITY

- (a) General review authority. The TGA shall have primary responsibility for the on-site regulation of the Tribal gaming operation. The TGA shall employ inspectors who shall be present in the gaming facility during all hours of operation and who shall be under the authority of the TGA and not the Tribal gaming operation.
  
- (b) Access. Such inspectors shall have unfettered immediate access to all areas of the gaming facility at all times without notice, and personnel employed by a Tribal gaming operation shall, for such purposes, immediately provide such inspectors access to locked and secure areas of the gaming facility. Immediate access shall also be granted during ordinary hours of business to areas outside of the gaming facility where original business records of the Tribal gaming operation are maintained, compiled, stored or reviewed and where gaming devices and equipment are maintained, stored or repaired.
  
- (c) Investigatory and regulatory duties of TGA. Such inspectors shall investigate and report to the TGA with respect to any failure by the Tribal gaming operation or the State to comply with any of the provisions of this Compact, the Tribal gaming operation's system of internal controls, the applicable laws and ordinances of the Tribe, and federal law. The TGA shall process and resolve non-criminal complaints by patrons, non-criminal violations committed by patrons, non-criminal violations committed by gaming employees and non-criminal violations committed by the Tribal gaming operation. The TGA shall require the Tribal gaming operation to promptly correct such failure upon such terms and conditions as the TGA may determine necessary.

- (d) Records access. In the course of any investigation, regulatory review or compliance audit the TGA may request, and the Tribal gaming operation shall promptly provide such business and accounting records of its gaming operations necessary to the conduct of that investigation. Such records shall remain the property of the Tribe and shall be returned to the Tribe at the conclusion of the investigation, regulatory review or compliance audit unless the records constitute evidence in a criminal proceeding.
- (e) Provision of reports; process and resolution of disputes. The TGA shall cooperate with the SGA and shall promptly forward copies of all patron complaints, incident reports, gaming violations, surveillance logs, and security reports to the SGA and the State law enforcement agency. In the case where a report indicates that a complaint, violation or incident has not been resolved, the report shall state what remedial steps have been or will be taken to resolve the matter. A follow-up report shall indicate the final disposition of the matter. If the SGA disagrees with the action taken by the TGA or the action of a Tribal gaming operation, which the TGA supports, the parties shall meet to settle the matter. If the parties cannot agree, the TGA or the SGA may initiate the arbitration provisions of section 19 of this Compact.
- (f) Fines. The TGA shall be empowered by Tribal ordinance to impose fines and other appropriate sanctions within the jurisdiction of the Tribe upon the Tribal gaming operation or its employees and any enterprise conducting business with the Tribal gaming operation who violate provisions of this Compact or its Appendices. The TGA shall immediately notify the State, in writing, of the imposition of any fine or sanction imposed pursuant to this subsection.
- (g) Restrictions on TGA. Any person employed by the Tribe in the regulation

of gaming conducted pursuant to this compact, and any immediate family member of such person, shall have no financial interest in gaming undertaken pursuant to this compact, other than an interest that accrues under Tribal law solely by virtue of being a member of the Tribe, and shall not be employed by a person or entity required to be licensed pursuant to Appendices C or D. This provision shall be in addition to, and not in derogation of, any applicable Tribal law or ordinance regarding conflicts of interest.

- (h) Identification badges. The TGA shall issue color-coded identification badges to all its personnel working at the gaming facility, which badges shall, unless otherwise agreed in writing by the TGA and the SGA, be worn by such personnel at all times when on the premises of the gaming facility. Such badges shall remain the property of TGA and must be returned at the conclusion of the official's work at the gaming facility.

## 6. STATE REGULATORY AUTHORITY

- (a) General review authority. The State shall have the authority to review Tribal gaming operations in order to determine whether such operations are conducted in compliance with the provisions of this Compact. The SGA shall employ inspectors who may be present in the gaming facility during all hours of operation and shall have unfettered immediate access to all areas of the gaming facility at all times without prior notice, except that personnel employed by the SGA shall have access to secured areas where money is counted or kept when accompanied by personnel of the TGA, or where the TGA otherwise provides permission. Immediate access shall also be granted during ordinary hours of business to areas outside the gaming facility where original business records of the Tribal gaming operation are maintained, compiled, stored or reviewed and where gaming devices and equipment are maintained, stored or repaired. The State shall not cause to be present at the gaming facility more employees than are reasonably necessary to carry out its responsibilities.
- (b) Investigatory and regulatory duties of SGA. Such inspectors shall have the authority to investigate and shall report to the SGA and notify the TGA of any failure by the Tribal gaming operation or TGA to comply with any of the provisions of this Compact, the Tribal gaming operation's system of internal control, and federal law. The Tribal gaming operation and the TGA shall cooperate with the SGA in any such investigation, regulatory review or compliance audit. If the TGA or the Tribal gaming operation fail to correct the failure in a timely manner or in a manner acceptable to the SGA after such report, the SGA and the TGA shall meet and attempt to settle the matter. If the matter is not settled, then either the SGA or the TGA may pursue remedies available under section 19 of this Compact.

