



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**JUN 29 2021**

The Honorable Mathew Wesaw  
Chairperson, Pokagon Band of Potawatomi Indians  
58620 Sink Road  
Dowagiac, Michigan 49047

Dear Chairperson Wesaw:

On May 5, 2021, the Pokagon Band of Potawatomi Indians (Tribe) submitted to the Department of the Interior (Department) *A Compact Between the Pokagon Band of Potawatomi Indians and the State of Indiana (State) Providing for the Conduct of Tribal Class III Gaming by the Pokagon Band of Potawatomi Indians* (Compact).

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

## **DECISION**

We undertook a thorough review of the Compact and the additional materials submitted by the parties. The Compact permits the Tribe to conduct class III gaming on its reservation in South Bend, Indiana, where it currently operates a class II gaming facility.<sup>1</sup> I have significant concerns with several provisions in the Compact, however, I decline to use my authority to take action on the Compact within the prescribed 45-day review period. As a result, the Compact is “considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA].” 25 U.S.C. § 2710(d)(8)(C).

The Compact takes effect upon the publication of notice in the *Federal Register* pursuant to IGRA.<sup>2</sup> We have set forth an explanation of our concerns below.

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<sup>1</sup> In 2016, the Department acquired the South Bend reservation in trust pursuant to section 6 of the Pokagon Restoration Act. Pub. L. No. 103-323, 108 Stat. 2153 (1994).

<sup>2</sup> 25 CFR § 293.15.

## ANALYSIS

### Permissible Subjects of Compact Negotiation

The Compact contains several notable provisions that implicate the limitations on compact negotiations prescribed by Congress in IGRA. 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;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities<sup>3</sup>
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are *directly related to the operation of gaming activities*.

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

Congress included these provisions and required the Secretary review tribal-state gaming compacts to fulfill the Department's trust responsibility to tribes by enforcing these provisions; thereby safeguarding against states leveraging compact negotiations to impose jurisdiction or influence over matters unrelated to gaming and solely flowing from the Tribe's inherent sovereignty.<sup>3</sup>

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<sup>3</sup> 25 U.S.C. § 2710(d)(8)(A).

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.<sup>4</sup> Those provisions limit 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 v. Schwarzenegger*, 602 F. 3d 1019 (9th Cir. 2010) (citing S. Rep. No. 100-446, at 33 (1988) (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. The above referenced provisions limit the subjects over which states and tribes can negotiate a tribal-state compact.

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

As we are all aware, many Indian tribes are opposing S.555 at least in part because of the potential of extending State jurisdiction over Indian lands for certain gaming activities. I wish to make it very clear that the committee has only provided for a mechanism to permit the transfer of limited State jurisdiction over Indian lands where an Indian tribe requests such a transfer as part of a tribal-State gaming compact for class III gaming. We intend that the two sovereigns – the tribes and the States – will sit down together in negotiations on equal terms and come up with a recommended methodology for regulating class III gaming on Indian lands. Permitting the States even in this limited say in matters that are usually in the exclusive domain of tribal government has been permitted only with extreme reluctance. As discussed in the committee report, *gambling is a unique situation and our limited intrusion on the right of tribal self-governance or State-tribal relations*.

S. Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071 (emphasis added).<sup>5</sup>

We conduct our review of tribal-state gaming compacts against this backdrop. Tribal governments are vested with the inherent authority to regulate gaming activities on their own lands. Congress through IGRA, prescribed a limited scope of a state's regulatory interests in class III gaming activities on Indian lands which are located within the state, provided the state permits the conduct of class III gaming. Therefore, we must view the scope of prescribed state regulatory authority over tribal gaming activities narrowly.

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<sup>4</sup> See 25 U.S.C. §§ 2702(2) and 2710(b)(2)(F).

<sup>5</sup> In the same colloquy, Sen. Inouye discussed the compact negotiation process, stating, "There is no intent on the part of Congress that the compacting methodology be used in such areas as taxation, water rights, environmental regulation, and land use." *Id.*

## **Impermissible Subjects of Compact Negotiations**

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. Because IGRA is very specific about the lawful reach of a compact, we interpret these provisions as applying only to spaces in which gaming actually takes place or in spaces in which other activities directly related to gaming occur. Similarly, compact provisions should not apply to businesses or amenities that are ancillary to gaming activities such as restaurants, spas, bars, etc. While these businesses may often be located near or adjacent to tribal gaming facilities, they ordinarily are not “directly related to the operation of gaming activities” and therefore not subject to regulation through a tribal-state compact.

The Compact’s inclusion of subjects relating to state environmental laws, tribal tax parity, state income tax withholding, child support withholding, and prohibitions against political contributions exceed the scope that the Tribe and State may include in a class III gaming compact under IGRA. Some of these include an expansive range of activities which are not related to gaming and not enforceable under IGRA.

### *Compact Section 9 – Application of State Environmental Law*

Subjecting tribal land to Indiana environmental regulations is problematic and not directly related to gaming. Section 9 of the Compact, which addresses infrastructure and site improvements on the South Bend Site exceeds the permissible scope of provisions in a class III gaming compact under IGRA. As defined in the Compact, the South Bend Site encompasses the entirety of Tribe’s approximately 166-acre reservation in South Bend, Indiana.<sup>6</sup> Section 9, in relevant part states: “with respect to all improvements on the South Bend Site, the Tribe shall maintain legal standards that are at least as rigorous as corresponding Indiana laws pertaining to such site improvements, including but not limited to construction and safety standards for Class 1 structures in applicable model codes of the International Code Council or the National Fire Protection Association, as adopted and amended by the State.”<sup>7</sup> Section 9 also requires the Tribe

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<sup>6</sup> Compact at Section 2(U).

<sup>7</sup> Section 9, Subsection (B). The Compact also requires that infrastructure and improvements to the South Bend Site requires the Tribe to comply with Tribal and federal environmental laws as well as State laws involving regulated wetlands under Indiana Code 13-18-22.

to comply with State laws involving regulated wetlands under Indiana Code 13-18-22, prior to undertaking improvements to the South Bend Site.

We note that the “Gaming Facility” occupies a small portion of the South Bend Site which includes amenities ancillary to the “Gaming Facility” as well as the future tribal village mixed use housing development. The provisions in Section 9 will apply to tribal activities far removed from and entirely unrelated to the operation of class III gaming. For example, improvements to the South Bend Site are expected for development of tribal housing, tribal administration buildings, utility infrastructure, and road systems. None of these are related to gaming. Under IGRA, it is not permissible for tribal-state compacts to provide for state regulation of activities such as tribal housing developments, government programs, or reservation infrastructure. Those activities involve intervening factors and otherwise are not “directly related” to class III gaming activities under IGRA.

*Compact Section 10 – Tax Parity, State Income Tax Withholding,  
Child Support Withholding, and Prohibitions on Political Contributions*

We have significant concerns about Section 10 of the Compact.

Subsection 10(A) impermissibly requires the Tribe to impose and maintain taxes on retail sales, food and beverage service, and hotel occupancy in an amount that is equal to or greater than State and local taxes which would be applicable to the Tribe’s operations if they were located off Indian lands. This is not directly related to gaming and is not a subject fit for inclusion in a class III gaming compact.

It is solely a Tribe’s prerogative flowing from its inherent tribal sovereignty to choose if it will impose taxes on business or amenities situated on tribal lands.

Section 10 of the Compact requires the Tribe to withhold state income taxes<sup>8</sup> and child support payments<sup>9</sup> from winnings of non-tribal patrons, as required by State law. These provisions obligate the Tribe to enforce State laws unrelated to gaming. The parties do not explain how these provisions comply with IGRA.

Subsection 10(E) of the Compact requires the Tribe to enact a law prohibiting any of its elected officials, or entities owned or controlled by the Tribe from making political contributions for the duration of the Compact and three years beyond. Political donations are not a topic that is directly related to the conduct of gaming and therefore not a proper topic of negotiation. The parties do not explain how limiting the Tribe, its elected officials, or entities owned or controlled by the Tribe from making political donations is a subject related to regulating gaming. If the

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<sup>8</sup> Compact at Subsection 10(A).

<sup>9</sup> Compact at Subsection 10(C).

State desires to limit political contributions, it is well within its powers to prohibit political candidates from accepting specific political donations under state law.

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. As discussed above, the provisions of Section 9 that apply beyond the Gaming Facility and certain provisions of Section 10 are inconsistent with IGRA.

To the extent that the Compact is implemented in such a way, it is not lawful.

### *Revenue Sharing*

The IGRA sharply limits the circumstances under which an Indian tribe can make direct payments to a state. We review revenue sharing provisions in compacts or amendments with great scrutiny. We begin with the premise that a Tribe's payments to a state or local government for anything beyond the costs of regulating class III gaming activities are a prohibited "tax, fee, charge, or other assessment." Our analysis first looks to whether the State has offered meaningful concessions to the Tribe that it was not otherwise required to negotiate, such as granting exclusive rights to operate class III gaming or other benefits with a gaming-related nexus. We then examine whether the value of the concessions provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required.

