



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAY 21 2021

The Honorable Calvin Johnson  
Chairman, Tonto Apache Tribe of Arizona  
Tonto Apache Reservation #30  
Payson, Arizona 85541

Dear Chairman Johnson:

On April 16, 2021, the Tonto Apache Tribe of Arizona (Tribe) and the State of Arizona (State) submitted to the Department of the Interior (Department) the Tonto Apache Tribe of Arizona - State of Arizona Amended and Restated Gaming Compact (2021 Compact), providing for the regulation of class III gaming activities on the Tribe's Indian lands.

I am pleased to approve the 2021 Compact for the reasons stated below.

I commend the Tribe, the State, and the other Arizona Tribes for engaging in good-faith negotiations to arrive at the 2021 Compact. In connection with the 2021 Compact, the State of Arizona enacted the 2021 Gaming Act.<sup>1</sup> The 2021 Compact and the 2021 Gaming Act complement each other by addressing the collective and individual interests of the Tribes and the State. The 2021 Gaming Act authorized the Arizona Lottery to operate on a limited and restricted basis electronic keno and a mobile draw game, fantasy sports contests, and authorized event wagering, with a significant opportunity for Tribes to participate in and benefit from off-reservation event wagering.

### *The 2021 Compact*

The 2021 Compact builds on the successes of the Tribe's existing compact that was approved by the Department in 2003 (2003 Compact) and addresses changes in gaming law and technology. The 2021 Compact extends the term of the 2003 Compact by including an additional 10-year initial term, a second 10-year first renewal term, and a 2-year final renewal term to allow for negotiation of a successor compact.<sup>2</sup> The 2021 Compact expands the scope of class III games the Tribe may offer on its Indian lands, including in-person and mobile sports betting and fantasy sports. The 2021 Compact maintains tribal exclusivity over the operation of gaming devices and poker, and expands tribal exclusivity to include blackjack, jackpot poker (including promotional award poker and house banked poker), baccarat, roulette, craps, sic bo, pai gow, and dealer

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<sup>1</sup> 2021 Ariz. Sess. Laws 234, An Act amending section 5-554, Arizona Revised Statutes; amending title 5, chapter 6, article 1, Arizona Revised Statutes, by adding section 5-605; amending title 5, Arizona Revised Statutes, by adding chapters 10 and 11; amending sections 13-3301 and 13-3305, Arizona Revised Statutes; relating to amusements and sports.

<sup>2</sup> Compact at Section 23(b)(1)-(3).

controlled electronic table games.<sup>3</sup> The 2021 Compact additionally expands the scope of non-exclusive class III games the Tribe may offer to include on-reservation, in-person and mobile sports betting and fantasy sports wagering,<sup>4</sup> while carving out limited exceptions for state lottery, off-reservation fantasy sports, and state licensed sports betting. The 2021 Compact reflects the purposes of the Indian Gaming Regulatory Act (IGRA) by promoting tribal economic development, tribal self-sufficiency, and strong tribal governments.

### *Sports Betting and Mobile Gaming*

Another important aspect of exclusivity is the State's agreement to restrict off-reservation gaming. The 2021 Compact and the 2021 Gaming Act address changes in gaming law and technology, particularly sports betting and fantasy sports. The 2021 Compact and the 2021 Gaming Act work in tandem to authorize sports betting and fantasy sports in the State and on the Tribe's Indian lands, while providing the Tribe geographic and electronic exclusivity over their Indian lands. The Tribes extracted a significant concession from the State to permit the Tribes to participate in and benefit from off-reservation event wagering. The 2021 Gaming Act provides for up to 20 State sports betting licenses, 10 of which are reserved for the Tribes to operate off-reservation mobile sports betting under State law.<sup>5</sup>

### *The 2021 Compact Trust Fund*

I am encouraged to see that the 2021 Compact creates the 2021 Compact Trust Fund, into which the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation will contribute funds in order to benefit 2021 Compact signatory Tribes who are non-gaming or limited gaming Tribes (beneficiary Tribes) for a ten-year period.<sup>6</sup> The beneficiary Tribes will receive disbursements that will fund tribal government operations or programs. I note that funding tribal government operations or programs from gaming net revenues is a permissible use under 25 U.S.C. § 2710(b)(2)(B), and the Compact Trust Fund arrangement in the 2021 Compact complies with IGRA's "sole proprietary interest" requirement at 25 U.S.C. § 2710(b)(2)(A). The 2021 Compact Trust Fund complements the mutually beneficial arrangement initiated in the 2003 Compacts and continued under the 2021 Compact, under which Tribes may lease some or all of their allotment of gaming devices to other Tribes.<sup>7</sup>

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<sup>3</sup> Compact at Section 3(a)(1).

<sup>4</sup> *Id.*

<sup>5</sup> 2021 Gaming Act § 5-1304; *see also* Letter from Martin Harvier, President, Salt River Pima-Maricopa Indian Community, to Paula L. Hart, Director, Office of Indian Gaming (May 6, 2021) (on file with the Office of Indian Gaming) (explaining the benefits of the limits contained in the 2021 Gaming Act's sports betting provisions including reserving mobile sports betting licenses for the Tribes).

<sup>6</sup> Compact at Section 12.1. *See, e.g.*, Letter from Val R. Panteah, Sr., Governor, Zuni Tribe of the Zuni Indian Reservation, to Paula L. Hart, Director, Office of Indian Gaming (May 10, 2021) (on file with the Office of Indian Gaming) (stating that the Trust Fund is not a tax or fee to the State of Arizona, but, like many of the 2021 amendments, is a set of obligations negotiated and agreed to between the participating tribes to strengthen and maintain the benefits of the compact for each tribe). *See also* Letter from Ned Norris, Jr., Chairman, Tohono O'odham Nation, to Paula L. Hart, Director, Office of Indian Gaming (May 13, 2021) (on file with the Office of Indian Gaming) (explaining the 2021 Compact Trust Fund was the result of inter-tribal negotiations as a way for all Arizona Tribes to benefit from the expansion of tribal gaming under the 2021 Compact).

<sup>7</sup> Compact at Section 3(d).

The 2021 Compact Trust Fund is an excellent example of Indian gaming benefitting all Tribes in a State.

### *Revenue Sharing*

The IGRA sharply limits the circumstances under which an Indian tribe can make direct payments to a state.<sup>8</sup> 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."<sup>9</sup> 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.

The 2021 Compact expands and clarifies the exclusive scope of tribal gaming in the 2003 Compact.<sup>10</sup> The 2021 Compact provides that five named Tribes will maintain the revenue sharing percentages contained in the 2003 Compact up to a maximum of 8% for net win over \$100 million. The remaining Tribes will pay a lower fixed rate of 0.75% of net win.<sup>11</sup> Representatives of the five named Tribes who will maintain the 2003 Compact's revenue sharing percentages stated that the improvements to the Tribes' expanded exclusivity provisions offset the limited expansions in state lottery and state-licensed sports betting, and justify maintaining the 2003 Compact's revenue sharing percentages.<sup>12</sup> Additionally, the representatives of the five named Tribes stated that the decrease in revenue sharing contributions for the remaining Tribes is evidence that the 2021 Compact is beneficial for Arizona Tribes. Further, the Tribes explain the 2021 Compact together with the narrowly tailored expansion of state-licensed, non-tribal gaming under the 2021 Gaming Act limits the potential impacts to the Tribes.

I also note that the State made a valuable concession to the Tribes by adopting the 2021 Gaming Act provisions that ensure an opportunity to participate in the commercial gaming market outside of Indian lands. This interconnected arrangement where the Tribes negotiated for the right to participate in off-reservation mobile sports betting with competition limited by the State is directly related to on-reservation gaming in the 2021 Compact, and, therefore, permissible under

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<sup>8</sup> 25 U.S.C. § 2710(d).

<sup>9</sup> 25 U.S.C. § 2710(d)(4).

<sup>10</sup> See e.g. Letter from Peter Yucupicis, Chairman, Pascua Yaqui Tribe, to Paula L. Hart, Director, Office of Indian Gaming (May 11, 2021) (on file with the Office of Indian Gaming) (explaining the value of the changes to the Tribes' exclusivity under the 2021 Compact); Compact at Sections 3(a)(1) and 3(c)(1)(A).

<sup>11</sup> Compact at Section 12(b)(2)(A); Letter from Anni Foster, General Counsel to the Governor, to Paula L. Hart, Director, Office of Indian Gaming (May 13, 2021) (on file with the Office of Indian Gaming) (explaining that the revenue sharing tiered rate structure remains unchanged for five Tribes - Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Ak-Chin Indian Community, Tohono O'odham Nation, and Pascua Yaqui Tribe and the other 15 Tribes signing the 2021 Compact will see their revenue sharing rates decrease from the tiered rate structure to a flat 0.75% of Class III Net Win).

<sup>12</sup> See e.g. Letter from Martin Harvier, President, Salt River Pima-Maricopa Indian Community, to Paula L. Hart, Director, Office of Indian Gaming (May 6, 2021) (on file with the Office of Indian Gaming) (explaining the value of the changes to the Tribes' exclusivity under the 2021 Compact).

IGRA. Were the State's concession not directly related to the Tribes' conduct of gaming on Indian lands, our analysis would have been different.

We have thoroughly analyzed the 2021 Compact, together with the Tribe's responses to our questions. It is my determination that the State has made meaningful concessions to the Tribe. First, the State has agreed to preserve the Tribe's exclusive rights under the 2003 Compact to operate gaming devices and poker. Second, the State has agreed to expand the Tribe's exclusive scope of gaming to include the full breadth of Las Vegas-style casino gaming devices and table games identified above. Third, the State has secured an opportunity for the Tribe to participate in related commercial gaming.