- (c) Conduct of State personnel. Personnel employed by the State shall take all reasonable measures to avoid interfering with the conduct of the Tribal gaming operation.
- (d) Records access. In the course of any investigation, regulatory review or compliance audit the SGA may request, and the Tribal gaming operation shall promptly provide during ordinary business hours of operation, business and accounting records of its gaming operations necessary to the conduct of that investigation, regulatory review or compliance audit. Such records shall remain the property of the Tribe and shall be returned to the Tribe at the conclusion of the investigation, regulatory review or compliance audit unless the records constitute evidence in a criminal proceeding.
- (e) Quarterly meetings. Representatives of the SGA, TGA and Tribal gaming operation shall meet, not less than on a quarterly basis, unless otherwise agreed, to review past practices and examine methods to improve the regulatory and enforcement programs created by this Compact.
- (f) Provision of reports. The SGA shall cooperate with the TGA and shall forward copies of all patron complaints, incident reports, and gaming violations to the TGA.
- (g) Restriction on SGA. Any person employed by the State in the regulation of gaming conducted pursuant to this compact, and any immediate family member of such person, shall have no financial interest in gaming undertaken pursuant to this compact, other than an interest that accrues under State law solely by virtue of being a citizen of the State, and shall not be employed by a person or entity required to be licensed pursuant to Appendices C or D. This provision shall be in addition to, and not in

derogation of, any applicable State law regarding conflicts of interest.

- (h) Office space, parking. The Tribal gaming operation shall provide reasonable separate on-site office space for the SGA and the State law enforcement agency at its class III gaming facility no less than ninety days prior to commencement of gaming operations. The surveillance system, as detailed in Appendix B, section 7, shall be accessible through monitors provided in the respective office space of the SGA and the State law enforcement agency. The number of monitors in each office shall be agreed upon by the State and the Tribe. SGA personnel and State law enforcement agency officials on official business may park at the nearest available parking space at the gaming facility. The Tribal gaming operation shall reserve twelve parking spaces immediately adjacent to an entrance (other than the front entrance) to the gaming facility for use by SGA and State law enforcement agency personnel in undertaking their duties under this Compact.
  
- (i) Identification badges. The TGA shall issue color-coded identification badges to all SGA and other State personnel working at the gaming facility, which badges shall, unless otherwise agreed in writing by the TGA and the SGA, be worn by the SGA and other State personnel at all times when on the premises of the gaming facility. The TGA shall issue such badges immediately upon the appearance of the SGA personnel. Such badges shall remain the property of the TGA and must be returned at the conclusion of the official's work at the gaming facility.

## 7. LAW ENFORCEMENT MATTERS

- (a) Jurisdiction. Nothing in this Compact shall alter the jurisdiction of the Tribe or the State over Indian land as provided by applicable law. The State law enforcement agency may at its discretion maintain a constant on-site presence and shall conduct all day-to-day criminal investigations, consistent with appropriate law enforcement needs defined by the State law enforcement agency, on any lands acquired by the Secretary in trust for the benefit of the Tribe within Sullivan County as well as all background investigations and other investigations as provided in this Compact. Staffing levels shall be determined at the discretion of the State law enforcement agency; reimbursement of staffing expenses shall be addressable through the procedures contained in Appendix F. Personnel of the Tribal Gaming Operation, the TGA and the SGA shall immediately report any detection, complaint or incident of suspected or actual criminal activity to the State law enforcement agency and shall promptly forward to the State law enforcement agency any records or reports maintained in compliance with this Compact and relevant to this criminal activity.
- (b) Powers of the State law enforcement agency. Personnel of the State law enforcement agency in the course of their official duties shall have unfettered access to all areas of the gaming facility.
- (c) Identification badges. The TGA shall issue color-coded identification badges to all State law enforcement agency personnel and other State personnel working at the gaming facility, which badges shall, unless otherwise agreed in writing by the TGA and the State law enforcement agency, be worn by the State law enforcement agency personnel and other State personnel at all times, other than in public areas of the gaming facility. The TGA shall issue such badges immediately upon the

appearance of the State law enforcement agency personnel. Such badges shall remain the property of the TGA and must be returned at the conclusion of the member's service in the detail.

- (d) Tribal gaming operation security personnel. The Tribal gaming operation shall provide security personnel to protect the gaming facility, its employees, patrons and their property. Tribal gaming operation security personnel shall wear badges or other apparel publicly identifying them as Tribal gaming operation security personnel.

## 8. LICENSING REQUIREMENTS

- (a) Class III gaming employees and non-gaming employees. No person may commence or continue employment as a class III gaming employee, class III key gaming employee or class III non-gaming employee unless he or she is the holder of a valid employee license issued by the TGA in accordance with the provisions of Appendix C or Appendix D, as applicable.
- (b) Class III gaming services enterprises. No class III gaming services enterprise may provide gaming devices, gaming supplies, gaming services, or gaming equipment to the Tribal gaming operation, directly or indirectly, unless it is the holder of a valid gaming service license issued by the TGA in accordance with the provisions of Appendix C.
- (c) Class III non-gaming services enterprises. No enterprise, other than a licensed class III non-gaming services enterprise, may provide supplies, services or equipment in a total amount exceeding the sum of \$75,000.00 in any continuous twelve (12) month period to the Tribal gaming operation, directly or indirectly, unless it is the holder of a valid class III non-gaming services license issued by the TGA in accordance with the provisions of Appendix D. Notwithstanding the foregoing, the TGA may require licensure at a lower monetary threshold.
- (d) Supplemental investigations. Upon written request of the Tribe or the TGA, the SGA may conduct, or have conducted, a background investigation of any person or enterprise, and provide a recommendation as to the suitability of the person or enterprise based on the results of the investigation. The request shall set forth the reason(s) for the background investigation.