### Meaningful Concessions

The Compact provides that in exchange for the revenue sharing payments under subsection 17(B), the State agrees to limit "Expanded Gaming" within the "Exclusivity Area." Under subsection 17(B) the Tribe agrees to pay eight percent of net win from the class III electronic gaming devices. Under subsection 17(C) the Tribe provides the State a minimum payment guarantee which allows the Tribe to offer a mix of class II and class III games, including class II progressive games, while protecting the State's economic expectations.<sup>10</sup> The parties assert the provisions in subsection 17(C) do not regulate class II gaming, rather it defines the parties economic expectations as the Tribe converts the South Bend gaming facility from class II to a mix of class II and class III.<sup>11</sup> Class II gaming is not regulated by tribal-state gaming compacts.

The "Exclusivity Area," is comprised of the north western Indiana counties of Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Miami, Noble, Porter, Pulaski, St. Joseph, Starke, Wabash, and Whitley. We note the Exclusivity Area includes the Indiana portion of the Chicago metropolitan area. We have consistently recognized that substantial exclusivity constitutes a meaningful concession to tribes seeking to participate in gaming under IGRA. We

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<sup>10</sup> Joint Response from the Pokagon Band of Potawatomi and the State of Indiana to the June 5, 2021 request for additional information from Director Hart, Office of Indian Gaming, (June 10, 2021).

<sup>11</sup> *Id.*

have reached the same conclusion in this instance; the State's concession of substantial exclusivity for at least twenty years constitutes a meaningful concession to the Tribe.

### Substantial Economic Benefits

Under the second prong of our analysis, we examine whether the value of the concessions provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required. The Tribe submitted an overview of the Compact, which explains the extent of its exclusivity within the 16-county area specified in the Compact, and the value to the Tribe of this exclusivity. The economic analysis shows that the Tribe's exclusivity protects its projected revenue and substantially outweighs the required revenue sharing payments on an annual basis. And, if the State breaches the Tribe's exclusivity, the Tribe will cease the revenue sharing payments. The Tribe's financial projections reasonably conclude that the Tribe will generate substantial revenues over the life of the Compact, which will allow the Tribe to pay its debts, develop its economy and strengthen its government. This means that the State's meaningful concession of exclusivity from expansions of non-tribal operators within the 16-county area has substantial economic value to the Tribe and justifies the revenue sharing payments.

### **CONCLUSION**

We undertook a thorough review of the Compact and the additional materials submitted by the Tribe, and the State. As explained above, I have significant concerns with several provisions in the Compact, however, I decline to use my authority to take action on the Compact within the prescribed 45-day review period. As a result, the Compact is "considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(c).

The Compact is effective upon the publication of notice in the *Federal Register*, as required by 25 U.S.C. § 2710(d)(8)(D). A similar letter is being sent to the Honorable Eric Holcomb, Governor of Indiana.

Sincerely,



Bryan Newland  
Principal Deputy Assistant Secretary –  
Indian Affairs

**A COMPACT BETWEEN  
THE POKAGON BAND OF POTAWATOMI INDIANS  
AND  
THE STATE OF INDIANA  
PROVIDING FOR THE CONDUCT OF TRIBAL  
CLASS III GAMING BY THE  
POKAGON BAND OF POTAWATOMI INDIANS**



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THIS COMPACT is made and entered into this 21st day of January, 2021, by and between the POKAGON BAND OF POTAWATOMI INDIANS (hereinafter referred to as “Band”) and the STATE OF INDIANA (hereinafter referred to as “State”).

## RECITALS

WHEREAS, the State of Indiana is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Enabling Act of April 19, 1816, 14 Ch. 57, April 19, 1816, 3 Stat. 289, and is authorized by its constitution to enter into contracts and agreements, including this agreement with the Band; and

WHEREAS, the Band is a federally recognized Indian tribe (reaffirmed pursuant to An Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians, P.L. 103-323, Sept. 21, 1994, 108 Stat. 2154 (hereinafter referred to as the “Pokagon Restoration Act”), and its governing body, the Tribal Council, is authorized by the Band’s constitution to enter into contracts and agreements of every description, including this agreement with the State; and

WHEREAS, the United States Supreme Court in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), held that absent Congressional consent, and unless the state interests are sufficient to overcome federal preemption, state gaming regulations do not apply to Indian tribes within Indian country in the conduct of gaming activities under their sovereign authority; and

WHEREAS, the Indian Gaming Regulatory Act of 1988 (25 U.S.C. § 2701 *et seq.*) (hereinafter “IGRA”) establishes a federal framework for tribal gaming that permits Indian tribes to operate Class III gaming activities on Indian lands pursuant to a tribal-state Compact entered into for that purpose; and

WHEREAS, on June 30, 1993 the State through the enactment of Sec. 124 of P.L. 277-1993, IC 4-33, Riverboat Gambling, authorized slot machines, roulette, baccarat, twenty-one, craps, and various other forms of casino gaming to be conducted within the State by riverboats located in certain specified counties and subject to state licensing and regulation; and

WHEREAS, said casino games are permitted “for any purpose by any person, organization or entity,” within the meaning of IGRA § 2710(d)(1)(B) and would be considered “Class III gaming” if conducted by the Band on “Indian lands”, as those terms are defined in IGRA; and

WHEREAS, on May 12, 2015, the State enacted Sec. 1 of P.L. 255-2015, Tribal Gaming, which establishes the process by which the State may negotiate and enter into a tribal-state Compact with an Indian tribe with land located within Indiana and

already taken into trust by the United States government in order to authorize Class III gaming on those Indian lands located within Indiana; and

WHEREAS, pursuant to a final agency determination made on November 17, 2016, by the Assistant Secretary – Indian Affairs for the U.S. Department of the Interior, on November 28, 2016, the United States accepted the conveyance of approximately 166 acres of land located in the City of South Bend, Indiana, in trust for the Band, which site the United States federal government determined is eligible for gaming under IGRA; and

WHEREAS, on January 16, 2018, the Band commenced “Class II gaming”, as that term is defined in IGRA, on the South Bend Site under the business name Four Winds South Bend; and

WHEREAS, by letter to the Governor of Indiana dated August 13, 2019, the Band requested in accordance with IGRA § 2710(d)(3)(A) that the Band and the State engage in negotiations for the purpose of entering into a gaming compact governing the conduct of “Class III gaming”, as that term is defined in IGRA, on the South Bend Site; and

WHEREAS, a Compact between the Band and the State for the conduct of Class III gaming satisfies the requirements of IGRA in order for the Band to operate Class III gaming on the South Bend Site; and

WHEREAS, the State and the Band, in recognition of the sovereign rights of each party and in a spirit of cooperation in the interests of the citizens of the State and the citizens of the Band, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the Band and the State agree as follows:

## **SECTION 1. Purpose and Objectives.**

The purpose and objectives of the Band and State in making this Compact are as follows:

(A) To allow the Band, pursuant to IGRA, to lawfully conduct certain Class III gaming on the South Bend Site;

(B) To fulfill the purpose and intent of IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

(C) To provide tribal revenues to fund tribal government operations and programs, in order to provide for the general welfare of the Band and its citizens and,

generally, to promote tribal economic development, tribal self-sufficiency, and a strong tribal government consistent with the intent and purpose of IGRA;

(D) To provide for the operation of certain Class III gaming in which the Band shall have the sole proprietary interest and be the primary beneficiary of the Band's gaming enterprise;

(E) To recognize the State's interests in the establishment by the Band of rules for the regulation of Class III gaming operated by the Band on the South Bend Site;

(F) To recognize the State's interests in confirming that the Band maintains adequate regulatory controls over Class III gaming to ensure that it is conducted fairly and honestly; and

(G) To establish requirements for notifying patrons of the Band's Class III gaming operations on the South Bend Site that the Gaming Facility is not regulated by the State and that patrons must look to the Band or to the federal government to resolve any issues or disputes with respect to the Band's Class III gaming operation under this Compact.

## **SECTION 2. Definitions.**

For purposes of this Compact, the following definitions pertain:

(A) "Any Offense" means, as referenced in subsection 4(I)(3), any criminal offense whether committed in Indiana or any other jurisdiction, that is, or would be, a crime under the provisions of the Title 35 of the Indiana Code, Criminal Law and Procedure, as amended, or any other criminal offense not specified in subsection 4(I)(3) involving gambling, theft, dishonesty, or Fraud or Misrepresentation arising under Indiana law or the law of another state or jurisdiction, that was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from such person's criminal record by executive pardon, state or federal court order, or operation of law.

(B) "Certificate of Self-Regulation" means the Certificate of Self-Regulation issued to the Band by the NIGC pursuant to IGRA and NIGC regulations (25 C.F.R. Part 518), which Certificate of Self-Regulation was first effective on January 1, 2019.

