United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 12 2012

Honorable Deval Patrick
Governor of the Commonwealth of Massachusetts
Boston, MA 02133

Dear Governor Patrick:

On August 31, 2012, the Department of the Interior (Department) received the tribal-state class III gaming compact (Compact) between the Mashpee Wampanoag Tribe (Tribe) and the Commonwealth of Massachusetts (Commonwealth).

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

DECISION

We have completed our review of the Compact, along with the additional material submitted by the Tribe and the Commonwealth. For the following reasons discussed, the Compact is hereby disapproved under Section 2710(d)(8)(B) of IGRA.

First, the Compact provides a significant share of the Tribe's gaming revenue to the Commonwealth, undermining the central premise of IGRA that Indian gaming should primarily benefit tribes. While we have approved varying revenue sharing schemes in exchange for tangible benefits to tribes for over 20 years, the revenue sharing provisions in this Compact go beyond those permitted by the Department and IGRA.

Second, the parties have attempted to use the compact negotiation process to address a host of other issues, such as the Tribe's hunting and fishing rights and land claims, in clear contravention of IGRA's express limitation that gaming compacts may only address matters directly related to gaming. This is not only a legal violation; it poses significant practical problems. If tribal hunting and fishing rights, and land and water rights, are subject to negotiation in gaming compacts, then other rights central to tribal sovereignty will be at stake in gaming compacts.

Third, in the Compact, the Commonwealth has sought authority over several other activities not related to gaming, such as regulation of non-gaming suppliers, ancillary entertainment services,

and ancillary non-gaming amenities. Congress expressly sought to prevent states from using gaming compacts to leverage power over sovereign tribes about matters unrelated to gaming. This is especially important because a tribe may be strongly tempted to agree to such terms for political expediency to obtain the state's agreement. The Department must preserve the important balance between tribal and state interests, and the singular focus on gaming, that Congress envisioned when it enacted IGRA.

Finally, there are numerous additional issues mentioned below that create further problems and concerns. We must apply IGRA in Massachusetts in the same manner we apply it to all other states, and to all other tribes.

BACKGROUND

The Compact was entered into on July 12, 2012 between the Tribe and the Commonwealth to govern the Tribe's conduct of gaming on a proposed site within the Commonwealth (within or near the City of Taunton, Massachusetts). It authorizes the Tribe to operate certain games within a single facility on eligible lands, pursuant to IGRA. Compact at § 4.1.

1. **Problematic regulatory provisions**

The Compact contains a number of significant regulatory provisions that give us concern. Part 3 of the Compact sets forth the definitions of key terms used throughout the agreement. Section 3.15 defines "Enterprise" as, "any legal entity wholly-owned and controlled by the Tribe…which lawfully owns or operates the Gaming Operation on behalf of the Tribe."

The Compact's definitions note important distinctions between terms used to describe the physical locations in which gaming will and will not occur. For example, "Approved Gaming Site" means "a single site on Indian Lands, as defined in IGRA, that is legally eligible under IGRA for the conduct of Compact Games thereon, located within Region C[.]" Compact § 3.3.

The term "Facility" is defined as "a single building complex (including buildings not more than one hundred (100) yards apart and connected by an enclosed walkway), located on the Approved Gaming Site in which any Compact Game or other gambling games of any kind are offered, played, supported, served or operated." Compact § 3.17.

Meanwhile, the term "Gaming Enclosure" is defined as:

> [T]he Facility and any other buildings or enclosures located on the Approved Gaming Site in which the Records of the Gaming Operation are maintained or stored or from which any service related to the Gaming Operation is directed, supervised, observed, monitored, or located, and any parking lots or structures, including hotels and other ancillary buildings, walkways, sidewalks, roadways, improvements, and common areas on or in proximity to the Approved Gaming Site which serve the Gaming Operation.

Compact § 3.22.

Section 3.20 of the Compact defines "Gaming Area" as "any area in the Facility where any Gaming, other than the operation of an authorized Wireless Gaming System, is played or offered for play."

One other notable defined term in the Compact is "Non-Gaming Supplier," which means "any Person, other than a Management Contractor or employee of the Enterprise, who sells, leases or provides goods or services to the Enterprise for the operation of the Facility, which are not used by the Enterprise in the operation of Compact Games." Compact § 3.42.

Part 4 of the Compact is titled "Authorized Gaming," and purports to regulate the Tribe's conduct of class II gaming under IGRA.

Part 5 of the Compact includes provisions that regulate the "Construction, Maintenance and Operation of [the] Facility." Under Part 5, the Tribe is required to adopt an ordinance establishing standards "for building, fire, health and safety which are consistent with and no less stringent than the provisions of any and all such codes that would be otherwise applicable if the Facility were constructed on land subject to the civil jurisdiction of the Commonwealth in the same location." Compact § 5.4.1. Section 5.4.7 requires the Tribe to comply with the National Environmental Policy Act and applicable Commonwealth law for any expansion or modification of the Facility. Section 5.4.11 of the Compact provides:

> Not less than fifteen (15) days before the Facility is open for business, the Tribe shall certify to the MGC, and provide such documentation to support the certification as the MGC requests, that: (a) the Gaming Area and other ancillary entertainment services and such non-gaming ancillary amenities the Tribe and the MGC shall agree upon have been built in accordance with the plans and specifications previously submitted to the MGC pursuant to subpart 5.4.5; and (b) the infrastructure improvements and traffic mitigation projects onsite and in the vicinity of the Facility are complete in accordance with the plans previously submitted to the MGC pursuant to subpart 5.4.5. Under no circumstances shall the Tribe permit the Facility to open for business unless the requirements of this subpart have been met.

Part 7 of the Compact is titled, "Licensing and Registration," and requires employees and vendors to become licensed by the Tribe's regulatory authority. This Part provides:

> The Enterprise shall not conduct business with any Non-Gaming supplier unless the Non-Gaming Supplier is registered with the TGC and has provided such information as the TGC shall require to become registered. Non-Gaming Suppliers include, but are not limited to: construction companies, vending machine providers, linen suppliers, garbage handlers, facility maintenance companies…and such other persons or entities as may be identified by the TGC as Non-Gaming Suppliers."

Compact § 7.7.2.

Part 13 of the Compact is titled "Use of Net Revenues," and limits the manner in which the Tribe may use its Net Revenue for a prescribed list of activities.

Part 17 of the Compact allocates the exercise of criminal jurisdiction within the Gaming Enclosure, as that term is defined in Section 3.22. This Part provides:

> 17.3. The Tribe and the Commonwealth agree that, in the event of the violation of any Gaming law of the Commonwealth, or the commission of any criminal offense against the Enterprise or the Gaming Operation or against any Person or property at the Gaming Enclosure, whether by or against an Indian or non-Indian, the Commonwealth shall have and may exercise criminal jurisdiction to prosecute such Person under its laws and in its courts.
>
> 17.4. If the Tribe adopts a Law and Order Code no less stringent than that provided in 25 C.F.R. Part 11 and authorizes its Tribal Court to hear criminal cases arising from offenses committed by its members and occurring at the Gaming Enclosure, the Tribe shall have and may exercise criminal jurisdiction concurrent with the Commonwealth over offenses committed at the Gaming Enclosure by members of the Tribe. Notwithstanding the foregoing and subject to any applicable federal jurisdiction, the Commonwealth shall have the first right of prosecution as to any crime which, if committed in the Commonwealth outside of Indian country, would be classified under the Commonwealth's laws as a felony.

Compact §§ 17.3-4.

Finally, Part 18 of the Compact addresses "Miscellaneous Provisions." Section 18.5.1 of the Compact provides that the Tribe and the Commonwealth agree to negotiate an agreement in good faith that "addresses measures the Tribe will use for the [collection] of state taxes that, pursuant to federal law, are applicable to activities taking place upon, and to goods and services provided, received or consumed upon, the Approved Gaming Site."

2. Revenue sharing provisions

The Compact includes provisions requiring the Tribe to share a portion of its gaming revenues in exchange for several asserted concessions. See Compact at Part 9. Under the Compact, the Tribe is required a pay the Commonwealth 21.5 percent of its Gross Gaming Revenue. In the event that the Commonwealth violates the Tribe's exclusive right to operate a gaming facility in Region C, the Tribe's revenue sharing obligation is reduced to 15 percent of Gross Gaming Revenues. Compact at § 9.2. The Compact does not provide for any circumstances in which the Tribe's revenue sharing obligations are extinguished.

In exchange for the Tribe's revenue sharing obligations, both the Tribe and the Commonwealth have asserted that the Commonwealth has made several meaningful concessions. These include:

- The Tribe's exclusive right to conduct gaming in a defined geographic area (Region C) within the Commonwealth. Compact § 9.2;

- The Commonwealth's agreement to ensure that the Tribe is the operator of the first gaming facility "in a constrained finite gaming market," – what the Tribe has termed the "First Casino Advantage." Supplemental Response of Mashpee Wampanoag Tribe to the United States Department of the Interior at 2 (September 27, 2012) (First Compact Supplement);

- The Commonwealth's political support and cooperation in the Tribe's efforts to have land acquired in trust on its behalf. Compact § 9.1.6;

- The Commonwealth's agreement "to consider resolution of various important issues between the Tribe and the Commonwealth, such as those involving hunting, fishing, and land use matters." Compact § 9.2;

- The Commonwealth's agreement to "use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee, giving consideration to the conveyance to the Tribe of some such land and water now publicly held." Compact § 2.12.

- The ability of the Tribe to conduct gaming over the internet pursuant to Commonwealth law, as well as its ability to offer patrons wireless gaming throughout its facility. See Compact § 4.3.2; and § 4.7.

ANALYSIS

The Secretary may disapprove a proposed Compact under IGRA only where the Compact 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 adhering to IGRA's statutory limitations on tribal-state gaming compacts. The IGRA prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's cost of regulating class III gaming activities. 25 U.S.C. § 2710(d)(4). The IGRA further prohibits using this restriction as a basis for states refusing to negotiate with tribes to conclude a compact. *Id.*

Moreover, IGRA also limits the subjects over which states and tribes may negotiate a tribal-state gaming compact. *See* 25 U.S.C. § 2710(d)(3)(C).

1. Permissible Subjects of Compact Negotiations

The IGRA established a statutory scheme that limited tribal gaming and sought to balance tribal, state, and Federal interests in regulating gaming activities on Indian lands.

To ensure an appropriate balance between tribal and state interests, Congress limited the subjects over which tribes and states could negotiate a class III gaming compact. Pursuant to IGRA, a tribal-state compact 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;
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> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
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> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
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> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
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> (v) remedies for breach of contract;
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> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
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> (vii) any other subjects that are ***directly related to the operation of gaming activities***.

25 U.S.C. § 2710(d)(3)(C) (emphasis added).

Congress included the tribal-state compact provisions to account for states' interests in the regulation and conduct of class III gaming activities, as defined by IGRA.[1] Those provisions limited the subjects over which states and tribes could negotiate a tribal-state compact. 25 U.S.C. § 2710(d)(3)(C). In doing so, Congress also sought to establish "boundaries to restrain aggression by powerful states." *Rincon Band of Luiseno Indians of the Rincon Reservation, 602 F.3d 1019, 1027 (9th Cir. 2010), cert denied, 131 S. Ct. 3055 (2011)* (statement of Sen. John McCain)). The legislative history of IGRA indicates that "compacts [should not] be used as subterfuge for imposing state jurisdiction on tribal lands." *See* Committee Report for IGRA, S. Rep. 100-446 at 14.

In the Senate debate regarding S.555, which was enacted as the Indian Gaming Regulatory Act, Senator Evans submitted:

> It is my understanding that S.555 acknowledges that inherent rights are expressly reserved to the tribes. This bill allows tribes to relinquish some of those rights by way of compacts with the States, in accordance with the Federal Government's trust obligation to the tribes. *This bill should not be construed, however, to require*

[1] 25 U.S.C. § 2708.

> *tribes to unilaterally relinquish any other rights, powers, or authority.*

S.Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071 (emphasis added).

Congress clearly did not intend for class III gaming compacts to be used as leverage by states to resolve "various important issues between [tribes and states], such as those involving hunting, fishing and land use matters[.]" Compact § 9.2.

As with revenue sharing provisions, we will review tribal-state gaming compacts with great scrutiny to ensure that they regulate only those activities that are directly related to the operation of gaming activities. We cannot approve a tribal-state compact that purports to interfere with tribal regulation of community planning and land use, for example, or that regulates certain activities in a manner that only indirectly relates to tribal gaming operations.

Nothing in IGRA or its legislative history indicates that Congress intended to allow gaming compacts to be used to expand state regulatory authority over tribal activities that are not directly related to the conduct of class III gaming.

When we review a tribal-state compact or amendment submitted under IGRA, we look to whether the provisions fall within the scope of categories prescribed at 25 U.S.C. § 2710(d)(3)(C). One of the most challenging aspects of this review is determining whether a particular provision adheres to the "catch-all" category at § 2710(d)(3)(C)(vii): "...subjects that are directly related to the operation of gaming activities."

In the context of applying the "catch-all" category, we do not simply ask, "but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a compact provision exist?" Instead, we must look to whether the regulated activity has a direct connection to the Tribe's conduct of class III gaming activities.

A. Consideration of resolution of hunting, fishing, and land use disputes

The exercise of aboriginal and reserved hunting and fishing rights has been described as "not much less necessary to the existence of the Indians than the atmosphere they breathed." *United States v. Winans*, 198 U.S. 371 (1905). Federal law has ensured the protection of these rights:

> Aboriginal title, along with its component hunting, fishing, and gathering rights, remains in the tribe that possessed it unless it has been granted to the United States by treaty, abandoned, or extinguished by statute. See *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 347 (1941); *Sac & Fox Tribe v. Licklider*, 576 F.2d 145 (8th Cir. 1978). A claim based on aboriginal title is good against all but the United States. The power to extinguish aboriginal title or aboriginal use rests exclusively with the federal government. See, e.g., *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661, 667 (1974); *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 347 (1941). . . Aboriginal rights will not be extinguished, however, absent 'plain and

> unambiguous' congressional intent. See *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247-248 (1985)(quoting *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 346, 354 (1941)(congressional intent to extinguish original title must be "plain and unambiguous," and "will not be lightly implied").

Cohen's Handbook of Federal Indian Law § 18.01 [2012 Ed.] (2012 Cohen's Handbook).

The Tribe has asserted to the Department that it requested this provision in an effort to resolve a longstanding point of contention between it and the Commonwealth. We appreciate the efforts of the Tribe and the Commonwealth to address these issues in a collaborative manner. However, the Tribe's hunting and fishing rights may not be placed upon the bargaining table when it negotiates a class III gaming compact with the Commonwealth.

We must review the Compact according to the statutory limitations placed upon the compact negotiation process. It is immaterial whether the Tribe or the Commonwealth requested that this provision be included in the Compact. Section 9.2 of the Compact is clearly unrelated to the operation of gaming activities, and is not permissible under IGRA. Moreover, Secretarial approval of such a provision may violate the United States' trust obligations to Indians, given that such aboriginal rights can be extinguished only by Congress.[2]

While the resolution of these issues is certainly important to both the Tribe and the Commonwealth, the Compact is neither the lawful nor the appropriate vehicle to do so. That such an important issue has been included in the Compact here implicates the efforts of Congress to limit the subjects of bargaining in IGRA.

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[2] We also note that the Commonwealth's Supreme Judicial Court, the highest appellate court in Massachusetts, has already recognized the hunting and fishing rights of Wampanoag Indians, including the Mashpee:

> Whether aboriginal rights exist is a factual matter. *United States v. Santa Fe Pac. R.R.*, 314 U.S. 339, 345 (1941). We note parenthetically that the Attorney General's amicus brief contends that the "District Court did not make a factual finding that the Defendants were descendants of the original Mashpee Wampanoag Native Americans or that the Wampanoag Native Americans had exercised exclusively and continuously their aboriginal fishing rights at the places in question since time immemorial." But the judge did expressly find that the defendants had tribal status and that "the Mashpee Indians have never given up their usufruct rights to fish and have continued to exercise those rights as did their forefathers, since time immemorial." Furthermore, he ruled that Indians are not subject to shellfishing license requirements, and that the Commonwealth has traditionally acknowledged and continues to acknowledge the usufruct rights of the American Indian.
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> The Commonwealth conceded at trial that aboriginal rights have long been recognized in the Commonwealth, and at least until 1941, such rights were explicitly acknowledged by statute.

Commonwealth v. Maxim, 429 Mass. 287, 708 N.E.2nd 636 (Mass. 1999).

B. Negotiation of Ancillary Agreements

In Section 2.12, the Commonwealth agreed to "use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee[.]" Section 18.5.1 of the Compact provides that the Tribe and the Commonwealth agree to negotiate an agreement in good faith that "addresses measures the Tribe will use for the [collection] of state taxes that, pursuant to federal law, are applicable to activities taking place upon, and to goods and services provided, received or consumed upon, the Approved Gaming Site."

For the same reasons described above, these provisions (Section 2.12 and Section 18.5.1) are clearly unrelated to the Tribe's conduct of gaming, and exceed the scope of permissible subjects of negotiating under IGRA. While Section 18.5.1 expressly addresses the taxation of activities, goods, and services on the Approved Gaming Site, its broad reach extends to activities that are not directly related to the Tribe's operation of gaming activities.

Therefore, we conclude that these provisions of the Compact extend beyond the prescribed subjects of bargaining contained in 25 U.S.C. § 2710(d)(3)(C) in violation of IGRA.

C. Regulation of Non-Gaming Suppliers

One other notable defined term in the Compact is "Non-Gaming Supplier," which means "any Person, other than a Management Contractor or employee of the Enterprise, who sells, leases or provides goods or services to the Enterprise for the operation of the Facility, which are not used by the Enterprise in the operation of Compact Games." Compact § 3.42.

Part 7 of the Compact is titled, "Licensing and Registration," and requires employees and vendors to become licensed by the Tribe's regulatory authority. This Part provides:

> The Enterprise shall not conduct business with any Non-Gaming supplier unless the Non-Gaming Supplier is registered with the TGC and has provided such information as the TGC shall require to become registered. Non-Gaming Suppliers include, but are not limited to: construction companies, vending machine providers, linen suppliers, garbage handlers, facility maintenance companies…and such other persons or entities as may be identified by the TGC as Non-Gaming Suppliers."

Compact § 7.7.2.

Again, we must scrutinize this provision to ensure that it fits within the prescribed subjects of bargaining contained within IGRA. The most relevant provisions of IGRA, for purposes of this analysis, are found at 25 U.S.C. § 2710(d)(3)(C)(vi) (pertaining to operation, maintenance, and licensing of the facility) and § 2710(d)(3)(C)(vii) (pertaining to other subjects that are "directly related" to the operation of gaming).

It is clear that the types of activities contemplated by Part 7 of the Compact are at least tangentially related to the Tribe's operation of gaming. The question is whether they are

"directly related," or otherwise pertain to the operation, maintenance, and licensing of the facility.

As explained above, we must view the scope of prescribed state regulatory authority over tribal gaming activities narrowly. This includes our understanding of the term "facility," as used in 25 U.S.C. § 2710(d)(3)(C)(vi).

We cannot conclude that vending machine providers and linen suppliers, for example, implicate the integrity of the Tribe's gaming activities. Nor can we conclude that Part 7 of the Compact implicates the state interests Congress sought to protect through IGRA's compacting provisions.

If we were to approve this particular provision, it would extend the Commonwealth's regulatory authority beyond what Congress has allowed, potentially subjecting tribal citizens and businesses to state regulation. This would inhibit the Tribe's ability to promote economic development and employment within its own community by entering into vendor contracts.

The Compact's definition of a "Non-Gaming Supplier" expressly acknowledges that goods and services provided by such persons are not used in the operation of gaming. See Compact § 3.42. We conclude that these provisions of the Compact extend beyond the prescribed subjects of negotiating contained in 25 U.S.C. § 2710(d)(3)(C) and therefore violates IGRA.

