

## 2008 CLASS III GAMING COMPACT

This Tribal-State Compact is made and entered into by and between the Nez Perce Tribe, a federally recognized Indian Tribe, and the State of Idaho, pursuant to the provisions of the National Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

### ARTICLE 1. TITLE

These Articles of Compact collectively comprise, and may be cited as, "The 2008 Class III Gaming Compact By and Between the Nez Perce Tribe and the State of Idaho."

### ARTICLE 2. RECITALS

2.1 The Tribe and the State recognize and respect the laws and the authority of each other.

2.2 In 1989 the State of Idaho initiated the Idaho State Lottery pursuant to the laws of the State of Idaho.

2.3 From the inception, the Idaho State Lottery operated on the Nez Perce Reservation and as of April, 1993, there were a total of 32 retail lottery outlets at various locations throughout the Nez Perce Reservation.

2.4 In 1993, litigation between the State of Idaho and three Indian Tribes situated within the State of Idaho was filed as a means of resolving issues regarding rights and obligations under the National Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

2.5 In that litigation, the Nez Perce Tribe asserted that the operation of the Idaho State Lottery within the Nez Perce Reservation was unlawful in the absence of a tribal ordinance or resolution and a tribal-state compact which authorized the operation of the Lottery on the reservation.

2.6 The United States District Court found that "in the absence of a tribal gaming ordinance and a compact, neither the Tribe nor any non-tribal entity, including the State of Idaho, may conduct Class III gaming on the reservation." Coeur d'Alene Tribe Kootenai Tribe of Idaho and Nez Perce Tribe v. State of Idaho, 842 F. Supp. 1268, 1282 (D. Idaho 1994).

2.7 Immediately subsequent to the District Court decision the Tribe and State exchanged positions regarding the terms by which the Idaho State Lottery could remain on the Nez Perce Reservation. On April 1, 1994, the Idaho State Lottery removed all lottery equipment and material from all lottery vendors within the Nez Perce Reservation.

2.8 This year, 2008, the State of Idaho and the Nez Perce Tribe agreed that it would be

in their collective best interests to have the Idaho State Lottery operating within the Nez Perce Reservation and the parties have, accordingly, negotiated the terms of this Compact.

### **ARTICLE 3. PURPOSE**

The purpose of this Compact is to define the terms and conditions by which the Idaho State Lottery may operate within the Nez Perce Reservation.

### **ARTICLE 4. DEFINITIONS**

Idaho State Lottery - Means the state agency created by Idaho Code Chapter 74, §§ 67-7401 - 67-7452 and all gaming activities operated by the Idaho State Lottery as authorized by state law currently or in the future.

### **ARTICLE 5. AUTHORIZED CLASS III GAMING**

Upon formal approval of this Compact by both parties and the National Indian Gaming Commission, the State of Idaho may operate the Idaho State Lottery within the Nez Perce Reservation.

### **ARTICLE 6. FEE**

6.1 Idaho agrees to pay to the Nez Perce Tribe an annual fee equal to 12% of the total annual net sales made by the Idaho State Lottery in the communities and surrounding unincorporated trading areas listed in Exhibit A attached to this Compact. The Nez Perce Tribe will be provided with a complete list of all retail outlets located within the areas listed in Exhibit A that offer or sell products of the Idaho State Lottery. An updated list will be provided to the Nez Perce Tribe if additional retail outlets begin offering or selling products of the Idaho State Lottery or if any retail outlets within the areas listed in Exhibit A cease offering or selling products of the Idaho State Lottery. Total net sales shall mean the Idaho State Lottery's total sales of all on-line (lotto) tickets, instant (Scratch Games®) tickets, and pull-tab tickets, less returns. Free replays as prizes, promotional free tickets, or cancelled transactions are not considered a ticket sold.

6.2 After ten years from the effective date of this Compact, the annual fee shall be 10% of the total annual net sales made by Idaho State Lottery in the communities and surrounding unincorporated trading areas listed in Exhibit A attached to this compact.

6.3 Fees shall be paid annually based upon the Idaho State Lottery's fiscal year. The Idaho State Lottery shall provide the Nez Perce Tribe with all the documentation used in determining and calculating the fees paid under this compact.