(C) "City" means the City of South Bend, located in St. Joseph County, Indiana, an Indiana municipal corporation.

(D) "Class III gaming" means all forms of gaming authorized by this Compact, which are neither Class I nor Class II gaming, as such terms are defined in IGRA §§ 2703(6) and (7). Only those forms of Class III gaming authorized by this

Compact may be offered by the Band pursuant to this Compact.

(E) “Compact” means this Compact between the Band and the State negotiated and entered into pursuant to IGRA § 2710(d)(3) to govern Class III gaming on the South Bend Site.

(F) “Compliance Oversight” means activities reasonably required to ensure that Class III gaming at the South Bend Site is being conducted in compliance with the express requirements of this Compact. Consistent with Section 4, Compliance Oversight shall not involve the exercise of any enforcement or other regulatory authority. Except where expressly stated otherwise in this Compact, Compliance Oversight activities shall be undertaken in compliance with subsection 4(P).

(G) “Confidential Information” means financial information, proprietary information, trade secrets, plans, methods, data, capital development, inventions or other information regarding the Band’s Class III gaming operations and the games conducted by the Band, and any other gaming and non-gaming business activities conducted at the Gaming Facility and ancillary to such Class III gaming operations. The term does not include information that: (1) is publicly available or becomes publicly available through no action or fault of the receiving party; (2) was in the receiving party’s possession or already known to the receiving party prior to disclosure by the disclosing party, provided that the source of such information was not bound by any contractual, legal, or other obligation of confidentiality to the disclosing party with respect to such information; or (3) is independently developed by the receiving party without the use of Confidential Information,

(H) “Electronic Game of Chance” means a “slot machine” and “electronic or electromechanical facsimiles of any game of chance” as those terms are defined in 25 C.F.R. § 502.4(b) and 25 C.F.R. § 502.8. The term Electronic Game of Chance does not include a toy crane machine, as defined in IC 35-45-5-1(k), or any other device played for amusement that rewards a player exclusively with a toy, a novelty, candy, other noncash merchandise, or a ticket or coupon redeemable for a toy, a novelty, or other noncash merchandise that has a wholesale value of not more than the lesser of ten (10) times the amount charged to play the amusement device one (1) time or twenty-five dollars (\$25). The term also does not include any electronic gaming devices that are Class II games under IGRA.

(I) “Endorsement Date” means the date that the Compact was endorsed on behalf of the Band in accordance with subsection 11(A).

(J) “Fraud or Misrepresentation” means a criminal offense committed in Indiana or any other jurisdiction, involving, theft, fraud, or misrepresentation, which is a felony or would be a felony if committed in Indiana, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from such person’s criminal record by executive pardon, state or federal

court order, or operation of law. This term does not include arrests which have been sealed, convictions which have been expunged by a court, or traffic infractions.

(K) “Gambling Game” means:

- (1) gambling game as defined under IC 4-33-2-9 and IC 4-35-2-5; and
- (2) any game authorized under IC 4-30, IC 4-31, IC 4-32.3, or IC 4-36 if such game is played in an electronic or electromechanical format, including without limitation any video gaming terminal that simulates the play of any game through the use of a video display, that replicates such game by incorporating all of the essential characteristics of the game.

(L) “Gambling Operation” means:

- (1) a gambling operation as that term is defined in IC 4-33-2-10 and any permit holder under IC 4-35-2-9 if the permit holder is licensed to conduct Gambling Games pursuant to IC 4-35-5; and
- (2) any other single location that is permitted to conduct more than fifteen (15) Gambling Games as that term is defined in subsection 2(K)(2).

(M) “Gaming Facility” means any building located on the South Bend Site where Class III gaming is conducted by the Band in accordance with this Compact. The term Gaming Facility is limited to the footprint of the Gaming Facility on the South Bend Site and does not include any gaming-related commercial amenities located within or adjoining such Facility, including without limitation restaurants, bars, hotels, spas, and retail shops, provided that Class III gaming is not conducted within such amenities.

(N) “Gaming Official or Employee” (collectively, “Gaming Officials and Employees”) means regarding Class III gaming activities at each Gaming Facility: (i) primary management officials and key employees as those terms are defined by IGRA, NIGC regulations, and Pokagon Band Gaming Regulations, (ii) all other employees whose regular job duties require access to restricted areas or involvement in Class III gaming activities at a Gaming Facility, and (iii) consultants providing gaming-related services directly to a Class III gaming operation (except legal counsel).

(O) “NIGC” means the National Indian Gaming Commission established by IGRA.

(P) “Net Win” means the total amount wagered on each Electronic Game of Chance, minus the total amount paid to players for winning wagers at such Electronic

Games of Chance. For purposes of calculating Net Win, the total amount wagered shall not include the value of Promotional Wagers. The total amount of prizes paid to players for winning wagers at each Electronic Game of Chance shall include all prizes, consisting of electronic credits on each Electronic Game of Chance, cash, check, or merchandise from all wagers, including Promotional Wagers. The formula prescribed here for calculating Net Win applies only to the calculation of the payments due under this Compact and is not intended to preclude the Band from otherwise following accepted GAAP and AICPA Guidelines in its general accounting practices in compliance with IGRA and this Compact.

(Q) “Payment Period” means a twelve-month fiscal period beginning on August 1 and ending on July 31 of each year.

(R) “Person” means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, trust, labor organization, company, corporation, association, committee, state, local government, government instrumentality or entity, or any other organization or group of persons acting jointly.

(S) “Pokagon Band Gaming Regulations” means: (i) the Pokagon Band Gaming Regulatory Act enacted into law by the Band and approved by the NIGC in accordance with IGRA, (ii) all gaming regulations duly promulgated by the Pokagon Band Gaming Commission in implementation of the Pokagon Band Gaming Regulatory Act, (iii) IGRA, and (iv) this Compact to authorize and govern Class III gaming on the South Bend Site. The Band shall provide to the State copies of: (i) any amendment to the Pokagon Band Gaming Regulatory Act within thirty (30) days of the date of approval of such amendment by the NIGC and (ii) any amendment to gaming regulations promulgated by the Pokagon Band Gaming Commission within thirty (30) days of the date such regulations are final and in effect. The Band hereby agrees that at least thirty (30) days prior to the commencement of any Class III gaming on the South Bend Site it shall enact amendments to the Pokagon Band Gaming Regulatory Act and shall promulgate regulations to incorporate the regulatory requirements of this Compact and, to the extent expressly required by this Compact, Indiana law.

(T) “Promotional Wagers” shall include wagers made by patrons using non-cashable vouchers, coupons, electronic credits, or electronic promotions provided by the Band without monetary consideration and which have no cash redemption value.

(U) “South Bend Site” means the trust and reservation lands acquired under § 6 of the Pokagon Restoration Act located in the City that consist of approximately 166 acres that were taken into trust for the Band by the United States on November 28, 2016, 81 Fed. Reg. 89499-89504, which lands the United States federal government determined are eligible for gaming under IGRA § 2719. Class III gaming may only be conducted on the South Bend Site by the Band under this Compact.

(V) “Table Game” means any “house banking card game” as that term is defined in 25 C.F.R. § 502.4(a). The term does not include any games or gaming devices that are Class II games under IGRA.

(W) “Tribal Chairperson” means the duly elected Chairperson of the Tribal Council of the Band.

References in this Section 2 and elsewhere in this Compact to State, Band, or federal laws and regulations includes all amendments thereto and any successor laws and regulations that may be enacted or promulgated

### **SECTION 3. Authorized Class III Games.**

(A) The Band may lawfully conduct on the South Bend Site only the following forms of Class III gaming that may be lawfully conducted by any other person under Indiana law:

- (1) Electronic Games of Chance;
- (2) Baccarat and mini-baccarat; chemin-de-fer; twenty-one (21) or blackjack; poker, including but not limited to Caribbean Stud poker, Let-It-Ride, and pai gow poker (to the extent not played as a house banking game); and all other banking card games that are not treated as Class II gaming pursuant to 25 U.S.C. § 2703(7)(C);
- (3) Roulette, craps, pai gow, Klondike, Big Six wheels, Sic bo, dice, and all other table games;
- (4) Sports wagering as permitted and defined under IC 4-38 and paid fantasy sports games as permitted and defined under IC 4-33-24; and
- (5) Keno, raffles, pull tabs, and similar games permitted under IC 4-32.3.

(B) Additional Class III games may be lawfully offered by the Band only by mutual agreement of the Band and the State as follows:

- (1) The Band shall request additional Class III games by letter from the Tribal Chairperson on behalf of the Band to the Governor on behalf of the State. The request shall identify the additional proposed Class III gaming activities with specificity and any proposed amendments to the Pokagon Band Gaming Regulatory Act.
- (2) The State, acting through the Governor, shall approve the Band’s request within ninety (90) days after receipt if the Governor



determines the following criteria have been satisfied:

- (a) The proposed gaming activities are permitted in the State for any purpose by any person, organization, or entity; and
- (b) The provisions of this Compact are adequate to fulfill the policies and purposes set forth in IGRA with respect to such additional games.