D. Construction, Maintenance and Operation Standards

As noted above, Part 5 of the Compact includes provisions that regulate the "Construction, Maintenance and Operation of [the] Facility." Section 5.4.7 requires the Tribe to comply with the National Environmental Policy Act and applicable Commonwealth law for any expansion or modification of the Facility. Section 5.4.11 of the Compact provides:

> Not less than fifteen (15) days before the Facility is open for business, the Tribe shall certify to the MGC, and provide such documentation to support the certification as the MGC requests, that: (a) the Gaming Area and other ancillary entertainment services and such non-gaming ancillary amenities the Tribe and the MGC shall agree upon have been built in accordance with the plans and specifications previously submitted to the MGC pursuant to subpart 5.4.5; and (b) the infrastructure improvements and traffic mitigation projects onsite and ***in the vicinity of the Facility*** are complete in accordance with the plans previously submitted to the MGC pursuant to subpart 5.4.5. ***Under no circumstances shall the Tribe permit the Facility to open for business unless the requirements of the subpart have been met*** (emphasis added).

As tribal gaming has matured, many tribes have developed businesses or amenities that are ancillary to their gaming activities, such as hotels, conference centers, restaurants, spas, golf courses, recreational vehicle parks, water parks, and marinas. These businesses are often located near or adjacent to tribal gaming facilities. It does not necessarily follow, however, that such ancillary businesses are "directly related to the operation of gaming activities" and therefore subject to regulation through a tribal-state compact.

While each compact is reviewed according to its unique facts and circumstances, the Department often views such businesses and amenities as not "directly related to gaming activities" unless class III gaming is conducted within those businesses or the parties to the compact can demonstrate particular circumstances establishing a direct connection between the business and the class III gaming activities. Those particular circumstances must also implicate the state interests Congress sought to protect through IGRA's compacting provisions.

In this instance, the Compact purports to regulate "infrastructure improvements and traffic mitigation projects onsite and in the vicinity of the Facility." Compact § 5.4.11.

It is possible to read certain provisions of Part 5, such as Section 5.4.7, narrowly to avoid reaching a determination that it violates the prescribed subjects of negotiating contained in IGRA. See, e.g., Letter from Donald E. Laverdure, Acting Assistant Secretary – Indian Affairs to Greg Sarris, Chairman of the Federated Indians of the Graton Rancheria (July 13, 2012) (narrowly construing certain regulatory provisions in the compact to avoid a conflict with IGRA). The Tribe has asserted that Section 5.4.11 is "non-regulatory and simply requires the Tribe to provide information to the [Commonwealth]." First Compact Supplement at 6.

The language of Section 5.4.11 indicates otherwise, making it clear that "under no circumstances" can the Tribe open the Facility if it has not satisfied this requirement. In other words, the Compact precludes the Tribe from conducting class III gaming activities unless it satisfies regulatory requirements related to infrastructure improvements "in the vicinity" of the Facility – without regard as to whether those improvements are "directly related to the operation of gaming activities." 25 U.S.C. § 2710(d)(3)(C).

We have determined that Section 5.4.11, by its terms, extends beyond the prescribed subjects of bargaining contained in 25 U.S.C. § 2710(d)(3)(C) and therefore violates IGRA. We cannot give a narrow construction to this requirement to avoid reaching this conclusion.

2. Revenue Sharing Provisions

We review revenue sharing provisions in gaming compacts with great scrutiny, in accordance with the principle that Indian tribes, not states or other parties, should be the primary beneficiaries of Indian gaming revenues.

Our analysis as to whether such provisions comply with IGRA first requires us to determine whether the Commonwealth has offered meaningful concessions to the Tribe. We view this concept as one where the Commonwealth concedes something it was not otherwise required to negotiate, such as granting the exclusive right to operate Class III gaming or other benefits sharing a gaming-related nexus, to which the Tribe was not already entitled.[3] We then examine whether the value of the concessions provides substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the Compact.

We note that the Ninth Circuit's recent decision in *Rincon Band of Luiseno Mission Indians of the Rincon Reservation* v. *Schwarzenegger*[4] favorably cited the Department's long-standing

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[3] See 25 U.S.C. § 2710(d)(3)(c). This particular section of IGRA is discussed further below.

[4] 602 F.3d 1019 (9th Cir. 2010), *cert denied,* 131 S. Ct. 3055 (2011).

policy regarding revenue sharing. While *Rincon* is not binding here because it arose under IGRA's remedial provisions and involved facts and circumstances unique to the litigants, aspects of the decision provide useful guidance.

A. Meaningful Concessions

The Tribe and the Commonwealth have asserted that the Commonwealth has made a number of meaningful concessions to the Tribe to justify the receipt of 21.5 percent of the Tribe's gaming revenues. We believe that the Commonwealth has offered the Tribe a single meaningful concession – the Tribe's exclusive right to conduct gaming in Region C – to support revenue sharing. We have addressed each purported concession below.

i. Geographic Exclusivity

First among the asserted meaningful concessions is the protection of the Tribe's exclusive right to operate a gaming facility in a defined geographic area within the Commonwealth. Compact § 9.2. The Department has previously determined that compact provisions securing a tribe's exclusive right to conduct gaming in a defined geographic area constitutes a "meaningful concession." See Amendment to the Tribal-State Compact Between the St. Regis Mohawk Tribe and the State of New York (2005).

In this instance, the Compact secures only the Tribe's right to exclusivity vis-à-vis a facility granted "a Category 1 License to operate a casino in Region C under the laws of the Commonwealth." Compact § 9.2.4. It does not secure the Tribe the ability to operate its facility exclusive of a competing facility operating under a Category 2 License issued by the Commonwealth. A Category 2 License "means a license issued by the [Commonwealth] that permits the licensee to operate a gaming establishment with no table games and not more than 1,250 slot machines."[5]

Thus, the Tribe could still be faced with the prospect of competing against another facility operating up to 1,250 slot machines in Region C, notwithstanding Section 9.2.4 of the Compact.

Under our test, we recognize that the Commonwealth was not required to concede any form of gaming exclusivity to the Tribe nor was the Tribe entitled to such exclusivity. Therefore, we have determined that the Commonwealth's concession of geographic exclusivity is "meaningful."

While we have determined that the Commonwealth's concession is meaningful, we note that the value to the Tribe of having the exclusive right to operate a full-scale gaming facility including table games within Region C (which is addressed below) may be substantially impaired by the Commonwealth's ability, not limited by the Compact, to issue a Category 2 License to a facility within Region C to operate up to 1,250 slot machines. [6]

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[5] Section 3.5 reflects the Commonwealth's definition of a Category 2 licensee. *See* Chapter 23K § 2 of the Massachusetts General Laws.

[6] We note that the Tribe's Gaming Market Study, submitted as part of its supplemental information, does not address the competitive impact on the Tribe's proposed casino if the Commonwealth awarded the Category 2 license to Plainridge Racecourse. Plainridge Racecourse, located in Plainville, MA, within the "Local Play" market identified

ii. First Casino Advantage

In the First Compact Supplement, the Tribe has asserted that the Commonwealth has conceded to the Tribe the right to:

> …operate the first casino in a constrained finite gaming market…, and [has foregone], at great economic cost to the Commonwealth, its alternative right under [Commonwealth law] to award the First Casino Advantage to a commercial gaming company through issuance in the Tribe's region ("Region C" as defined in the Compact) of a Category 1 license described in [Commonwealth law].

First Compact Supplement at 2.

The Tribe has also asserted that the Commonwealth's agreement to negotiate the Compact prior to the Tribe possessing gaming-eligible land under IGRA secures the First Casino Advantage. See *Id.*

We believe that this asserted concession is illusory, and that it does not constitute a meaningful concession for purposes of this analysis.

The Compact does not contain any provisions that expressly secure the Tribe's asserted right to operate the first gaming facility in Region C Section 9.2 of the Compact secures the Tribe's exclusive right to operate a gaming facility in Region C, which we have explained does constitute a meaningful concession. By definition, this exclusive right ensures that the Tribe will enjoy the First Casino Advantage within Region C.

In an August 17, 2010 letter to the Governor of California, the Department disapproved a tribal-state gaming compact between the State of California and the Habemetolel Pomo of Upper Lake. Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs to Sherry Treppa, Chairwoman of the Habemetolel Pomo of Upper Lake (2010 Upper Lake Letter). In that letter, we explained that an additional concession of exclusivity in a limited geographic area, where the Tribe already enjoyed the right to conduct gaming activities exclusive of non-tribal operators throughout the entire State, was not meaningful.

In this instance, the Tribe's right to operate the first full-scale gaming facility in Region C is secured by Section 9.2 of the Compact, which we have already determined constitutes a distinct, meaningful concession. We cannot consider the First Casino Advantage to be a separate and distinct concession by the Commonwealth.

iii. Support for the Tribe's Trust Acquisition Application

Section 9.1.6 of the Compact provides that the Governor of the Commonwealth will "cooperate with and support" the Tribe's efforts to acquire land in trust for gaming purposes within Region

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by the Tribe's Gaming Market Study supplement, began the application process for the sole Category 2 license in August of 2012; *see* http://www.thesunchronicle.com/plainville/plainridge-racecourse-submits-check-to-apply-for-slots-license/article_29285302-cf9f-575b-8457-f3569a19adf5.html (last accessed October 11, 2012).

C. It further adds that this support is a concession in exchange for the Tribe's sharing of its gaming revenues with the Commonwealth.

In a letter dated March 7, 2002, to the Governor of Louisiana, then-Assistant Secretary Neal McCaleb explained that the State of Louisiana's political support for the Jena Band of Choctaw Indians' trust acquisition application could not be used to justify revenue sharing payments under the tribal-state compact between the State of Louisiana and the Jena Band of Choctaw Indians. Letter from Neal McCaleb, Assistant Secretary – Indian Affairs to Mike Foster, Governor of the State of Louisiana, March 7, 2002 (Jena Band Letter). In that letter, the Assistant Secretary noted, "the State does not have the authority to either have the land taken into trust, or to have the land declared part of the Band's initial reservation. Both decisions are vested with the Secretary of the Interior." Jena Band Letter at 2.

In both the Jena Band Letter and the 2010 Upper Lake Letter, we explained that the purported concessions were illusory – meaning that the State was not conceding anything at all to the Tribe. Here, the Commonwealth's offer of support to the Tribe's application to have the Department of the Interior acquire land in trust on its behalf is symbolic, and likely signals improved relations between the Tribe and the Commonwealth. Nevertheless, it is not a concession at all. The Commonwealth does not have the authority or ability to approve the Tribe's application, and is not giving anything tangible to the Tribe. Thus, this offer constitutes an illusory concession to the Tribe and is not meaningful for purposes of this analysis.

iv. Consideration of resolution of hunting, fishing, and land use disputes

In this instance, the Tribe has asserted that the Commonwealth has made a meaningful concession to justify revenue sharing under Section 9.2 of the Compact by agreeing to "use its best efforts to negotiate an agreement with the Tribe to facilitate the exercise by the Tribe and its members of aboriginal hunting and fishing rights on certain lands in the Commonwealth." First Compact Supplement at 3.

As discussed above, this provision is an impermissible subject of compact negotiations under IGRA. Therefore, it cannot constitute a meaningful concession by the Commonwealth to the Tribe to support revenue sharing.

v. Resolution of the Tribe's Land Claims

Section 2.12 of the Compact states that, as a concession by the Commonwealth to the Tribe, it will "use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee, giving consideration to the conveyance to the Tribe of some such land and water now publicly held."

Congress explicitly sought to protect land and water rights from being the subject of compact negotiations. States cannot use gaming as a lever to negotiate about rights such as these that are arguably more fundamental than gaming.

For the same reasons as those relating to the purported concession of "consideration of resolution of hunting, fishing, and land use disputes," we have determined that this does not constitute a meaningful concession by the Commonwealth, for purposes of revenue sharing.

vi. Internet gaming and gaming over wireless, handheld devices

Section 4.3.2 of the Compact prohibits the Tribe from offering any form of internet gaming, as defined in the Compact, unless it is authorized under both Federal and Commonwealth law. In the event that such types of gaming activities are permitted by the Commonwealth, the Compact authorizes the Tribe to conduct those activities on par with other entities under the laws of the Commonwealth. *Id.*

Section 4.7 of the Compact authorizes the Tribe to utilize a "Wireless Gaming System," as that term is defined in the Compact.

As of today, the legality of internet gaming is uncertain throughout the United States. Congress has been contemplating legislation to address internet gaming since at least 2008, but it is difficult to predict whether Congress will ever enact such legislation. It is equally difficult to predict whether such legislation may grant states regulatory authority over tribal internet gaming, or permit tribes to operate internet gaming free of state regulation altogether. For purposes of this analysis, the Commonwealth's asserted concession of internet gaming cannot be considered a meaningful concession.

The Tribe also asserts that the Commonwealth's agreement to allow the Tribe to operate wireless gaming is a meaningful concession. While wireless gaming technology is relatively new, insofar as implementation, standards governing wireless gaming were published in 2007 by Gaming Laboratory International.[7] On October 9, 2012, the New Jersey Attorney General's Division of Gaming Enforcement published temporary regulations to permit gaming on mobile devices. [8] Moreover, we are aware of at least three tribal gaming facilities offering wireless gaming today without specific authority to do so in their respective class III gaming compacts.

Therefore, we do not view authority to operate wireless gaming as a concession at all because it is simply an extension of the class III gaming already authorized by the Compact using a different interface.

B. Substantial Economic Benefit

We must now examine whether the Commonwealth's sole meaningful concession – the exclusive right of the Tribe to conduct gaming in Region C – justifies the revenue sharing provisions in the Compact. We determine that it does not.

The language of Section 9.2 of the Compact makes it clear that the Tribe and the Commonwealth believe that the Tribe's exclusive right to conduct gaming in Region C is worth 6.5 percent of the Tribe's Gross Gaming Revenue. The Compact does not contain any other concessions by the Commonwealth to the Tribe that would justify revenue sharing beyond that rate.

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[7] *See* http://www.gaminglabs.com/downloads/GLI%20Standards/updated%20Standards/GLI-26%20v1.1.pdf (last accessed on October 10, 2012). Gaming Laboratories International (GLI) is a gaming software and equipment test laboratory. GLI or other, similar, certification is required by Part 4.8 of the Compact before a particular gaming device model can be offered for play.

[8] *See* http://www.nj.gov/oag/newsreleases12/pr20121009a.html (last accessed on October 10, 2012).

Section 9.2.1 requires the Tribe to pay 21.5 percent of its Gross Gaming Revenue to the Commonwealth, in exchange for this meaningful concession. In the event that the Tribe's exclusive right to conduct gaming within Region C is abrogated, Section 9.2.4 provides the Tribe with the option of either ceasing operation of class III gaming within 60 days[9], or reducing its revenue sharing obligation to a rate of 15 percent of Gross Gaming Revenues.

If the Tribe loses this exclusive right, its obligation to share revenues with the Commonwealth is reduced by 6.5 percent.

Therefore, we must determine that the Commonwealth has made additional meaningful concessions, beyond securing the Tribe's exclusive right to conduct gaming in Region C, to justify revenue sharing above a rate of 6.5 percent.

As we have explained above, the other purported concessions made by the Commonwealth to the Tribe under the Compact do not constitute "meaningful concessions" that would justify revenue sharing. Without additional meaningful concessions, revenue sharing at a rate of 15 percent as required by the Compact would be unlawful.

In 1996, then-Assistant Secretary Ada Deer issued a letter to the Wampanoag Tribe of Gay Head (Aquinnah) regarding a tribal-state compact it had entered into with the Commonwealth. Letter from Ada Deer, Assistant Secretary – Indian Affairs to Beverly M. Wright, Chairperson of the Wampanoag of Gay Head (July 23, 1996) (Aquinnah Letter). In the Aquinnah Letter, the Assistant Secretary noted that the Aquinnah Wampanoag Tribe's tribal-state compact with the Commonwealth would have required that tribe to share revenues with the Commonwealth even if the tribe were to lose its exclusive right to conduct gaming:

> If the Tribe loses exclusivity after six years, it agrees to make a cash contribution equal to the greater amount of a) the State's actual costs of regulation, licensing, and Compact oversight of its gaming facility, plus 15 percent of the amount the Tribe would have paid to the State under this compact if the exclusivity had been maintained....This provision contemplates that if the Tribe loses exclusivity rights after the first six years, it will be required to continue to pay the State an amount in excess of actual costs to regulate gaming.

Aquinnah Letter at 2.

The Assistant Secretary then expressed the Department's concerns with this provision, which is similar to Section 9.2 of the Compact at issue here:

> We strongly advise that the provision be rewritten because we believe that a requirement that the Tribe make indefinite payments to the State beyond the cost of regulation even if the State removes all restriction on competitive gambling renders the Compact legally vulnerable. We believe that it is very likely that, if

[9] We are reserving analysis as to whether the "option" of ceasing gaming operations in event of the abrogation of the Tribe's exclusive gaming rights in Region C is permissible.

> litigated, a court would find that such payments are beyond the scope of the statute.

Id. at 3.

The 1996 Aquinnah Letter demonstrates that the Department has had longstanding concerns with the type of revenue sharing structure embodied in Section 9.2 of the Compact.

We have determined that the Commonwealth has not made meaningful concessions that would confer a substantial economic benefit to the Tribe in a manner that would justify a revenue sharing rate above and beyond 6.5 percent. Therefore, the revenue sharing provisions set forth in Section 9.2 of the Compact constitute an impermissible tax, fee, charge, or other assessment in violation of IGRA. See 25 U.S.C. § 2710(d)(4).

3. Other Concerns

The preceding discussion is sufficient for us to conclude that the Compact violates IGRA and cannot be approved. Nevertheless, it is important to note that there are additional provisions within the Compact that cause significant concern for the Department.

For example, Part 4 of the Compact purports to regulate the Tribe's conduct of class II gaming activities. We question whether the Commonwealth, through the negotiation of a class III gaming compact, can exercise regulatory authority reserved exclusively to tribes and the National Indian Gaming Commission under IGRA.

Likewise, Part 13 of the Compact appears to constrain the manner in which the Tribe can use net revenues generated by its gaming facility. Given the fact that the Commonwealth would have the ability to enforce the terms of the Compact, we question whether this would create an impermissible conflict with the Federal Government's and tribes' regulatory authority under IGRA.

Part 17 of the Compact addresses the allocation of criminal jurisdiction over the Tribe's Gaming Enclosure, which is permissible under IGRA to a limited extent. See 25 U.S.C. § 2710(d)(3)(C) (permitting the inclusion of provisions in a compact that allocate criminal and civil jurisdiction "directly related to and necessary for" the licensing and regulation of gaming). In this instance, the Compact purports to extend the Commonwealth's criminal jurisdiction to cover all criminal offenses, under the laws of the Commonwealth, to all persons within the Gaming Enclosure. Compact Part 17. We question whether this would violate the limited reach of criminal jurisdiction allowed under IGRA or other Federal laws pertaining to criminal jurisdiction in Indian Country.

It was not necessary for us to analyze these provisions to make the determination to disapprove the Compact. But, it is possible that these provisions – as written, or as potentially applied – could also violate IGRA and provide us with separate bases to disapprove the Compact. We would scrutinize these provisions carefully in any future submissions by the Tribe and the Commonwealth.

CONCLUSION

Based on this analysis I find that the Compact is in violation of IGRA. Therefore, we hereby disapprove the Compact.

We appreciate the efforts of the Commonwealth and the Tribe to attempt to reach an agreement on important matters affecting their relationship. We deeply regret that this decision is necessary, and understand that it constitutes a significant setback for the Tribe. Nevertheless, the Department is committed to upholding IGRA and cannot approve a compact that violates IGRA in the manner described above.

We strongly encourage the Commonwealth to negotiate a new class III gaming compact with the Tribe in good faith and in accordance with IGRA so that the Tribe may proceed with its efforts to develop its economy for the benefit of its citizens.

A similar letter has been sent to the Honorable Cedric Cromwell, Chairperson, Mashpee Wampanoag Tribe.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs

TRIBAL-STATE COMPACT

BETWEEN

THE MASHPEE WAMPANOAG TRIBE

AND

THE COMMONWEALTH OF MASSACHUSETTS

This compact is made and entered into on July 12, 2012 by and between the **MASHPEE WAMPANOAG TRIBE**, a federally recognized Indian tribe ("Tribe") and the **COMMONWEALTH OF MASSACHUSETTS** ("Commonw ealth" or "State"), with respect to the operation of Gaming on the Tribe's Indian lands pursuant to the Indian Gaming Regulatory Act, as amended, and codified at 25 U.S.C. §§ 2701 to 2721, inclusive, and 18 U.S.C. §§ 1166 to 1168, inclusive.