It is my determination that the State's concessions will provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the 2021 Compact.

*Decision*

We completed our review of the 2021 Compact and conclude that it does not violate the Indian Gaming Regulatory Act, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B). Therefore, pursuant to my delegated authority and Section 11 of IGRA, I approve the 2021 Compact. 25 U.S.C. § 2710(d)(8)(A). The 2021 Compact takes effect when the notice of this approval is published in the Federal Register. 25 U.S.C. § 2710(d)(3)(B).

A similar letter is being sent to the Honorable Doug Ducey, Governor of Arizona.

Sincerely,



Bryan Newland  
Principal Deputy Assistant Secretary –  
Indian Affairs

Enclosure

**THE TONTO APACHE TRIBE - STATE OF ARIZONA**  
**AMENDED AND RESTATED GAMING COMPACT**

This Compact is entered into by and between the Tonto Apache Tribe ("Tribe") and the State of Arizona ("State"), in accordance with the Indian Gaming Regulatory Act of 1988 for the purposes of governing Class III Gaming Activity conducted within the territorial jurisdiction of the Tribe.

**DECLARATION OF POLICY AND PURPOSE**

WHEREAS, the Tribe and the State are separate sovereigns, and each recognizes and respects the laws and authority of the other sovereign; and

WHEREAS, the Congress of the United States has enacted into law the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168 (the "Act"), which requires a tribal-state compact negotiated between a tribe and a state in order to conduct Class III Gaming Activity on the Indian Lands of a tribe; and

WHEREAS, the purpose of the Act is to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; and

WHEREAS, the Tribe is a federally recognized Indian Tribe and exercises governmental power over Indian Lands which are located within the exterior boundaries of the State, and within which the Gaming Activity regulated hereunder shall take place; and

WHEREAS, the Tribe and the State have negotiated the terms and conditions of this Compact to provide a regulatory framework for the operation of certain Class III Gaming which is intended to (a) ensure the fair and honest operation of such Gaming Activity; (b) maintain the integrity of all Activity conducted in regard to such Gaming Activity; (c) protect the public health, welfare and safety; and (d) ensure that gaming in Arizona remains limited; and

WHEREAS, changes in law, technology and the marketplace have led to a need to amend the 2003 Compact to ensure that gaming in Arizona remains limited while continuing to share revenue with the State; and

WHEREAS, Section 17 of the 2003 Compact provides for amendments that are not inconsistent with the provisions of Title 5, Chapter 6 of the Arizona Revised Statutes; and

WHEREAS, Arizona Revised Statute Section 5-601.02(E) provides that the Governor is authorized to negotiate and enter into amendments to the 2003 Compact; and

WHEREAS, the Tribe and the State are committed to ensuring that gaming in Arizona remains limited and regulated; and

WHEREAS, the Tribe and the State have agreed to enter into this Compact, which is an amended and restated version of the 2003 Compact and which includes provisions intended to enhance the regulation and integrity of gaming, consistent with the provisions of Title 5, Chapter 6 of the Arizona Revised Statutes.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the Tribe and the State agree as follows:

## **SECTION 1. TITLE**

This document shall be referred to as "Tonto Apache Tribe – State of Arizona Amended and Restated Gaming Compact."

## **SECTION 2. DEFINITIONS**

For purposes of this Compact and its appendices:

(a) "2003 Compact" means that certain tribal-state gaming compact by and between an Indian tribe and the State that is a 'new compact' as that term is defined in A.R.S. 5-601.02(I)(6), as amended.

(b) "2021 Compact" means a gaming compact by and between an Indian tribe and the State in a form substantially the same as this Compact.

(c) "2021 Compact Trust Fund" means the trust fund established and administered according to the 2021 Gaming Act and Section 12.1 of the 2021 Compact.

(d) "2021 Gaming Act" means the laws of the State of Arizona in the substantially identical form attached hereto as Exhibit A. For purposes of this definition, 2021 Gaming Act does not include any revisions or amendments to such act that may be adopted after the execution of this Compact.

(e) "Act" means the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721, and 18 U.S.C. §§ 1166-1168.

(f) "Additional Gaming Devices" means the number of additional gaming devices allocated to the Tribe in column (2) on Gaming Device Annex as adjusted under Section 3(c)(1)(B).

(g) "Ancillary Services" means any goods or services, except for legal services, provided to the Tribe in connection with the operation of Class III Gaming in a Gaming Facility, including but not limited to equipment, transportation, food, linens, janitorial supplies, or maintenance.

(h) "Annex" means one of those certain annexes attached to this Compact and incorporated herein, each of which may be amended only in accordance with Section 17 of this Compact, and all amendments thereof shall be subject to approval by the Secretary of the Interior in accordance with Section 2710(d)(3) of the Act.

(i) "Applicant" means any Person who has applied for a license or certification under the provisions of this Compact, or employment with a Gaming Facility Operator, or approval of any act or transaction for which approval is required or permitted under the provisions of this Compact.

(j) "Application" means a request for the issuance of a license or certification or for employment by a Gaming Facility Operator, or for approval of any act or transaction for which

approval is required or permitted under the provisions of this Compact.

(k) "Beneficiary Category" means a category of Beneficiary Tribe that is to receive a benefit from the 2021 Compact Trust Fund.

(l) "Beneficiary Tribe" means any tribe that (1) is not a Contributing Tribe; (2) has executed a 2021 Compact and such Compact is in effect during the year for which benefits are to be distributed from the 2021 Compact Trust Fund; and (3) meets the criteria of a Category One Tribe, a Category Two Tribe, or Category Three Tribe.

(m) "Card Game Table" means a single table at which the Tribe conducts the card game of poker, jackpot poker or blackjack.

(n) "Category One Tribe" means a Beneficiary Tribe that: (1) does not conduct Gaming Operations in a given year; and (2) does not have a Transfer Agreement in effect in the same year. The Category One Tribes expected as of the Effective Date are set forth in Annex 12.1(c)(2).

(o) "Category Two Tribe" means a Beneficiary Tribe that: (1) does not conduct Gaming Operations in a given year; and (2) has a Transfer Agreement in effect in the same year. The Category Two Tribes expected as of the Effective Date are set forth in Annex 12.1(c)(2).

(p) "Category Three Tribe" means a Beneficiary Tribe that the State Gaming Agency determines is eligible to receive a payment from the 2021 Compact Trust Fund in accordance with the procedures set forth in Paragraph 12 of Annex 12.1(c)(5).

(q) "Class I Gaming" means all forms of gaming defined as Class I in Section 4(6) of the Act, 25 U.S.C. § 2703(6).

(r) "Class II Gaming" means all forms of gaming defined as Class II in Section 4(7) of the Act, 25 U.S.C. § 2703(7).

(s) "Class II Gaming Device" means a Gaming Device which, if operated on Indian Lands by an Indian tribe, would be Class II Gaming.

(t) "Class III Gaming" means all forms of gaming as defined in Section 4(8) of the Act, 25 U.S.C. § 2703(8).

(u) "Class III Gaming Device" means a Gaming Device which, if operated on Indian Lands by an Indian tribe, would be Class III Gaming.

(v) "Class III Net Win" means gross gaming revenue, which is the difference between gaming wins and losses, before deducting costs and expenses.

(w) "Compact" means this Tonto Apache Tribe-State of Arizona Amended and Restated Gaming Compact.

(x) "Continuing 2003 Compact Tribe" means any Indian tribe that is a party to the 2003 Compact that does not enter into the 2021 Compact.

(y) "Contributing Tribe" means the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, or the Tohono O'odham Nation (collectively, "Contributing Tribes").

(z) "CPR" means the CPR Institute for Dispute Resolution.

(aa) "Current Gaming Device Allocation" means the number of Class III Gaming Devices allocated to the Tribe in column (1) on Gaming Device Annex as adjusted under Section 3(c)(1)(B).

(bb) "Delayed Gaming Facility" means a Gaming Facility that the Tribe is authorized to operate only after satisfying the conditions set forth in Section 3(c)(3)(A)(iv), (v), (vi), (vii), or (viii).

(cc) "Distributor" means a Person who distributes Class III Gaming Devices and/or component parts thereof.

(dd) "Effective Date" means the day this Compact goes into effect after all of the following events have occurred:

- (1) It is executed on behalf of the State and the Tribe;
- (2) It is approved by the Secretary of the Interior or deemed approved by operation of law under the Act;
- (3) Notice of the Secretary of the Interior's approval, or deemed approval by operation of law, is published in the Federal Register pursuant to the Act; and,
- (4) Each Indian tribe with a Gaming Facility in the Phoenix Metropolitan Area and each Indian tribe with a Gaming Facility in Pima County has executed the 2021 Compact and each such 2021 Compact has been approved by the Secretary of the Interior, or deemed approved by operation of law as indicated through publication in the Federal Register pursuant to the Act.

(ee) "Enrolled Tribal Member" means a person who has been enrolled in the Tribe and whose name appears in the Tribal membership roll and who meets the written criteria for membership.

(ff) "Existing Gaming Facility" means any Gaming Facility that the Tribe is operating as of the Effective Date and replacements or successors to such Gaming Facility without regard to the location of such replacement or successor but subject to the restrictions of Section 3(j).