The Governor's determination shall be a final decision of the State, subject to the dispute resolution procedures under Section 7 of this Compact.

(C) Sports wagering and paid fantasy sports games authorized to be conducted by the Band under this Compact may be conducted and offered by the Band on internet and mobile platforms only so long as the wagers on such platforms are initiated by patrons who are physically present on the South Bend Site at the time the wager is initiated, and the wager is placed, received, or otherwise made at a Gaming Facility.

(D) The number of games that may be operated or played on the South Bend Site cannot exceed the greatest number of games offered by a State licensed owner or operating agent as of the effective date of this Compact, which is 3,403 games. Except as otherwise specifically provided in this Compact, the Band may determine, by Band law or regulation, the hours or period of operation and limits on wagers or pot size for Class III gaming on the South Bend Site. For purposes of this subsection 3(D), the term "games" means any gambling game expressly permitted under this Section 3 and as that term is defined by IC § 4-33-2-9 and IC § 4-35-2-5.

(E) Except as expressly authorized by this Compact for sports wagering and paid fantasy sports games under subsection 3(C) of this Compact, the Band shall not conduct or allow any other person to conduct any form of internet gaming or mobile wagering under this Compact; provided, however, that to the extent that the State authorizes a State licensed owner or operating agent to conduct other forms of Class III gaming on internet or mobile platforms, then the Band also may conduct those same forms of Class III gaming on internet and mobile platforms to the same extent authorized for the State licensed owner or operating agent, but only so long as the wagers on such platforms are initiated by patrons who are physically present on the South Bend Site at the time the wager is initiated, and the wager is placed, received, or otherwise made at a Gaming Facility.

(F) Notwithstanding anything to the contrary in this Section, this Compact does not authorize the operation of any of the following forms of Class III gaming:

- (1) Any form of wagering on live or simulcast horse racing or dog racing; and

- (2) Lottery games as defined in 65 IAC 1-1-1, except to the extent such games are authorized as approved gambling activities under IC 4-32.3.

**SECTION 4. Administration and Regulation of Class III Gaming.**

(A) The Band shall maintain at all times while this Compact remains in effect Pokagon Band Gaming Regulations in compliance with IGRA and governing all aspects of the Band's Class III gaming operations on the South Bend Site.

(B) With respect to sports wagering authorized under Section 3 of this Compact, the Band shall adopt as part of the Pokagon Band Gaming Regulations those regulatory standards embodied in Indiana laws, rules, directives, and regulations related to who may place such wagers, geofence testing and standards, network diagrams, wager types and approved events, internal control procedures, change management for event wagering, and field testing requirements.

(C) With respect to paid fantasy sports games authorized under Section 3 of this Compact, the Band shall adopt as part of the Pokagon Band Gaming Regulations those regulatory standards embodied in Indiana laws, rules, directives, and regulations related to who may participate in a paid fantasy sports game, game operator requirements and rules, prizes, and financial reserves.

(D) With respect to other forms of Class III gaming on internet or mobile platforms authorized under subsection 3(E) of this Compact, the Band shall adopt as part of the Pokagon Band Gaming Regulations internal control requirements and technical standards that are at least as stringent as the State internal control requirements and technical standards for those other forms of Class III gaming on internet or mobile platforms.

(E) The regulatory requirements of this Section 4 shall apply to the conduct of all Class III gaming authorized by the Compact. At all times during which the Band conducts any Class III gaming under this Compact, the Band shall maintain, as part of the Pokagon Band Gaming Regulations requirements at least as restrictive as those set forth herein.

(F) The Band shall license, operate, and regulate all Class III gaming activities pursuant to this Compact, Band law, IGRA, and all other applicable federal law. This shall include but not be limited to the licensing of Gaming Officials and Employees. In its operation and regulation of Class III gaming on the South Bend Site, the Band shall promptly address and resolve any material violation of this Compact and Band and federal laws, including IGRA, that are applicable to Class III gaming.

(G) If the Band's Certificate of Self-Regulation is revoked by the NIGC, then

the State may, in its discretion and in coordination with the Pokagon Band Gaming Commission, engage in Compliance Oversight activities regarding the licensing of all Gaming Officials and Employees pursuant to this Compact and the applicable standards in the Pokagon Band Gaming Regulations. The Band shall cooperate with the State in its Compliance Oversight efforts regarding the applicable licensing standards. The State's right to engage in Compliance Oversight regarding the licensing of Gaming Officials and Employees will become effective immediately on the date the Band's Certificate of Self-Regulation is revoked, notwithstanding any appeal of such revocation the Band may pursue pursuant to 25 U.S.C. § 2714. The State's right to engage in Compliance Oversight of the licensing of Gaming Officials and Employees shall cease to be effective immediately on the date that the NIGC re-issues a Certificate of Self-Regulation to the Band.

(H) Regarding the management of the Band's gaming operations, the Band shall have the sole proprietary interest and shall be the primary beneficiary of the Band's gaming operations. A Gaming Facility at which Class III gaming operations are authorized under this Compact shall be owned solely by the Band.

(I) The Band may not license, hire, or employ as a Gaming Official or Employee any person who:

- (1) Is under the age of 18; or
- (2) Has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, or Fraud or Misrepresentation; or
- (3) Has been convicted of or entered a plea of guilty or no contest to Any Offense within the immediately preceding five years; this provision shall not apply if that person is a Band citizen and has been determined by the Band to be a person who is not likely again to engage in any offensive or criminal course of conduct and the public good does not require that the applicant be denied a license as a Gaming Official or Employee; or
- (4) Is determined by the Band to have participated in organized crime or unlawful gambling or whose prior activities, criminal records, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or
- (5) Was denied a license by the Indiana Gaming Commission or had his or her license revoked by the Indiana Gaming Commission, as verified by the Indiana Gaming Commission to the Band, and such

person remains ineligible for a license from the Indiana Gaming Commission.

The Band shall provide notice to the State if the Band denies a license to any person applying for a license as a Gaming Official or Employee or if the Band revokes a license from a Gaming Official or Employee. The notice to the State shall include the person's name and the reasons for denial or revocation of a license.

(J) All management contracts entered into by the Band regarding its Class III gaming facilities operated pursuant to this Compact shall conform to all the requirements of IGRA, including § 2711, and Band law. If the Band submits to the NIGC for review a draft management contract for the operation of any Gaming Facility, the Band shall within seven (7) days of such submission provide a copy of the draft management contract to the State. Upon NIGC approval of such management contract, the Band shall within seven (7) days of the execution of such management contract provide the State with a copy of the executed management contract.

(K) All accounting and financial activities for Class III gaming under this Compact shall conform to industry standards and generally accepted accounting principles (GAAP). Accounting records shall be kept on a double entry system of accounting, maintaining detailed, supporting, subsidiary records. The Band shall maintain the following records for not less than three (3) years:

- (1) Revenues, expenses, assets, liabilities, and equity for the location at which Class III gaming is conducted;
- (2) Daily cash transactions for each Class III gaming activity at each Class III gaming operation, including but not limited to transactions relating to each gaming table bank, game drop box, and gaming room bank;
- (3) All markers, IOUs, returned checks, hold checks, or other similar credit instruments;
- (4) Individual and statistical game records (except for card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;
- (5) Contracts, correspondence, and other transaction documents relating to all vendors and contractors;
- (6) Records of all gaming enforcement activities;

- (7) Audits prepared by or on behalf of the Band; and
- (8) Personnel information on all Gaming Officials and Employees, including rotation sheets, hours worked, employee profiles, and background checks.

(L) No person under the age of 21 may participate in any Class III game.

(M) The Band shall not conduct any Class III gaming within the State outside of the South Bend Site under this Compact. This prohibition includes accepting any wagers initiated on any internet or mobile platforms from patrons who are not physically present on the South Bend Site at the time the wager is initiated.

(N) The rules of each Class III card and table game shall be posted in a prominent place in proximity to the locations where such games are played and must designate:

- (1) The maximum rake-off percentage, time buy-in, or other fee charged;
- (2) The number of raises allowed;
- (3) The monetary limit of each raise;
- (4) The amount of ante; and
- (5) Other rules as may be necessary.

(O) Upon the request of the State, the Band shall within thirty (30) days of such request provide to the State copies of its eligibility determination and investigative reports on any and all Gaming Officials and Employees required to be licensed under 25 C.F.R. Part 556, the Band's Gaming Regulatory Act, or this Compact to allow the State to make an independent determination as to the suitability of these individuals, consistent with the standards set forth in subsection 4(I) herein. The Band shall not license any person as a Gaming Official or Employee if that person has been denied a license or had a license revoked by the Indiana Gaming Commission and such person remains ineligible for a license from the Indiana Gaming Commission.