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Part 1. Title.

This document, as it may be amended or supplemented in accordance with its terms, shall be referred to as the "Mashpee Wampanoag Tribe-Commonwealth of Massachusetts Tribal-State Compact." Unless otherwise defined herein, all capitalized terms in this Compact shall have the meaning ascribed to them in Part 3 below.

Part 2. Recitals.

2.1. The Tribe is a federally recognized Indian tribe located within the geographic borders of the Commonwealth and possessing sovereign powers and rights of self-government.

2.2. The Commonwealth is a state of the United States of America, possessing the sovereign powers and rights of a state government.

2.3. The Commonwealth has enacted the Expanded Gaming Act ("Act," as defined in subpart 3.16), which authorizes expanded gaming in the Commonwealth. The Act reflects the public policies of the Commonwealth with regard to the operation and regulation of gaming, as well as the public benefits to the Commonwealth and its citizens that can result from a gaming project conducted in accordance with such policies, such as the creation of jobs, the generation of revenues for public purposes, and the increase of tourism and economic development within the Commonwealth.

2.4. The Act also recognizes the right of a federally recognized Indian tribe to seek to conduct tribal gaming in the Commonwealth under IGRA, through negotiation on a government-to-government basis with the Governor for a tribal-state gaming compact that is consistent with the Commonwealth's and the Tribe's policies on gaming and serves IGRA's and the Tribe's goal of supporting and strengthening Tribal governmental self-sufficiency.

2.5 Massachusetts General Laws Chapter 23K, Section 19, as added by Section 16 of the Act, authorizes the Commonwealth, through the MGC, to license three casinos within the Commonwealth, one each in three distinct geographic areas within the Commonwealth. Those regions are identified as Regions A, B and C. Section 19 anticipates that under IGRA a tribe may seek to conduct gaming in Region C. Region C is in Southeastern Massachusetts and is where the Tribe's proposed casino would be located. Such a gaming project under IGRA would not require a license from the State in order to operate, but the Tribe would have to reach a tribal-state compact with the Commonwealth before any class III gaming, as defined in IGRA, could be operated. Federal law requires such compacts to be negotiated in good faith and does not permit the imposition of taxes as a condition of agreement.

2.6. Section 91 of the Act provides that if a compact negotiated by the Governor is approved by the General Court by July 31, 2012, the MGC will not issue a request for Category 1 License applications in Region C unless and until it determines that the Tribe will not have land taken into trust for it by the United States Secretary of the Interior. IGRA requires that a tribe's gaming must be conducted on Indian Lands, which includes land taken into trust by the United States.

2.7. By letter dated March 14, 2012, the Tribe requested that the Governor negotiate with it for a tribal-state gaming compact under IGRA and Section 91 of the Act and, upon reaching agreement, submit it to the General Court for approval. Section 91 provides that the Governor may only negotiate a compact if the Tribe has requested a referendum to seek the views of the community in which the proposed gaming operation is to be located. The Tribe has proposed Taunton, Massachusetts, where it has acquired rights to purchase land, to serve as the location of its IGRA gaming project. Taunton is within that part of the Commonwealth designated as Region C. At the Tribe's request, Taunton conducted a referendum in which the site of the Tribe's proposed gaming development was approved. The Tribe also requested that the United States Secretary of the Interior accept the Approved Gaming Site in trust for the Tribe as Indian Lands for gaming purposes under IGRA, which request is pending.

2.8. The Tribe has requested that the Governor negotiate and the General Court approve this Compact by July 31, 2012, which will provide exclusivity in Region C for the Tribe while depriving the Commonwealth of certain economic benefits that would be realized if a licensed commercial casino under the Act were authorized. In recognition of the benefit to it and the detriment to the Commonwealth, the Tribe has offered significant benefits to the Commonwealth for agreeing to expedite the negotiations in order to meet the exclusivity timelines in Section 91. Neither federal nor Commonwealth law requires the Governor to negotiate a compact that will provide exclusive gaming opportunities to a tribe, or to negotiate a compact with a tribe before it has land that is qualified under IGRA for gaming by the tribe.

2.9. This Compact is the product of arm's length negotiations between two sovereign governments and reflects mutual and valuable concessions that have been made and exchanged voluntarily beyond those ordinarily required in negotiations under IGRA, in order to achieve the parties' respective goals. If approved, this Compact will:

(a) further the government-to-government relationship between the Tribe and the Commonwealth;

(b) facilitate the Tribe's desire to qualify land under federal law in order to conduct gaming under IGRA;

(c) offer the play of Compact Games, as defined herein, as a means of generating Tribal revenues for the purposes authorized by IGRA, including without limitation, the support of Tribal governmental programs, such as health care, housing, sewer and water projects, police, corrections, fire, judicial services, highway and bridge construction, general assistance for Tribal elders, day care for children, economic development, educational opportunities and other typical and valuable governmental services and programs for Enrolled Tribal Members;

(d) enhance the revenues the Tribe will generate from gaming by obtaining the approvals necessary to secure the Tribe's opportunity to operate its casino within Region C on an exclusive basis;

(e) promote economic development in Southeastern Massachusetts, both on and off the Tribe's lands as contemplated under the Act and IGRA, including the positive effects and benefits that will flow from the increased employment, tourism, local commerce and other economic benefits the gaming activities described herein will bring to the region;

(f) address the issue of problem gambling;

(g) ensure that the Facility in which Gaming is conducted is constructed and operated in a manner that will protect the health and safety of all who enter the Facility;

(h) meet all federal, state and tribal requirements related to tribal gaming;

(i) promote a positive working relationship with the Host Community, and address and mitigate any impacts on the Host Community and Surrounding Communities that will result from the presence of the Tribal Gaming Facility; and

(j) ensure public confidence in the integrity of the gaming offered under this Compact and further the mutual interests of the Tribe and the Commonwealth in protecting their citizens from the possibility of criminal involvement in the gaming operations authorized under this Compact through rigorous Tribal and Commonwealth regulation.

2.10. As further demonstrations of the Tribe's interest in obtaining an expedited compact under Section 91 of the Act, the Tribe has addressed and reached agreement with the city of Taunton over the costs and mitigation of the impacts of the Facility, a copy of which agreement is attached in Appendix A.

2.11. In response to the Tribe' s request for assistance, and as a further concession, the Governor and the Commonwealth have also agreed to support the Tribe's applications to have the land identified as the Approved Gaming Site in Taunton, Massachusetts accepted by the United States in trust for the

Tribe as Indian Lands for gaming purposes under IGRA, and the land now owned by the Tribe in Mashpee, Massachusetts, which is the site of the Tribe's governmental, housing and economic development operations (described in Appendix B) ("Gover nmental Sites"), accepted by the United States in trust for the Tribe. Except for Community Gaming, no gaming will be conducted on the Governmental Sites. The Governor has agreed to use his best efforts to dedicate the resources of the Office of the Governor to urge the United States Secretary of the Interior to give the Tribe's applications early and expeditious approval.

2.12. As a further concession by the Commonwealth to the Tribe, the Commonwealth has agreed to use its best efforts to negotiate an agreement in 2012 with the Tribe with the mutual goal of facilitating the exercise by the Tribe and its individual members of aboriginal hunting and fishing rights on certain lands in the Commonwealth, including public lands and Tribal lands; and to use its best efforts to negotiate an agreement in 2013 with the Tribe to resolve certain title claims asserted by the Tribe involving land and water in and around Mashpee, giving consideration to the conveyance to the Tribe of some such land and water now publicly held.

2.13. The Tribe acknowledges that it requested the concessions summarized in this Part 2, along with other concessions made by the Commonwealth throughout and in furtherance of this Compact, all of which concessions are hereby acknowledged by the Tribe to be extremely important and valuable to it, are not required to be given under IGRA or any other law, and are not attainable in any other way, in exchange for the Tribe's agreements herein, including but not limited to its agreement to make the payments set forth in Part 9.

Part 3. Definitions.

In addition to other terms defined in this Compact, the terms referenced in this Part 3 shall have the meanings described in this Part 3 for purposes of this Compact.

3.1. "Affil iate" means a Person who directly or indirectly controls, or is controlled by, or is under common control with, a specified Person.

3.2. "Applica nt" means any Person that has applied for a license or registration as required under this Compact.

3.3. "Appr oved Gaming Site" or "Ap proved Site" means a single site on Indian Lands, as defined in IGRA, that is legally eligible under IGRA for the conduct of Compact Games thereon, located within Region C and identified with further specificity in Appendix C, as the same may be modified from time to time in accordance with subpart 5.2.

3.4. "Cate gory 1 License" means a license issued by the MGC that permits the licensee to operate a gaming establishment with table games and slot machines; and " Category 1 Licensee" means the Person to whom a Category 1 License is issued.

3.5. "Cate gory 2 License" means a license issued by the MGC that permits the licensee to operate a gaming establishment with no table games and not more than 1,250 slot machines.

3.6. "Certificate of Occupancy" means a certificate of occupancy equivalent to such certificates issued under the laws of the Commonwealth.

3.7. "Commo nwealth" or "St ate" means the Commonwealth of Massachusetts.

3.8. "Commu nity Gaming" means the game played on paper cards or sheets, commonly known as "bingo " or "b eano," where players cover a pre-designated arrangement of letters and numbers as those letters and numbers are selected and called, provided the game is played in accordance with the requirements contained in Part 4.

3.9. "Comp act" means this Mashpee Wampanoag Tribe - Commonwealth of Massachusetts Tribal-State Compact, as the same may be amended or supplemented in accordance with its terms.

3.10. "Comp act Games" means, except to the extent excluded, limited or otherwise defined under the terms of this Compact, all forms of gaming defined as " class III gaming activities" under IGRA, provided such games are not criminally prohibited under the laws of the Commonwealth.

3.11. "Comp act Game Employee" means any individual employed by or performing services for the Enterprise whose responsibilities include any activity related to the operation, maintenance or management of Compact Games. The term "Com pact Game Employee" includes, but is not limited to, the following: Key Gaming Employees and Primary Management Officials; managers and assistant managers; accounting personnel; surveillance and security personnel; cashiers; supervisors; floor personnel; cage personnel; and any other person whose duties require or authorize access to the Gaming Area or any other area used for the maintenance or storage of Compact Games, Compact Game components, or Records relating to Compact Games. "Compa ct Game Employee" shall not include a person solely because he or she is an elected official of the Tribe.

3.12. "Doc uments" or "R ecords" means books, records, photographs, diagrams, maps, electronic, magnetic and computer media, and other writings and materials, and copies thereof, in any form or medium, tangible or intangible, whether now known or discovered or created in the future, and information contained therein.

3.13. "Effective Date" means the date on which the conditions set forth in Part 22 of this Compact have been met.

3.14. "Enrolled Tribal Member" means an individual who is enrolled as a member of the Tribe under its Constitution.

3.15. "Enterprise" means the Tribe, or any division, section, agency, or instrumentality thereof, whether or not legally organized or separate from the Tribe's gover nment, and any legal entity wholly-owned and controlled by the Tribe or any of the foregoing, which lawfully owns or operates the Gaming Operation on behalf of the Tribe. For purposes of enforcement of this Compact, and without relieving any person or entity encompassed by the definition of the term "Enterprise" from any duty, obligation or debt owing hereunder, the Tribe is deemed ultimately responsible for the activities of, and to have made all promises for, the Enterprise.

3.16. "Expan ded Gaming Act" or "A ct" means the law enacted as Chapter 194 of the Acts of 2011, and any amendments thereto.

3.17. "Facility" means a single building complex (including buildings not more than one hundred (100) yards apart and connected by an enclosed walkway), located on the Approved Gaming Site in which any Compact Game or other gambling games of any kind are offered, played, supported, served or operated. The parties acknowledge and agree that throughout the term of this Compact and any renewal term, the precise location of the Facility on the Approved Gaming Site may be moved or the Facility may be reconstructed, but at no time shall the Approved Gaming Site contain more than one Facility.

3.18. "Financial Source" means any Person providing financing in connection with the Facility or the conduct of Gaming under this Compact.

3.19. "Gambling" or "Gaming " means the operation or conduct of a game or the playing of a game by a Patron of the Facility.

3.20. "Gaming Area" means any area in the Facility where any Gaming, other than the operation of an authorized Wireless Gaming System, is played or offered for play.

3.21. "Gaming D evice" means an electronic, electrical or mechanical contrivance or machine used in the conduct of Gaming in the Facility.

3.22. "Gaming Enclosure" means the Facility and any other buildings or enclosures located on the Approved Gaming Site in which the Records of the Gaming Operation are maintained or stored or from which any service related to the Gaming Operation is directed, supervised, observed, monitored, or located, and any parking lots or structures, including hotels and other ancillary buildings, walkways, sidewalks, roadways, improvements, and common areas on or in proximity to the Approved Gaming Site which serve the Gaming Operation.

3.23. "Gaming Operation" means the conduct of Gaming on behalf of the Tribe, together with all management and supporting services, including accounting and the safeguarding of all funds derived from the conduct of such Gaming.

3.24. "Gaming Ordinance" means the Tribal Gaming Ordinance adopted by the Tribe and approved by the NIGC, and any regulations promulgated by the TGC pursuant to the Gaming Ordinance, as duly and lawfully amended.

3.25. "Gaming Test Laboratory" means an independent gaming test laboratory recognized in the gaming industry as competent and qualified to conduct scientific tests and evaluations of Gaming Devices.

3.26. "Gaming Vendor" means a Person, other than a Management Contractor, or Compact Game Employee, who sells, leases or otherwise provides goods or services to the Enterprise which are used by the Enterprise in the operation of Compact Games.

3.27. "Gen eral Court" means the legislature of the Commonwealth.

3.28. "Gove rnor" means the governor of the Commonwealth.

3.29. "Gross Gaming Revenue" means the total of all sums generated from the operation of Compact Games and other Gambling games in the Facility, less the total paid out as winnings to Patrons from the operation of such games. Gross Gaming Revenue shall include all sums generated from the operation of Internet Gaming to the same extent such revenues are included within Gross Gaming Revenue for Category 1 Licensees under the Act. Gross Gaming Revenue shall not include as sums generated the cash equivalent value of any merchandise or thing of value included in a jackpot or payout or any amount received by the Gaming Operation from credit extended or collected by the Enterprise for purposes other than the operation of gambling games. Gross Gaming Revenue shall also not include as sums generated by a Patron's wagering of any promotional gaming credit issued by the Gaming Operation.

3.31. "Host Commu nity" means the municipality in which the Facility is located.

3.32. "IGRA" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. Section 2701 *et seq.* and 18 U.S.C. Sections 1166 to 1168.

3.33. "Indian Lands" means those lands defined as such in IGRA, 25 U.S.C. Section 2703(4)(A) and (B).

3.34. "Institut ional Investor" means any of the following entities: a corporation, bank, insurance company, pension fund or pension fund trust, retirement fund (including funds administered by a public agency), employees profit-sharing fund or employees profit-sharing trust, or an association engaged, as a substantial part of its business or operation, in purchasing or holding securities, or any trust in respect of which a bank is a trustee or co-trustee, an investment company registered under the federal Investment Company Act of 1940, a securities dealer registered pursuant to the Securities Exchange Act of 1934, a federally or state-regulated bank, savings and loan or other lending institution, a collective investment trust organized by banks under Part 9 of the Rules of the Comptroller of Currency, a closed end investment trust, a chartered or licensed life insurance company or property and casualty insurance company, an investment advisor registered under the federal Investment Advisers Act of 1940, and such other persons as the TGC may reasonably determine to qualify as an Institutional Investor for purposes of this Compact.

3.35. "Internet Gamin g" means the placing or receiving of a Wager over the Internet.

3.36. "Key Gaming Employee" means any Person identified as such in 25 C.F.R. Part 502.14 and any other Person the Tribe designates as a Key Gaming Employee in its Gaming Ordinance.

3.37. "Lottery Game" means games offered by the Massachusetts State Lottery, including, but not limited to instant scratch ticket games, numbers or lotto games (including any game offered in conjunction with any multi-jurisdictional lottery) and keno games.

3.38. "Man agement Contract" means any contract, subcontract or collateral agreement, or combination thereof, between the Tribe and a third party if such contract or agreement provides for the management of all or a part of the Gaming Operation and has been approved by the NIGC Chairman.

3.39. "Man agement Contractor" means any Person that has entered into a Management Contract with the Tribe to manage all or a part of the Gaming Operation.

3.40. "Massachusetts Gaming Commission" or "MGC " means the gaming regulatory agency created by the Act, or any successor agency.

3.41. "NIGC" m eans the National Indian Gaming Commission, or any successor agency.

3.42. "Non-Gamin g Supplier" means any Person, other than a Management Contractor or employee of the Enterprise, who sells, leases or provides goods or services to the Enterprise for the operation of the Facility, which are not used by the Enterprise in the operation of Compact Games.

3.43. "Patron" means, unless otherwise provided herein, any person who is on the premises of the Facility for the purpose of playing Compact Games or enjoying the other amenities of the Facility.

3.44. "Person" me ans any individual or entity.

3.45. "Primary Management Official" means any Person described in 25 C.F.R. Part 502.19 and any other Person the Tribe designates as a Primary Management Official in its Gaming Ordinance.

3.46. "Regio n C" as that term is defined in General Laws Chapter 23K, Section 19(a)(3), as added by Section 16 of the Act, means all areas within the boundaries of Bristol, Plymouth, Nantucket, Dukes and Barnstable counties in the Commonwealth.

3.47. "Surro unding Communities" means municipalities in proximity to a Host Community that experience, or are likely to experience, impacts from the development or operation of the Facility, including municipalities with transportation infrastructure providing ready access to the Facility.

3.48. "TGC Regulations" means the regulations promulgated or adopted by the Tribal Gaming Commission for implementation of this Compact, which regulations shall be subject to the requirements of this Compact and IGRA.

3.49. "Tribal Gaming Commission" or "TGC" means the tribal government agency designated by the Gaming Ordinance to have regulatory authority over the Gaming Operation.

3.50. "Tribe" means the Mashpee Wampanoag Tribe.

3.51. "Wager" means a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.

3.52 "Wireless Gaming System" means a system used for the conduct of Gambling that is composed of one or more client terminals, one or more access points, a secure gateway/mobility controller and a secure authentication server in which the client terminals and the access point communicate wirelessly within the Facility over a private and secure, encrypted network. A Wireless Gaming System may not use communications technology that is based on or includes the use of the Internet.

Part 4. Authorized Gaming.

4.1. Compact Games. The Tribe and Commonwealth agree that the Tribe is authorized to operate Compact Games only in accordance with this Compact, IGRA and the Tribal Gaming Ordinance and the Tribe shall only conduct such Gaming on Indian Lands as authorized under IGRA. The Tribe acknowledges that under IGRA it may not conduct any class III gaming activity not authorized by a tribal-state compact in effect under IGRA. During the term of this Compact and subject to its terms, the Tribe is authorized to conduct Compact Games as defined herein within no more than one Facility. The Tribe agrees that to the extent that it is permitted by law to conduct any other Gaming, such other Gaming shall be subject to the same level of regulatory standards and oversight by the Tribe to which the Compact Games are held herein. Except for Community Gaming, the Tribe agrees that no gaming shall be conducted on the Tribe's lands except in the Facility.

4.1.1. Compact Game Reports. Prior to commencing the operation of any Compact Games in the Facility, the TGC shall notify the MGC of the number and type of Compact Games which are anticipated to be played over the next thirty (30) days, and thereafter report to the MGC by

the 5th day of each month any changes anticipated for the coming month, and any changes made in the previous month which were not on the report covering anticipated games for the previous month.

4.2. Automatic Amendment. If a Compact Game authorized under this Part is criminally prohibited by an amendment to or repeal of a Commonwealth statute or Constitution or any part thereof, or if a court of competent jurisdiction makes a final determination that a Compact Game authorized under this Part is criminally prohibited, this Compact shall no longer authorize the Tribe to engage in that Compact Game and the Tribe shall cease offering such Gaming immediately.