(gg) "Existing Transfer Agreement" means a Transfer Agreement entered into pursuant to the 2003 Compact, which is in effect as of the Effective Date of the 2021 Compact.

(hh) "Far West Valley Facility" means the Gaming Facility that the Tohono O'odham Nation is authorized to operate on the Far West Valley Trust Land.

(ii) "Far West Valley Trust Land" means a single area consisting of contiguous tracts of land within Maricopa County, Arizona that is north of Northern Avenue, west of Reems Road,



and south of Waddell Road when acquired in trust by the United States for the benefit of the Tohono O'odham Nation pursuant to the Gila Bend Indian Reservation Lands Replacement Act, PL 99-503.

(jj) "Final Renewal Term" has the meaning set forth in Section 23(b)(3).

(kk) "First Renewal Term" has the meaning set forth in Section 23(b)(2).

(ll) "Forbearance Agreement" means an agreement between the State and an Indian tribe in which the Indian tribe that is transferring some or all of its Gaming Device Operating Rights waives its rights to put such Gaming Device Operating Rights into play during the term of a Transfer Agreement.

(mm) "Gaming Activity" means all forms of Class III Gaming owned and operated by the Tribe and conducted within the Indian Lands of the Tribe.

(nn) "Gaming Device" means a fixed location or mobile mechanical device, electro-mechanical device, or device controlled by an electronic microprocessor or in any other manner, whether that device would constitute Class II Gaming or Class III Gaming if operated on Indian Lands by an Indian tribe, which is used in connection with a game of chance, whether or not the outcome of the game is also affected in some part by skill, and where the game includes the payment of consideration in the form of coins, tokens, bills, coupons, ticket vouchers, pull tabs, smart cards, electronic in-house accounting system credits or any other forms of consideration and, through the application of chance, the player of the game may become entitled to a prize, which may be paid in coins, tokens, bills, coupons, ticket vouchers, smart cards, electronic in-house accounting system credits or any other forms of value. Gaming Device does not include any of the following:

- (1) Those technological aids used in live bingo games that function only as electronic substitutes for bingo cards and cannot substitute for the bingo caller.
- (2) Devices that issue and validate paper lottery products and that are directly operated only by Arizona State Lottery licensed retailers and their employees.
- (3) Devices expressly authorized by Arizona statutes and which are operated by the Arizona State Lottery that allow a lottery player to dispense paper lottery tickets, so long as the devices do not identify winning or losing lottery tickets, display lottery winnings or disburse lottery winnings.
- (4) Devices expressly authorized by Arizona statutes and which are operated by the Arizona State Lottery that allow a lottery player to validate paper lottery tickets for a game that does not have a predetermined number of winning tickets, if:
  - (A) The devices do not allow interactive gaming;
  - (B) The devices do not allow a lottery player to play the lottery for immediate payment or reward;

(C) The devices do not disburse lottery winnings; and

(D) The devices are not Video Lottery Terminals.

(5) Player Activated Lottery Terminals.

(oo) "Gaming Device Operating Right" means the authorization of an Indian tribe to operate a Class III Gaming Device pursuant to the terms of the 2021 Compact or the 2003 Compact.

(pp) "Gaming Employee" means any person employed as a Primary Management Official or Key Employee of a Gaming Operation of the Tribe and any person employed in the operation or management of a Gaming Operation, including, but not limited to, any person whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public.

(qq) "Gaming Facility" means the buildings or structures in which Class III Gaming, as authorized by this Compact, is conducted. The State Gaming Agency, the Tribal Gaming Office and the Tribe shall engage in a case-by-case analysis of each Gaming Facility project and may document the borders of the Gaming Facility in a written agreement. Where there are multiple buildings or structures housing Class III Gaming at a single gaming site or resort, each of the buildings or structures in which Class III Gaming is conducted will be considered part of a single Gaming Facility.

(rr) "Gaming Facility Operator" means the Tribe, an enterprise owned by the Tribe, or such other entity of the Tribe as the Tribe may from time to time designate by written notice to the State as the wholly-owned tribal entity having full authority and responsibility for the operation and management of Class III Gaming Activity.

(ss) "Gaming Operation" means any Gaming Activity conducted within any Gaming Facilities.

(tt) "Gaming Ordinance" means any duly enacted ordinance of the Tribe which governs the conduct of Gaming Activity by the Tribe, all amendments thereto, and all regulations promulgated thereunder.

(uu) "Gaming Vendor" means any Person or entity which sells, leases, distributes or provides: (1) devices, machines, or equipment used directly in connection with Gaming Activity including that which has the capacity to affect the calculation, storage, collection, electronic security, or control of gaming revenues; (2) services which are unique to the operation of Gaming Activity, including, but not limited to, simulcasting and bookmaking; and (3) security or surveillance services or equipment for the Gaming Facility. Gaming Vendors include Persons who provide general construction contracting, payroll and locks and locksmith services for the Gaming Facility, as well as Persons who provide player tracking, player acquisition, promotional, and marketing services related to Gaming Activity.

(vv) "Indian Lands" means lands as defined in 25 U.S.C. § 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

(ww) "Initial Term" has the meaning set forth in Section 23(b)(1).

(xx) "Key Employee" means a Gaming Employee who performs one or more of the following functions:

- (1) Counting room supervisor;
- (2) Chief of security;
- (3) Custodian of gaming supplies or cash;
- (4) Floor manager; or
- (5) Custodian of Gaming Devices including persons with access to cash and accounting records within such devices; or,

if not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or, if not otherwise included, the four most highly compensated persons in the Gaming Operation.

(yy) "License" means an approval issued by the Tribal Gaming Office to any natural person or entity to be involved in the Gaming Operation as a Gaming Employee, Gaming Vendor or in the providing of Ancillary Services to the Tribe.

(zz) "Lottery Draw Games" means draw games operated through the Arizona State Lottery that are limited solely and exclusively to the activities as authorized in the 2021 Gaming Act (including the operation of such activities through the internet on personal electronic devices such as smart phones and tablets) and no other activities. For purposes of this definition, Lottery Draw Games is strictly limited solely and exclusively to the scope, nature and location of the activities as provided in the 2021 Gaming Act.

(aaa) "Lottery Keno" means keno operated through the Arizona State Lottery that is limited solely and exclusively to the activities as authorized in the 2021 Gaming Act (including the operation of such activities through the internet including on personal electronic devices such as smart phones and tablets at authorized locations) and no other activities. For purposes of this definition, Lottery Keno is strictly limited solely and exclusively to the scope, nature and location of the activities as provided in the 2021 Gaming Act.

(bbb) "Lower Highway 89 Gaming Facility" means a Gaming Facility that is authorized to be operated by Navajo Nation on land west of Highway 89 between mile marker 421 and mile marker 423, which may be acquired in trust by the United States for the benefit of the Navajo Nation pursuant to the Navajo Nation's 1974 settlement of a land claim, codified at 25 U.S.C. Section 640(d)-10(b).

(ccc) "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

(ddd) "Management Contractor" means a natural person or entity that has entered into a Management Contract with the Tribe or a Gaming Facility Operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

(eee) "Manufacturer" means a natural person or entity that manufactures Gaming Devices and/or component parts thereof as defined by this Compact for use or play in the

Gaming Facilities.

(fff) "Maximum Devices Per Gaming Facility" means the total number of Class III Gaming Devices that the Tribe may operate within a single Gaming Facility.

(ggg) "Multi-Station Device" means an electronic Class III Gaming Device that incorporates more than one Player Station and contains one central processing unit which operates the game software, including a single random number generator that determines the outcome of all games at all Player Stations for that Class III Gaming Device.

(hhh) "New Gaming Device" means a Gaming Device that the Tribe operates from its New Gaming Device Allocation.

(iii) "New Gaming Device Allocation" means the number of Class III Gaming Devices allocated to the Tribe in column (3) on Gaming Device Annex as adjusted under Section 3(c)(1)(B).

(jjj) "Off-Reservation Fantasy Sports" means fantasy sports activities that are limited solely and exclusively to the activities as authorized in the 2021 Gaming Act (including the operation of such activities on mobile devices) and no other activities. For purposes of this definition, Off-Reservation Fantasy Sports is strictly limited solely and exclusively to the scope, nature and location of the activities as provided in the 2021 Gaming Act.

(kkk) "Off-Reservation Event Wagering" means event wagering activities that are limited solely and exclusively to the activities as authorized in the 2021 Gaming Act (including the operation of such activities through the internet on personal electronic devices such as smart phones and tablets) and no other activities. For purposes of this definition, Off-Reservation Event Wagering is strictly limited solely and exclusively to the scope, nature and location of the activities as provided in the 2021 Gaming Act.

(III) "Pascua Yaqui Third Facility" means the third Gaming Facility allocated to the Pascua Yaqui Tribe under the 2021 Compact, to be located in an area South of West Grant Road, East of Interstate 10, North of West Calle Adelanto, and West of North 15<sup>th</sup> Avenue in the City of Tucson, Arizona, when such land is acquired in trust for the benefit of the Pascua Yaqui Tribe, and is made eligible for gaming, by an act of Congress.

(mmm) "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When "Person" is used to designate the violator or offender of any law, it includes a corporation, partnership or any association of Persons.

(nnn) "Payment Year" means a period of one calendar year beginning on the Effective Date and ending on the anniversary of the Effective Date, and each annual period thereafter for a total of ten (10) years.