(P) The regulatory requirements set forth in this Section of this Compact shall be administered and enforced as follows:

- (1) The Band shall have sole responsibility to administer and enforce the regulatory requirements set forth in this Compact.
- (2) A representative authorized in writing by the Governor of the State or his or her designee shall have the following right to inspect all

Gaming Facilities and all records related to Class III gaming under this Compact, including those records set forth in subsection 4(K) herein, subject to the following conditions:

- (a) With respect to public areas, at any time without prior notice;
- (b) With respect to private areas not accessible to the public, at any time during normal business hours, with twelve (12) hours prior written notice; and
- (c) With respect to inspection and copying of all records relating to Class III gaming, with forty-eight (48) hours prior written notice, not including weekends.

If the Band's Certificate of Self-Regulation is revoked, then the State may inspect the Band's Class III gaming operations at any time without prior notice. The State's right to inspect the Band's Class III gaming operations under this subsection in such manner will become effective immediately on the date the Certificate of Self-Regulation is revoked notwithstanding any appeal of such revocation the Band may pursue pursuant to 25 U.S.C. § 2714. The State's right under this subsection to conduct inspections of the Band's Class III gaming operations without advance notice shall cease to be effective immediately on the date that the NIGC re-issues a Certificate of Self-Regulation to the Band.

(Q) Confidentiality.

- (1) Except as expressly allowed by the exceptions defined below, and subject to Indiana law, the State agrees to maintain in confidence and to never disclose to any third party any Confidential Information provided to the State by the Band or prepared by the State through its access to such Confidential Information under the terms of this Compact. The State, including without limitation any State official, employee, agency, or entity that has received any such Confidential Information from the Band shall: (i) maintain all such Confidential Information in a secure place accessible only to authorized State officials and employees, and (ii) adopt procedures and regulations to protect the Confidential Information from unauthorized disclosure without the prior approval of a duly authorized representative of the Band. Nothing contained in this subsection 4(Q) shall be construed to prohibit:
  - (a) The furnishing of any information to a law enforcement or regulatory agency of the Federal or State government or to the State government pursuant to a lawful request of such agency

or government;

- (b) The State from making known the names of persons engaged in the conduct of Class III gaming activities pursuant to the terms of this Compact, the locations at which Class III gaming activities are conducted, or the dates on which such activities are conducted pursuant to the terms of this Compact;
- (c) Publishing the terms of this Compact;
- (d) Disclosing information as necessary to audit, investigate, prosecute, or arbitrate suspected violations of this Compact, subject to all limitations in this Compact;
- (e) Complying with any law, subpoena, or court order, provided that the State first notifies the Band of any request or demand for the release of Confidential Information under this subsection 4(Q) in order to provide the Band an opportunity to challenge such request or demand or to initiate proceedings under Section 7 of this Compact or other applicable law to resolve any dispute regarding the State's anticipated disclosure of such Confidential Information.

- (2) Notwithstanding the foregoing, the Band agrees that the State may disclose the following documents and information to the public: the Pokagon Band Gaming Regulatory Act and the Pokagon Band Gaming Regulations; final rulings of the Pokagon Band Gaming Commission except to the extent that such rulings are subject to a confidentiality order; other information and documents of the Pokagon Band Gaming Commission and the Band's Class III gaming operations that have been made available to the public; the amount of annual revenue sharing payments to the State pursuant to Section 17; and correspondence between the Band or a Band entity and the State or a State entity, unless such correspondence is specifically marked or labeled "Confidential".

(R) Semi-Annual Reimbursement Payments to the State for Compact Oversight Costs.

- (1) The Band shall make semi-annual reimbursement payments ("Reimbursement Payments") for the Class III gaming operations at the South Bend Site in the amount of \$50,000 or 0.05% of the semi-annual Net Win, whichever amount is greater, to the Indiana Gaming Commission, or to its successor as determined by law, to be applied by the State toward the costs it incurs in carrying out functions authorized by the terms of this Compact.

- (2) If the Band's Certificate of Self-Regulation is revoked, then the Band shall cease to be responsible for the Reimbursement Payments required under subsection 4(R)(1) and shall thereafter be responsible for reimbursing the State for the actual costs incurred by the Indiana Gaming Commission, or its successor as determined by law, in carrying out Compliance Oversight functions authorized by the terms of this Compact, provided that the total amount of each such Reimbursement Payment under this subsection 4(R)(2) shall be capped at 0.3% of the semi-annual Net Win. The Band's obligation to reimburse the State for the Indiana Gaming Commission's actual oversight costs shall be effective immediately on the date the Certificate of Self-Regulation is revoked notwithstanding any appeal of such revocation the Band may pursue pursuant to 25 U.S.C. § 2714. The Band's obligation to reimburse the State for the actual oversight costs incurred by the Indiana Gaming Commission shall cease to be effective immediately on the date that the NIGC re-issues a Certificate of Self-Regulation to the Band and thereafter the Band shall be responsible for the Reimbursement Payment due under subsection 4(R)(1).
- (3) The Reimbursement Payments owed under subsection 4(R)(1) or subsection 4(R)(2) shall be based on a six-month payment period that commences on August 1 and February 1, respectively, of each year (each six-month payment period is referred to as a "Reimbursement Period"). Any payment due and owing for that Reimbursement Period shall be made within sixty (60) days after the end of that Reimbursement Period. A payment required under subsection 4(R)(1) that ceases to be owed under the terms of subsection 4(R)(2) shall be prorated for a partial Reimbursement Period and the payment obligations under subsection 4(R)(2) shall thereafter apply to the remaining portion of the Reimbursement Period.

(S) In the event the State believes that the Band is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

(T) The Band shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. § 5311 *et seq.*, as amended.

(U) The Band shall conduct its Class III gaming authorized under this Compact pursuant to an internal control system that implements minimum internal control standards for Class III gaming that are no less stringent than the applicable Minimum Internal Control Standards set forth in this Compact and NIGC regulations. If the Band's Certificate of Self-Regulation is revoked, thereafter the



Band shall be required to provide a copy of any amendment to its internal control standards to the Indiana Gaming Commission within thirty (30) days of the effective date of such amendment under Band law. If the Indiana Gaming Commission determines that such standards fail to meet the Minimum Internal Control Standards of this Compact or applicable NIGC regulations, the Indiana Gaming Commission shall within thirty (30) days of receiving such amendments, provide the Band with a written notice that specifically identifies the Band internal control standard at issue and the applicable standard under this Compact or NIGC regulations, and, as warranted, an explanation of the reasons underlying the State's determination. Within thirty (30) days of receiving such notice from the State, the Band shall provide a written response to the State that either (i) refutes the State's determination or (ii) identifies proposed amendments to the Band's internal control standards to correct the inconsistency, the timeframe for adopting such amendments, and any proposed interim compliance measures to ensure compliance with this compact and NIGC regulations. The State's right to such Compliance Oversight of the Band's internal control systems shall become effective immediately on the date the Certificate of Self-Regulation is revoked notwithstanding any appeal of such revocation the Band may pursue pursuant to 25 U.S.C. § 2714. The State's right to such Compliance Oversight of the Band's internal control system shall cease to be effective immediately on the date that the NIGC re-issues a Certificate of Self-Regulation to the Band. The State retains the right, however, to ensure compliance with this subsection in accordance with subsection 4(P) regardless of the status of the Band's Certificate of Self-Regulation.

(V) In furtherance of this Section, the Band shall notify the State immediately in writing if the Band's Certificate of Self-Regulation is revoked. The Band shall also notify the State (i) within three (3) business days of any material changes in circumstances that create a duty to advise the NIGC under 25 C.F.R. § 518.11, and (ii) within one (1) business day upon receipt of a notice from the NIGC advising the Band of the NIGC's intent to revoke the Band's Certificate of Self-Regulation.

## **SECTION 5. Employee Benefits.**

The Band shall provide to any employee whose job duties involve the conduct of Class III gaming at any Gaming Facility pursuant to this Compact, benefits that are substantially equivalent to the benefits to which the employee would be entitled by virtue of the Indiana Employment Security Act, (Indiana P.L. 21-1995, Sec. 61, as amended, IC 22-4-1 et seq.), and the Indiana Worker's Compensation Act, (Indiana P.L. 144-1986, Sec. 21, as amended, IC 22-3-1-1 et seq.) if his or her employment services were provided to an employer engaged in a business enterprise which is subject to, and covered by, the respective Public Acts. The Band shall, or shall require that its insurance carrier provide written notice to the Worker's Compensation Board of Indiana in accordance with the requirements of IC 22-3-4-13 regarding any

employee described in this Section 5, which notice shall include information that is substantially equivalent to the information requested on State Form 34401, First Report of Employee Injury, Illness. Nothing in this Section 5 shall be construed as subjecting the Band to the procedural and administrative processes of Indiana law or to the authority or jurisdiction of Indiana administrative bodies, tribunals, or judicial forums.