4.3. Limitations on Class III Gaming Activity. Notwithstanding any other provision of this Compact, the parties agree that the following class III gaming activity shall not be offered by the Tribe, except as expressly provided in this subpart 4.3.

4.3.1. Pari-mutuel Racing. Live horse racing and live dog racing shall not be offered by the Tribe.

4.3.2. Internet Gaming. The Tribe will not offer any form of Internet Gaming unless Internet Gaming is authorized under Commonwealth and federal law, and provided:

(a) If Internet Gaming is authorized by the Commonwealth, and only the Massachusetts State Lottery or any other governmental agency of the Commonwealth is permitted to conduct Internet Gaming, the parties agree that at the Tribe's request, they will negotiate in good faith for a tribal-state compact, or amendment to this Compact, to permit the Tribe to conduct Internet Gaming. If agreement is reached on a tribal-state compact or amendment to this Compact, the Tribe may offer Internet Gaming only in accordance with such compact or amendment.

(b) If Internet Gaming is authorized by the Commonwealth and permitted to be conducted by any Category 1 Licensee or other commercial entity licensed by the Commonwealth, the Tribe may conduct Internet Gaming in the same manner and to the

same extent that Internet Gaming is permitted to be conducted in the Commonwealth by any Category 1 Licensee or other licensed commercial entity, provided the Tribe first complies with subpart 4.4 of this Compact.

4.3.3. Lottery Games. The Tribe agrees it will not offer any game which is substantially similar to a Lottery Game operated by the Massachusetts State Lottery. Other than keno, nothing herein is intended to prohibit the Tribe from operating Compact Games typically offered at major casinos in the United States, such as Gaming Devices and table games. The Tribe and the Commonwealth may enter into an agreement separate and apart from this Compact to permit the Tribe to offer Lottery Games through the Massachusetts State Lottery, provided any such agreement complies with IGRA and Commonwealth law.

4.4. New Class III Gaming Activity. Except for Internet Gaming described in subpart 4.3.2(a) or Lottery Games the Tribe agrees it will not offer under subpart 4.3.3, any new class III gaming activity authorized by the Commonwealth to be conducted by any Category 1 Licensee for any purpose within the Commonwealth after the Effective Date of this Compact may be offered by the Tribe, provided that before offering any such Gaming activity the TGC shall provide at least forty-five (45) days advance written notice to the MGC of its intention to offer such class III gaming activity, and a description of the Gaming activity, the regulations governing the Gaming activity, and the manner in which the Gaming activity will be regulated under this Compact.

4.4.1. Within thirty (30) days of its receipt of a notice under this subpart 4.4, the MGC shall notify the TGC in writing of its objection, if any, to the proposed new Gaming activity or the manner in which the TGC proposes to regulate it.

4.4.2. If the MGC objects, the Tribe may not conduct the proposed Gaming activity unless and until the MGC withdraws its objection, approves the new Gaming activity, or does not prevail in a completed arbitration pursuant to the dispute resolution process set forth in Part 21.

In the event the Tribe does not receive timely notice under subpart 4.4.1 of an objection by the MGC, such new Gaming activity shall be deemed approved.

4.4.3. The Tribe and the MGC shall work cooperatively to resolve any MGC objections to the proposed additional Gaming activity. Within fifteen (15) days of an MGC objection, the TGC and the MGC shall meet and attempt to resolve their differences informally. If the parties are unable to resolve their differences within thirty (30) days of their initial meeting, either party may invoke the dispute resolution process set forth in Part 21.

4.5. Class II Gaming. Nothing in this Compact shall limit the Tribe's right to operate any game that is within the definition of a class II game under IGRA, except that for as long as the Commonwealth does not authorize the conduct of Gaming under a Category 1 License in Region C, the Tribe agrees that the sole location where it may offer class II gaming, except for Community Gaming operated in accordance with subpart 4.6, is within the Facility upon the Approved Gaming Site. Revenues from all Gaming operated at the Facility shall be included within the Gross Gaming Revenues of such Facility.

4.6. Community Gaming. If the Tribe permits the conduct of Community Gaming on the Tribe's lands outside of the Facility, the Tribe agrees that the Community Gaming will be located on the Tribe's Governmental Sites, will not be conducted more than two (2) days per week and not more than five (5) hours per day, that no single prize will exceed one hundred dollars ($100), and that all games will be played exclusively on paper cards or sheets which contain five (5) rows and five (5) columns with a free space and the letters BINGO or BEANO over the columns.

4.7. Wireless Gaming System. The TGC may designate certain areas within the Facility where an authorized Wireless Gaming System may be used. The operation of a Wireless Gaming System shall be considered new class III gaming activity and may only be offered in accordance with the procedures contained in subpart 4.4. The regulations governing Wireless Gaming Systems must include measures to ensure the devices are not used by persons under the age of twenty one (21).

4.8. Authorizations Specific to Gaming Devices. No Gaming Device may be offered for play by the Enterprise unless:

4.8.1. The manufacturer and distributor which sells, leases, distributes, services or repairs, or otherwise provides such Gaming Device for use in the Gaming Operation has been licensed by the TGC as a Gaming Vendor;

4.8.2. the software for the game authorized for play on the Gaming Device has been tested, approved and certified by a Gaming Test Laboratory as operating in accordance with any published standards for Gaming Devices by the NIGC, the published standards of Gaming Laboratories International, Inc. (known as GLI-11 and GLI-12), or such other comparable or more rigorous technical standards as the MGC and TGC shall agree upon, which agreement shall not be unreasonably withheld, and a copy of the certification is provided to the MGC;

4.8.3. such software is tested by the Gaming Test Laboratory to ensure that each game authorized for play on the Gaming Device has the correct electronic signature and has been installed and is operated in accordance with the manufacturer's specifications, and the Gaming Test Laboratory has so certified; provided that if the electronic signature is retained outside the gaming device, the server for the Gaming Device shall be located within the Facility. In such instance, the software shall be tested by the Gaming Test Laboratory, and the TGC shall verify that the same software tested is installed and operated in accordance with the manufacturer's specifications and the Gaming Test Laboratory certification;

4.8.4. the hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory to ensure operation in accordance with the manufacturer's specifications; and

4.8.5. the TGC determines that the requirements of this subpart 4.8 have been met and the Gaming Device is approved by the TGC.

4.9. Domestically Manufactured Devices. To the extent permitted by law, in purchasing or leasing Gaming Devices, the Tribe shall prefer machines manufactured in the United States.

Part 5. Construction, Maintenance and Operation of Facility.

5.1. Location. The Facility shall be located on the Approved Gaming Site.

5.2. Identification of Location. Subject to the following provisions of this subpart 5.2, the specific location of the Approved Gaming Site and the placement of the Facility thereon are described in Appendix C.

5.2.1. If the details of the specific location of the Facility upon the Approved Gaming Site have not been finalized by the time this Compact is executed, Appendix C shall describe as much of such information as is available at the time of execution. Ratification of this Compact by the General Court shall provide authority for the Tribe to make subsequent and limited amendment to the description in Appendix C to provide more specific details of the location of the Facility on the Approved Gaming Site. The identification information shall describe with specificity the street-map location, the ownership interests of the land comprising the Approved Gaming Site over the past twenty (20) years, its assessed value, and whether it is presently publicly owned.

5.2.2. If it is not commercially feasible for the Tribe to acquire in trust the land described in Appendix C as the intended Approved Gaming Site for purposes of this Compact, or if the United States Secretary of the Interior fails to accept such land in trust, the Tribe may identify alternative land in Region C to be acquired in trust for Gaming under this Compact. The Tribe shall provide to the MGC a complete description of the alternative land and the proposed location of the Facility thereon, shall obtain a vote in the Host Community for approval of the proposed Gaming development on the alternative land, and shall enter into an inter-governmental agreement with the Host Community as provided in Part 12.1.1. The alternative

land must meet the requirements for Indian Lands eligible for gaming under IGRA before the Tribe may offer Compact Games on the land. Subject to the foregoing conditions of this subpart 5.2.2, ratification of this Compact by the General Court shall provide authority for the Tribe to identify such alternative land for the Approved Gaming Site. Appendix C shall be modified to include a complete description of the alternative land and as long as the Tribe has fully complied with the requirements of this subpart, it is the parties' intent that such modification shall not be considered an amendment or modification to this Compact under Part 23.

5.2.3. The final determination regarding the location of the Approved Gaming Site and the location of the Facility thereon must be consistent with the definition of "Approv ed Gaming Site." Nothing in subpart 5.2 shall be construed as expanding or otherwise altering the term Indian Lands, or as altering the federal process governing the acquisition by the Tribe of Indian Lands for gaming purposes.

5.3. Location of Gambling Games within the Facility. Except as expressly provided in this Compact, all Gambling of any type that may be lawfully offered by the Tribe or on the Tribe's Indian Lands shall only be conducted within the Gaming Area of the Facility.

5.4. Construction Standards.

5.4.1. In order to protect the health and safety of all persons entering the Facility, all Facility construction, expansion and modification work shall meet the building, fire, health and safety codes of the Tribe. The Tribe shall adopt an ordinance setting forth codes for building, fire, health and safety which are consistent with and no less stringent than the provisions of any and all such codes that would be otherwise applicable if the Facility were constructed on land subject to the civil jurisdiction of the Commonwealth in the same location. In all cases where these otherwise applicable codes would require a permit, the Tribe shall hire or retain inspectors who are architects, engineers or similar experts licensed by the Commonwealth.

These inspectors shall have demonstrated experience with building, fire, health and safety codes in the context of commercial projects and shall review all plans and specifications for the Facility and shall certify to the MGC and the Tribe that both the design and the construction of the Facility meet the standards set forth in, and otherwise comply with, the building, fire, health and safety codes of the Tribe.

5.4.2. The Tribe shall require the inspectors to maintain contemporaneous Records of all inspections and report to it in writing any failure to comply with the Tribal building, fire, health and safety codes, and simultaneously provide a copy of each report to the MGC. The Tribal building, fire, health and safety codes may provide that in lieu of hiring experts and inspectors, the Tribe may contract with local or Commonwealth officials to perform the required inspections, however nothing in this subpart 5.4 shall be deemed to confer jurisdiction upon any local government or the Commonwealth with respect to any Tribal building, fire, health and safety codes. Any dispute between the Tribe and the Commonwealth relating to the enforcement of the Tribal building, fire, health and safety code shall be resolved pursuant to the dispute resolution process set forth in Part 21.

5.4.3 For all Facility construction, expansion or modification work, the Tribe shall use commercially reasonable efforts to advance the objective of utilizing sustainable development principles, including a goal of meeting construction standards equivalent to those in effect on January 1, 2012, or some later date chosen by the Tribe, for being certified as gold or higher by the Leadership in Energy and Environmental Design (LEED) program created by the United States Green Building Council.

5.4.4. All development, construction, expansion or modification of the Facility shall comply with the standards of the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 *et seq.*; OSHA, 29 U.S.C. § 651 *et seq.*; and comparable Commonwealth law requirements. Nothing in this subpart 5.4.4 shall constitute a waiver of the Tribe's

sovereign immunity from suit by third parties, including but not limited to third party claims alleging non-compliance or any failure by the Tribe to meet such standards.

5.4.5. Prior to commencement of any construction related to the Facility, the Tribe shall furnish to the MGC: (a) a copy of all available plans, specifications and designs for the proposed Facility, including plans for all infrastructure improvements and traffic mitigation measures on site and in the vicinity of the Facility, the names and addresses of the architects, engineers and designers, and information demonstrating that there are no design elements in the proposed Facility that are likely to impede the effective regulation of the Gaming Operation; (b) completed studies and reports required in connection with the Tribe's fee-to-trust application for the Approved Gaming Site which examine the Facility's local and regional social, environmental, traffic and infrastructure impacts, including but not limited to studies completed in fulfillment of the Tribe's obligations under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*; the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.*; and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.;* and (c) a timeline for construction that includes the detailed stages of construction for the Facility, the deadline by which stages and overall construction and all infrastructure improvements and traffic mitigation measures will be completed, a good faith estimate of the number of construction hours that will be required to complete the project, the general hours of construction, and the efforts that will be made to minimize noise, dust and other impacts from the construction.

5.4.6. Prior to the commencement of Gaming at the Facility, the TGC will certify to the MGC, and provide documentation that supports the certification if requested by the MGC, that the Enterprise has: (a) developed adequate emergency egress and ingress plans, which include identification of the location of all appropriate fire alarm and fire suppression equipment; (b) installed appropriate hardware and other equipment to ensure the safe and secure movement of

cash to and from the cage; (c) developed adequate sight lines for supervision and surveillance of the Gaming Operation and Compact Game Employees; (d) installed adequate monitoring and recording equipment that promotes the security of the Gaming Operation and meets or exceeds standards comparable to those applicable to Category 1 Licensees regulated by the MGC, including but not limited to a closed circuit television system that meets all specifications promulgated by the TGC, with access on the premises to the system or its signal provided to the MGC; and (e) made available rooms or locations approved by the TGC and the MGC for use by MGC agents and employees when in the Facility.

5.4.7. All design, development, construction, expansion or modification of the Facility and all infrastructure improvements related to the Facility shall be conducted in compliance with all applicable requirements of the National Environmental Policy Act and the Massachusetts Environmental Policy Act ("MEPA"), Massachusetts General Laws, Chapter 30, Section 61 *et seq.* The Commonwealth agrees that it will use its best efforts to expedite the MEPA process.

5.4.8. Upon completion of construction and receipt of a final inspection certification, and subject to the requirements of 5.4.9, 5.4.10 and 5.4.11, the Tribe shall issue a Certificate of Occupancy for the Facility. A current Certificate of Occupancy shall be a prerequisite to public occupancy of, and commercial activity within, the Facility. The Facility shall be inspected for continuing compliance with the Tribal building, fire, health and safety codes every two (2) years and if such compliance exists, the Certificate of Occupancy may be renewed. The review shall be based on inspections by qualified inspectors as described in subpart 5.4.1.

5.4.9. Prior to the issuance or renewal of a Certificate of Occupancy, the TGC shall forward the inspector's certification to the MGC. If the MGC objects to that certification, the Tribe shall make a good faith effort to address the MGC's concerns, but if the MGC does not withdraw its objection, the matter shall be resolved in accordance with the dispute resolution process in Part 21.

5.4.10. Failure by the Tribe to remedy within a reasonable period of time any material deficiency that poses a serious or significant risk to the health or safety of any Person shall be deemed a violation of this Compact and shall be grounds for the MGC to seek and obtain a court order pursuant to subpart 21.8 to prohibit occupancy of the affected portion of the Facility until the deficiency is corrected.

5.4.11. Not less than fifteen (15) days before the Facility is to open for business, the Tribe shall certify to the MGC, and provide such documentation to support the certification as the MGC requests, that: (a) the Gaming Area and other ancillary entertainment services and such non-gaming ancillary amenities the Tribe and the MGC shall agree upon have been built in accordance with the plans and specifications previously submitted to the MGC pursuant to subpart 5.4.5; and (b) the infrastructure improvements and traffic mitigation projects onsite and in the vicinity of the Facility are complete in accordance with the plans previously submitted to the MGC pursuant to subpart 5.4.5. Under no circumstances shall the Tribe permit the Facility to open for business unless the requirements of this subpart have been met. Failure by the Tribe to provide the certification or documentation required by this subpart shall be grounds for the MGC to seek and obtain a court order under subpart 21.8 to prohibit occupancy of the Facility until the requirements of this subpart have been met.

5.5. Basic Standard. Notwithstanding compliance with the requirements of this Part 5, the Tribe recognizes the importance of protecting the health and safety of all Patrons, Enterprise employees, and others who enter the Facility and all other structures and buildings on the Approved Gaming Site. The Tribe agrees that it will apply its building, fire, health and safety codes to the construction, expansion and modification of each structure or building on the Approved Gaming Site and that it will not permit public occupancy of a building or structure on the Approved Gaming Site that is constructed or maintained in a manner that endangers the health or safety of its occupants or the integrity of the Gaming Operation.

5.6. Fire Suppression Services.

5.6.1. The Tribe shall take all necessary steps to ensure the ongoing availability of sufficient and qualified fire suppression services to the Facility. The Tribe shall adopt a Fire and Life Safety Code, which shall be similar to and no less stringent than the Fire and Life Safety Code of the Host Community.

5.6.2. Prior to the commencement of Gaming Operations in the Facility and not less than every two (2) years thereafter, and upon at least ten (10) days' notice to the MGC, the Facility shall be inspected, at the Tribe's expense, by a qualified Tribal official who shall be responsible for fire and life safety protection at the Facility, or by an independent expert if no such official has been engaged, for purposes of certifying that the Facility meets the Tribe's Fire and Life Safety Code.

5.6.3. Within fifteen (15) days of the inspection, the Tribal official or independent expert shall provide the Tribe and the MGC with a report identifying any deficiency in fire or life safety protection at the Facility or any inability of the Tribe to meet reasonably expected fire suppression needs at the Facility. Within fifteen (15) days after provision of the report, the Tribe shall prepare a specific plan for correcting the deficiencies, whether in fire or life safety at the Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Facility, including those identified by the State's representative(s). The plan shall also contain a date, within thirty (30) days, by which all identified deficiencies will be corrected. A copy of the plan shall be provided to the MGC within three (3) days of its completion. Immediately upon correction of all deficiencies identified in the report, the Tribal official or independent expert shall certify in writing to the Tribe and to the MGC that all previously identified deficiencies have been corrected. Any failure by the Tribe to follow the procedures set forth in this subpart 5.6.3 and to correct all deficiencies identified in the report within the timeframes identified in the plan may be deemed by the Commonwealth to be a violation of the

Compact, and any failure by the Tribe to promptly correct a material deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the Commonwealth to obtain a court order pursuant to subpart 21.8. to prohibit occupancy of the affected portion of the Facility until the deficiency is corrected.

5.7. Retention of Construction Records.

5.7.1. The Tribe shall require each Person with whom it contracts for the construction, expansion or modification of any portion of the Facility to maintain for inspection and copying by the TGC, and the MGC if the MGC so requests, the Documents set forth below:

(a) the design and construction calculations, and plans and specifications that form the basis for the planned construction (the "Fa cility Design and Building Plans");

(b) all contract change orders, and other Documents that are related to any material changes to a structural detail of the Facility Design and Building Plans or any other changes in the Facility Design and Building Plans; and

(c) all other contract change orders.

5.7.2. The Tribe shall maintain the Documents required by subpart 5.7.1 until the termination of this Compact or until expiration of twenty-four (24) months following permanent cessation of occupancy of the portion of the Facility to which such plans and other documents apply, whichever last occurs.

5.8. MGC Inspection Agent. The MGC may designate an agent or agents to be given reasonable advance notice by the Tribe of each inspection required under Part 5 and such agent(s) may accompany the Tribally appointed inspector on any such inspection. The MGC agents may identify any condition that should reasonably preclude certification of the Facility pursuant to Part 5.

5.9. Facility License. Separate and apart from its obligation to obtain a Certificate of Occupancy, the Facility shall be licensed by the TGC only upon certification by the Enterprise to the TGC that the

Facility is in full compliance with the regulatory and other requirements of this Compact, the Gaming Ordinance, the Tribe's co des for building, fire, health and life safety, and IGRA.

5.9.1. The Facility license shall be reviewed and renewed by the TGC, if appropriate, every two years after its initial issuance. Verification that an initial license has been granted and, thereafter, that a license has been reviewed and approved, shall be provided by the TGC to the MGC within ten (10) days of its issuance or renewal.

5.9.2. A current Facility license shall be posted in a conspicuous and public place in the Facility at all times along with a current Certificate of Occupancy issued by the Tribe in accordance with subpart 5.4.8.

Part 6. Gaming Regulatory Authorities.

6.1. Tribal Duty to Regulate. The Tribe shall have the duty and primary responsibility to operate and regulate, through the TGC, the Enterprise and the Gaming Operation in accordance with this Compact, the Gaming Ordinance and IGRA.

6.2 State Duty to Regulate. The Commonwealth shall have the authority and responsibility to regulate the Gaming Operation as provided in this Compact.