(ooo) "Phoenix Metropolitan Area" means the area located:

Beginning at an XY coordinate on the West boundary of Maricopa County recognized as 113° 19' 45" W, 33° 5' 13" N;  
Thence due East 345,230 Feet to an XY coordinate recognized as 112° 12' 07" W; 33° 05' 13" N;  
Thence due South 52,709 Feet to an XY coordinate recognized as 112° 12' 09"

W, 32° 56' 31" N;  
Thence due East 135,817 Feet to an XY coordinate recognized as 111° 45' 35"  
W, 32° 56, 31" N;  
Thence South and East along a curve to the left with a radius of 79,200 Feet to  
an XY coordinate recognized as 111° 16' 21" W, 33° 05' 13" N;  
Thence due East 69,021 Feet to an XY coordinate recognized as 111° 02' 49" W,  
33° 05' 13" N;  
Thence due North 144,793 Feet to the intersection with the East boundary of  
Maricopa County;  
Thence along the North and West boundaries of Maricopa County to the point of  
beginning.

A map of the Phoenix Metropolitan Area is attached to this Compact for illustrative purposes only.

(ppp) "Player Activated Lottery Terminal" means an on-line computer system that is not a Video Lottery Terminal and that does not provide the player with interactive gaming, but that uses the terminal for dispensing paper tickets only, in which:

- (1) The terminal algorithm is used for the random generation of numbers;
- (2) The tickets dispensed by the terminal do not allow the player the means to play directly against the terminal;
- (3) The player uses the dispensed ticket to participate in an off-site random drawing; and
- (4) The player cannot play against the terminal for immediate payment or reward.

(qqq) "Player Station" means a terminal of a Multi-Station Device through which the player plays an electronic game of chance simultaneously with other players at other Player Stations of that Multi-Station Device, and which:

- (1) Has no means to individually determine game outcome;
- (2) Cannot be disconnected from the Gaming Device central processing unit that determines the game outcomes for all Player Stations without rendering that terminal inoperable; and
- (3) Does not separately contain a random number generator or other means to individually determine the game outcome.

(rrr) "Principal" means with respect to any Person:

- (1) Each of its officers and directors;
- (2) Each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer or general manager;

- (3) Each of its owners or partners, if an unincorporated business;
- (4) Each of its shareholders who own more than ten (10) percent of the shares of the corporation, if a corporation;
- (5) Each Person other than a banking institution who has provided financing for the entity constituting more than ten (10) percent of the total financing of the entity; and
- (6) Each of the beneficiaries, or trustees of a trust.

(sss) "Primary Management Official" means the Person having management responsibilities under a Management Contract; or any Person who has authority to hire and fire employees or to set up working policy for a Gaming Operation; or the chief financial officer or other Person who has financial management responsibility for a Gaming Operation.

(ttt) "Rules" means the CPR Rules for Non-Administered Arbitration (2000 rev.).

(uuu) "Section" means a section or subsection of this Compact, but not of the annexes attached hereto.

(vvv) "Short Form Application" means the form of application for vendor certification approved the Stage Gaming Agency and attached for illustrative purposes as Exhibit B to this Compact.

(www) "State" means the State of Arizona, its authorized officials, agents and representatives.

(xxx) "State Certification" means the process utilized by the State Gaming Agency to ensure that all Persons required to be certified are qualified to hold such certification in accordance with the provisions of this Compact.

(yyy) "State Gaming Agency" means the agency of the State which the Governor may from time to time designate by written notice to the Tribe as the single State agency which shall act on behalf of the State under this Compact.

(zzz) "Transfer Agreement" means a written agreement authorizing the transfer of Gaming Device Operating Rights between the Tribe and another Indian tribe, which may include a written agreement for pooled Gaming Device Operating Rights pursuant to Section 3(d)(12) of the Compact.

(aaaa) "Transfer Notice" means a written notice that the Tribe must provide to the State Gaming Agency of its intent to acquire or transfer Gaming Device Operating Rights pursuant to a Transfer Agreement.

(bbbb) "Tribal Gaming Office" means the department, agency or commission designated by action of the Tribe as the tribal entity which shall exercise the civil regulatory authority of the Tribe over Class III Gaming by the Tribe.

(cccc) "Tribal Police Department" means the police force of the Tribe established and maintained or contracted for by the Tribe pursuant to the Tribe's powers of self-government to

carry out law enforcement by the Tribe.

(dddd) "Tribe" means the Tonto Apache Tribe, and its authorized officials, agents and representatives.

(eeee) "Video Lottery Terminal" means an on-line computer or data-processing terminal capable of providing a source of both input and a video display output for the computer system to which it is connected, in which a player is playing a game against an algorithm so that the player is playing directly against the terminal or computer system for the determination of the outcome of the game and is rewarded or penalized based on the outcome, and which dispenses winnings in any form including a receipt or ticket which can be redeemed for the player's winnings.

(ffff) "West Valley Facility" means the Gaming Facility that the Tohono O'odham Nation is authorized to operate on the West Valley Trust Land.

(gggg) "West Valley Trust Land" means the approximately 134.88 acres of land taken in trust for the benefit of the Tohono O'odham Nation by the Secretary of the Interior and located in Maricopa County, Arizona south of Northern Avenue, west of 91st Avenue, north of Glendale Boulevard, and east of 95th Avenue.

(hhhh) "YAN Cliff Castle Gaming Facility" means the Existing Gaming Facility operated by the Yavapai-Apache Nation that is located on the Indian Lands of the Yavapai-Apache Nation.

### **SECTION 3. NATURE, SIZE AND CONDUCT OF CLASS III GAMING**

(a) Authorized Class III Gaming Activity as of Effective Date.

- (1) Subject to the terms and conditions of this Compact, the Tribe is authorized to operate the following Gaming Activity: (1) Class III Gaming Devices, (2) blackjack, (3) jackpot poker (including promotional award poker and house banked poker), (4) keno, (5) lottery, (6) off-track pari-mutuel wagering, (7) pari-mutuel wagering on horse racing, (8) baccarat, (9) roulette, (10) craps, (11) sic bo, (12) pai gow, (13) dealer controlled electronic table games, (14) event wagering, (15) fantasy sports contests, and (16) other Gaming Activity pursuant to Section 3(a)(2).
- (2) Pursuant to procedures in Section 3(b)(3), the Tribe may propose that any additional Gaming Activity be authorized pursuant to this Compact.

(b) Appendices Governing Gaming Activity. The Tribe shall conduct all Gaming Activity authorized by this Compact in accordance with a mutually agreed-upon appendix setting forth the standards, specifications, and regulations governing such Gaming Activity. If there is a conflict between the provisions of this Compact and its appendices, then this Compact shall control.

- (1) Technical and operational standards for Gaming Devices.
  - (A) The Tribe may only operate Class III Gaming Devices, including Multi-Station Devices, host systems, kiosks, and other associated

equipment, which comply with the technical standards set forth in Appendix A, and in accordance with the operational standards, specifications and regulations set forth in Appendix A.

- (B) Appendix A may incorporate by reference standards published by a recognized independent corporate or governmental entity mutually agreed upon by the parties, including, without limitation, Gaming Laboratories International LLC.
  - (C) In the event an applicable entity ceases to publish standards that have been incorporated into Appendix A, then those standards shall be replaced by corresponding and equally rigorous technical standards mutually agreed upon by the parties. The replacement standards shall be adopted following the procedures of Section 3(b)(3) below.
  - (D) Class III Gaming Devices, including Multi-Station Devices, host systems, kiosks and other associated equipment (in cases where there are testing standards applicable to the associated equipment), shall be tested by a tribally licensed and State Gaming Agency certified independent test laboratory, and shall only be put into play or use once the independent test laboratory certifies that they comply with the applicable provisions of Appendix A.
- (2) Operational standards for other Gaming Activity. The Tribe shall conduct keno in accordance with Appendix D, pari-mutuel betting in accordance with Appendix E, blackjack in accordance with Appendix F(1), promotional award poker in accordance with Appendix F(2), house banked poker in accordance with Appendix F(3), baccarat in accordance with Appendix F(4), roulette in accordance with Appendix F(5), craps in accordance with Appendix F(6), lottery in accordance with Appendix G, and dealer controlled electronic tables games in accordance with Appendix L.
- (3) Modifications to appendices and new appendices.
- (A) The Tribal Gaming Office and the State Gaming Agency may agree to modify the appendices to this Compact and may enter into additional appendices in order to continue efficient regulation and address future circumstances, including new or additional Gaming Activity. Neither the modification of an appendix nor the addition of a new appendix shall be considered an amendment to this Compact.
  - (B) Either the Tribe or the State Gaming Agency may give written notice to the other of a request to negotiate an appendix for a new or additional Gaming Activity or a modification to the existing appendices referenced in Sections 3(b)(1) and (2) by submitting a written request to the other party that includes the proposed additions and/or revisions. Within seven (7) business days of



giving or receiving notice of request to negotiate under this Section 3(b)(3)(B), the State Gaming Agency shall give written notice of the request to the Tribal Gaming Offices of all Arizona Indian tribes that are parties to a 2021 Compact. If agreement between the Tribe and the State Gaming Agency on a new or modified appendix is not reached within one hundred eighty (180) days after receipt of the written notice, then either the Tribe or the State Gaming Agency may initiate Section 15 dispute resolution in order to resolve the terms of any new or modified appendix.