## **SECTION 6. Providers of Class III Gaming Equipment or Supplies.**

(A) No Class III games of chance, gaming equipment, or gaming supplies may be purchased, leased, or otherwise acquired by the Band unless the Class III games, equipment, or supplies meet the technical equipment standards of the State of Indiana, State of Nevada, or the State of New Jersey.

(B) Prior to entering into any lease or purchase agreement for Class III games of chance, gaming equipment, or gaming supplies, the Band shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Pokagon Band Gaming Commission to conduct a background check on those persons. The Band shall not enter into any lease or purchase agreement for Class III games of chance, gaming equipment, or gaming supplies with any person or entity if the lessor or seller, or any manager or person holding direct or indirect financial interest in the lessor or seller or the proposed lease/purchase agreement, is determined to have participated in or have involvement with organized crime or has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, or Fraud or Misrepresentation, or has been convicted of or entered a plea of guilty or no contest to any other felony offense within the immediately preceding five years, unless that person has been pardoned. The Band shall also not enter into any lease or purchase agreement for Class III games of chance, gaming equipment, or gaming supplies unless the seller or lessor is licensed by the Pokagon Band Gaming Commission.

(C) The seller, lessor, manufacturer, or distributor shall provide, assemble, and install all Class III games of chance, gaming equipment, and gaming supplies in a manner approved and licensed by the Pokagon Band Gaming Commission. The Band shall not enter into any lease or purchase agreement for Class III games of chance, gaming equipment, supplies unless the seller, lessor, manufacturer, or distributor is licensed by the Pokagon Band Gaming Commission.

(D) Any testing of Class III games of chance, gaming equipment, and gaming supplies shall be conducted by an independent testing laboratory that has been certified for compliance with applicable International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) standards for technical competence by an (ISO/IEC) accreditation body that is a signatory to the

International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), or the substantially equivalent successor arrangement. The approval of such Class III games of chance, gaming equipment, and gaming supplies in accordance with applicable standards shall be subject to the exclusive regulatory authority of the Pokagon Band Gaming Commission.

## **SECTION 7. Dispute Resolution.**

(A) In the event that either party to this Compact believes that the other party has failed to comply with the requirements of this Compact or has otherwise breached any provision of this Compact, or in the event of any dispute hereunder, including but not limited to a dispute over the proper interpretation of the terms and conditions of this Compact, such party may invoke the dispute resolution procedures set forth in this Section 7.

(B) **Informal Dispute Resolution.** The party asserting noncompliance or seeking an interpretation of any provision of this Compact shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual and legal basis for the claim or dispute. Representatives of the State and the Band shall meet within thirty (30) calendar days of receipt of the notice in an effort to resolve the claim or dispute, unless the parties mutually agree to extend this period.

(C) **Federal Court Jurisdiction.** In the event that the Band and the State are unable to resolve a claim or dispute through the process specified in subsection 7(B) within ninety (90) days after service of the required notice in subsection 7(B), the party asserting noncompliance or seeking an interpretation of any provision of this Compact may pursue resolution through an action brought in a United States District Court ("federal court"). In order to effectuate this subsection 7(C), and in the exercise of its sovereignty, the Band expressly and irrevocably waives its sovereign immunity in connection with any action brought in a federal court to resolve any claim or dispute under this Compact. In order to effectuate this subsection 7(C), and in the exercise of its sovereignty, the State expressly and irrevocably waives its sovereign immunity in connection with any action brought in a federal court to resolve any claim or dispute under this Compact, provided that the State's waiver of its sovereign immunity under this subsection 7(C) shall not extend to any claim or dispute related to the State's consideration of a renewal term or negotiation of a successor compact under Section 12 or to its consideration of a proposed amendment to this Compact under Section 16.

(D) **Binding Arbitration.** In the event that the Band and the State are unable to resolve a claim or dispute through the process specified in subsection 7(B) within ninety (90) days after service of the required notice in subsection 7(B), the

Band and the State may by mutual written consent as to such claim or dispute, agree to pursue resolution of the claim or dispute through binding arbitration. The party asserting noncompliance or seeking an interpretation of any provision of this Compact may, upon first obtaining such mutual written consent, pursue resolution through binding arbitration. Any arbitration under this authority shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association (“Rules”) except that the arbitrators shall be attorneys who are licensed members of the Indiana State Bar, the State Bar of Michigan, or the bar of another state, in good standing, and shall be selected by the State appointing one arbitrator, the Band appointing a second arbitrator, and the two so appointed shall select a third arbitrator who shall serve as the chair. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is appointed, the third arbitrator shall be selected in accordance with the Rules. The Band and the State shall each bear their own costs of arbitration and attorney fees and shall equally share the administrative cost and fees for the arbitration services. In order to effectuate this subsection 7(D), and in the exercise of its sovereignty, the Band expressly and irrevocably waives its sovereign immunity in connection with the arbitrator’s jurisdiction and in any action brought in a federal court to: (1) enforce the Band’s obligation to arbitrate, (2) enforce or confirm any arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award. In order to effectuate this subsection 7(D), and in the exercise of its sovereignty, the State expressly and irrevocably waives its sovereign immunity in connection with the arbitrator’s jurisdiction and in any action brought in a federal court to: (1) enforce the State’s obligation to arbitrate, (2) enforce or confirm any arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award.

(E) Nothing in Section 7 shall be construed to waive, limit, or restrict any remedy which is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. The Band and the State agree that neither party shall be entitled to assert as part of a defense or response to any dispute resolution procedure under this Section 7 that there was a failure to first exhaust all administrative remedies or to first exhaust all Band remedies. Except as expressly stated otherwise, nothing in this Compact shall be deemed a waiver of the Band’s sovereign immunity. Except as expressly stated otherwise, nothing in this Compact shall be deemed a waiver of the State’s sovereign immunity.

**SECTION 8. Notice to Patrons.**

In each of its Class III gaming facilities on the South Bend Site, the Band shall post in a prominent location a notice to patrons at least two (2) feet by three (3) feet in dimension with the following language:

## NOTICE

**THIS FACILITY IS REGULATED BY ONE OR MORE OF THE FOLLOWING: THE NATIONAL INDIAN GAMING COMMISSION, BUREAU OF INDIAN AFFAIRS OF THE U.S. DEPARTMENT OF THE INTERIOR, AND THE GOVERNMENT OF THE POKAGON BAND OF POTAWATOMI INDIANS**

**THIS FACILITY IS NOT REGULATED BY THE STATE OF INDIANA**

### **SECTION 9. Infrastructure and Site Improvements.**

(A) Infrastructure Serving Class III Gaming on the South Bend Site. To the extent that the Band determines that it is not feasible and desirable to extend existing Band infrastructure or develop new Band infrastructure to provide water, sewer, or other essential utility services to the South Bend Site in order to provide for the safe and sanitary operation of a Gaming Facility on such site, the Band shall arrange for such services to the site through public or private providers on such terms and at such costs as would apply to other similar customers under applicable law.

(B) Site Improvements. In the development and operation of any Gaming Facility, the Band shall maintain compliance with IGRA § 2710(b)(2)(E) to ensure that the construction and maintenance of such Gaming Facility and its operation is conducted in a manner that adequately protects public health and safety and the environment. With respect to all improvements on the South Bend Site, the Band shall maintain legal standards that are at least as rigorous as corresponding Indiana laws pertaining to such site improvements, including but not limited to construction and safety standards for Class 1 structures in applicable model codes of the International Code Council or the National Fire Protection Association, as adopted and amended by the State. With respect to infrastructure and improvements to the South Bend Site, in addition to the Band's obligation to comply with the Band's Health And Safety Act and other Band law, the Band shall comply with the following laws: (i) applicable federal environmental laws and their implementing regulations, including without limitation the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the National Indian Forest Resources Management Act; and (ii) with regard to any State regulated wetlands, the compensatory mitigation standards and requirements under IC 13-18-22. Prior to undertaking improvements to the South Bend Site that may implicate the foregoing federal and Indiana environmental laws, the Band agrees to coordinate with the Indiana Department of Environmental Management to ensure Band compliance with such laws.

### **SECTION 10. Parity.**

(A) Tax Parity. Nothing in this Compact shall be deemed to authorize the

State to impose any tax, fee, charge, or assessment upon the Band or any Band gaming operation or Gaming Facility except for the reimbursement of expenses expressly authorized pursuant to this Compact. To the extent that the Band is required under federal law, however, to withhold federal income tax from the gaming winnings of non-tribal patrons, the Band agrees to withhold State individual income tax from gaming winnings of non-tribal patrons in the amounts set forth in applicable Indiana law. The Band shall maintain as enacted Band law Band taxes on retail sales, food and beverage service, and hotel occupancy, which taxes shall be in an amount that is equal to or greater than any corresponding State and local taxes which would be applicable to the Band's Class III gaming operation if it were not located on the South Bend Site. The Band shall remit amounts withheld for State individual income tax together with Indiana Department of Revenue Form WH-1 to the Indiana Department of Revenue. The Band shall also annually submit in accordance with due date under Indiana law Indiana Department of Revenue Form WH-3 to the Indiana Department of Revenue in order to reconcile the total amounts remitted and submitted on Form WH-1 and the details of the amounts withheld per individual.