## 9. ACCOUNTING STANDARDS AND AUDITING REQUIREMENTS

- (a) Books and records. Tribal gaming operations shall make and keep books and records which accurately and fairly reflect each day's transactions, including but not limited to receipt of funds, expenses, prize claims, prize disbursements or prizes liable to be paid, and other financial transactions of or related to the Tribe's class III gaming operations, so as to permit preparation of monthly and annual financial statements in conformity with Generally Accepted Accounting Principles as applied to the gaming industry and to maintain daily accountability. Tribal gaming operations' books and records shall be susceptible to an annual audit in accordance with this Compact, in accordance with Generally Accepted Accounting Principles. A chart of accounts, contained as Appendix E of this Compact shall be adopted, maintained and followed.
- (b). Additional reports and records related to financial transactions. If requested to do so by the SGA, the Tribal gaming operation shall contemporaneously provide to the SGA copies of all reports, letters, and other documents filed with the National Indian Gaming Commission pursuant to 25 C.F.R., Section 571.13. All such reports, letters, and documents shall be deemed confidential.
- (c) Class III gaming accounting and auditing procedures.
- (1) The Tribe shall, at its own expense, cause the annual financial statements of the class III gaming operation to be audited in accordance with Generally Accepted Auditing Standards as applied to audits for the gaming industry by a certified public accountant. Such audit may be conducted in conjunction with any other independent audit of the Tribe, provided that the requirements of

this section are met, and provided further that, except as otherwise provided in this Compact, the information in the audit not related to class III gaming need not be submitted to the SGA. The Tribe shall select a certified public accountant with suitable experience in casino auditing.

- (2) A copy of each current audited financial statement, together with the report(s) thereon of the Tribe's independent auditor, shall be submitted on an annual basis to the SGA not later than one hundred twenty (120) days following the end of the accounting period under review.
- (3) The Tribe shall require its independent auditor to render:
  - a. A report on the material weaknesses, if any, in accounting and internal controls; and
  - b. A report expressing the opinion of the independent auditor based on his or her examination of the financial statements, on the extent to which the Tribe's class III gaming operations has followed in all material respects during the period covered by the examination, the system of accounting and internal controls adopted by the Tribe. The independent auditor shall also make recommendations in writing regarding improvements in the system of accounting and internal controls.
- (4) The Tribe's independent auditor shall retain a copy of each audit report, together with copies of all engagement letters, management letters, supporting and subsidiary documents, and other work

papers in connection therewith, for a period of not less than three (3) years.

- (5) A copy of the reports required by section 9(c)(3) above shall be submitted to the SGA by the Tribe not later than one hundred twenty (120) days following the end of the accounting period under review or within thirty (30) days of receipt, whichever is earlier.
- (6) Nothing herein shall be construed to affect the right of the SGA to conduct, or cause to be conducted, audits for the purpose of confirming compliance by the Tribe and Tribal gaming operations with the provisions of this Compact, its Appendices and the Tribal gaming operation's system of internal control, provided the cost for any additional outside financial audit(s) conducted for or on behalf of the SGA to verify the accuracy of or which duplicates the annual audit submitted by the Tribe shall be borne by the SGA and shall not be a reimbursable expense. All documents, materials, books and records reviewed or copied for purpose of such audits shall be confidential.

## 10. EMPLOYEE PROTECTION

- (a) Workers' compensation. The Tribe agrees that, with respect to employees at the Tribe's class III gaming and related facilities, the Tribal gaming operation will provide workers' compensation to its employees consistent with the State workers' compensation laws, however for workers at or in support of the gaming and related facilities established in Sullivan County the Tribe will participate in and abide by the State workers' compensation laws.
- (b) Occupational safety and health. The Tribe agrees that the Tribal gaming operation will follow standards that are no less stringent than those of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* and regulations duly promulgated under that Act.
- (c) Unemployment and disability compensation benefits. The Tribe agrees that, with respect to employees at the Tribe's class III gaming and related facilities, the Tribal gaming operation will participate in the State's unemployment compensation benefits and unemployment compensation disability benefits programs.
- (d) Withholding and payment of tax for non-Tribal members. With respect to employees at the Tribe's class III gaming and related facilities who are not members of the Tribe, the Tribal gaming operation shall withhold and forward all applicable taxes relating to wages and compensation on non-member employees due to the State as provided in the New York Unemployment Insurance Law and Taxation and Revenue Law.
- (e) Compensation and hours. Except to the extent preempted by the federal Fair Labor Standards Act, as amended, 29 U.S.C. 201 *et seq.*, or

inconsistent with any provisions therein, with respect to employees employed at the class III gaming and related facilities, the Tribe agrees to implement and comply with standards no less rigorous than those imposed by the laws and regulations of the State regarding labor.

- (f) Unionization of employees. At the class III gaming and related facilities established pursuant to this Compact, the Tribe agrees to:
- (1) Provide reasonable access to the class III gaming and related facilities to labor union organizers for purposes of a campaign to solicit employee support for labor union representation;
  - (2) Provide permission for labor union organizers to distribute labor union authorization cards on site for the purpose of soliciting employee support for labor union representation;
  - (3) Provide employees' names and addresses to labor union representatives and maintain tribal/employer/management neutrality in labor union organizing campaigns;
  - (4) Recognize labor unions as the exclusive collective bargaining representatives of employees in appropriate bargaining units based upon a demonstration of majority employee support of such labor unions by union authorization card check as verified, if necessary, by an independent arbitrator appointed by the State Employment Relations Board in consultation with the Tribe and the labor union;
  - (5) Final and binding arbitration of organized labor matters or disputes including negotiations for collective bargaining agreements with arbitrators' awards enforceable in a state or federal court of

competent jurisdiction; and

- (6) Notwithstanding the foregoing, the Tribe shall enter into an agreement with the New York Hotel & Motel Trades Council in the form contained in Appendix G or as such other form as may be agreed to govern the unionization of non-supervisory individuals employed at the class III gaming and related facilities located on lands within Sullivan County, in the following worker classifications: food and beverage, housekeeping, laundry, bellman and doorman, front desk and PBX, maintenance and mechanical trades and shipping and receiving. The Tribe represents and warrants that it will engage in good faith negotiations to modify the aforementioned agreement. In the event an amended agreement is not reached within a period of one hundred twenty (120) days following the commencement of such negotiations, either party may submit only the issue of the other party's good faith in the negotiations to the Party Dispute Resolution provisions set forth in section 19; provided, however, that during the pendency of dispute resolution, the terms of this Compact shall remain in effect. Failure to comply with the Arbitrator's decision or order shall be a material breach of this Compact and subject to the early termination provision under section 2.
- (g) Application of other statutes. The failure to expressly specify the application of any other State statute or regulation governing employment shall not be deemed an admission by the State that said statute or regulation does not otherwise apply to the Tribe or the class III gaming and related facilities.
- (h) Applicability to construction. All provisions of this section shall apply to

any entities and their agents and employees engaged in the construction of the class III gaming and related facilities.