- (C) At the election of either the Tribe or the State Gaming Agency, any arbitration process under Section 15(c) pursuant to this Section 3(b)(3) shall be amended so as to (i) be conducted before a single qualified neutral arbitrator selected by CPR, and (ii) follow a last best offer format to be set forth by the arbitrator with the goal of reaching an appropriate, fair, timely and cost-effective result that is consistent with this Compact. Evidence that the arbitrator should consider includes whether the Tribe or State is seeking to change existing appendix language it has already agreed to and the terms of any existing appendices between the Tribe, the State, and any other Arizona Indian tribes, as well as the following:
    - (i) current industry standards;
    - (ii) the promotion of, and compatibility with, future technology;
    - (iii) which proposal best serves the public;
    - (iv) which proposal is most reliable;
    - (v) which proposal is most cost effective; and
    - (vi) which proposal can be executed in the most expeditious manner.
- (4) Security and surveillance requirements. The Tribe shall comply with the security and surveillance requirements set forth in Appendix C to this Compact.
- (A) If the Gaming Facility Operator operates the surveillance system, the manager of the surveillance department may report to management of the Gaming Facility Operator regarding administrative and daily matters, but must report to a Person or Persons independent of the management of the Gaming Facility Operator (e.g., the Gaming Facility Operator's management board or a committee thereof, the Tribe's council or a committee thereof, or the Tribe's chairperson, president, or governor) regarding matters of policy, purpose, responsibility, authority, and integrity of casino management.

- (B) If the Tribal Gaming Office operates the surveillance system, the manager of its surveillance department must report directly to the executive director of the Tribal Gaming Office.
- (c) Number of Gaming Device Operating Rights and Number of Gaming Facilities.
  - (1) Number of Gaming Devices; Periodic Increases.
    - (A) Number of Gaming Devices.
      - (i) The Tribe's Gaming Device Operating Rights are equal to the sum of its Current Gaming Device Allocation, plus any rights to operate Additional Gaming Devices acquired by the Tribe in accordance with and subject to the provisions of Section 3(d), plus its New Gaming Device Allocation. The Tribe may operate one Class III Gaming Device for each of the Tribe's Gaming Device Operating Rights. Unless the Tribe is Ak-Chin Indian Community or Pascua Yaqui Tribe, the Tribe shall not operate its New Gaming Device Allocation unless and until the Tribe has acquired Gaming Device Operating Rights through one or more Transfer Agreement(s) or through a transfer pool pursuant to Section 3(d)(12)(A) for all of its Additional Gaming Devices.
      - (ii) If the Tribe is Ak-Chin Indian Community, the Tribe shall not operate its New Gaming Device Allocation unless the Tribe has extended for the duration of the 2021 Compact its Existing Transfer Agreement(s) in effect for five hundred twenty three (523) Additional Gaming Devices, and thereafter each New Gaming Device put into operation shall be matched by putting an Additional Gaming Device into operation through a transfer pool pursuant to Section 3(d)(12)(A); and if the Tribe initiates operation of its Delayed Gaming Facility, the Tribe shall automatically receive an increase in its New Gaming Device Allocation of one hundred fifty (150) and an increase in its Additional Gaming Device allocation of one hundred fifty (150), with the same matching requirement imposed.
      - (iii) If the Tribe is Pascua Yaqui Tribe, the Tribe shall not operate its New Gaming Device Allocation unless the Tribe has extended for the duration of the 2021 Compact its Existing Transfer Agreement(s) in effect for three hundred twelve (312) Additional Gaming Devices, and if Gaming Activity commences at the Pascua Yaqui Third Facility, the Tribe shall have a transfer pool pursuant to Section 3(d)(12)(A) in place for three hundred fifty eight (358) Additional Gaming Devices, and thereafter each New Gaming Device put into operation shall be matched by

putting an Additional Gaming Device into operation through a transfer pool pursuant to Section 3(d)(12)(A).

- (iv) If the Tribe is Yavapai-Apache Nation, the Tribe shall extend its Existing Transfer Agreement in accordance with its terms, including the term authorizing the Yavapai-Apache Nation to reduce the number of Gaming Device Operating Rights acquired under the Transfer Agreement on each five-year anniversary of the Transfer Agreement.

(B) Periodic Increases.

- (i) If the Tribe is not Ak-Chin Indian Community, Pascua Yaqui Tribe or Fort McDowell Yavapai Nation, the Tribe's New Gaming Device Allocation shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex.
- (ii) If the Tribe is Ak-Chin Indian Community, the Tribe's Additional Gaming Devices shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex and the Tribe's New Gaming Device Allocation shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex. In the event that the 2021 Compact Trust Fund does not continue after the evaluation process set out in Section 12.1(d), the Ak Chin Indian Community's New Gaming Device Allocation shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex multiplied by two for a period beginning at the date of opening of the Ak Chin Second Facility and continuing for a period of not more than ten years from the Ak Chin Second Facility's opening date.
- (iii) If the Tribe is the Pascua Yaqui Tribe, the Tribe's Additional Gaming Devices shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex and the Tribe's New Gaming Device Allocation shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex. In the event that the 2021 Compact Trust Fund does not continue after the evaluation process set out in Section 12.1(d), the Pascua Yaqui Tribe's New Gaming Device Allocation shall be automatically increased

on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex multiplied by two for a period beginning at the date of opening of the Pascua Yaqui Third Facility and continuing for a period of not more than ten years from the Pascua Yaqui Third Facility's opening date.

- (iv) If the Tribe is Fort McDowell Yavapai Nation, the Tribe's Current Gaming Device Allocation shall be automatically increased on each two-year anniversary of the Effective Date by the number of Gaming Devices specified in Column 4 of Gaming Device Annex.
- (C) Other Gaming Devices. A Gaming Device used solely in the play of keno, event wagering, fantasy sports wagering, pari-mutuel wagering, or other Gaming Activity in compliance with an applicable appendix, other than Appendix A, or through Section 3(b)(1), does not require the use of a Gaming Device Operating Right from the Tribe's allocation in Section 3(c)(1).
- (2) Class II Gaming Devices. The Tribe may operate up to forty (40) Class II Gaming Devices in a Gaming Facility without acquiring Gaming Device Operating Rights under Section 3(d), but such Class II Gaming Devices shall be counted against the Tribe's number of Additional Gaming Devices. Each Class II Gaming Device in excess of forty (40) that the Tribe operates within its Indian Lands shall be counted against the Tribe's Current Gaming Device Allocation.
- (3) Number of Gaming Facilities.
- (A) Number of Gaming Facilities. The Tribe may operate Class III Gaming only in the number of Gaming Facilities specified in Gaming Facilities Annex for the Tribe; provided, however, notwithstanding the number of Gaming Facilities specified on Gaming Facilities Annex, if the Tribe is:
- (i) Tohono O'odham Nation, the Tribe shall not operate more than two Gaming Facilities in the Phoenix Metropolitan Area, which shall be subject to the geographical location restrictions in Section 3(j)(3)(A).
  - (ii) Salt River Pima-Maricopa Indian Community, the Tribe shall not operate more than two Gaming Facilities until Fort McDowell Yavapai Nation has consented in writing to the Tribe's operation of the Tribe's third Gaming Facility.
  - (iii) Gila River Indian Community, the Tribe shall not operate more than four Gaming Facilities in the Phoenix Metropolitan Area, which shall be subject to the geographical restrictions in Section 3(j)(3)(C).

- (iv) Fort McDowell Yavapai Nation, the Tribe shall not operate more than one Gaming Facility until: (a) the tenth anniversary of the Effective Date shall have occurred; and (b) Salt River Pima-Maricopa Indian Community has consented in writing to the Tribe's operation of the Tribe's second Gaming Facility.
  - (v) Ak-Chin Indian Community, the Tribe shall not operate more than one Gaming Facility until the tenth anniversary of the Effective Date shall have occurred.
  - (vi) Yavapai-Apache Nation, the Tribe shall not operate more than one Gaming Facility until the fifth anniversary of the Effective Date shall have occurred.
  - (vii) San Carlos Apache Tribe, the Tribe shall not operate more than two Gaming Facilities until the fifth anniversary of the Effective Date shall have occurred.
  - (viii) White Mountain Apache Tribe or Fort Mojave Indian Tribe, the Tribe shall not operate more than two Gaming Facilities until the tenth anniversary of the Effective Date shall have occurred.
- (4) Maximum Devices Per Gaming Facility; Periodic Increases.
- (A) The Maximum Devices Per Gaming Facility.
    - (i) If the Tribe is Tohono O'odham Nation,
      - a. the Maximum Devices Per Gaming Facility in each of the Tribe's Existing Gaming Facilities located outside of the Phoenix Metropolitan Area is 1,400 Gaming Devices as of the Effective Date;
      - b. the Maximum Devices Per Gaming Facility in the West Valley Facility is 1,450 Gaming Devices as of the Effective Date; and
      - c. the Maximum Devices Per Gaming Facility in the Far West Valley Facility is 900 Gaming Devices as of the Effective Date.
    - (ii) If the Tribe is Gila River Indian Community,
      - a. the Maximum Devices Per Gaming Facility in each of the Tribe's three Existing Gaming Facilities is 1,400 Gaming Devices as of the Effective Date; and