(B) Minority and Women-Owned Businesses. The Band agrees that it shall make a good faith effort to utilize certified minority and women-owned businesses in an amount that is consistent with the most recent disparity study conducted by the Indiana Gaming Commission under IC 4-33-14-5(b) and IC 4-35-11-6(b).

(C) Child Support Withholdings. If the Band is required to file Form W-2G or a substantially equivalent form with the United States Internal Revenue Service for a person who is a resident of the State and has been identified through information supplied to the Band by the Child Support Bureau of the Department of Child Services established by IC 31-25-3-1 (the "Bureau") as delinquent in child support, before payment of cash winnings to the person, the Band:

- (1) May deduct and retain an administrative fee in the amount of the lesser of: (a) three percent (3%) of the amount of delinquent child support withheld under subsection 10(C)(2)(a); or (b) one hundred dollars (\$100); and
- (2) Shall (a) withhold the amount of delinquent child support owed from the cash winnings; (b) transmit to the Bureau: (i) the amount withheld for delinquent child support; and (ii) identifying information, including the full name, address, and Social Security Number of the obligor and the child support case identifier, the date and amount of the payment, and the name and location of the Band and the South Bend Site; and (c) issue the obligor a receipt in a form prescribed by the Bureau with the total amount withheld for delinquent child support and the administrative fee.

The Bureau shall as soon as practicable provide information to the Band concerning persons who are delinquent in child support.

(D) Emergency Plan. The Band shall within thirty (30) days of the Effective Date submit to the State an emergency operation plan as defined in Section 2.05 of the Pokagon Band Health and Safety Act (an emergency response plan as defined in 68 IAC 8-2). The Band shall within sixty (60) days of the end of each Payment Period notify the State whether there have been any amendments to its emergency operation plan and, if so, provide a copy of the amended plan to the State. This requirement is intended to facilitate cooperation between the State and the Band regarding their mutual interest and responsibility to ensure public safety and coordinate their efforts in the event of a public emergency response at a Gaming Facility. The Band's emergency operation plan shall comply with the minimum standards and requirements set forth in 68 IAC 8-2. This provision shall not be construed as requiring compliance with the procedural requirements of 68 IAC 8-2 and shall not be construed as subjecting the Band to State jurisdiction.

(E) Political donations. Any Band elected official, any entity controlled or owned by the Band that operates a Gaming Facility, or any officer of such entity may not make a contribution (as defined in IC 3-5-2-15) to a candidate or a committee during the following periods: (1) the duration of this Compact; and (2) the three (3) years following the final expiration or termination of this Compact. The following definitions apply for purposes of this subsection. A "candidate" means a candidate for a state office, a candidate for a legislative office, or a candidate for a local office. A "committee" means a candidate's committee, a regular party committee, a committee organized by a legislative caucus of the house of the general assembly, or a committee organized by a legislative caucus of the senate of the general assembly.

(F) Voluntary Exclusion Program. The Band shall make all reasonable attempts to cease all direct marketing efforts to a person participating in the voluntary exclusion program established under IC 4-33-4-3 and to eject such person found within the Gaming Facility. The Band also shall make all reasonable efforts to avoid cashing the check or extending credit of any person at the Gaming Facility who is participating in the voluntary exclusion program. The Indiana Gaming Commission shall provide the Band with information necessary to ensure compliance with this subsection. The Band agrees to strictly maintain the confidentiality of participants in the program consistent with the standards under applicable Indiana law.

(G) IGC Exclusion List. The Band shall eject or exclude a person from its Gaming Facility authorized under this Compact if that person is placed on the Indiana Gaming Commission's Exclusion List pursuant to IC 4-33-4-7. The Indiana Gaming Commission shall as soon as practicable provide the Band with information necessary to ensure compliance with this subsection. The Band shall as soon as practicable provide to the State a list of any persons ejected or excluded from any

Band facility where Class III gaming is authorized pursuant to Band law.

(H) Notwithstanding IC 7.1-5-5-7, the Band, upon approval by the Indiana Alcohol and Tobacco Commission, may provide alcohol to its guests at less than cost or without charge at an event at its Gaming Facility in conformity with IC 7.1-3-17.5-6.

#### **SECTION 11. Effective Date.**

This Compact shall be effective immediately upon:

(A) Endorsement by the Tribal Chairperson and Tribal Secretary and concurrence in that endorsement by resolution of the Tribal Council;

(B) Endorsement by the Governor of the State and ratification by the State General Assembly as required by Indiana law;

(C) Approval by the Secretary of the Interior of the United States; and

(D) Publication in the Federal Register.

#### **SECTION 12. Binding Effect, Duration, and Severability.**

(A) This Compact shall be binding upon the State and the Band for an initial term of twenty (20) years (the “Initial Term”) from the Effective Date unless amended in accordance with Section 16 of this Compact or terminated by written agreement of both parties.

(B) Upon completion of the Initial Term, this Compact shall renew for an additional ten (10) year term (a “Renewal Term”) if, at least 365 days prior to the expiration of the Initial Term, the Band serves written notice on the State requesting that the Compact be renewed for a Renewal Term, *unless* at least 365 days prior to the expiration of the Initial Term, the General Assembly of the State, by concurrent resolution, rejects the renewal of this Compact for the Renewal Term.

(C) Upon completion of a Renewal Term, as applicable, this Compact shall renew for an additional Renewal Term if, at least 365 days prior to the expiration of the Renewal Term then in effect, the Band serves written notice on the State requesting that the Compact be renewed for an additional Renewal Term, *unless* at least 365 days prior to the expiration of the Renewal Term then in effect, the General Assembly of the State, by concurrent resolution, rejects the renewal of this Compact for the additional Renewal Term.

(D) If the General Assembly of the State rejects the renewal of this Compact for a Renewal Term under subsection 12(B) or subsection 12(C), the Band may



request to negotiate a successor compact by serving written notice on the State prior to the expiration of the Initial Term or the Renewal Term then in effect. In the event that the Band serves written notice on the State under this subsection and the parties are unable to conclude a successor compact prior to the expiration of the Initial Term or Renewal Term then in effect, then this Compact shall remain in effect pending exhaustion of the administrative and judicial remedies set forth in IGRA, provided that in the event that the State raises the defense of sovereign immunity in the administrative or judicial proceedings, this Compact shall remain in effect pending the negotiation and approval of any successor compact.

(E) The Band may operate Class III gaming only while this Compact is in effect during the Initial Term, a Renewal Term, while any successor or amended Compact is in effect, and for the duration of any period that this Compact remains in effect pursuant to subsections 12(D).

(F) Notwithstanding anything to the contrary in this Section, following the expiration of the Initial Term or the last Renewal Term, any successor or amended Compact, or any extension of the Compact pursuant to subsection 12(D), this Compact shall remain in effect for a period of two years (the “Limited Dispute Period”) only for the specific and limited purposes of resolving any claims or disputes pursuant to Section 7 of this Compact, including any obligations arising under Section 17.

(G) In the event that any Section or provision of this Compact is disapproved by the Secretary of the Interior of the United States or is held invalid by any court of competent jurisdiction, it is the intent of the parties that the remaining Sections or provisions of this Compact, and any amendments thereto, shall continue in full force and effect. This severability provision does not apply to Section 17 of this Compact.

### **SECTION 13. Notice to Parties.**

Unless otherwise indicated, all notices, payments, requests, reports, information or demands which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class, certified or registered United States Mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Band shall be sent to:

Tribal Chairperson  
Pokagon Band of Potawatomi Indians  
58620 Sink Road  
Dowagiac, MI 49047

Notice to the State shall be sent to:

Office of the Governor  
Indiana Statehouse  
200 W. Washington Street  
Indianapolis, Indiana 46204-2797

Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt, or if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

**SECTION 14. Entire Agreement.**

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an amendment that meets the requirements of Section 16.

**SECTION 15. Filing of Compact with the Indiana Secretary of State.**

Following publication of this Compact in the Federal Register, the Governor shall file a certified copy of the Compact with the Indiana Secretary of State and shall transmit a copy to the State General Assembly and the Indiana Attorney General.