- (i) Disclaimer. Nothing in this section shall be construed as an admission or evidence that in the absence of this Compact, the foregoing State or federal laws would otherwise be applicable to the Tribe or upon Indian lands.

11. **INSURANCE REQUIREMENTS; TORT REMEDIES FOR PATRONS AND THIRD PARTIES**

(a) Insurance requirements.

- (1) Generally. The Tribe shall require the Tribal gaming operation to obtain and maintain during the term of this Compact public liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages sustained by a visitor at the class III gaming and related facilities arising out of or relating to the operation of such facilities. Such liability insurance shall provide coverage of no less than five (5) million dollars per person per occurrence, and shall cover both negligent and intentional torts. The Tribe's insurance policy shall further provide that the claimant may institute such a claim in State or Federal court directly against the insurance company issuing the policy under applicable New York law.
  
- (2) Dram shop liability coverage. The Tribe shall require the Tribal gaming operation to obtain and maintain during the term of this Compact public liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury or property damage arising out of the service of alcoholic beverages at the class III gaming and related facilities. Such liability insurance shall provide coverage of no less than five (5) million dollars per person per occurrence and shall further provide that the claimant may institute such a claim in State or Federal court directly against the insurance company issuing the policy on the same grounds on which a claim could be made under § 11-101 of the New York General Obligation Law.

- (b) Tribal sovereign immunity. The Tribe's insurance policy shall include an endorsement providing the insurer may not invoke tribal sovereign immunity up to the limits of the policy required under subsection (a).

## 12. INTEGRITY OF ELECTRONIC GAMING DEVICES

- (a) Designation of independent gaming test laboratories. The TGA shall propose to the SGA, with supporting documentation, one or more independent gaming test laboratories which are competent and qualified to conduct scientific tests and evaluations of electronic gaming devices and to otherwise perform the functions set forth in this section. The retention of the independent gaming test laboratories are subject to the consent of the SGA, but the SGA shall not unreasonably withhold its consent if the independent gaming test laboratories hold a license in good standing with a gaming jurisdiction in the United States. If, at any time, any of the independent gaming test laboratories' licenses are suspended, terminated or subject to disciplinary action, the independent gaming test laboratory shall discontinue its responsibility under this section. If only one independent gaming test laboratory was proposed and consented to, and that laboratory is unable to continue its responsibilities under this section, the TGA shall propose a new independent gaming test laboratory as provided herein.
- (b) Testing and approval of electronic gaming devices. No electronic gaming device may be exposed for play unless:
- (1) The class III gaming services enterprise which sells, leases or distributes such electronic gaming devices has obtained a class III gaming services enterprise license pursuant to Appendix C of this Compact; and
  - (2) The electronic gaming device, or a prototype thereof, has been tested, approved and certified by the independent gaming test laboratory as meeting the requirements specified by this Compact

or Appendices, in accordance with the following process.

- (3) The TGA shall require that the class III gaming services enterprise provide the independent gaming test laboratory with at least two (2) copies of electronic gaming device illustrations, schematics, block diagrams, technical and operation manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), if any, and all other information requested by the independent gaming test laboratory. The class III gaming services enterprise shall make all such materials available to the SGA upon request, subject to confidentiality.
- (4) If the TGA is requested by the independent gaming test laboratory, the TGA or Tribal gaming operation shall require the class III gaming services enterprise to transport not more than two (2) working models of the electronic gaming devices to a location designated by the laboratory for testing, examination or analysis. Neither the TGA nor the independent gaming test laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the components of the electronic gaming devices resulting from the testing, examination or analysis. If the TGA is requested by the independent gaming test laboratory, the TGA or Tribal gaming operation shall require the class III gaming services enterprise to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination and analysis. At the conclusion of each test the independent gaming test laboratory shall provide to the TGA and the SGA a report that contains findings, conclusions and a certification that the electronic

gaming devices conform or fail to conform to the requirements specified by this Compact. If the independent gaming test laboratory determines that an electronic gaming device fails to conform to such requirements, and if modifications can be made which would bring the electronic gaming devices into compliance, the report may contain recommendations for such modifications. Neither the TGA nor the SGA are bound by the findings, conclusions or certifications of the independent gaming test laboratory for purposes of their regulatory responsibilities under the provisions of this Compact.

- (5) Each class III gaming services enterprise shall assemble and install all electronic gaming devices pursuant to a procedure approved in writing by the TGA and the SGA.

(c) . Modifications of electronic gaming devices.

- (1) No modification to the assembly or operation of any electronic gaming device may be made after testing and certification unless the independent gaming test laboratory certifies to the TGA and the SGA that the electronic gaming device as modified conforms to the requirements specified by this Compact and Appendices. All such proposed modifications shall be described in a written request made to the TGA, the SGA and the independent gaming test laboratory. The request shall contain information describing the proposed modification and the reason(s) therefore, and shall provide all documentation required by the independent gaming test laboratory. In emergency situations where modifications are necessary to preserve the integrity of any electronic gaming devices, the independent gaming test laboratory is authorized to

grant temporary certification of the modifications for up to thirty (30) days pending compliance with this section.