6.3. Tribal Gaming Commission. The Tribe shall form a Tribal Gaming Commission under Tribal law and pursuant to and in accordance with the Gaming Ordinance in order to carry out the Tribe's regulatory responsibilities under this Compact.

6.3.1. The Tribe shall determine the structure of the TGC and how its members and employees are appointed or elected, but at a minimum the TGC shall have no less than one (1) nor more than five (5) full-time commissioners who shall determine and direct policy for the TGC, approve its regulations, and carry out such other and further duties as prescribed by applicable law, the Gaming Ordinance, and this Compact.

6.3.2. The Tribe shall have the ultimate responsibility for ensuring that the TGC fulfills its responsibilities under this Compact and shall ensure that all TGC members and employees are qualified and receive ongoing training to obtain and maintain skills sufficient to carry out their responsibilities.

6.3.3. Each TGC commissioner and employee shall be subject to a background investigation at least as rigorous as that required for a Key Gaming Employee, and to licensure to the extent required by Tribal law, the Gaming Ordinance, IGRA and this Compact. Each such commissioner or employee shall swear or affirm that neither he or she, nor any person identified in the last sentence of this subpart 6.3.3, possess any interest in a management entity, Gaming Vendor or Non-Gaming Supplier or other entity licensed by the TGC. For purposes of this subpart 6.3.3, no person other than a spouse, grandparent, child, grandchild or person residing in the same household of a person holding such an interest: (a) shall be disqualified to serve as a TGC commissioner or employee, or (b) shall be deemed to have a financial interest in the licensed Facility solely because such person is a member of the Tribe eligible to receive services and benefits generally available to members of the Tribe.

6.3.4. No Compact Game Employee may be a member or employee of the TGC and no member or employee of the TGC shall be permitted to participate as a player in Gaming at the Facility.

6.4. Specific Duties of the TGC. The TGC shall, through the exercise of its regulatory powers, assure that the Tribe and the Enterprise will:

6.4.1. conduct the Gaming Operation in full compliance with this Compact, Tribal law, IGRA and other applicable law;

6.4.2. provide for the physical safety of all Persons in the Facility, including protection from illegal or corrupt activity;

6.4.3. provide for the safeguarding of revenue and assets in connection with the Gaming Operation, including those assets transported to and from the Gaming Area, the cashier's department, and any banking transportation service;

6.4.4. require licensing or registration of all Persons as required by this Compact, IGRA and the Gaming Ordinance;

6.4.5. institute appropriate and lawful methods for the temporary detention, to the extent permitted by law, of persons who may be involved in illegal acts, which detention shall be for the purpose of notifying law enforcement authorities and providing them with an opportunity to investigate, apprehend and prosecute such persons;

6.4.6. record and investigate any and all unusual occurrences related to the Enterprise, the Gaming Operation or the Facility;

6.4.7. require written internal controls that provide a level of control that equals or exceeds that set forth in the NIGC's Minimum Internal Control Standards in 25 C.F.R. Part 542 ("MICS") as published on June 27, 2002 and updated from time to time, or similar regulations promulgated by the MGC for general application to all Gaming activities within the Commonwealth. The internal controls and a complete description of the Facility's security systems shall be forwarded to the MGC for review and comment at least sixty (60) days prior to commencement of Compact Game operations. The TGC may grant a variance from the internal controls for technological and other advances that may not have been addressed in the MICS or the MGC's rules, or to meet extenuating financial circumstances in complying with such requirements. The TGC's process for the granting of variances shall be consistent with the minimum standards for the granting of variances as prescribed by the MGC or the NIGC, whichever standards are more rigorous, and provided the variance, and the reasons given therefore, are forwarded to the MGC for review and comment at least thirty (30) days prior to the effective date of the variance;

6.4.8. require such written controls as may be necessary to ensure that the financial books and Records of the Enterprise will be maintained in accordance with generally accepted accounting principles and auditing standards;

6.4.9. require that neither the Enterprise nor the Gaming Operation receive or utilize financing for any aspect of the Enterprise, the Gaming Operation or the Facility, including but not limited to purchase money financing, leasing, secured transactions, loans, and other sources of funds and capital, from Persons who fail to meet the suitability standards or licensing requirements to the extent required in Part 7, and that such determination or licensing occurs prior to the acceptance of any funds, debt obligations or other financial benefits by the Tribe, the Enterprise or the Gaming Operation;

6.4.10. require that all Compact Games are operated in a Facility that complies with all building, fire, health and safety standards as set forth in Part 5, including the requirement that the Facility hold a current Facility license and a current Certificate of Occupancy;

6.4.11. require that the Enterprise engage or employ only Persons who meet the suitability requirements to the extent required in Part 7 and that all such Persons are licensed or registered as required by this Compact;

6.4.12. ensure that all Compact Games are operated in accordance with the requirements set forth in this Compact; and

6.4.13. enter into agreements or memoranda of understanding which establish protocols for interaction among Tribal, federal, State and local law enforcement and fire safety agencies.

6.5. Promulgation of Regulations. Without affecting the generality of the foregoing, the TGC shall promulgate and administer regulations for the implementation of this Compact:

6.5.1. prohibiting participation in any Gambling game by any person under the age of twenty-one (21) years;

6.5.2. prohibiting the employment of any person who is under the age of twenty-one (21) years in a position that involves any Gaming activity, provided that under circumstances that do not involve any Gaming activity or the sale or handling of alcoholic beverages, the TGC may promulgate regulations providing for the employment of persons under the age of twenty-one (21) years at the Facility;

6.5.3. prohibiting the employment of any person who has not been licensed or registered in accordance with the applicable requirements of federal and Tribal law and this Compact;

6.5.4. requiring standards for the Enterprise that meet or exceed the requirements contained in the laws of the Commonwealth relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

6.5.5. requiring that on any construction project involving the Facility or a related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for the Commonwealth under the federal Davis-Bacon Act, 40 U.S.C. § 276a.

6.5.6. prohibiting the Enterprise and any Management Contractor from discriminating in the employment of persons who work for the Enterprise on the grounds of race, color, national origin, gender, sexual orientation, age or disability, provided, however, that nothing herein shall be interpreted to prevent the Tribe from granting employment preference to Enrolled Tribal Members or members of other Indian tribes and their immediate families in accordance with applicable Tribal law;

6.5.7. prohibiting the Enterprise from (a) cashing for any Patron or employee of the Enterprise any paycheck or any type of government assistance check, including Social Security, Temporary Assistance for Needy Families (TANF), pension, unemployment benefits, and other similar payments; (b) allowing the operation in the Facility of any credit card or automated teller machine that would allow a Patron to obtain cash from a government-issued electronic

benefits card; (c) extending credit to a Patron or employee of the Facility who receives any form of income-based public assistance, including but not limited to, supplemental nutrition assistance, TANF, emergency aid to the elderly, disabled and children, public housing assistance, MassHealth and unemployment insurance; and (d) violating the privacy of any Person subject to this subpart 6.5.7;

6.5.8. providing that all Gaming Devices on the premises of the Facility are connected to a central computerized reporting and auditing system on the Facility premises, which shall collect and record on a continual basis the unaltered activity of each Gaming Device in use at the Facility, and require that the activity of each Gaming Device may be accessed and downloaded electronically by the MGC by a dedicated communications connection, on a "r ead-only" basis upon entry of appropriate security codes, provided that if the system does not automatically record each instance of MGC access, the MGC provides immediate notice to the TGC when it has accessed the system;

6.5.9. providing that before alcoholic beverages are sold at the Facility, the Tribe adopts a liquor ordinance that complies with the laws of the Tribe and conforms to the laws of the Commonwealth as required by federal law. The ordinance must prohibit an employee of any licensee or registrant at the Approved Gaming Site from selling, serving, giving or delivering an alcoholic beverage on the Approved Gaming Site to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Approved Gaming Site;

6.5.10. prohibiting the Gaming Operation from providing complimentary alcoholic beverages except in the Gaming Area, or any complimentary services, gifts, cash or other items of value to any Patron unless the complimentary item consists of a room, food, beverage, transportation or entertainment expenses provided directly to the Patron and the Patron' s guests by the Enterprise, or consists of coins, tokens, cash or other items or services provided through a

complimentary distribution program which shall be filed with and approved by the TGC upon the implementation of the program, which approval shall be immediately transmitted to the MGC;

6.5.11. requiring the Enterprise to submit quarterly reports to the TGC covering all complimentary services offered or provided by the Enterprise during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the TGC may require. The report shall also document any complimentary services or items valued in excess of an aggregate of two thousand dollars ($2,000) that were provided to Patrons in each quarter, including detailed reasons as to why they were provided. Complimentary services or items shall be valued in an amount based upon the retail price normally charged by the Enterprise for the service or item. The value of a complimentary service or item not normally offered for sale by the Enterprise or provided by a third party on behalf of the Enterprise shall be the cost of providing the service or item, as determined under rules adopted by the TGC;

6.5.12. requiring that all Records relating to the Gaming Operation at the Facility be maintained in accordance with generally accepted accounting principles. All such Records shall be retained for a period of at least five (5) years from the date of creation;

6.5.13. requiring the Enterprise to obtain, at least annually, a certified audit covering all financial activities of the Enterprise conducted by an independent certified public accountant licensed by the Commonwealth. The audit shall be prepared in accordance with generally accepted accounting principles and auditing standards and shall specify the total amount wagered in the Facility for purposes of calculating Gross Gaming Revenue. The certified audit report shall be submitted to the TGC and the MGC within one hundred twenty (120) days of the close of the Enterprise's fiscal year. Such documents shall be subject to the confidentiality

provisions of Part 11. The Tribe will maintain a copy of the certified audit report for not less than five (5) years; and

6.5.14. providing that agents of the TGC and the MGC shall have access to designated areas of the Facility as provided for in this Compact and requiring the agents to report immediately to the TGC any suspected violation of law, this Compact, or the regulations of the TGC.

6.6. Massachusetts Gaming Commission.

6.6.1. Regulatory Role. The Commonwealth may exercise its regulatory role under this Compact through the MGC or one or more other State agencies as the Commonwealth may designate by written notice from the Governor to the Tribe.

6.6.2. State Inspections. MGC representatives shall have the right to inspect the Facility, the Gaming Operation and all Records relating to the Gaming Operation, subject to the following conditions:

(a) with respect to public areas of the Facility, at any time during which the Facility is open for business;

(b) with respect to private areas of the Facility not accessible to the public, at any time during which the Facility is open for business, upon notice and the presentation of proper identification to the TGC and to a designated representative of the Enterprise. The TGC, in its sole discretion, may require an employee of the TGC to accompany the MGC representative at all times that the representative is in the non-public areas of the Facility, but if the TGC imposes such a requirement, the TGC shall ensure that such employee is available at all times for such purpose; and

(c) with respect to inspection and copying of books and Records relating to the Gaming Operation activity, at any time with 24 hours prior notice between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying shall be borne by the MGC.

6.6.3. Inspection Protocol. Whenever an MGC representative enters the Facility for any inspection, he or she shall identify him or herself to security and if possible, contact the TGC Executive Director or his or her designated representative.

6.6.4. Outsourcing. The MGC may contract with private persons, firms or other entities for the purpose of performing certain of its regulatory functions, but the MGC will maintain a single point of contact with the TGC or its Executive Director. Any such private persons, firms or entities shall be required to be licensed by the TGC and subject to a background investigation as rigorous as that required of a Key Gaming Employee.

6.6.5. Office Space. The Enterprise shall provide the MGC with access to reasonable office space for the purposes of its regulatory activities if requested to do so by the MGC.

6.6.6. Non-Interference with Operations. Personnel employed by or under contract with the MGC shall not interfere with the Gaming Operation or the general operations of the Facility, except as may be required to perform the regulatory functions permitted under this Compact.

6.6.7. Identification Badges. Identification badges issued by the TGC shall be worn by MGC representatives while at the Facility and shall be prominently displayed on the MGC representative's outer garment. Such identification badges will be of a distinctive color identifying its wearer as a representative of the MGC. Upon issuance of each badge, the name of its recipient, employment position and badge number shall immediately be forwarded to the MGC.

Part 7. Licensing and Registration.

7.1. License or Registration Required. No Person shall be employed by the Enterprise or provide goods or services to the Enterprise, including sources of financing, unless such Person has been licensed or registered by the TGC to the extent required herein; provided that nothing in this Compact shall restrict the TGC from adopting more stringent licensing or registration requirements for any

Person having the ability to influence or affect the affairs or operations of the Gaming Operation or the Facility.

7.2. Basic Requirements for Licensing. The TGC may not issue a license to an Applicant who has:

7.2.1. been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury, however, if the conviction occurred before the ten (10) year period immediately preceding the application for a license, the TGC may consider whether the Applicant has demonstrated by clear and convincing evidence that the Applicant has the financial responsibility, character, reputation, integrity and general moral fitness to not be automatically disqualified for a license or registration;

7.2.2. submitted an application that contains false or misleading material information;

7.2.3. committed prior acts which have not been prosecuted or for which the Applicant was not convicted but which form a pattern of misconduct that makes the Applicant unsuitable for a license; or

7.2.4. failed to demonstrate to the satisfaction of the TGC that the Applicant is a Person of good character, honesty, and integrity whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

7.3. Basic Requirements for Registration. The TGC may issue a registration if the Applicant is determined by the TGC to be a person of good character, honesty, and integrity whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of Gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of Gambling, or in the carrying on of the business and financial arrangements incidental thereto.

7.4. For corporations, partnerships, limited liability companies, trusts, or other entities that are required to be licensed or registered under this Part, the Applicant shall establish to the TGC that the following persons within such entity meet the suitability requirements of this Part 7:

(a) if a corporation, each of its officers and directors and, except for publicly-traded corporations, each of its shareholders who own more than five percent (5%) of the shares of the corporation;

(b) if a trust, each Person having control over the trust assets;

(c) if a partnership, each of its partners holding partnership interests (whether limited or general) entitled to five percent (5%) or more of the partnership interests, equity, profits or distributions in the partnership;

(d) if a limited liability company, each of its members holding membership interests entitled to five percent (5%) or more of the membership interests, equity, profits or distributions in the limited liability company;

(e) for all other entities not listed in clauses (a)-(d), each Person having a financial ownership, profits or distribution interest in the entity of five percent (5%) or more; and

(f) with respect to each of the entities listed in clauses (a)-(e), each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, managing partner or member, and general manager.

(g). For purposes of this subpart 7.4, where there is any commonality of interest between any two (2) or more of the entities identified in clauses (a)-(e), those entities may be deemed by the TGC to be a single entity. Nothing herein precludes the TGC from requiring more stringent licensing or registration requirements than those provided herein.

7.5. Processing Applications - General Requirements.

7.5.1. The TGC shall establish reasonable licensing and registration fees for licenses and registrations issued pursuant to this Compact, and may require an Applicant to bear the costs of

a background investigation to determine the Applicant's suitability. The TGC shall establish the term for a license or registration, which shall be consistent with the term established by the MGC for Category 1 Licensees in the Commonwealth.

7.5.2. Each Applicant for a license or registration shall submit a completed application, on a form prescribed by the TGC, along with the required information and an application fee, if required, to the TGC in accordance with TGC Regulations.

7.6. Persons or Entities Required to be Licensed.

7.6.1. Compact Game Employees. No Person shall be employed as a Compact Game Employee by the Enterprise unless such Person has been licensed by the TGC.

7.6.2 Key Gaming Employees. No Person shall be employed by the Enterprise as a Key Gaming Employee unless such Person has been licensed by the TGC.

7.6.3. Management Contractors and Primary Management Officials. No Person shall act as a Management Contractor or Primary Management Official unless such Person has been licensed by the TGC.

7.6.4. Gaming Vendors. The Enterprise shall not conduct business with a Gaming Vendor unless the Gaming Vendor has been licensed by the TGC.

7.6.5. Financial Sources. The TGC shall license each Financial Source (other than an Institutional Investor that the TGC has determined does not require a license under subpart 7.9) that, alone or in combination with Affiliates or Persons under common control with such Financial Source, has provided financing in connection with the Facility or the Gaming Operation, if that Person provided more than five percent (5%) of: (a) the start-up capital; (b) the operating capital over a twelve (12) month period; or (c) a combination thereof.

7.6.6. Notwithstanding the foregoing, any Person acting solely as (a) a " clearing corporation" as defined in Massachusetts General Laws Chapter 6, Section 8-102(a)(5), (b) an indenture trustee which is a federally regulated bank or trust company, (c) a beneficial owner of an

interest in a debt security of the Enterprise held by an Institutional Investor, or (d) a transferee holder or beneficial owner of an interest in a debt security issued by the Enterprise following the initial distribution or placement thereof by one or more securities dealers registered pursuant to the Securities Exchange Act of 1934 shall not be deemed to be a Financial Source or a Non-Gaming Supplier subject to the registration and licensing requirements of this Part 7.

7.6.7. Others. Any other Person required by the TGC to hold a license.

7.7. Persons or Entities Required to be Registered.

7.7.1. Employees. Employees in the Facility who are not considered to be Compact Game Employees, Key Gaming Employees, or Primary Management Officials and who have access to the Gaming Area or have knowledge of security procedures, shall be required to register with the TGC and shall produce such information as the TGC may require to become registered.

7.7.2. Non-Gaming Suppliers. The Enterprise shall not conduct business with any Non-Gaming Supplier unless the Non-Gaming Supplier is registered with the TGC and has provided such information as the TGC shall require to become registered. Non-Gaming Suppliers include, but are not limited to: construction companies, vending machine providers, linen suppliers, garbage handlers, facility maintenance companies, transportation services, food purveyors, alcoholic beverage distributors and such other persons or entities as may be identified by the TGC as Non-Gaming Suppliers.

7.7.3. Notwithstanding the foregoing, the TGC may require any Non-Gaming Supplier regularly conducting business with the Enterprise to be licensed as a Gaming Vendor, and may exempt federally or state-regulated banks, savings and loans or other lending institutions providing customary banking and financial services from the registration and licensing requirements of this Part 7.

7.8. The TGC shall establish a master Gaming Vendor and a Non-Gaming Supplier list to monitor all vendor contracts with the Enterprise. Any Gaming Vendor or Non-Gaming Supplier doing business

with the Enterprise who has failed to submit any required application for licensure or registration in accordance with the provisions in this Part 7 shall be prohibited from engaging in any business with the Enterprise, and the TGC may terminate any contract that has been entered into with an unlicensed Gaming Vendor or unregistered Non-Gaming Supplier required to be licensed or registered in this Part 7.

7.8.1. The Enterprise shall have a continuing duty to inform the TGC of all vendor contracts with any Gaming Vendor or Non-Gaming Supplier required to be licensed or registered in accordance with this Part 7.

7.8.2 The TGC shall monitor all Gaming Vendors and other Persons having a material involvement, directly or indirectly, with a Gaming Vendor to ensure that Gaming Vendor licenses are not issued to, or held by, a Gaming Vendor with whom unqualified, disqualified or unsuitable Persons are materially involved, either directly or indirectly.

7.9. Institutional Investors. To the extent provided in subpart 7.4, any Person with a financial interest of more than five percent (5%) in the equity of any Person required to be licensed under this Part, or in a holding, intermediary or subsidiary of such Person, shall be required to be qualified for licensure; provided that the TGC may waive this requirement for Institutional Investors with an interest in up to fifteen percent (15%) of the stock of such Person, or in a holding, intermediary or subsidiary of such Person, upon a showing by the Person seeking the waiver that the Person acquired the equity for investment purposes only and does not have any ability to influence or affect the affairs or operations of the Person or a holding, intermediary or subsidiary of such Person. Any Institutional Investor granted a waiver which subsequently is determined to have the ability to influence or affect the affairs or operations of the Person, or a holding, intermediary or subsidiary of the Person, shall provide not less than thirty (30) days' notice to the TGC of such ability and shall apply for a license and be subject to the licensing requirements of this Part 7 before taking any action that may influence or affect the affairs of the Person or a holding, intermediary or subsidiary of the Person. In addition to the

foregoing, the TGC may exempt Institutional Investors from the licensing and registration requirements applicable to Financial Sources in this Part 7.

7.10. Attorneys and certified public accountants and their firms shall be exempt from the licensing and registration requirements of this Compact to the extent that they are providing services covered by their professional licenses.