- b. the Maximum Devices Per Gaming Facility in the Tribe's fourth Gaming Facility (i.e., other than the Tribe's three Existing Gaming Facilities) is 900 Gaming Devices as of the Effective Date.
- (iii) If the Tribe is Salt River Pima-Maricopa Indian Community,
  - a. the Maximum Devices Per Gaming Facility in each of the Tribe's two Existing Gaming Facilities is 1,400 Gaming Devices as of the Effective Date; and
  - b. the Maximum Devices Per Gaming Facility in the Tribe's third Gaming Facility (i.e., other than the Tribe's two Existing Gaming Facilities) is 900 Gaming Devices as of the Effective Date.
- (iv) If the Tribe is Fort McDowell Yavapai Nation,
  - a. the Maximum Devices Per Gaming Facility in the Tribe's Existing Gaming Facility is 1,400 Gaming Devices as of the Effective Date; and
  - b. the Maximum Devices Per Gaming Facility in the Tribe's Delayed Gaming Facility (i.e., other than the Tribe's Existing Gaming Facility) is 300 Gaming Devices as of the date such Gaming Facility begins operations.
- (v) If the Tribe is Ak-Chin Indian Community,
  - a. the Maximum Devices Per Gaming Facility in the Tribe's Existing Gaming Facility is 1,400 Gaming Devices as of the Effective Date; and
  - b. the Maximum Devices Per Gaming Facility in the Tribe's Delayed Gaming Facility (i.e., other than the Tribe's Existing Gaming Facility) is 300 Gaming Devices as of the date such Gaming Facility begins operations.
- (vi) If the Tribe is Yavapai-Apache Nation,
  - a. the Maximum Devices Per Gaming Facility in the YAN Cliff Castle Gaming Facility is 1,400 Gaming Devices as of the Effective Date; and
  - b. the Maximum Devices Per Gaming Facility in the Tribe's Delayed Gaming Facility (i.e., other than the Existing Gaming Facility) is 300 Gaming Devices as of the date such Gaming Facility begins operations.

- (vii) if the Tribe is San Carlos Apache Tribe Indian Tribe,
  - a. the Maximum Devices Per Gaming Facility in the Tribe's two Existing Gaming Facilities is 1,400 Gaming Devices as of the Effective Date; and
  - b. the Maximum Devices Per Gaming Facility in the Tribe's Delayed Gaming Facility (i.e., other than the Tribe's two Existing Gaming Facility) is 300 Gaming Devices as of the date such Gaming Facility begins operations.
  
- (viii) if the Tribe is White Mountain Apache Tribe or Fort Mojave Indian Tribe,
  - a. the Maximum Devices Per Gaming Facility in the Tribe's Existing Gaming Facility is 1,400 Gaming Devices as of the Effective Date;
  - b. the Maximum Devices Per Gaming Facility in the second Gaming Facility that the Tribe may operate after the Effective Date is 900 Gaming Devices as of the date such Gaming Facility begins operations; and,
  - c. the Maximum Devices Per Gaming Facility in the Tribe's Delayed Gaming Facility (i.e., other than the two Gaming Facilities referenced in the immediately preceding subsections) is 300 Gaming Devices as of the date that such Gaming Facility begins operations.
  
- (ix) If the Tribe is Pascua Yaqui Tribe,
  - a. the Maximum Devices Per Gaming Facility in each of the Tribe's two Existing Gaming Facilities is 1,400 Gaming Devices as of the Effective Date; and
  - b. the Maximum Devices Per Gaming Facility in the Pascua Yaqui Third Facility is 900 Gaming Devices as of the Effective Date.
  
- (x) If the Tribe is the Navajo Nation,
  - a. the Maximum Devices Per Gaming Facility in one of the Tribe's Gaming Facilities is 1,400 Gaming Devices as of the Effective Date;
  - b. the Maximum Devices Per Gaming Facility in the Lower Highway 89 Gaming Facility is 300 Gaming

Devices as of the date that such Gaming Facility begins operations; and,

- c. the Maximum Devices Per Gaming Facility in the Tribe's remaining two (2) Gaming Facilities (i.e., other than the two Gaming Facilities referenced in the immediately preceding subsections) is 900 Gaming Devices as of the Effective Date.

(xi) If the Tribe is the Cocopah Indian Tribe, the Quechan Tribe, or the Colorado River Indian Tribes,

- a. the Maximum Devices Per Gaming Facility in the Tribe's Existing Gaming Facility is 1,400 Gaming Devices as of the Effective Date; and
- b. the Maximum Devices Per Gaming Facility in the second Gaming Facility that the Tribe may operate after the Effective Date is 900 Gaming Devices as of the date that such Gaming Facility begins operations.

(xii) If the Tribe is the Tonto Apache Tribe, the Maximum Devices Per Gaming Facility in the Tribe's Existing Gaming Facility is 1,400 Gaming Devices as of the Effective Date.

(xiii) If the Tribe is the Yavapai-Prescott Tribe, the Maximum Devices Per Gaming Facility in each of the Tribe's Existing Gaming Facilities is 1,400 Gaming Devices as of the Effective Date.

(xiv) If the Tribe is the Hopi Tribe, the Maximum Devices Per Gaming Facility for the first Gaming Facility that the Tribe may operate is 1,400 Gaming Devices as of the Effective Date; for each of the remaining Gaming Facilities that the Tribe may operate thereafter, the Maximum Devices Per Gaming Facility is 900 Gaming Devices as of the date such Gaming Facility begins operations.

(xv) If the Tribe is the Havasupai Tribe, Hualapai Tribe, Zuni Tribe, Kaibab-Paiute Tribe, or San Juan Southern Paiute Tribe, if the Tribe commences operations at a Gaming Facility in accordance with the terms of this Compact, the Maximum Devices Per Gaming Facility that the Tribe may operate is 1,400 Gaming Devices as of the date such Gaming Facility begins operations; for each of the remaining Gaming Facilities that the Tribe may operate thereafter, the Maximum Devices Per Gaming Facility is 900 Gaming Devices as of the date such Gaming Facility begins operations.

(B) Periodic Increases



- (i) If the Tribe is not Tohono O'odham Nation, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, Ak-Chin Indian Community, or Pascua Yaqui Tribe, during the term of this Compact, the Maximum Devices Per Gaming Facility shall be automatically increased without the need to amend this Compact on each two-year anniversary of the Effective Date as specified in Annex 3(c)(4)(B)(i).
  - (ii) If the Tribe is Tohono O'odham Nation, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, Ak-Chin Indian Community, or Pascua Yaqui Tribe, during the term of this Compact, the Maximum Devices Per Gaming Facility shall be automatically increased without the need to amend this Compact as specified in Annex 3(c)(4)(B)(ii).
- (5) If the Tribe is not listed on Gaming Device Annex, the Tribe's Current Gaming Device Allocation shall be four hundred seventy-five (475) Gaming Devices and the Tribe shall be allocated one (1) Gaming Facility, and the Tribe's number of Additional Gaming Devices shall be zero and the Tribe's New Gaming Device Allocation shall be zero. Periodic increases shall be allocated in accordance with Section 3(c)(4)(B).
- (6) Multi-Station Devices. No more than two and one-half percent (2.5%) of the Gaming Devices in a Gaming Facility (rounded off to the nearest whole number) may be Multi-Station Devices.
- (d) Transfer of Gaming Device Operating Rights.
  - (1) Transfer requirements. During the term of this Compact, the Tribe may enter into a Transfer Agreement with one or more Indian tribes to acquire Gaming Device Operating Rights up to the Tribe's number of Additional Gaming Devices or to transfer some or all of the Tribe's Gaming Device Operating Rights up to the Tribe's Current Gaming Device Allocation, except that if the Tribe is Navajo Nation, then the Tribe may transfer only up to 1,400 Gaming Devices of its Current Gaming Device Allocation. Before the Effective Date of this Compact, the Tribe may enter into extended Existing Transfer Agreements or amended Existing Transfer Agreements. The Tribe's acquisition or transfer of Gaming Device Operating Rights is subject to the following conditions:
    - (A) Gaming Compact. Each Indian tribe that is a party to a Transfer Agreement must have a valid and effective 2003 Compact or a 2021 Compact that contains a provision substantially similar to this Section 3(d) permitting transfers of the Indian tribe's Gaming Device Operating Rights.
    - (B) Forbearance Agreement. If the Tribe enters into a Transfer Agreement to transfer some or all of its Gaming Device Operating

Rights, the Tribe shall also execute a Forbearance Agreement with the State. The Forbearance Agreement shall include:

- (i) A waiver of all rights of the Tribe to put into play or operate the number of Gaming Device Operating Rights transferred during the term of the Transfer Agreement;
- (ii) An agreement by the Tribe to reduce its Gaming Facility allocation during the term of the Transfer Agreement as follows:

Number of transferred Gaming Device Operating Rights

Reductions in Gaming Facility allocation

1 - 613	1
614 - 1,316	2
1,317 - 1,806	3

- a. If the Tribe's number under column (4) of the Table in the 2003 Compact is lower than the Tribe's number under column (3) in the 2003 Compact, then the Tribe shall be credited for the reduction if the Tribe enters into a Transfer Agreement.
  - b. The numbers in the column labeled "Number of transferred Gaming Device Operating Rights" shall be increased on each five-year anniversary of the Effective Date by multiplying each such number, other than one (1), by one and one-half percent (1.5%)
  - c. Reductions in the Gaming Facility allocation will be based on the cumulative total number of Gaming Device Operating Rights transferred by the Tribe under all Transfer Agreements that are in effect.
  - d. If the Tribe is the Navajo Nation, then the Tribe's Gaming Facility allocation shall be reduced by one (1) if, pursuant to Section 3(d)(2) of this Compact, the Tribe transfers from 1 to 613 Gaming Device Operating Rights, and by an additional one (1) if the Tribe transfers from 614 to 1,400 Gaming Device Operating Rights.
- (C) Gaming Facility not required. The Tribe may transfer unused Gaming Device Operating Rights whether or not it has a Gaming Facility allocation.
  - (D) Current operation. The Tribe must operate Gaming Devices at least equal to its Current Gaming Device Allocation as set forth in

its 2003 Compact before, or simultaneously with, the Tribe acquiring the right to operate Additional Gaming Devices by a Transfer Agreement. The Tribe is not required to utilize any Gaming Device Operating Rights it acquires, or to utilize them prior to acquiring additional Gaming Device Operating Rights.