(2) With respect to any modifications proposed to the electronic gaming devices, the Tribal gaming operation shall advise the TGA and the SGA in writing of any such modification no less than ten (10) days prior to implementing the modification, and either party shall have the right to direct the Tribal gaming operation to seek testing and certification of the modification. However, the Tribal gaming operation shall not be precluded from implementing such modification prior to any such direction by either the TGA or SGA. The modification shall be withdrawn if the independent gaming test laboratory concludes that the modified electronic gaming device fails to conform to the requirements specified by this Compact and its Appendices.

(d) Conformity to technical standards. Before any electronic gaming device may be exposed for play, the TGA shall first have obtained and submitted to the SGA a written certification from the class III gaming services enterprise that upon installation, any electronic gaming device placed at the gaming facility will conform precisely to the exact specifications of the electronic gaming devices tested and approved by the independent gaming test laboratory and operates and plays in accordance with the requirements specified in this Compact and its Appendices. Authorization to operate an electronic gaming device requires that it operate and play in accordance with the requirements specified by this Compact and its Appendices, provided that while the failure of such electronic gaming devices to comply with such requirements will suffice as a grounds to enjoin or otherwise terminate said electronic gaming devices' operation, such noncompliance will not be deemed a violation of this Compact and its

Appendices as long as the TGA has relied in good faith on the certification of the class III gaming services enterprise.

- (e) Ex parte communication. Neither party shall communicate with the independent gaming test laboratory regarding a substantive matter, whether in writing, by telephone or otherwise, concerning the approval of the electronic gaming devices without providing the other party with a reasonable opportunity to participate in or respond to such communication. The TGA and the SGA shall ensure that copies of all written communications sent to or received from the independent gaming test laboratory are provided immediately to the other party.
  
- (f) Payment of independent gaming test laboratory fees. The Tribal gaming operation shall be responsible for securing the payment of all independent gaming test laboratory fees and costs in connection with the duties described in this section. The Tribal gaming operation shall provide to the TGA and SGA copies of all independent gaming test laboratory invoices and payments secured by the Tribal gaming operation, and either the TGA or SGA shall have the right to audit such fees or cause an audit of such fees.
  
- (g) Independent gaming test laboratory duty of loyalty. The TGA shall inform the independent gaming test laboratory in writing that, irrespective of the source of its fees, the independent gaming test laboratory's duty of loyalty and reporting requirements run equally to the TGA and the SGA.
  
- (h) Random inspections.
  - (1) By the SGA. The SGA may inspect or cause to be inspected one non-electronic gaming device for each type of game or activity

specified in this Compact on a random basis twice per annum to confirm that it operates and plays in accordance with the requirements specified by Appendices A and B of this Compact. In any such inspection the SGA may utilize the services of an independent gaming test laboratory, provided that it meets the criteria set forth in section 12(a) above. Notwithstanding the foregoing, the State may inspect or cause to be inspected any electronic gaming device for cause. The SGA shall bear the cost of any duplicate or random testing initiated at the request of the SGA except for electronic gaming devices inspected or tested for cause.

- (2) By the TGA. Notwithstanding the foregoing, nothing shall preclude the TGA from inspecting or causing to be inspected any electronic gaming device. The Tribal gaming operation shall be responsible for the cost of any duplicate or random testing conducted or initiated at the request of the TGA.

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13. **APPLICATION OF CERTAIN STATE REGULATORY STANDARDS**

- (a) Health and safety standards. Tribal ordinances and regulations governing building, sanitary, health standards and fire safety applicable to the class III gaming and related facilities shall be no less rigorous than standards imposed at any time by the State and local governments. Notwithstanding the foregoing, there shall be smoke-free environments maintained within portions of the class III gaming and related facilities.
- (b) Environmental laws. The Tribe shall adopt and enforce environmental standards no less stringent than those contained in federal law and regulations.
- (c) Alcoholic beverages. Alcohol shall be permitted only pursuant to an Alcohol Control Ordinance adopted by the Tribe consistent with State and federal law and a license issued by the New York State Liquor Authority/Division of Alcohol Beverage Control.
- (d) Traffic standards. Access shall be provided from the class III gaming and related facilities onto public highways of the State of New York which are adequate to meet standards of the State Department of Transportation. The State will cooperate with the Tribe in providing, at the Tribe's expense, such signage as is reasonable and appropriate in order to permit members of the traveling public to locate the Indian lands from major road approaches.

#### 14. SITE FOR GAMING FACILITY

Chapter 383 of the Laws of 2001 permits the State, through the Governor, to execute tribal-State gaming compacts authorizing up to three class III gaming facilities in the counties of Sullivan and Ulster. The Tribe may establish one gaming facility on a parcel of land, described within Appendix H, within the Town of Thompson, County of Sullivan approved by the Governor and acquired or accepted by the Secretary in trust for the benefit of the Tribe.

Any such lands shall be utilized for gaming and only commercial activities traditionally associated with the operation or conduct of a casino facility.

15. **EXCLUSIVITY AND STATE CONTRIBUTION**

- (a) The Tribe and certain other compact authorized Indian nations or tribes shall have Indian exclusivity with respect to the installation and operation of, and no person or entity other than such a compact authorized Indian nation or tribe pursuant to Chapter 383, shall be lawfully authorized to install or operate slot machines within the geographic area defined by Bronx, Columbia, Delaware, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Sullivan, Ulster and Westchester counties.
  