7.11. Background Investigations.

7.11.1. Before issuing a license to or registering any Applicant under this Part, the TGC shall conduct, or cause to be conducted, all necessary background investigations to determine that the Applicant is qualified for a license or registration under the standards set forth in this Part 7.

7.11.2. The TGC shall not issue a license or registration until the TGC determines that the Applicant meets all of the qualifications under this Part 7.

7.11.3. In lieu of completing its own background investigation, the TGC may contract with the MGC for the conduct of some or all of its background investigations, or may rely on a license or registration previously issued to the Applicant by the TGC or the MGC that is currently in effect.

7.12. Abbreviated Licensing and Registration Processes. If an Applicant for a license or registration is licensed or registered in another jurisdiction within the United States with license and registration requirements as least as stringent as those of the TGC and is in good standing in all the jurisdictions in which it holds a license or registration, the TGC may allow for an abbreviated background, licensing or registration process and may issue a license or registration under this Part, to the extent permitted under federal law; provided, however, that the TGC shall reserve its right to investigate the qualifications of an Applicant at any time and may require the Applicant to submit at any time a full application for a license or provide further information for registration.

7.13. Releases. An Applicant for a license or registration shall be required to provide releases to the TGC and to the MGC to make available and to provide for the exchange of background information

regarding the Applicant. The TGC and the MGC shall cooperate with each other in furnishing that information, unless doing so would violate any agreement either agency has with a source of the information other than the Applicant, would impair or impede a criminal investigation, would violate Commonwealth law, or would not assure that the information will remain confidential.

7.14. TGC Intent to Issue License or Registration.

7.14.1. Notice to MGC. Once the TGC has received a completed application for a license or registration, conducted a background investigation as required by subpart 7.11, and made a determination that the Applicant is suitable for a license or registration, the TGC shall transmit to the MGC, unless such transmittal is waived by the MGC, a notice of intent to license or register the Applicant.

7.14.2. Applicant Information. For Applicants subject to licensing, the TGC shall transmit, along with the notice of intent to license, all of the following information, where applicable, for the past ten (10) years:

(a) the name of the Applicant, including all other names by which the Applicant has been known;

(b) the residential address of the Applicant;

(c) an employment history for the Applicant;

(d) fingerprints for the Applicant;

(e) any criminal and arrest records for the Applicant;

(f) any civil or criminal actions in which the Applicant has been involved, together with any judgments, settlements or other outcomes of such matters;

(g) the Applicant's credit an d banking history;

(h) a copy of all other application materials and information received by the TGC from the Applicant;

(i) a current photograph; and

(j) except to the extent waived by the MGC, such releases of information, waivers, and other completed and executed forms as have been obtained by the TGC.

7.14.3. For Applicants subject to registration, the TGC shall transmit to the MGC unless waived by the MGC, along with the notice of intent to issue a registration:

(a) a copy of all the application materials and information received by the TGC from the Applicant; and

(b) a release of information and waiver form, and any other completed and executed forms obtained by the TGC.

7.15. Other Information and Documents. The TGC may require an Applicant to provide such other information or Documents as it considers appropriate including, but not limited to, information or Documents related to the financial integrity of the Applicant, bank accounts and Records, bank references, business and personal income and disbursement schedules, tax returns and reports filed by government agencies, and business and personal accounting check Records and ledgers. Upon receipt, the TGC immediately shall forward to the MGC a copy of all information it receives under this subpart 7.15.

7.16. MGC Review.

7.16.1. Within thirty (30) days of its receipt of a notice of intent to issue a license or registration, the MGC must notify the TGC in writing of its objection, if any, to the issuance of the license or registration. If additional time is required by the MGC to complete any necessary background investigation or evaluation of the Applicant, the MGC may extend the time to notify the TGC for an additional thirty (30) days, unless the TGC agrees to a longer extension.

7.16.2. If the MGC timely objects to the issuance of a license or registration, the TGC may not issue the license or registration unless and until the MGC withdraws its objection. In the

event the TGC does not receive timely notice of an objection by the MGC, the TGC may approve the license or registration application.

7.16.3. The TGC and the MGC shall work cooperatively to resolve any MGC objections to an application. Within fifteen (15) days of the MGC's notice of objection, the TGC and the MGC shall meet and attempt to resolve their differences informally. If the parties are unable to resolve their differences within fifteen (15) days of the meeting, either party may invoke the dispute resolution process in Part 21.

7.17. Temporary Licenses or Registrations. During the pendency of the MGC review under subpart 7.16, the TGC may issue a temporary license or temporary registration to an Applicant and impose specific conditions thereon. The TGC must provide to the MGC at least ten (10) days' advance notice of its intent to issue a temporary license or registration and if a temporary license or registration is issued, the TGC must include any and all conditions required by the MGC to be imposed on the temporary license or registration.

7.18. Emergency Registration. Notwithstanding the requirements of this Part 7, the TGC may issue an emergency registration to a Non-Gaming Supplier to permit the Non-Gaming Supplier to provide immediate emergency services to the Enterprise that are necessary to protect the health and safety of the employees and Patrons or the continued operation of the Facility. An emergency registration shall be valid for not more than ten (10) days and no emergency registration may be issued to the same Non-Gaming Supplier more than twice in any year. The TGC shall notify the MGC of the issuance of an emergency registration within twenty-four (24) hours of the issuance.

7.19 Denial, Suspension and Revocation. An application for a license or registration shall be denied and a license or registration shall be revoked: (a) if at any time the TGC or the MGC determines that the application is incomplete or deficient; (b) if the Applicant, licensee, or registrant is determined to be unsuitable or otherwise unqualified for a license or registration; or (c) if an Applicant, licensee or registrant, or any officer, director, member, partner or Person with a financial interest of five percent

(5%) or more of an Applicant, licensee or registrant, or any employee of an Applicant, licensee or registrant whose responsibilities include any activity related to the operation, maintenance or management of Compact Games, has been arrested for or convicted of a felony or crime involving fraud, embezzlement, theft, perjury or a Gaming-related offense. The TGC may deny, revoke, suspend or condition an application, license or registration if the TGC or the MGC determines that the Applicant, licensee or registrant has failed to comply with any provision of this Compact pertaining to Applicants, licensees or registrants, as applicable; has violated any other provision of this Compact, or engaged in any conduct that would constitute a finding of unsuitability under this Part; or for any other reason the TGC or the MGC deems necessary or appropriate in order to protect the Enterprise and uphold the integrity of the Gaming Operation.

7.19.1. If the MGC makes a determination that an application should be denied or a license or registration revoked, suspended, or conditioned, it shall immediately notify the TGC and provide the TGC with a detailed explanation and evidence supporting its determination. The Applicant, licensee or registrant shall be notified by the TGC of the intent to deny, suspend or revoke the application, license or registration. All rights to notice and hearing shall be governed by applicable law, as to which the Applicant, licensee or registrant shall be notified by the TGC in writing along with the notice of an intent to deny, suspend or revoke the application, license or registration.

7.20. Continuing Duty to Supply Information. An Applicant, licensee or registrant shall have the continuing duty to provide any assistance or information required by the TCG or the MGC and to cooperate in any inquiry or investigation conducted by the TCG or the MGC. Refusal to answer or produce information, evidence or testimony by an Applicant, licensee or registrant is grounds for the denial of the application or the suspension or revocation of the license or registration.

7.21. Withholding or Falsifying Application Information. No Applicant, licensee or registrant shall withhold material information from, or give false or misleading information to, the TGC or the MGC.

If the TGC or MGC determines that an Applicant, licensee or registrant, or a close associate therewith, has intentionally provided false or misleading information, the TGC shall deny the application or revoke the license or registration.

7.22. Issuance of License or Registration Following Arbitration. The TGC may, in its discretion, issue a license or registration to a Person following entry of a final order or other final determination in an arbitration proceeding conducted under the dispute resolution process in Part 21 which fails to uphold the objection of the MGC to the issuance of a license or registration by the TGC.

7.23. No Recourse. Under no circumstances shall any Applicant, licensee or registrant have any right to seek recourse against the TGC, the Tribe or the Gaming Operation, including any Management Contractor associated therewith, or the Commonwealth, including the MGC, with respect to the denial, suspension or revocation of a license or registration. A license or registration is a privilege, not a property right.

Part 8. Annual Oversight Assessment.

8.1. The Tribe shall reimburse the MGC for the costs the Commonwealth incurs in carrying out the regulatory functions authorized by the terms of this Compact. The Tribe will pay its share of the MGC's actual costs of operation which directly relate to the MGC's responsibilities under this Compact. The costs shall be based on estimates by the MGC derived from the actual costs incurred in prior years and shall be included in a budget the MGC shall provide to the TGC for its approval, which approval shall not be unreasonably withheld or delayed. Payments for such costs shall be made to the MGC in advance and prior to the beginning of each fiscal year, or on such other payment schedule as the MGC and the Tribe shall agree. At the close of each fiscal year, the MGC shall reconcile the payments made by the Tribe under this Part with the actual costs incurred in carrying out its regulatory responsibilities under this Compact. Within thirty (30) days of the close of the fiscal year, the MGC shall either refund to the Tribe any amount paid in excess of the actual costs or bill the Tribe with a

detailed invoice for the actual costs incurred in excess of the amounts paid, which amount due shall be paid by the Tribe as an addition to the next quarterly payment made under Part 9. At the Tribe's expense, the Tribe shall have the right to conduct a reasonable audit with respect to such costs.

8.2 Notwithstanding subpart 8.1, no funds shall be due under subpart 8.1 until one hundred twenty (120) days after the date the land comprising the Approved Gaming Site is accepted into trust by the United States as eligible for the conduct of Gaming under IGRA, on which date the Tribe shall pay to the MGC an amount estimated by the MGC to be necessary to cover the MGC's oversight responsibilities for the remaining portion of that first fiscal year of regulatory activity. The MGC estimate required under this subpart shall be included in a budget the MGC shall provide to the TGC for its approval, which approval shall not be unreasonably withheld or delayed.

Part 9. Revenue Allocations.

9.1. This Compact represents a negotiated agreement on a government-to-government basis between the Tribe and the Commonwealth with respect to the allocation of certain Tribal gaming revenues, under the following terms and circumstances:

9.1.1. Under IGRA, the Tribe has a right to seek a negotiated compact with the Commonwealth to engage in Gaming on federal lands held in trust for it and qualified for Gaming. The Tribe presently has no lands held in trust, for Gaming purposes or otherwise.

9.1.2. IGRA requires the Commonwealth to commence negotiations with a qualified tribe for a compact within one hundred eighty (180) days of the tribe's request to do so. IGRA does not require a state to provide a tribe with geographic exclusivity as to the proposed location for its Gaming, the games it intends to offer, or on any other basis. The parties agree that IGRA negotiations need not be commenced or concluded until the Tribe has land in trust that is qualified for Gaming.

9.1.3. Massachusetts General Laws Chapter 23K, Section 19, as added by Section 16 of the Act, authorizes no more than three licensed casinos within the Commonwealth, one in each of three distinct geographic areas within the Commonwealth and identified as Regions A, B and C. Region C, which is in Southeastern Massachusetts, is where the Tribe's proposed casino would be located. The casinos authorized under Section 19 must obtain a license from the MGC and pay a minimum licensing fee of $85 million. The licensed casinos are also subject to gaming taxes and other fees payable to the Commonwealth. Under federal law, an Indian tribe cannot be required to hold a state license or pay taxes to a state as a condition of conducting gaming that is available to others within a state, but a tribe must reach agreement with the Commonwealth for a tribal-state compact regarding such gaming through an IGRA negotiation, which must be conducted by the Commonwealth in good faith. However, applicable law permits a tribe to request and offer to pay fair value for concessions and benefits to it that a state is otherwise not required to negotiate or provide under IGRA and thus would ordinarily not be available to the tribe.

9.1.4. Section 91 of the Act creates a process that authorizes the Governor to negotiate a compact with a qualified Indian tribe for a tribally-owned casino under IGRA and then to seek approval from the General Court. Section 91 further provides that if a tribal-state compact is not reached and approved by the General Court on or before July 31, 2012, and certain other conditions occur thereafter, the MGC shall consider bids for a Category 1 License in Region C. If such a license is granted, any casino operated under an IGRA compact within Region C would not be able to do so on an exclusive basis and would be negatively impacted economically. On the other hand, the approval by the General Court of this Compact by July 31, 2012, although not required under IGRA or Commonwealth law, would provide the Tribe with the opportunity to operate a casino in Region C on an exclusive basis, but would displace revenues that could have been received by the Commonwealth from a licensed casino. Such

exclusivity therefore would be extremely valuable to the Tribe, while being detrimental to the Commonwealth.

9.1.5. Although financially detrimental, the Commonwealth recognizes the importance of assisting the Tribal government in reaching its goal of self-sufficiency, including its ability to fund critical Tribal governmental programs through the conduct of Gaming under IGRA, and that such ability will be materially assisted if the Tribe can do so on an exclusive basis within Region C. Providing such exclusivity would also further the Commonwealth's policy of controlling the expansion of Gaming within Massachusetts, by limiting the total number of casinos within the Commonwealth to three.

9.1.6. As a further and material part of its request that the Governor and the Commonwealth negotiate a compact under IGRA and Section 91 of the Act on an expedited basis, the Tribe has proposed and received the pledge in subpart 2.11 that, although not required to do so, the Governor will cooperate with and support the Tribe' s efforts in seeking trust status for the land within Region C described therein, including the qualification of the Approved Gaming Site for Gaming purposes. The Tribe acknowledges and agrees that such support is being provided at its request and that it represents a substantial benefit to the Tribe that is in addition to the other concessions and benefits being provided to it by the Commonwealth herein.

9.2. In fair exchange for the concessions, commitments, and actions by the Commonwealth and the Governor for the Tribe's benefit set forth above and in other parts of this Compact, including but not limited to, the creation, on an exclusive basis, of the opportunity to conduct casino gaming in Region C; assistance in advocating for and qualifying the transfer of certain lands into trust by the United States for governmental and Gaming purposes; agreeing to consider resolution of various important issues between the Tribe and the Commonwealth, such as those involving hunting, fishing and land use matters; and other concessions described in this Compact, and to further the regulatory and other gaming-related purposes of IGRA, the Tribe has proposed, and the Commonwealth has agreed to accept

payment of the following, based on an allocation of some of the Tribe's Gross Gaming Revenues for the uses described:

9.2.1. The Tribe shall pay an amount (the "Allocation") equal to twenty-one and one-half percent (21.5%) of its Gross Gaming Revenue per day on a quarterly basis to the MGC as set forth below.

9.2.2. In order to distribute the Allocation in a manner that is consistent with the intent of the parties under this Compact, IGRA, and applicable law, there shall be set up on the books of the Commonwealth a "Mashpee Tribal Gaming Fund," into which all payments under this Compact shall be paid and which shall be administered by the MGC.

9.2.3. Within three (3) business days of its receipt of the Allocation, the MGC shall transfer the monies in the Mashpee Tribal Gaming Fund to the funds identified in Massachusetts General Laws, Chapter 23K, Section 59(2), and in the proportions set forth therein. An amount equal to fifty percent (50%) of the monies transferred under this subpart 9.2.3 to the Transportation Infrastructure and Development Fund established in Massachusetts General Laws Chapter 23K, Section 62 shall be segregated and utilized for the purpose of transportation and related infrastructure projects in Region C, including but not limited to, transit expansion and maintenance, other than those infrastructure improvements and traffic mitigation measures identified in subpart 5.4.5 and required to be completed by the Tribe pursuant to subpart 5.4.11.

9.2.4. If the Tribe's exclusive right to operate a casino within Region C is abrogated by the lawful issuance of a Category 1 License to operate a casino in Region C, then upon commencement of operations of such casino in Region C the Tribe can elect to either: (a) cease operations of its casino within sixty (60) days and terminate this Compact at the end of such period, in which case the Tribe will lose its right to conduct class III gaming within Region C, provided that payment of the Allocation shall be made for any Gaming conducted within the

Facility; or (b) continue under this Compact but reduce the Allocation to fifteen percent (15%) of Gross Gaming Revenues. Nothing herein shall relieve the Tribe of its obligation to pay the regulatory costs and fees required under Part 8.

9.3. The amount of quarterly Allocation payments shall be based on the Gross Gaming Revenues generated during the immediately preceding quarter, due by the thirtieth (30^{th}) day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter of the preceding year). If Gaming in the Facility commences during a calendar quarter, the first payment shall be made within thirty (30) days of the end of the first full quarter of such operations and shall cover the period from the commencement of operations to the end of the first full calendar quarter.

9.4. Any quarterly Allocation payment not paid on or before the date on which it is due shall be deemed overdue. If any quarterly Allocation payment is overdue, the Tribe shall pay, in addition to the overdue quarterly payment, all interest accrued thereon from the date such quarterly payment was due at the rate of one percent (1.0%) per month or the maximum rate permitted by law for delinquent payments owed to the Commonwealth, whichever is less. Entitlement to such interest shall be in addition to any other remedies the Commonwealth may have under this Compact.

9.5. The quarterly Allocation payments shall be accompanied by a certification of the Gross Gaming Revenue calculation prepared by an authorized representative of the Tribe reflecting the total of all Gross Gaming Revenues during the quarter and the total amount of the Allocation amounts due and payable. A copy of the certification shall also be sent to the MGC.

9.6. The Tribe shall not conduct any Gaming at the Facility, directly or indirectly, if the Tribe is in arrears in any Allocation payment due under this Part for more than thirty (30) days and the MGC or the Governor has given the Tribe at least fifteen (15) days' written notice to cure such arrearage, and regardless of whether or not a dispute is pending over whether or not such Allocation payment is due. It is the intent of the parties that disputes over such payments shall not cause delays in the payments

while a dispute is pending. Such disputes shall not be grounds for seeking or obtaining any equitable relief from the requirement that Gaming be suspended while the amount in such notice remains unpaid and uncured.

9.7. If the audited financial statement under Part 16 shows a material understatement in an Allocation payment to the Commonwealth during the year covered by said statement, the Tribe's next payment shall be increased by the amount owing plus interest at the rate of one percent (1.0%) per month or the maximum rate permitted by State law for delinquent Allocation payments owed to the Commonwealth, whichever is less.

9.8. Any dispute over the amount of the quarterly Allocation payment shall be resolved by the dispute resolution process defined in Part 21 of this Compact, but said process shall not delay Allocation payments determined to be due either by the Tribe's certified public accountant or by the MGC or Office of the Governor and made the subject of a notice to cure under subpart 9.6.

9.9. Any Allocation payment by the Tribe that is determined by the dispute resolution process in Part 21 to have been an overpayment will be credited against the Tribe's next quarterly Allocation payment as the Tribe's sole reme dy in connection therewith.

Part 10. Records.

10.1. In addition to other Records required to be maintained by this Compact, the Enterprise shall maintain the following Records related to the implementation of this Compact, in permanent form and as written or entered, whether manually or by computer. The following Records shall be maintained by the Enterprise and made available for inspection by the MGC for not less than five (5) years from the date generated:

10.1.1. A log recording all surveillance activities in the monitoring room of the Facility, including, but not limited to, surveillance Records kept in the normal course of Enterprise operations and in accordance with industry standards; provided, notwithstanding anything to the

contrary herein, surveillance Records may, at the discretion of the Enterprise, be destroyed if no incident has been reported within one (1) year following the date such Records were made and neither the TGC nor the MGC has requested that the Enterprise retain such Records and the Enterprise did not know or should not reasonably have been expected to have known that the Records should be retained;

10.1.2. Payouts from the conduct of all Compact Games;

10.1.3. Maintenance logs for all equipment used in the operation of Compact Games by the Enterprise;

10.1.4. Security logs as kept in the normal course of conducting and maintaining security at the Facility and in all aspects of the Enterprise, which at a minimum shall conform to industry practices for such reports. The security logs shall document any unusual or nonstandard activities, occurrences or events at or related to the Facility or in connection with the Enterprise. Each incident, without regard to materiality, shall be assigned a sequential number for each such report. At a minimum, the security logs shall consist of the following information for each incident, which shall be recorded in a reasonable format: (a) the assigned sequential number; (b) the date, time and specific location of the incident; (c) a description of the incident; (d) the identity, including any identification information, of any persons involved in the incident and any known witnesses to the incident; and (e) the identity of the person making the report and any other persons contributing to its preparation;

10.1.5. Books and Records on all Compact Games operated by the Enterprise, which shall be maintained in accordance with generally accepted accounting principles; and

10.1.6. All other documents generated in accordance with this Compact.

10.2. All Records required to be provided to the MGC under this Compact may be transmitted in an electronic format.

Part 11. Confidentiality of Records.