**SECTION 16. Amendments.**

This Compact may be amended by mutual agreement between the Band and the State as follows:

(A) The Band or the State may propose amendments to the Compact by providing the other party with notice of the proposed amendment as follows:

- (1) The Band shall propose amendments pursuant to the notice provisions of this Compact by submitting the proposed amendments to the Governor who shall act for the State pursuant to the authority delegated under IC 4-29.
- (2) The State, acting through the Governor, shall propose amendments by submitting the proposed amendments to the Band pursuant to

the notice provisions of this Compact.

(B) The party receiving the proposed amendment shall advise the requesting party within forty-five (45) days as follows:

- (1) That the receiving party agrees to the proposed amendment; or
- (2) That the receiving party rejects the proposed amendment as submitted and agrees to meet concerning the subject of the proposed amendment.

(C) The Governor shall submit any amendment agreed to between the parties to the State General Assembly for ratification as required by Indiana law.

(D) Upon ratification by the State General Assembly, the Band shall submit the amendment to the Secretary of the Interior for approval pursuant to the provisions of IGRA.

(E) Upon the effective date of the amendment, the Governor shall file a certified copy with the Indiana Secretary of State and transmit a copy to the State General Assembly and the Indiana Attorney General.

**SECTION 17. Payments to the State in Exchange for Market Exclusivity.**

(A) Notwithstanding IGRA's express prohibition against state taxation of tribal gaming activities, revenue-sharing payments from tribal gaming to a state may be considered lawful under IGRA when such payments are bargained for in exchange for meaningful concessions from the state, i.e., quantifiable economic benefits over which the state is not required to negotiate under IGRA, such as substantial exclusive rights to engage in Class III gaming activities. Accordingly, and as consideration for the revenue sharing payments required under subsection 17(B), the State agrees that the Band's right to conduct Class III gaming on the South Bend Site under Section 3 shall be exclusive of any "Expanded Gaming" within the "Exclusivity Area", which is comprised of the Indiana counties of Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Miami, Noble, Porter, Pulaski, St. Joseph, Starke, Wabash, and Whitley. For purposes of this paragraph, Expanded Gaming means, within the Exclusivity Area and as of the Endorsement Date, (i) the licensure of any Gambling Operation as defined in subsection 2(L)(1) if that licensure would result in a greater number of Gambling Operations within the Exclusivity Area, would permit a Gambling Operation that holds a license as of the Endorsement Date to relocate to a new licensed location within the Exclusivity Area (other than the relocation from a dock site to property adjacent to the dock site, as permitted by Indiana Code 4-33-6-24), or would permit a Gambling Operation that does not hold a license for a location within the Exclusivity Area as of the Endorsement Date to locate to a new licensed location within the Exclusivity Area;

or (ii) the licensure of any Gambling Operation as defined in subsection 2(L)(2) for a location within the Exclusivity Area. Subject to the foregoing limitations regarding Gambling Operations within the Exclusivity Area, the term Expanded Gaming shall not include (i) any new gaming facility or any expansion of an existing gaming facility in which the Band has the “sole proprietary interest”, as that term is defined at IGRA § 2710(b)(2)(A) and 25 C.F.R. § 522.4(b)(1); (ii) any new game operated by the Band at such facilities under this Compact or under any successor compact; (iii) any new game operated at a Gambling Operation that holds a license as of the Endorsement Date; (iv) any new game operated by the Indiana State Lottery pursuant to IC 4-30; or (v) any new game operated by a “qualified organization” as defined in IC 4-32.3-2-31, (vi) any new game operated by a satellite facility licensed under IC 4-31-5, or (vii) any new game operated by a retailer endorsement or license under IC 4-36-4.

(B) As consideration for the meaningful concessions from the State described in subsection 17(A) and provided that the State is not in breach of its obligations regarding Expanded Gaming in the Exclusivity Area, the Band shall make annual payments to the State of eight percent (8%) of the Net Win at its South Bend Site Class III Gaming Facility. In the event that the State breaches its obligations regarding Expanded Gaming in the Exclusivity Area, the Band’s obligation to make the annual payment to the State described in this subsection 17(B) shall immediately cease as of the date of the breach.

(C) In the event that the Band continues to conduct Class II gaming at its South Bend Site Gaming Facility after the Effective Date of this Compact, beginning with the second full Payment Period the total amount of the Band’s payment of Net Win to the State due under subsection 17(B) shall be in an amount that is not less than:

- (1) the total Net Win from all Class III Electronic Games of Chance;
- (2) divided by the total number of such Class III Electronic Games of Chance
- (3) multiplied by eighty-five percent (85%) of the total number of all electronic Class II gaming devices and all Class III Electronic Games of Chance in operation on the last day of the Payment Period; and
- (4) multiplied by the applicable percentage of Net Win due under subsection 17(B).

(D) All annual payments made by the Band to the State under subsection 17(B) shall be based on a full Payment Period, provided that the first payment under this provision may be for a period of less than a full Payment Period beginning on the day that Class III gaming commences on the South Bend Site and through July 31 immediately subsequent thereto. Payments for each Payment Period shall be made within sixty (60) days of the end of that Payment Period.

(E) Funds received by the State under this Section 17 shall be expended at the direction of the Indiana State Budget Director, subject to appropriation by the Indiana General Assembly. It is the intent of the State and the Band that the funds be used in the following program areas: (i) education, (ii) economic and workforce development, (iii) tourism promotion, and (iv) public health.

(F) In addition, from the total amount of each annual payment due to the State under subsection 17(B), the Band shall reduce such amount by up to \$1,000,000 as provided in Section 18.

(G) The Band shall file an annual report with the State, coinciding with the remittance of the payment due under subsection 17(B), that includes the following information:

- (1) calculations and supporting data for the Band's determination of the Net Win payment under subsection 17(B), and specifically denoting the revenues from all Electronic Games of Chance;
- (2) calculations and supporting data for the Band's determination of the amount of any additional payment that may be owed under subsection 17(C); and
- (3) the amount and use of the scholarship funds set aside under subsection 17(E).

## **SECTION 18. Pokagon Indiana Education Fund**

(A) For so long as the Band makes payments in accordance with Section 17, the Band shall allocate a portion of the annual payment to provide funding for public postsecondary and vocational education for Band citizens (the "Pokagon Indiana Education Fund").

(B) The Pokagon Indiana Education Fund shall be used solely to make payments directly to Indiana public institutions of higher learning or workforce development and training programs approved by the Indiana Department of Workforce Development for eligible Band citizens for direct costs and expenses, such as tuition, on-campus room and board, and other direct education expenses. To be eligible, a Band citizen must (i) be enrolled in the Band prior to benefiting from any payment, and (ii) meet the education or workforce provider admission requirements. Priority shall be given to Band citizens who are legal residents of the State of Indiana as of the date of their application for benefits.

(C) The Pokagon Indiana Education Fund shall be administered as follows:

- (1) The Pokagon Indiana Education Fund shall be established by the Band solely for the purposes set forth in this Section 18 and shall be maintained separate from all other Band (sovereign) funds. The Pokagon Indiana Education Fund shall be held in an interest-bearing account at a financial institution that is subject to Indiana law and located within the State of Indiana.
- (2) The Band shall arrange for an annual independent audit of the Pokagon Indiana Education Fund that includes a schedule of all payments and payees for the audit period with an attestation that the funds were used in compliance with this Section 18. The audit shall be delivered to the Indiana Department of Workforce Development, with courtesy copies to the Indiana Gaming Commission and the Indiana Native American Affairs Commission. The cost of the audit may be paid from the fund.

(D) Payments to the Pokagon Indiana Education Fund shall be made as follows:

- (1) An initial allocation of \$1,000,000 shall be made by the Band to the Pokagon Indiana Education Fund for the first full Payment Period from the Band's annual payment due under subsection 17(B).
- (2) In all subsequent years, the Band shall make an allocation to the Pokagon Indiana Education Fund from the Band's annual payment due under subsection 17(B) in an amount equal to \$1,000,000 less the balance of the Pokagon Indiana Education Fund as of the conclusion of the Payment Period just ended and adjusted by the amount of any payments that were determined to not be in compliance with this Section 18 according to the most recent annual audit.

**SECTION 19. Band Payments to Local Units of Government.**

The State and the Band recognize that IGRA § 2710(b)(2)(B) strictly limits the use of net revenues from tribal gaming, but expressly permits payments to, among other things, help fund operations of local government agencies. The State and the Band agree that the Band may, at its discretion and without any involvement by the State, make arrangements directly with the City to help fund operations of such local government agencies as the Band and the City may determine to be appropriate.

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IN WITNESS WHEREOF, the Chairperson and the Secretary acting for the Pokagon Band of Potawatomi Indians, Michigan and Indiana, and the Governor acting for the State of Indiana have hereunto set their hands and seals.

Date: 1/21/21  
Pokagon Band of Potawatomi

Date: 1-21-21  
State of Indiana

By: Matthew Wesaw  
Matthew Wesaw, Chairperson

By: Eric J. Holcomb  
Eric J. Holcomb, Governor

By: Kelly Curran  
Kelly Curran, Secretary