6.4 The Nez Perce Tribe will utilize all fees received under this compact consistent with uses permitted under the federal Indian Gaming Regulatory Act, 25 U.S.C. § 2710(2)(B), which are:

- to fund tribal governmental operations or programs;
- to provide for the general welfare of the Indian tribe and its members;

- to promote tribal economic development;e
- to donate to charitable organizations;e
- to help fund operations of local governmental agencies.e

## **ARTICLE 7. REQUIREMENTS**

7.1 This compact authorizes and permits the State of Idaho to operate the Idaho State Lottery and to license any number of retail outlets within the Nez Perce Reservation subject to the the terms of this compact.

7.2 The Idaho State Lottery shall have the sole authority and responsibility for the selection, licensing, inspection and regulation of retail outlets for the Idaho State Lottery within the Nez Perce Reservation.

7.3 The Nez Perce Tribe agrees that the provisions and requirements of Idaho law adequately insure the security and integrity of the Idaho State Lottery and that the operation of the Idaho State Lottery within the Nez Perce Reservation will not be subject to any further or additional regulation by the Nez Perce Tribe beyond the specific provisions of this Compact.

7.4 The Nez Perce Tribe and the State of Idaho agree that the provisions and requirements of the National Indian Gaming Regulatory Act will be adhered to under this compact.

## **ARTICLE 8. TRIBAL ORDINANCE OR RESOLUTION**

The Nez Perce Tribe will adopt an ordinance or resolution as required by the National Indian Gaming Regulatory Act, consistent with the terms of this Compact which authorizes and permits the operation of the Idaho State Lottery within the Nez Perce Reservation.

## **ARTICLE 9. PARTIES AND AUTHORITY**

9.1 The Governor has authority to execute this Compact on behalf of the State pursuant to Idaho Constitution, Art. IV, Sec. 5, and Idaho Code §§ 67-429A, 67-802 and 67-4002(1).e

9.2 The Nez Perce Tribal Executive Committee has authority to execute this Compact on behalf of the Nez Perce Tribe pursuant to Article VIII, Section 1(a) and (b) and Section 2(b) and (c) of the Constitution and By-Laws of the Nez Perce Tribe.

## **ARTICLE 10. TERMINATION**

Either party may terminate this Compact by delivery of written notice to the other at least sixty (60) days prior to the effective termination date. Written notice shall be deemed delivered when it is physically delivered by one party to the other or when it is deposited in the United States Mail and sent certified, return receipt requested with postage pre-paid and addressed to the officials executing this compact on behalf of the parties at the

addresses given below with copies of the notice also being sent to their respective legal counsel.

### ARTICLE 11. EFFECTIVE DATE


This Compact shall become effective upon signature by both parties, approval by the Secretary of the Interior and publication of that approval in the Federal Register in accordance with federal law. This Compact is entered into pursuant to federal, state and tribal law.

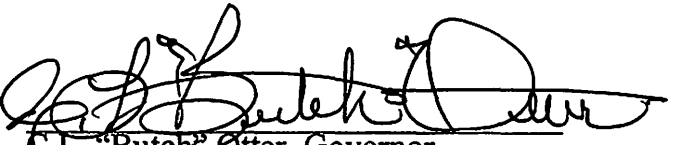
### ARTICLE 12. ENTIRE AGREEMENT

This Compact and its Exhibit A constitute the entire understanding between the parties with respect to the subject matter herein. It may not be amended except by an agreement signed by the authorized representatives of the Tribe and the State of Idaho. This Compact may be amended at any time by mutual consent of the parties involved if such amendments are in writing and signed by each of them.

NEZ PERCE TRIBE

STATE OF IDAHO

  
Samuel N. Penney, Chairman  
PO Box 305  
Lapwai, Idaho 83540

  
C.L. "Butch" Otter, Governor  
PO Box 83720  
Boise, Idaho 83720-0034

## EXHIBIT A

Pursuant to Article 6 of this Compact, fees paid to the Nez Perce Tribe shall be based on total net sales from these Idaho communities and their surrounding unincorporated trading areas:

Ahsahka

Craigmont

Culdesac

Kamiah

Kooskia

Lapwai

Lenore

Nez Perce

Orofino

Peck

Winchester

The area approximately three miles east of Lewiston on U.S. Hwy 12 representing Nez Perce Tribal enterprises.