- (b) Rights to operate and conduct gaming on any qualifying site pursuant to Chapter 383 of the Laws of 2001 shall cease if the Tribe fails to commence:
  - (1) construction of a permanent gaming facility within twelve (12) months of the latter of:
    - a. the effective date of this Compact, or
    - b. when a qualifying parcel is acquired or accepted by the Secretary in trust for the benefit of the Tribe; and
  
  - (2) class III gaming activities within a permanent gaming facility on such site within twenty-four (24) months of the latter of:
    - a. the effective date of this Compact, or
    - b. when a qualifying parcel is acquired or accepted by the Secretary in trust for the benefit of the Tribe.

- (c) The Tribe's obligation to pay and the State's right to receive the State contribution from slot machines shall be subject to interruption in the event of a breach by the State of the exclusivity provisions set forth in subsection (a) of section 15, above. In the event of such interruption, the Tribe shall place the State contribution for the disputed payment period into escrow until such time as a negotiated settlement between the Tribe and the State is reached or a final arbitration decision is rendered pursuant to section 19 of this Compact. Failure by the Tribe to pay the State contribution into escrow within 5 days of the end of the payment period shall constitute a material breach. In the event the arbitration decision determines that the State has breached its obligations, the State shall forfeit not more than the amount of State contribution owed from the time the arbitration action was commenced until the final arbitration decision is rendered.
- (d) In consideration of the exclusivity granted by the State pursuant to subsection a of section 15 above, the Tribe agrees to contribute to the State an amount, equal to twenty-five percent (25%), of the Net Drop from the operation and conduct of slot machines at the Gaming Facility. This amount shall be paid on a cumulative quarterly basis to be adjusted annually at the end of the relevant fiscal year, provided that no value shall be attributed to free promotional slot plays utilized by patrons for purposes of calculating Net Drop and provided further that the aggregate amount of such free promotional slot plays during any month does not exceed 6.5% of gross revenues from slot machines at the Gaming Facility for such month. In the event free promotional slot plays exceed 6.5% of monthly gross revenues from slot machines, contribution payments are required on such excess face amount of free promotional slot plays at the same rate as required by this subsection (d). "Net Drop" means for the purposes of

this subsection (d) the net amount of money dropped into the slot machines after payout to patrons, but before expenses. Notwithstanding the above, the parties further agree that the Tribe's contribution to the State shall be at a rate equal to eighteen (18) percent during years one and two of the initial term of the Compact and equal to twenty-two (22) percent during years three, four and five of the initial term of the Compact.

- (e) In the event the State reaches a compact with another state or federally recognized Indian nation or tribe which authorizes slot machine usage within the geographic area defined by Bronx, Columbia, Delaware, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Sullivan, Ulster and Westchester counties and has a State contribution provision more favorable to the other Indian nation or tribe than those set forth herein, the State shall give the Tribe written notice of such action within thirty (30) days of entering such compact, identifying the more favorable terms. If the Tribe accepts the more favorable terms, it shall notify the State in writing within thirty (30) days of such acceptance and a corresponding amendment shall be made to the Compact and appropriate appendices hereunder upon the effective date of the other tribe's compact.
- (f) Any dispute regarding a payment by the Tribe of the State contribution must be raised within one (1) year of the receipt by the State of the audited financial statements required pursuant to section 9(c)(2).

## 16. AGE LIMITATION FOR GAMING PARTICIPATION

- (a) Limitation on age. No person under the age of eighteen (18) may play or be present in any room in which class III gaming is offered, provided that such underage person may be directly escorted by a person eighteen (18) years of age or older through a room in which class III gaming is conducted for the sole purpose of reaching non-class III gaming areas. Notwithstanding the foregoing if alcoholic beverages are permitted for sale or provided by the Tribal gaming operation for consumption on the gaming floor or immediately adjacent to the gaming floor, no person under the age of twenty-one (21) may play or be present in any room in which class III gaming is offered, provided that such underage person may be directly escorted by a person twenty-one (21) years of age or older through a room in which class III gaming is conducted for the sole purpose of reaching non-class III gaming areas. The applicable restriction shall be prominently displayed on each entrance leading to class III gaming areas. The area in which any class III gaming activity is conducted must be monitored at all times by an employee of the Tribal gaming operation to prevent unauthorized access to, or play of, such games by persons under the permitted age.
- (b) Exceptions. Notwithstanding the foregoing, the following exceptions shall apply:
- (1) Notwithstanding the foregoing, the conduct of pull-tabs and keno games of chance may occur in dining establishments when minors are present so long as procedures are in place that safeguard against underage individuals from participating in those gaming activities. Such procedures shall be approved in writing by the TGA and the SGA prior to permitting such games of chance at dining

establishments.

- (2) Minors may be present in dining establishments offering alcoholic beverage service so long as procedures are in place that safeguard against underage individuals from obtaining such beverages. Such procedures shall be approved in writing by the TGA and the SGA prior to permitting such minors at the dining establishments.
- (3) Notwithstanding any inconsistent provision to the contrary, any person duly licensed pursuant to Appendix C or Appendix D of this Compact may be present in the gaming facility for the purpose of executing his or her employment responsibilities.

## 17. POSSESSION OF FIREARMS PROHIBITED

Except as otherwise agreed in writing by the Tribe and the State, no person, including security department personnel, shall possess, or be permitted to possess any firearm within the class III gaming facility without the prior express written consent of the State law enforcement agency, except for personnel of the State law enforcement agency duly authorized to possess firearms acting in their official capacities. The Tribal gaming operation shall post, in a conspicuous location at every entrance to each gaming facility, a sign stating: "Firearms Prohibited: No person shall possess any firearm within this Gaming Facility."