11.1. The parties agree that, to the extent permitted by law, any Documents, communications, or information provided to or received from the TGC, the Enterprise, the MGC or any other official, agency or entity of the Commonwealth, the Tribe, or the United States, in connection with any investigation or confidential matter under the provisions of this Compact, are confidential. Any party that has received any information, Document or communication from the other that is marked or deemed " Confidential" may release or disclose the information, Document or communication only with the prior written consent of the other party or pursuant to a lawful court order after timely notice of the proceeding has been given to the other party, unless such release or disclosure is required pursuant to State or federal law. Such Documents, communications or information shall be maintained in a secure place accessible only to authorized officials and employees of the party that has received the same, and shall be treated in accordance with the party's procedures and regulations to protect the confidentiality of the information, Documents and communications.

11.2. These prohibitions shall not be construed to prohibit:

11.2.1. the furnishing of any information to a law enforcement or regulatory agency of the Tribal, State or federal government;

11.2.2. the Commonwealth from making known the names of Persons, firms, or corporations conducting Gaming pursuant to the terms of this Compact, locations at which such Gaming is conducted, or the dates on which such Gaming is conducted;

11.2.3. the publishing of the terms of this Compact;

11.2.4. the disclosure of information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against a party; or

11.2.5. the compliance with subpoenas or court orders issued by courts of competent jurisdiction.

Part 12. Community Mitigation.

12.1. Host Community. Prior to the execution and approval of this Compact, the Tribe, on its own volition and without the participation of the Commonwealth, entered into an inter-governmental agreement with Taunton, Massachusetts, as the anticipated Host Community in connection with the location proposed by the Tribe for its casino under this Compact. The Tribe did so in recognition of its desire to develop a government-to-government working relationship with that community and to qualify the site for obtaining General Court approval of a gaming compact under Section 91 of the Act by July 31, 2012, so that the Tribe's proposed casino could obtain exclusivity in Region C. Neither approval of the Compact by July 31, 2012, nor exclusivity within Region C for the Tribe, nor the execution of the inter-governmental agreement with Taunton or any other community were required by the Governor as part of the negotiation of, or as a condition to, this Compact. The Tribe's agreement with Taunton addresses the impact the Facility is likely to have on the Host Community and identifies measures that the Tribe will take, including the provision of financial resources to the Host Community to mitigate those impacts.

12.1.1. If the Tribe relocates the Facility to alternative land pursuant to subpart 5.2 and the Facility is no longer located in Taunton, the Tribe shall enter into an inter-governmental agreement with the local government of the Host Community that addresses the impact of the Facility on the Host Community and identifies measures that the Tribe will take, including the provision of financial resources to the Host Community, to mitigate those impacts.

12.2. Surrounding Communities. The funding to mitigate impacts with respect to Surrounding Communities shall be in accordance with section 61 of Massachusetts General Laws chapter 23K, as added by section 16 of the Act. Pursuant to section 61 the MGC will expend monies from its Community Mitigation Fund to assist communities to offset costs related to the construction and operation of a gaming establishment including, but not limited to, the impacts on communities and

water and sewer districts in the vicinity of the Facility, local and regional education, transportation, infrastructure, housing, environmental issues and public safety, including the office of the county district attorney, police, fire and emergency services. The MGC may, at its discretion, distribute funds to a governmental entity or district other than a single municipality in order to implement a mitigation measure that affects more than one (1) municipality. In addition, in conjunction with its application to the Secretary of the Interior to have the Approved Gaming Site accepted into trust for gaming purposes, and in accordance with its obligations under the NEPA, the Tribe is required to commission and pay for environmental impact studies prior to the Approved Gaming Site being accepted into trust, a process that necessitates public hearings and other obligations to take into account the input and views of surrounding communities. This process will give communities in the vicinity an opportunity to shape the scope and content of the public studies made on the impacts on the human environment, which NEPA broadly defines to include among other things education, housing, public safety, infrastructure, transportation and traffic, air, land, water, wildlife and all other social and physical considerations, and the alternative proposals and costs to mitigate all impacts that are the reasonably foreseeable consequences of any proposed decision to take land in trust for the purpose of Gaming conducted under this Compact. Under the Act, Region C may establish a local community mitigation advisory committee, which shall include not fewer than six (6) members, one of whom shall be appointed by each of the Host and Surrounding Communities, and one of whom shall be appointed by each regional planning agency to which at least one of the Host or Surrounding Communities belongs. At least one (1) member of that committee shall be appointed by the Tribe, and the Tribal appointee shall also be eligible to serve as a representative to the subcommittee on community mitigation formed under chapter 23K, section 68(b), as added by section 16 of the Act. The local community mitigation advisory committee may provide information to and develop recommendations for the subcommittee on community mitigation of the impact of the Facility on the Host Community and Surrounding Communities. The rules and processes governing the committee and subcommittee, including those

providing guidance as to which communities shall be eligible for benefits and which applications for such benefits shall be granted, shall be as governed by the Act.

Part 13. Use of Net Revenues.

Net revenues (which for the limited purpose of this Part 13 are as defined in IGRA) that the Tribe receives from Gaming shall only be used for any one or more of the following purposes permitted under IGRA:

(a) To fund Tribal government operations or programs;

(b) To provide for the general welfare of the Tribe and its members;

(c) To promote Tribal economic development;

(d) To donate to charitable organizations;

(e) To help fund operations of local government agencies; or

(f) Other permitted uses under IGRA.

Part 14. Problem Gambling.

14.1. The Tribe acknowledges that the conduct of Gaming activities on its Tribal land may adversely impact individuals who suffer from problem gambling. The Tribe is committed to supporting problem gambling education, awareness and treatment for such individuals. The Tribe agrees to contribute an amount that is no less than $1.5 million annually to the Public Trust Health Fund established under Massachusetts General Laws chapter 23K, section 58, as added by section 16 of the Act. The annual payments agreed to under this Part 14 shall commence on the fifteenth (15th) day of the month following the one-year anniversary of the date the Facility opens and shall be paid on the same date each year thereafter for the duration of this Compact.

14.2. Prior to the commencement of Gaming at the Facility, the Enterprise shall develop and implement a responsible gaming program that meets or exceeds industry standards for a Gaming facility of comparable size.

14.2.1. The responsible gaming program of the Enterprise must include a process for persons to voluntarily exclude themselves from the Facility. The names of persons who have requested to be so excluded shall be entered and maintained by the Enterprise on a self-exclusion list. Persons whose names appear on the self-exclusion list shall agree that during any period of self-exclusion, such persons shall not collect any winnings or recover any losses resulting from any gaming activity at the Facility.

14.2.2. The Enterprise must make all reasonable efforts to remove all persons on the self-exclusion list from all of its direct marketing lists or direct marketing programs, and to invalidate such persons' membership in its players' club program, and deny such persons check cashing privileges.

14.2.3. The Enterprise shall develop a comprehensive training and education program for all Compact Game Employees to assist them in identifying problem gamblers.

14.3. The Enterprise shall post at conspicuous locations throughout the Facility, the toll-free help-line number for the Massachusetts Council on Compulsive Gambling and shall place at locations in the Gaming Area of the Facility educational and informational materials aimed at the prevention of problem gambling and which identify where persons may receive counseling or assistance for problem gambling.

Part 15. Enforcement.

15.1. The TGC and the MGC shall cooperate to ensure that the Enterprise is operated in compliance with the provisions of this Compact and all applicable laws and regulations and is subject to controls fully adequate to provide for the public safety and the physical security of all Patrons.

15.2. The MGC shall have the authority to investigate any report of a failure to comply with the provisions of this Compact, and may require the TGC to correct any such failure upon such terms and conditions as the MGC may determine are reasonably necessary after consultation with the TGC. All reports of a failure to comply with the provisions of this Compact or any applicable law shall be reduced to writing, and a copy shall be forwarded to the TGC, along with a written report of the outcome of any investigation that was conducted in connection therewith. Investigators employed by the MGC for the purposes set forth in this Part 15 shall be required to obtain Key Gaming Employee licenses as defined in Part 7 and shall carry proper identification at all times.

15.3. If the MGC determines that the Enterprise is not in compliance with the provisions of this Compact, the MGC shall deliver a written notice of non-compliance to the Enterprise, the TGC, and the Tribe that describes in detail the nature of the non-compliance and the action required to remedy it. In the event that corrective action is not undertaken by the Tribe, the TGC or the Enterprise within ten (10) days after receipt of a valid notice from the MGC, the MGC may initiate the dispute resolution procedures in Part 21 or may exercise its rights in the United States District Court for the District of Massachusetts pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii). In the event that the MGC determines that an emergency exists, the MGC may bring an action in the United States District Court for the District of Massachusetts immediately upon a finding by the MGC of non-compliance with the provisions of this Compact. In addition to the remedies provided hereunder, the MGC may exercise its right to petition the NIGC to impose penalties, which may include civil fines and temporary or permanent closure of the Facility, for violation of the provisions of this Compact.

Part 16. Audits.

16.1. The Tribe shall cause, at its own expense, the annual financial statements of its Gaming Operation to be audited by an independent certified public accountant in accordance with generally accepted auditing principles as applied to audits for the gaming industry. A copy of the current audited

financial statement for the Gaming Operation shall be submitted on an annual basis to the MGC no later than one hundred twenty (120) days following the end of the accounting period under review. The TGC shall also transmit a copy of all audit reports to the MGC within twenty (20) days of receipt of the audit by the TGC, and shall also provide a copy of the audit to other Commonwealth agencies upon request. Auditors employed by the MGC shall have access to the Facility and to all Records of the Enterprise during ordinary hours of operation in accordance with Part 6. All Records of the Enterprise and any MGC Records related to the Enterprise shall be deemed confidential and proprietary financial information pursuant to Part 11 and shall be protected from public disclosure by the MGC to the extent permitted by law. The Tribe shall provide secure storage in the Facility for the MGC to store any copies of Enterprise Records that are the subject of MGC review.

16.2. The Tribe shall select a nationally recognized accounting firm that is licensed by the Commonwealth and has demonstrated experience in auditing tribal gaming enterprises for the audit required by this Part.

16.3. The TGC shall provide to the MGC a copy of the audit report of the independent auditor at the same time the final audit is supplied to the NIGC under IGRA. Prior to issuance of the final audit report, the MGC may review, at the TGC offices, the draft audit report, engagement letter, management's representation letter, lawyer's contingency letter and other work-papers and make copies as the MGC deems necessary.

16.4. The MGC or other Commonwealth agency may cause at its own expense an audit to be made by or on behalf of the Commonwealth of the quarterly Allocation payment report submitted pursuant to subpart 9.5. The audit shall be conducted by a certified public accountant in accordance with generally accepted accounting principles. If the audit finds that there is a material understatement in the quarterly Allocation payment for any quarter as reflected on such quarter's quarterly Allocation payment report, the Commonwealth will promptly notify the Tribe, and the Tribe will either accept the difference or provide reconciliation satisfactory to the Commonwealth. If the Tribe accepts the difference or fails to

provide a reconciliation satisfactory to the Commonwealth within thirty (30) days of receipt of the notice, the Tribe must immediately pay the amount of any resulting deficiency in the quarterly Allocation payment plus interest on such amounts from the date they were due at the rate of one percent (1.0%) per month, or at the maximum rate permitted by state law for delinquent payments owed to the Commonwealth, whichever is less. The Tribe shall reimburse the Commonwealth or the MGC, as the case may be, for the cost of the audit if the audit finds a material understatement in the quarterly Allocation payment for any quarter as reflected on such quarterly payment report.

Part 17. Criminal Jurisdiction.

17.1. The Tribe and the Commonwealth acknowledge that pursuant to 18 U.S.C. §1166 (d), jurisdiction to prosecute violations of state gambling laws made applicable by that section to Indian country is vested exclusively in the United States, unless the Commonwealth and the Tribe agree in this Compact to transfer such jurisdiction to the Commonwealth.

17.2. It is the intent of the parties by the provisions of this Part 17 to provide for the application of the Commonwealth's laws, jurisdiction, and law enforcement services to criminal acts or omissions that directly affect the Enterprise, the Gaming Operation, or Persons or property at the Gaming Enclosure, and in no way to otherwise affect or limit any criminal jurisdiction of the Tribe.

17.3. The Tribe and the Commonwealth agree that, in the event of the violation of any Gaming law of the Commonwealth, or the commission of any criminal offense against the Enterprise or the Gaming Operation or against any Person or property at the Gaming Enclosure, whether by or against an Indian or non-Indian, the Commonwealth shall have and may exercise criminal jurisdiction to prosecute such Person under its laws and in its courts.

17.4. If the Tribe adopts a Law and Order Code no less stringent than that provided in 25 C.F.R. Part 11 and authorizes its Tribal Court to hear criminal cases arising from offenses committed by its members and occurring at the Gaming Enclosure, the Tribe shall have and may exercise criminal

jurisdiction concurrent with the Commonwealth over offenses committed at the Gaming Enclosure by members of the Tribe. Notwithstanding the foregoing and subject to any applicable federal jurisdiction, the Commonwealth shall have the first right of prosecution as to any crime which, if committed in the Commonwealth outside of Indian country, would be classified under the Commonwealth's laws as a felony.

17.5. Nothing in this Part 17 shall be interpreted to diminish the criminal jurisdiction of the United States or to diminish the rights of any Person under the United States Constitution or the Massachusetts Declaration of Rights as against the United States or the Commonwealth.

17.6 If the Tribe establishes a law enforcement agency, the Tribe shall implement a written law enforcement plan that provides a comprehensive and effective means to address criminal and undesirable activity at the Facility. The plan shall provide that sufficient law enforcement resources are available at all times to protect the Gaming Operation and the health, welfare and safety of all Patrons of the Facility. Officers employed by the Tribal law enforcement agency shall meet all training requirements for officers set by the Municipal Police Training Committee under Massachusetts General Law Chapter 6, Section 116 or meet the standards of education, experience and training established by the United States Secretary of the Interior pursuant to 25 U.S.C. § 2802, as amended by the Tribal Law and Order Act of 2010, Pub. L. 111-211.

17.7. The Tribe, including the TGC and Tribal law enforcement, and the Commonwealth agree to cooperate fully in the investigation and prosecution of any violation of any Gaming law of the Commonwealth or the commission of any criminal offense against the Enterprise or the Gaming Operation or against any Person at the Gaming Enclosure, whether by or against an Indian or non-Indian. To this end, the procedures applicable to the enforcement of criminal laws at the Gaming Enclosure shall be established pursuant to a Memorandum of Agreement to be executed by the Tribe and the Commonwealth or other appropriate law enforcement agencies, which shall include, but not be limited to, terms governing the manner in which the Tribe and the Commonwealth shall cooperate in

the detection and reporting of violations, the apprehension and detention of any suspected violator, the investigation and prosecution of any offense, and the coordination of such activities through a Tribal law enforcement liaison.

17.8. Law enforcement officers of the Commonwealth, or officers designated by the Commonwealth, shall have access to all areas of the Gaming Enclosure, all persons employed by the Enterprise or working at the Gaming Enclosure, all Patrons, and all surveillance video, reports and Records related to the conduct of Compact Games at the Facility for the purpose of maintaining public order and safety, conducting investigations related to possible criminal activity and enforcing applicable laws of the Commonwealth and for other law enforcement activities which are requested by the Tribe.

Part 18. Miscellaneous Provisions.

18.1. Smoke-free Facility. The Tribe agrees to prohibit all smoking within the Facility in accordance with Massachusetts General Laws Chapter 270, Section 22, to the extent any gaming establishments authorized by the Act are required to prohibit smoking. The parties agree that consistent with Section 22(c), the use of tobacco at the Facility is permitted for Native American religious or ceremonial purposes.

18.2. Firearms. The Tribe agrees to prohibit any person from bringing firearms of any kind into the Facility unless the person is a representative of a governmental law enforcement agency and is authorized by that law enforcement agency to carry such firearms and be on the premises in an official capacity. The Enterprise shall take reasonable measures to inform the public of this prohibition and to enforce it.

18.3. Persons Barred From the Facility. The TGC shall establish, maintain and share with the MGC a list of persons barred from the Facility because their criminal histories, associations, reputation or habits pose a threat to the integrity of Gaming or enhance the chances of unsuitable, unfair or illegal activities or pose a threat to the safety of the Patrons or employees. The TGC shall exclude persons on

such a list from entry into the Facility. The TGC shall also exclude persons engaging in disorderly conduct or other conduct jeopardizing public safety, and those persons who have either placed themselves on a self-exclusion list or who have been placed on an exclusion list in accordance with the Enterprise's policies.

18.4. Restricted Access. The TGC shall issue regulations prohibiting persons under the age of twenty-one (21) years from being present in any Gaming Area of the Facility, and prohibiting such persons from placing any wager, directly or indirectly; provided that persons under the age of twenty-one (21) years may be permitted to work in non-Gaming positions anywhere in the Facility as prescribed by the TGC.

18.5. Compliance with Tax Reporting Requirements. The Enterprise shall comply with all applicable reporting and withholding requirements of the United States Department of the Treasury, Internal Revenue Service and the Massachusetts Department of Revenue relating to employees and Patrons of the Enterprise and as required in connection with all forms of Gaming conducted at the Facility; shall maintain accurate Records of all such reports and returns; and shall implement policies and procedures adequate to assure compliance with such obligations.

18.5.1. Tax Agreement. Given that it is in their mutual benefit, the Tribe and the Commonwealth agree to enter into separate, good-faith discussions for an inter-governmental agreement which addresses measures the Tribe will use for the imposition, accounting, collection and remission to the Commonwealth of state taxes that, pursuant to federal law, are applicable to activities taking place upon, and to goods and services provided, received or consumed upon, the Approved Gaming Site. Such an inter-governmental agreement shall adhere to all federal statutory and case law pertaining to the application of state taxes on Indian Lands, and shall establish a mutually acceptable formula for the apportionment, between the Tribe and the Commonwealth, of the taxes collected under such agreement. Nothing herein is

intended to authorize the imposition of any state or local tax on the Tribe or a Tribal member that is not otherwise authorized under federal law.

18.6. Labor Relations. The parties agree that an important objective of this Compact is to assure that employee rights are protected. Notwithstanding any other provision of this Compact, the Gaming Operations authorized by this Compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix D and may only continue as long as the Tribe maintains in legal effect said Ordinance. The Tribe shall provide written notice to the MGC that it has adopted said Ordinance before commencing the Gaming Operation authorized by this Compact, and shall notify the MGC within ten (10) days of any amendment to or repeal of said Ordinance.

18.7. Most Favored Nation. The amount of Gross Gaming Revenue to be allocated pursuant to Part 9 is a mutually agreed-upon valuation of and equitable consideration for the concessions made by the Commonwealth to the Tribe set forth in this Compact. The parties understand that such valuation is made in light of the law and the expected market conditions that exist in the Commonwealth at the time of the execution of this Compact. With respect to any game, the Tribe shall at no time be required to pay a percentage of Gross Gaming Revenue under this Compact that is greater than the daily revenue percentage then required to be paid by any Category 1 Licensee or greater than the revenue allocation percentage then required to be paid by any other Indian tribe to the Commonwealth under a compact entered into pursuant to IGRA. The Tribe and the Commonwealth shall meet as soon as practical after any such reduction in the daily revenue percentage or lower tribal revenue allocation percentage becomes effective, in order to determine any possible effects the reduction may have on the other provisions of this Compact, including the need to amend or modify this Compact pursuant to Part 23; and any necessary changes to the implementation of this Compact.

18.8. If this Compact is not approved by the United States Secretary of the Interior as required by IGRA, the Governor agrees that, if requested by the Tribe, the Governor will immediately resume

negotiations in good faith with the Tribe for an amended compact. Before it is given effect, any amended Compact must be ratified by the General Court and, pursuant to IGRA, be approved by the Secretary of the Interior.