- (E) Transfer of acquired Gaming Device Operating Rights prohibited. The Tribe shall not at any time simultaneously acquire Gaming Device Operating Rights and transfer Gaming Device Operating Rights pursuant to Transfer Agreements.
- (2) Transfer Agreements. Transfers of Gaming Device Operating Rights may be made pursuant to a Transfer Agreement between two Indian tribes. A Transfer Agreement must include the following provisions:
- (A) Number. The number of Gaming Device Operating Rights transferred and acquired.
  - (B) Term. The duration of the Transfer Agreement.
  - (C) Consideration. The consideration to be paid by the Indian tribe acquiring the Gaming Device Operating Rights to the Indian tribe transferring the Gaming Device Operating Rights and the method of payment.
  - (D) Dispute resolution. The dispute resolution and enforcement procedures, including a provision for the State to receive notice of any such proceeding.
  - (E) Notice. A procedure to provide quarterly notice to the State Gaming Agency of payments made and received, and to provide timely notice of disputes, revocation, amendment, and termination.
- (3) Transfer Notice. At least thirty (30) days prior to the execution of a new Transfer Agreement or an extended, amended, or modified Existing Transfer Agreement, the Tribe must send to the State Gaming Agency a Transfer Notice of its intent to acquire or transfer Gaming Device Operating Rights. The Transfer Notice shall include a copy of the proposed new Transfer Agreement, or extended, amended, or modified Existing Transfer Agreement, the proposed Forbearance Agreement and a copy of the tribal resolution authorizing the acquisition or transfer.
- (4) State Gaming Agency denial of transfer. The State Gaming Agency may deny a transfer as set forth in a Transfer Notice only if: (i) the proposed transfer violates the conditions set forth in Section 3(d)(1), or (ii) the proposed Transfer Agreement does not contain the minimum requirements listed in Section 3(d)(2). The State Gaming Agency's denial of a proposed transfer must be in writing, must include the specific reason(s) for the denial (including copies of all documentation relied upon by the State Gaming Agency to the extent allowed by State law), and must be received by the Tribe within thirty (30) days of the State Gaming

Agency's receipt of the Transfer Notice. If the Tribe disputes the State Gaming Agency's denial of a proposed transfer, the Tribe shall have the right to have such dispute resolved pursuant to Section 15.

- (5) Effective date of transfer. If the Tribe does not receive a notice of denial of the transfer from the State Gaming Agency within the time period specified above, the proposed Transfer Agreement shall become effective on the later of the thirty-first (31st) day following the State Gaming Agency's receipt of the Transfer Notice or the date set forth in the Transfer Agreement.
- (6) Use of brokers. The Tribe shall not contract with any Person to act as a broker in connection with a Transfer Agreement. No Person shall be paid a percentage fee or a commission as a result of a Transfer Agreement, nor shall any Person receive a share of any financial interest in the Transfer Agreement or the proceeds generated by the Transfer Agreement. Any Person acting as a broker in connection with a Transfer Agreement is providing Ancillary Services.
- (7) Revenue from Transfer Agreements. The Tribe agrees that: (i) all proceeds received by the Tribe as a transferor under a Transfer Agreement are net revenues from tribal gaming as defined by the Act and that such proceeds shall be used for the purposes permitted under the Act; and (ii) the Tribe shall include the proceeds in an annual audit and shall make available to the State that portion of the audit addressing proceeds from Transfer Agreements.
- (8) Agreed upon procedures report. The Tribe agrees to provide to the State Gaming Agency, either separately or with the other party to the Transfer Agreement, an agreed upon procedures report from an independent Certified Public Accountant. The procedures to be examined and reported upon are whether payments made under the Transfer Agreement were made in the proper amount, made at the proper time, and deposited in an account of the Indian tribe transferring Gaming Device Operating Rights. To comply with this reporting requirement, if the Tribe acquires Gaming Device Operating Rights under a Transfer Agreement, the acquiring Tribe shall submit its agreed upon procedures report to the State Gaming Agency, with a copy to the transferring tribe, within 180 days after each fiscal year end for the Tribe's Gaming Operation. If the Tribe transfers Gaming Device Operating Rights under a Transfer Agreement, the transferring Tribe may comply with this reporting requirement by either: (A) submitting its agreed upon procedures report to the State Gaming Agency within 180 days after the fiscal year end for the acquiring Tribe's Gaming Operation; (B) jointly submitting an agreed upon procedures report with the acquiring Tribe to the State Gaming Agency within 180 days after the fiscal year end for the acquiring Tribe's Gaming Operation; or (C) within 45 days after receipt of the acquiring Tribe's procedures report, providing the State Gaming Agency a written acknowledgment certifying that the information in the acquiring Tribe's agreed upon procedures report is correct and that all payments were deposited in an account of the transferring Tribe.

- (9) State payment. Proceeds received by the Tribe as a transferor under a Transfer Agreement from the transfer of Gaming Device Operating Rights are not subject to any payment to the State under this Compact or otherwise.
- (10) Compact enforcement; effect on Transfer Agreements. If the Tribe acquires Gaming Device Operating Rights under a Transfer Agreement, no dispute between the State and the other party to the Transfer Agreement shall affect the Tribe's rights under the Transfer Agreement or the Tribe's obligations to make the payments required under the Transfer Agreement. If the Tribe transfers Gaming Device Operating Rights under a Transfer Agreement, no dispute between the State and the other party to the Transfer Agreement shall affect the Tribe's rights under the Transfer Agreement or the obligations of the other party to the Transfer Agreement to make the payments required under the Transfer Agreement. These provisions shall not apply to a dispute among the State and both parties to a Transfer Agreement regarding the validity of a Transfer Agreement or to a dispute between the parties to a Transfer Agreement regarding a breach of the Transfer Agreement.
- (11) Access to records regarding Transfer Agreement. The State Gaming Agency shall have access to all records of the Tribe directly relating to Transfer Agreements and Forbearance Agreements under Section 7(b).
- (12) Transfer and acquisition of pooled Gaming Devices.
- (A) The Tribe is authorized to join with other Indian tribes to periodically establish a pool to collect Gaming Device Operating Rights from Indian tribes that desire to transfer Gaming Device Operating Rights and transfer them to Indian tribes that desire to acquire Gaming Device Operating Rights. The Tribe may acquire Additional Gaming Devices up to the number specified in Gaming Device Annex for the Tribe from such transfer pool under procedures agreed to by Indian tribes participating in the transfer pool, a copy of which shall be provided to the State. The procedures shall provide a meaningful opportunity for each tribe with a 2021 Compact and the ability to acquire or transfer Gaming Device Operating Rights to participate in the transfer pool.
- (B) The Tribe and the State are authorized to establish a pooling mechanism, under procedures agreed to by the Tribe and the State, by which the rights to operate Gaming Devices that are not in operation may be acquired by an Indian tribe through an agreement with the State. If the Tribe is operating all of its Current Gaming Device Allocation as set forth in its 2021 Compact and, after making reasonable efforts to do so, the Tribe is not able to acquire Additional Gaming Devices pursuant to an agreement described in Section 3(d)(2) or from any transfer pool established pursuant to Section 3(d)(12)(A) within 90 days after the opening of a transfer pool established pursuant to Section 3(d)(12)(A), the Tribe may acquire Additional Gaming Devices from the State up to

the number specified in the Gaming Device Annex for the Tribe at a price that is at least one hundred percent (100%) of the highest price paid to date for the transfer of at least one hundred (100) Gaming Device Operating Rights for a term of at least five (5) years. The monies paid by an Indian tribe to acquire Additional Gaming Devices under an agreement pursuant to this Section 3(d)(12)(B) shall benefit Indian tribes that have the right to operate Gaming Devices that are eligible to be transferred and are not in operation. The State shall provide Indian tribes that are eligible to enter into an agreement with the State pursuant to this Section 3(d)(12)(B), the opportunity to participate in the pool pursuant to the procedures agreed to by the Tribe and the State. The procedures shall provide a meaningful opportunity for each Tribe with a Compact and the ability to acquire or transfer Gaming Device Operating Rights to participate in the transfer pool.

- (C) Prior to agreeing to any procedures with any Indian tribe pursuant to Sections 3(d)(12)(A) or (B), the State shall provide notice to the Tribe of the proposed procedures.
- (D) The provisions of Sections 3(d)(1)(B)(ii) and 3(d)(1)(E) shall not apply to the transfer of gaming devices pursuant to Sections 3(d)(12)(A) or (B).
- (E) The Tribe may extend any pre-existing transfer pool agreements with one or more Indian tribes that were in effect during the term of the 2003 Compact on terms agreed to by the parties, and the extended agreements shall continue to be a transfer of Gaming Device Operating Rights pursuant to Sections 3(d)(12)(A) or (B), as applicable. The provisions of this Section 3(d)(12)(E) shall apply regardless of any amendments, including a reduction in the number of Gaming Device Operating Rights, transferred to an Indian tribe during the extended transfer pool agreement term.

(13) Continuing Validity of Transfer Agreements.