## 18. PATRON DISPUTE RESOLUTION

- (a) Whenever the Tribe or its agents refuse payment to a patron of alleged winnings from any class III game or activity, the patron shall be advised of his or her right to request, within thirty (30) days of the date of the refusal, resolution by TGA staff, and if dissatisfied with the proposed resolution, to seek appeal to the commissioners of the TGA.
- (b) Upon request by a patron, the TGA shall, after notifying the SGA, conduct an appropriate investigation and the TGA shall render a decision whether payment of the alleged winnings should be made. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reason(s) for the decision.
- (c) If the patron is dissatisfied with the decision of the TGA staff or no decision is issued within the sixty (60) day period specified in subsection 18(b) above, the patron may request that the dispute be settled by formal hearing before the commissioners of the TGA. At such a hearing, the patron shall have a right to be represented by counsel at the patron's expense, to present oral testimony, to call and question witnesses and to present documentary or other evidence. If the alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure that is not due to the intentional acts or gross negligence of the Tribal gaming operation or its agents, the commissioners of the TGA shall deny the patron's claim for the winnings, but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure.
- (d) The SGA shall be given advanced written notice of any hearing and the

final determination of each dispute made by the TGA.

## 19. PARTY DISPUTE RESOLUTION

- (a) Purpose. The Tribe and the State hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the administration of and compliance by each party with the provisions of this Compact and its Appendices. Except for disputes concerning the class III games and activities permitted under this Compact and its Appendices, all disputes concerning compliance with and interpretation of any provisions of the Compact and its Appendices shall be resolved by binding arbitration in accordance with the procedures set forth below. A claim by the State or the Tribe with respect to whether a class III gaming activity is authorized by this Compact is not subject to mandatory arbitration.
- (b) Negotiation. In the event of any dispute, claim, question, or disagreement arising from or relating to this Compact and its Appendices, or the breach thereof, the parties shall use their best reasonable efforts to settle the dispute, claim, question, or disagreement. Either party may provide written notice of a claim to the other and the parties shall then meet within fourteen (14) days of such written notice, and must negotiate in good faith to reach a just and equitable solution satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days after such meeting, or the parties fail to meet and thirty (30) days pass after the written notice of a claim is received then, upon notice by either party to the other, all disputes, claims, questions, or disagreements shall be finally settled by arbitration. The notice shall specify with particularity the nature of the dispute, the particular provision of the Compact or its Appendices at issue and the proposed relief sought by the party demanding arbitration.
- (c) Procedures for dispute resolution. The parties shall maintain a list of

mutually agreed upon arbitrators from which an arbitrator shall be selected by the parties to resolve any given dispute. The list shall be composed of not less than ten (10) arbitrators and shall be reviewed annually in order to fill any vacancies which may occur. Interim vacancies shall be filled within thirty (30) days from the time when both the parties have knowledge of the vacancy. In the event of a disagreement as to the arbitrator to be selected, each party shall select one arbitrator and the two arbitrators shall select the third from the list. The arbitrator(s) shall be selected within (30) days of the notice of arbitration set forth in subsection 19(b) above. Should the two arbitrators chosen be unable to agree on a third, selection of such third arbitrator shall be by lot, from the list. Arbitration under this section may be conducted in accordance with the rules of the American Arbitration Association.

- (d) Arbitration costs. The cost of the arbitration shall be shared equally by the parties, but the parties shall bear their own costs and attorneys' fees associated with their participation in the arbitration. All arbitration proceedings shall be conducted to expedite resolution of the dispute and minimize cost to the participants.
- (e) Remedies. The arbitrators shall exempt the Tribe from the payment of the State Contribution under section 15(c) for any breach of the State's commitments to exclusivity as set forth in subsections a and c of section 15 above and require such State Contribution be placed in escrow until such time as a negotiated settlement between the Tribe and the State is reached or a final arbitration decision is rendered pursuant to this section. For breaches, the arbitrators may impose as a remedy only specific performance. In no event shall damages be available as a remedy to either party for any alleged breaches of this Compact. The only remedy available to either party for any breach of this Compact shall be specific

performance. An arbitration award against the Tribe for specific performance that entails the payment of money to the State shall be satisfied solely and exclusively from the revenues of the Tribe's class III gaming facility operated pursuant to this Compact. Either party may apply to the arbitrators seeking injunctive relief for an alleged violation of this Compact until the arbitration award is rendered or the controversy is otherwise resolved.

- (f) Arbitration decision. The decision of the arbitrator(s) shall be final, binding and not subject to appeal. Failure to comply with the decision and award within the time specified therein for compliance, or should a time not be specified, then forty-five (45) days from the decision and award, shall be deemed a breach of the Compact. The prevailing party may bring an action in the United States District Court of the Northern District of New York to enforce the decision and award and the parties agree to waive their sovereign immunity solely and exclusively for the strict limited purpose of such an enforcement action in such court and for no other purpose.
  
- (g) Immediate judicial remedy. Notwithstanding the foregoing, the Tribe or the State may seek a temporary restraining order or preliminary injunction in accordance with IGRA.