18.9. The parties acknowledge that the Tribe's right to engage in Gaming is as a Tribal government pursuant to the terms of this Compact and in compliance with IGRA, and not pursuant to a gaming license issued by the Commonwealth as that term is used under the Act. Section 91(d) of the Act requires that the compact "include a statement of the financial investment rights of any individual or entity which has made an investment to the tribe, its affiliates or predecessor applicants of the tribe for the purpose of securing a gaming license for that tribe under its name or any subsidiary or affiliate since 2005." In compliance therewith, the Tribe represents that since 2005 no individual or entity has made an investment to the Tribe, its affiliates or predecessor, for the purpose of securing a gaming license under its name or any subsidiary or affiliate. However, in keeping with the spirit of section 91(d), the Tribe discloses and represents that it has received financial assistance and funding because the Tribe is pursuing the conduct of gaming operations within the Commonwealth. Since 2005, the entities or individuals who have contributed or advanced funds to the Tribe, its Affiliates or any predecessor for such purposes are set forth in Appendix E, along with a description of the various instruments and agreements that reflect such assistance or funding, to which the Tribe or its Affiliates or predecessor is a party. The Tribe represents that it has received no other material third party financial assistance or investment connected to Gaming in the Commonwealth.

18.10. Before paying a Patron winnings in excess of $600, the Enterprise will verify the Patron' s identification and determine from information provided to it by the Commonwealth's child support enforcement agency ("IV-D agency") or department of revenue whether the Patron owes past-due child support or any tax liability to the Commonwealth. Subsequent to statutory state and federal tax withholding, the Enterprise shall first disburse to the IV-D agency the full amount of the cash or prize or such portion of the cash or prize that satisfies the Patron's past-due child support obligation. If

funds remain available after the disbursement to the IV-D agency or if no such obligation to the IV-D agency is owed, the Enterprise shall disburse to the department of revenue the full amount of the cash or prize or such portion of the cash prize that satisfies any past-due tax liability of the Patron. The Enterprise shall disburse to the Patron only that portion of the prize, if any, remaining after the Patron's past-due child support obligation or tax liability has been satisfied. Nothing in this Section 18.10 shall operate to waive the Tribe's sovereign immunity from a suit by a Patron whose winnings are paid to the IV-D agency or to the department of revenue as required by this Subpart 8.10.

Part 19. Patron Disputes, Workers' Compensation, Unemployment Insurance, Employee Health Care Coverage.

19.1. Patron Disputes. The TGC shall, after consultation with the MGC, establish procedures for the resolution of Patron disputes involving the play of Compact Games.

19.2. Workers' Compensation. The Tribe agrees that tort claims by employees of the Enterprise will be handled pursuant to the Commonwealth' s Workers' Compensation Law, Massachusetts General Laws Chapter 152. The Tribe and the Enterprise consent to the jurisdiction of the Commonwealth agencies charged with the enforcement of such law and to the courts of the Commonwealth for purposes of enforcement of such law. The Tribe will cause the Enterprise to consent to maintain in effect at all times during the term of this Compact a policy of workers' compensation insurance for such coverage as required by the Commonwealth's Workers' Compensation Law.

19.3. Unemployment Insurance. The Tribe agrees that it will participate in the Commonwealth's statutory program for providing unemployment insurance benefits and unemployment compensation disability benefits with respect to employees of the Enterprise, including compliance with the provisions of the Commonwealth's Unemployment Insurance Law, Massachusetts General Laws Chapter 151A. The Tribe and the Enterprise consent to the jurisdiction of the Commonwealth agencies charged with

the enforcement of such law and to the courts of the Commonwealth for purposes of enforcement of such law, provided that nothing herein shall be construed as a waiver by the Tribe or the Enterprise of the defense of sovereign immunity as to any claim for unemployment or disability benefits not covered by such unemployment or disability insurance.

19.4. Employee Health Care Coverage. The Tribe agrees that it will provide employees of the Enterprise with health care benefits which meet or exceed the benefits, protections and processes provided to other similarly situated employees within the Commonwealth by employers who are subject to the Commonwealth's Act Providing Access to Affordable, Quality, Accountable Health Care, Chapter 58 of the Acts of 2006, as amended, and all implementing regulations and all laws referenced or incorporated into such Act.

19.5. Generally. In any claim made under subparts 19.2, 19.3 or 19.4, the Tribe and the Enterprise waive the defenses of Tribal sovereign immunity from suit and exhaustion of tribal court remedies and agree not to raise sovereign immunity or exhaustion of tribal court remedies as defenses, but such waivers shall only apply to claims up to the extent of insurance coverage provided for under such subparts. The Tribe and the Enterprise likewise agree to bind and instruct their insurer not to raise sovereign immunity and exhaustion of tribal court remedies as defenses for claims up to the extent of insurance coverage provided for under such subparts. All claims shall be brought against the Enterprise, but shall not relieve the Tribe of any ultimate financial liability for such claims up to the extent of the insurance coverage provided for under such subparts, and the Tribal or Enterprise insurer shall be bound in each case to address the matter and pay for any such judgment.

Part 20. Insurance Coverage and Claims.

20.1. The Tribe shall, after consultation with the MGC, establish procedures governing the adjudication and compensation for commercial general liability claims arising in connection with the Facility. Such claims shall be covered by commercial general liability insurance consistent with

industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher and at the limits set forth below.

20.2. Limits. The Enterprise shall maintain a general liability insurance policy with limits of not less than twenty million dollars ($20,000,000) per occurrence and ten million dollars ($10,000,000) per person for bodily injury, personal injury, and property damage arising out of, connected with, or related to, the operation of the Facility or the Gaming Operation ("C overed Claims"). Covered Claims shall include, but not be limited to, claims based on the Commonwealth Dram shop laws or other alcohol-related injury claims. The laws of the Commonwealth shall be applied in determining all Covered Claims, including the time periods limiting the filing of any action. The insurance policy shall:

20.2.1. prohibit the insurer, the Enterprise or the Tribe from invoking sovereign immunity or the defense of exhaustion of tribal court remedies for claims up to the limits of the insurance policy;

20.2.2. permit the insurer, the Enterprise or the Tribe to assert any statutory or common law defense to the claim other than sovereign immunity and exhaustion of tribal court remedies as provided in subpart 20.2.1; and

20.2.3. provide that any award or judgment rendered shall be satisfied solely from insurance proceeds.

20.3. The Tribe and the Enterprise agree to waive sovereign immunity and consent to the jurisdiction of the courts of the Commonwealth for the adjudication of Covered Claims, but only to the extent of the insurance policy limits. The Tribe or the Enterprise may, in their discretion, consider claims for compensation in excess of the limits of the sovereign immunity waiver.

20.4. Notices explaining the procedures and time limitations for making a Covered Claim shall be prominently displayed in the Facility, posted on the Tribe's website, and provided to any person requesting that information, including any person for whom the Tribe, the Enterprise or the TGC has

notice of injury or property damage giving rise to the tort claim. Such notices shall explain the method and places for making a Covered Claim, including where the person may submit any required claim form, and the process for asserting the claim against the Tribe or the Enterprise. All Covered Claims pursuant to this Part 20 shall be brought exclusively against the Enterprise as the sole party in interest, but such claims shall not relieve the Tribe of any ultimate financial liability up to the limits and terms of the insurance coverage as set forth in this Part 20.

Part 21. Dispute Resolution.

21.1. In the event the Tribe or the Commonwealth believe that the other party has failed to comply with any requirement of this Compact, or in the event of a dispute over the interpretation of the terms and conditions of this Compact, the aggrieved party may invoke the dispute resolution procedure in this Part 21.

21.2. The aggrieved party shall serve written notice on the other party as provided in Part 29. The notice shall identify the specific provision of the Compact alleged to have been violated or in dispute and shall specify the factual basis for the allegation of non-compliance or the proposed interpretation. Representatives of the Tribe and the Commonwealth shall meet within thirty (30) days of the receipt of the notice and shall attempt to reach an equitable solution satisfactory to both the Tribe and the Commonwealth.

21.3. Subject to subpart 21.8, if the dispute is not resolved to the satisfaction of the parties within thirty (30) days after the meeting, either party may require the dispute to be resolved by an arbitrator in accordance with this section. Arbitration shall be initiated by serving on the other party a notice for arbitration. The notice shall specify the nature of the dispute, the provision of the Compact at issue, and the proposed relief sought. If a party refuses to consent to arbitration, the other party may seek to compel arbitration in the courts in the sequence set forth in subpart 21.8. The waivers of immunity and consent to suit therein shall be applicable to any claim to compel arbitration.

21.4. Arbitration under this Part 21 shall be conducted in accordance with the rules of the American Arbitration Association (AAA), or such other rules as the parties may mutually agree. Arbitrators shall be selected from a list maintained by the AAA and shall be experienced in Indian Law and shall not have represented either party during the previous ten (10) years. Each party shall select one arbitrator from the list and the two arbitrators shall select the third arbitrator. Except as provided in subpart 21.6, the costs of the arbitration shall be shared equally by the parties, but the parties shall bear their own costs and attorneys' f ees associated with the arbitration.

21.5. The arbitration hearing shall occur within ninety (90) days of the selection of the arbitrators under subpart 21.4, unless another date is stipulated to by the parties or set by the arbitrators. The hearing shall occur at a location agreed to by the parties, or if the parties cannot agree, as determined by the arbitrators.

21.6. The party initiating arbitration under this Part 21 shall certify, to the best of the party' s knowledge that its claim or contention is made in good faith and not for any improper purpose. If arbitration is found to have been initiated in violation of this subpart, the arbitrators, upon the request of a party or upon their own initiative, may award to the other party a sum equal to the costs of the arbitration and the other party's reason able attorneys' fees incurr ed in connection with the arbitration.

21.7. The decision of the arbitrators shall be final, binding and non-appealable. The prevailing party in an arbitration proceeding may bring an action solely and exclusively in the United States District Court for the District of Massachusetts to enforce the arbitration award, provided that if the federal court lacks or declines jurisdiction to hear the matter, such enforcement action may be brought in State court, and the parties agree to waive sovereign immunity solely and exclusively for the limited purpose of such an enforcement action.

21.8. Notwithstanding anything in this Part 21 to the contrary, neither party shall be compelled to arbitrate, and may litigate in the United States District Court for the District of Massachusetts or, if the federal court lacks or declines jurisdiction to hear the matter, in State court, a claim seeking to enjoin

or assert a violation or material breach of this Compact, to enforce a monetary obligation to pay an amount due to a party under this Compact, and each of the parties agrees to a limited waiver of sovereign immunity and consent to the jurisdiction of such court for such action.

21.9. In no event may either party be precluded from pursuing any arbitration or judicial remedy against the other on the grounds of a failure to exhaust administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resort to judicial process.

21.10 Any determination by the MGC pursuant to Section 91(e) of the Act that the Tribe will not have land taken into trust by the United States Secretary of the Interior will not be subject to the arbitration procedures in this Part 21. Nothing in this Part shall prevent the Tribe from challenging in a court of competent jurisdiction any such determination by the MGC.

21.11 This Part may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Part be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the TGC and MGC; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

21.12. The Tribe represents that any of the transactions contemplated by this Compact may constitute a "Commercial Transaction" within the meaning of the 2009-ORD-008 (the Tribe's Commercial Transaction Ordinance) which in Section 5(b) thereof authorizes the Tribal Council to waive the sovereign immunity of the Tribe if the waiver is made by an express written agreement and includes limits as to duration, grantee, transaction, and property or funds, if any, of the Tribe made subject thereto. Accordingly, notwithstanding any other provision herein, the Tribe warrants and represents that each and every waiver of the Tribe's sovereign immunity contained in this Compact is enforceable provided each is subject to the following express limitations, which are hereby accepted by the Commonwealth, that each waiver (a) shall be enforceable solely by the Commonwealth, (b) shall be

limited in duration to the duration of the term of this Compact (as it may be extended pursuant to Part 24), and (c) only permits enforcement of claims as against revenues and other assets of the Enterprise or those distributed by the Enterprise to the Tribe.

Part 22. Effective Date.

This Compact shall become effective upon the publication of notice of approval by the United States Secretary of the Interior in the Federal Register in accordance with 25 U.S.C. § 2710 (d)(3)(B) and § 2710(d)(8)(D).

Part 23. Amendments and Modifications.

23.1. The terms and conditions of this Compact may be modified or amended by written agreement of both parties, and any such amendment or modification shall be subject to the approval of the General Court and the United States Secretary of the Interior, to the extent required by law.

23.2. Except for a modification requested pursuant to Part 24, a request to amend or modify this Compact by either party shall be in writing, specifying the manner in which a party requests this Compact to be changed, and the reason(s) for the modification and the proposed language. Representatives of the Tribe and the Commonwealth shall meet within thirty (30) days of a request under this subpart 23.2 and shall expeditiously negotiate whether and on what terms and conditions this Compact will be amended or modified.

Part 24. Duration.

24.1. The initial term of this Compact shall conclude at midnight on the fifteenth (15th) year anniversary of the date the Facility is opened, unless terminated pursuant to Part 25, or automatically renewed pursuant to subpart 24.2 or 24.3.1 or 24.3.2. The initial term of any Facility opening on February 29th shall be treated as if opened on March 1st.

24.2. If in effect, this Compact shall be automatically renewed without modification for an additional term of fifteen (15) years unless not less than one hundred eighty (180) days prior to the expiration of this Compact, the Tribe or the Commonwealth serves written notice on the other for the modification or nonrenewal of the Compact. Any notice provided under this subpart 24.2 must be made in accordance with Part 29.

24.3. In the event notice for modification is given by either the Tribe or the Commonwealth, the notice must be accompanied by specific written grounds demonstrating that the modification is necessary to protect the integrity of the Gaming Operation, or to prevent material harm to Patrons of the Facility, the citizens of the Commonwealth, or the members of the Tribe. Within thirty (30) days of the receipt of a notice for modification, the Tribe and the Commonwealth shall meet and expeditiously negotiate to reach agreement on the requested modification.

24.3.1 If the parties reach agreement in writing on any negotiated modification before expiration of the initial term of the Compact referred to in subpart 24.1, the Compact shall be renewed, as modified, for an additional term of fifteen (15) years, provided the modified Compact is approved as may be required by State or federal law.

24.3.2 If no written agreement as to a negotiated modification is reached before expiration of the initial term of the Compact, the Compact shall renew without such modification, but either party may invoke the dispute resolution process in Part 21, provided the issue submitted for dispute resolution is limited to whether the party requesting modification of the Compact has demonstrated that the modification is necessary to protect the integrity of the Gaming Operation or prevent material harm to Patrons of the Facility, the citizens of the Commonwealth or the members of the Tribe. If modification of the Compact is ordered pursuant to a final non-appealable arbitration award under Part 21, the Compact shall be modified, but any such modified Compact shall be subject to approval as required by State or federal law.

24.4. In the event written notice of nonrenewal is given by either the Tribe or the Commonwealth, the notice must be accompanied by specific written grounds demonstrating that the decision to not renew the Compact is necessary to protect the integrity of the Gaming Operation, or to prevent material harm to Patrons of the Facility, the citizens of the Commonwealth, or the members of the Tribe. If such notice is received, and unless a successor compact has been negotiated and is in effect, the Tribe shall cease the conduct of all Compact Games upon the expiration date of this Compact.

24.5. Upon receipt of a notice of nonrenewal of this Compact from the Commonwealth, the Tribe may request that the Commonwealth enter into good faith negotiations under IGRA for a successor compact to become effective upon the expiration of this Compact. The Governor may enter into such negotiations, provided any successor compact is approved as may be required by State and federal law. If no successor compact is in effect at the expiration of the initial term of this Compact, the Tribe shall cease the conduct of all Compact Games.

24.6 If this Compact is automatically renewed for an additional term of fifteen (15) years pursuant to this Part, the Tribe shall cease the conduct of all Compact Games under this Compact upon the expiration of the second fifteen (15) year term.

Part 25. Termination.

25.1 Subject to Part 24, this Compact shall remain in effect until such time as:

25.1.1. This Compact is terminated by mutual agreement of the Tribe and the Commonwealth;

25.1.2. The Commonwealth amends its Constitution or its laws to criminally prohibit within the Commonwealth the conduct of all of the Gaming authorized by this Compact, and a court of competent jurisdiction makes a final and enforceable determination that all of the Gaming authorized by this Compact is criminally prohibited under the laws of the Commonwealth;

25.1.3. The federal government amends or repeals IGRA so that this Compact is no longer required for the Tribe to conduct the Gaming authorized under this Compact;

25.1.4. Either party materially breaches this Compact; but in such case, this Compact shall cease to be effective only after the dispute resolution process set forth in Part 21 has been concluded with a finding of material breach and the breach has continued for a period of sixty (60) days following the conclusion of the dispute resolution process; or

25.1.5. The Tribe fails to comply with its payment obligations to the Commonwealth under Part 9, and persists in such failure for a period of thirty (30) days after receipt of a written notice from the Commonwealth that specifies the amount due and the provision of this Compact under which such payment obligation is required. The Tribe may dispute the payment obligation or the amount of the obligation by invoking the dispute resolution process in Part 21. If the Tribe invokes the dispute resolution process in Part 21, the Tribe shall simultaneously place into escrow, in a financial institution that is not affiliated with either the Tribe or the Commonwealth, a sum of money equal to the amount claimed due by the Commonwealth. Within thirty (30) days of the entry of a final, non-appealable order by the arbitrators or by a court of competent jurisdiction, this Compact shall terminate and the Tribe shall cease the operation of Gaming governed by this Compact, unless the Tribe has paid the full amount due, if any, as determined by the arbitrators or the Court or made arrangements satisfactory to the Commonwealth to make the payment. If the Tribe fails to make the payment to the Commonwealth, or fails to make an arrangement with the Commonwealth for payment, the Compact shall terminate and the Tribe shall cease the operation of all Gaming governed by this Compact.

25.2. The Tribe shall not conduct Gaming under this Compact at the same time it conducts gaming in Region C under a Category 1 License it has obtained under the Act. The Tribe may conduct Gaming under this Compact at the same time it conducts gaming in Region C under a Category 2 License it has obtained under the Act. The Tribe will prohibit each Affiliate of the Tribe from financing, managing, or supporting the conduct of Gaming in Region C by any Person other than the Tribe.

25.3. Notwithstanding any expiration or termination of this Compact pursuant to Part 24 or Part 25, any payment obligation or liability assumed or incurred by the parties prior and up to the expiration or termination of this Compact shall survive such expiration or termination until satisfied in full. The dispute resolution process in Part 21 shall survive such expiration or termination and continue in full force and effect only so long as necessary for an aggrieved party to seek recourse as to the fulfillment of any such obligation or liability.

Part 26. Calculation of Time.

In computing any period of time prescribed or allowed by this Compact, the day of the act, event or breach from which the designated period of time begins to run shall not be included.

Part 27. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements between the parties with respect to the conduct of Gaming in the Commonwealth. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties in accordance with this Compact.

Part 28. Counterparts.

This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.

Part 29. Notices.

All notices and other communications required or authorized to be served in accordance with this Compact shall be served by registered or certified mail, return receipt requested, at the following addresses:

Governor, Commonwealth of Massachusetts
Office of the Governor
State House, Room 360
Boston, MA 02133

Chairperson, Mashpee Wampanoag Tribe
483 Great Neck Road South
Mashpee, MA 02649

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

Part 30. Filing of Compact with Secretary of State.

Upon execution by the Governor and approval by the General Court, a certified copy of this Compact shall be filed by the Governor with the Commonwealth's Secretary of State. Any subsequent amendment or modification of this Compact shall be similarly filed.

IN WITNESS WHEREOF, the Tribal Chairperson and Vice Chairperson of the Mashpee Wampanoag Tribe and the Governor of the Commonwealth of Massachusetts hereto set their hands and seals.

Date: July 12, 2012

COMMONWEALTH OF MASSACHUSETTS

By: _____

Deval L. Patrick
Governor

MASHPEE WAMPANOAG TRIBE

By: _____

Cedric Cromwell
Chairperson

By: _____

Aaron Tobey Jr.
Vice Chairperson