## 20. AMENDMENT AND MODIFICATION

- (a) Amendment and modification. The provisions of this section shall govern the amendment and modification of the Compact and its Appendices. The Compact and any of its Appendices may be amended or modified by written agreement of the Tribe and the State.
- (b) Compact provisions. A request to amend or modify the Compact by either party shall be in writing, specifying the manner in which the party requests the Compact to be amended or modified, the reason(s) therefore, and the proposed language. Representatives of the parties shall meet within thirty (30) days of the request and shall expeditiously and in good faith negotiate whether and on what terms and conditions the Compact will be amended or modified. A request by the Tribe to amend or modify any provision of the Compact shall be deemed a request to enter into negotiations for the purpose of entering into a Tribal-State Compact subject to the provisions of 25 U.S.C. § 2710(d).
- (c) Appendices provisions.
- (1) If the State makes lawful a class III game not authorized to be conducted for any purpose by any person, organization or entity on the effective date of this Compact and the SGA adopts specifications for such game, or enters into a Tribal-State Compact with any Indian tribe or nation governing the conduct of class III gaming authorizing the conduct by such tribe or nation of a class III game not authorized to be conducted under this Compact, and setting forth specifications for such game, the State shall give the Tribe written formal notice of such action within thirty (30) days, identifying the game and its specifications. If the Tribe accepts

such game and its specifications, it shall formally notify the State in writing and amendments shall be made to the appropriate Appendices to authorize such games. If the Tribe submits its own specifications for such game, the State shall within thirty (30) days notify the Tribe that it has accepted or rejected the Tribe's proposed specifications. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the Tribe's proposed specifications, amendments and modifications shall be made to the appropriate Appendices. If the State rejects the Tribe's proposed specifications, the Tribe may commence an arbitration pursuant to section 19 of this Compact.

- (2) The Tribe may make a request to amend or modify specifications for a currently approved game by submitting proposed amended or modified specifications in writing to the State. The State shall within thirty (30) days notify the Tribe that it has accepted or rejected the Tribe's proposed specifications. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the Tribe's proposed specifications, the appropriate amendments and modifications shall be made to Appendices. If the State rejects the Tribe's proposed specifications, the Tribe may commence an arbitration pursuant to section 19 of this Compact.
- (3) The Tribe may request that a class III game be added to the list of approved games contained in Appendix A of this Compact by submitting written specifications for such a game to the State. Such a request shall be deemed a request to amend or modify the Compact pursuant to section 20(b), and the Tribe shall not commence an arbitration pursuant to section 19 with respect to a

dispute arising out of such request. The State shall within thirty (30) days notify the Tribe in writing that it accepts or rejects the game and the specifications proposed by the Tribe. Failure to act within thirty (30) days shall be deemed a rejection of the proposed amendment. If the State accepts the proposed game and the specifications, amendments shall be made to appropriate Appendices to authorize the Tribe to conduct such games. If the State rejects the proposed game and the specifications, the State and the Tribe shall within thirty (30) days after the Tribe's receipt of the notice of rejection enter into negotiations pursuant to 25 U.S.C. § 2710(d) for the limited purpose of the addition of the proposed game. Nothing in this Compact shall be deemed to waive the right of the Tribe to request negotiations for amendment or modification to this Compact with respect to a class III game or activity which is to be conducted on Indian lands but which is not permitted under the provisions of this Compact.

- (4) Except as provided for in subsection (c)(1),(2) and (3) of this section, if the Tribe or the State seeks to amend or modify a provision of any of the Appendices to this Compact, it shall notify the other party in writing. The party receiving such notice shall within thirty (30) days notify the party requesting the amendment or modification that it accepts or rejects the proposed amendment or modification. If the proposed amendment or modification is accepted, it shall be effective upon the written acceptance of the other party. If the proposed amendment or modification is rejected, the party proposing it may commence an arbitration pursuant to section 19 of this Compact on the issue of the opposing party's good faith in considering the proposed amendment.

- (d) Implementation of amendments and modifications. Implementation of amendments and modifications shall be in accordance with the provisions of this Compact and, as applicable, federal law.

## 21. CALCULATION OF TIME

In computing any period of time prescribed or allowed by this Compact and its Appendices or any laws, rules or regulations of the Tribe, the day of the event from which the designated period of time begins to run shall not be included. A calendar day includes the time from midnight to eleven fifty-nine and fifty-nine seconds past meridian. Periods of less than ten (10) days shall be construed as business days. Periods of eleven (11) days or more shall be construed as calendar days.

## **22. REIMBURSEMENT FOR STATE COSTS OF REGULATION**

Pursuant to Section 2710(d)(3)(c)(iii) of IGRA, the Tribe shall reimburse the State for costs associated with the regulation of this Compact and its Appendices, as set forth in Appendix F.

## 23. SEVERABILITY

- (a) If any section or provision of this Compact is held invalid by any federal court, or its application to a particular activity is held invalid, it is the intent of the Tribe and the State that the remaining sections and provisions, and the remaining applications of such section and provisions, shall remain in full force and effect.
  
- (b) Application of the provisions of subsections a and b of section 15 above, terminating the State contribution in the event of the State's breach of its exclusivity obligations, shall not affect the validity of any other provision of this Compact.

## 24. OFFICIAL NOTICES AND COMMUNICATIONS

All notices and other communications required or authorized to be served in accordance with this Compact shall be served by certified mail at each of the following addresses:

Tribe

President

Stockbridge-Munsee Community

N8476 Moh-He-Con-Nuck Road

PO Box 70

Bowler, Wisconsin 54416

Tribal gaming agency

Commissioners

Mohican Gaming Commission

W12189 County Highway A

PO Box 70

Bowler, Wisconsin 54416

State of New York

Governor

State of New York

The Capitol

Albany, New York 12224

State gaming agency

Chairman

New York State Racing and Wagering Board

1 Broadway Center

Schenectady, New York 12305

or to such other address or addresses as either the Tribe or the State may from time to time designate in writing.

25. EXECUTION AND APPROVAL

DATE: 11-22-2010

Kimberly M. Vele

Kimberly M. Vele

PRESIDENT

STOCKBRIDGE-MUNSEE COMMUNITY

BAND OF MOHICAN INDIANS

DATE: 11/22/10

David A. Paterson

David A. Paterson

GOVERNOR

STATE OF NEW YORK