- (A) An Existing Transfer Agreement shall remain in effect during the term of this Compact according to the Transfer Agreement's terms; provided that:
  - (i) the Transfer Agreement was effective as of the Effective Date for the 2021 Compact of one of the tribes that are parties to the Transfer Agreement (the "Transferring Parties"); and
  - (ii) the Transferring Parties have complied with the requirements of Section 3(d)(3).
- (B) A tribe that acquired Gaming Device Operating Rights pursuant to a Transfer Agreement in effect during the term of the 2003 Compact may continue operating transferred Gaming Devices

Operating Rights pursuant to such a Transfer Agreement, upon the Effective Date provided that:

- (i) the obligation to pay for such acquired Gaming Device Operating Rights continues to be fulfilled;
- (ii) the conditions set forth in Section 3(d)(13)(A) are satisfied; and
- (iii) each Transferring Party has a 2003 Compact in effect or a 2021 Compact in effect within one hundred eighty (180) days after each Indian tribe with a Gaming Facility in the Phoenix Metropolitan Area or in Pima County has a 2021 Compact in effect.

(e) Number of Card Game Tables and Other Games; Dealer Controlled Electronic Table Games.

- (1) Number of Card Game Tables; number of players per game. Subject to the terms and conditions of this Compact, the Tribe is authorized to operate up to one hundred (100) Card Game Tables within each Gaming Facility that is located more than forty (40) miles from any municipality with a population of more than 400,000 Persons; and up to one hundred fifty (150) Card Game Tables within each Gaming Facility that is located within forty (40) miles of a municipality with a population of more than 400,000 Persons. In addition to the Card Game Tables authorized in the preceding sentence, the Tribe is authorized to operate poker on up to five (5) additional Card Game Tables within each Gaming Facility that is located within forty (40) miles of a municipality with a population of more than 400,000 Persons. Each blackjack table shall be limited to no more than seven (7) available player positions plus the dealer. Each poker table shall be limited to no more than ten (10) available player positions plus the dealer. The Tribe agrees that it will not operate card games outside of a Gaming Facility.
- (2) Other games. Subject to the terms and conditions of this Compact, the Tribe is authorized to operate up to:
  - (A) four (4) keno games per Gaming Facility;
  - (B) eight (8) craps tables within each Gaming Facility;
  - (C) eight (8) roulette tables within each Gaming Facility;
  - (D) eight (8) baccarat tables within each Gaming Facility;
  - (E) four (4) sic bo games per Gaming Facility; and
  - (F) four (4) pai gow tile games per Gaming Facility.

- (3) Periodic increases. On each five-year anniversary of the Effective Date, the number of Card Game Tables and other games referenced in Sections 3(e)(1) and (2) that the Tribe is authorized to operate shall automatically increase by five percent (5%) without the need to amend this Compact, and all resulting increases shall be rounded up to the next whole number.
- (4) Number of dealer controlled electronic table games; number of players; classification.
  - (A) Dealer controlled electronic table games shall be considered table games for purposes of this Compact and shall comply with the requirements of Appendix L, applicable requirements of Appendix A, and the applicable game appendix (e.g., Appendix for Blackjack, Appendix for Roulette, Appendix for Baccarat, etc.). There shall be no more than three (3) dealer controlled electronic table games per Gaming Facility. Each dealer controlled electronic table game shall have no more than twelve (12) wagering stations; provided, however, if the Tribe elects to operate fewer than three (3) dealer controlled electronic table games, then the one (1) or two (2) dealer controlled electronic table games in the Gaming Facility shall together have no more than 36 wagering stations.
  - (B) If there is a game, device or equipment that incorporates elements of a dealer controlled electronic table game, but adds the ability for players to wager on games other than the live, on-going dealer controlled game in a dealer controlled electronic table game and utilizes an electronic random number generator to determine any game outcome, it shall be considered a Gaming Device for purposes of the Compact, and treated as a Multi-Station Device. If the game, device or equipment is operated without a live dealer, but does not meet the definition, requirements and limitations for Multi-Station Devices when it is operated without a live dealer, then each wagering station in the dealer controlled electronic table game shall be considered a unique Gaming Device.
- (f) [Reserved.]
- (g) Inter-Tribal Parity Provisions.
  - (1) Gaming Devices. Except as provided in Section 3(g)(6), and subject to the terms of Section 3(i), if, during the term of this Compact:
    - (A) Any Indian tribe listed on Gaming Device Annex is authorized or permitted to operate in the State:
      - (i) More Class III Gaming Devices than the total number of that Indian tribe's Current Gaming Device Allocation, plus the number of that Indian tribe's Additional Gaming Devices, plus that Indian tribe's New Gaming Device



Allocation and any periodic increases provided for under this Compact; or

- (ii) More Class III Gaming Devices within a single Gaming Facility than that Indian tribe's Maximum Devices Per Gaming Facility specified in Section 3(c)(4)(A) (as adjusted in accordance with Section 3(c)(4)(B)); or
  - (B) Any Indian tribe not listed on Gaming Device Annex is authorized or permitted after the Effective Date to operate in the State more than four hundred seventy-five (475) Class III Gaming Devices plus any periodic increases provided for under this Compact; then
  - (C) Subject to the provisions of Section 3(i), the following remedies shall be available to the Tribe to elect, as the Tribe may determine in its sole discretion, from time to time:
    - (i) The Tribe shall automatically be entitled to a greater number of Gaming Device Operating Rights, without the need to amend this Compact and without the need to acquire any Gaming Device Operating Rights under Section 3(d). The greater number of Gaming Device Operating Rights is the product of a ratio which is the total number of Class III Gaming Devices the other Indian tribe is in fact authorized or permitted to operate following the occurrence of any of the events specified in subsections (A) or (B) of this Section 3(g)(1) divided by the sum of the number assigned to the other Indian tribe under column (1) plus column (2) plus column (3) on Gaming Device Annex multiplied by the sum of number assigned to the Tribe in column (1) plus column (2) plus column (3) on Gaming Device Annex. If the Tribe is not listed on the Gaming Device Annex, then the ratio described in the previous sentence is multiplied by the Tribe's total number of Gaming Devices authorized in the Compact; and
    - (ii) The Tribe shall automatically be entitled to immediately reduce its obligations to make contributions to the State under Section 12. Instead of the amounts payable under Section 12(b), the Tribe shall make quarterly contributions to the State equal to seventy-five hundredths of one percent (.75%) of its Class III Net Win for the prior quarter. This remedy will not be available during the Final Renewal Term (as defined in Section 23 below).
- (2) Gaming Facilities. If, during the term of this Compact, any Indian tribe is authorized or permitted to operate more Gaming Facilities than are specified for such Indian tribe on Gaming Facilities Annex or a Gaming Facility within the Phoenix Metropolitan Area that is not authorized under Section 3(c)(3)(A), then, subject to Section 3(i), the Tribe shall automatically be entitled to immediately reduce its obligations to make

contributions to the State under Section 12. Instead of the amounts payable under Section 12(b), subject to Section 3(i), the Tribe shall make quarterly contributions to the State equal to seventy-five hundredths of one percent (.75%) of its Class III Net Win for the prior quarter.

- (3) Contribution Terms. If the obligation of Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Tohono O'odham Nation, Ak-Chin Indian Community, or Pascua Yaqui Tribe to make contributions to the State pursuant to Section 12(b)(1) is amended to provide more favorable terms to any one of such tribes, then, subject to Section 3(i), the Tribe may elect to have Section 12 automatically amended to conform to those more favorable terms.
- (4) Additional Class III Gaming. Except as provided in Section 3(g)(6), if during the term of this Compact, any Indian tribe is authorized to operate:
  - (A) A form of Class III Gaming in the State that is not listed in Section 3(a), then the Tribe shall be entitled to operate the additional form of gaming that the other Indian tribe is authorized to operate, without the need to amend this Compact.
  - (B) More Card Game Tables per Gaming Facility or other games than authorized under this Compact, then the Tribe shall be entitled to operate blackjack on the additional number of Card Game Tables or other games that the other Indian tribe is authorized to operate, without the need to amend this Compact.
- (5) Wager limits. If, during the term of this Compact, any Indian tribe is authorized or permitted to operate in the State any Class III Gaming with higher wager limits than the wager limit specified in the Tribe's applicable Appendix, then the Tribe is also authorized to operate that form of Class III Gaming with the same higher wager limits, without the need to amend this Compact or the applicable Appendix.
- (6) Exceptions. The provisions of Section 3(g) shall not be triggered by: (a) the automatic periodic increases in (i) the Current Gaming Device Allocation, Additional Gaming Devices and New Gaming Device Allocation provided in Section 3(c)(1)(B); (ii) the Maximum Devices Per Gaming Facility provided in Section 3(c)(4)(B); or (iii) the number of authorized Card Game Tables and other games provided in Section 3(e)(3); (b) the increase in the number of Additional Gaming Devices and New Gaming Device Allocation pursuant to Section 3(c)(1)(A)(ii); or (c) the triggering of any of the remedies set forth in Sections 3(g) and 3(h) of the 2003 Compact of any Continuing 2003 Compact Tribe; provided that if a Continuing 2003 Compact Tribe that is entitled to any of the remedies set forth in Sections 3(g) and 3(h) of the 2003 Compact has any fee or trust land within the exterior boundaries of the Navajo reservation, and the Tribe is the Navajo Nation, San Juan Southern Paiute Tribe, or Yavapai Apache Nation, then, without the need to amend this Compact:

- (A) the number of Gaming Facilities authorized for the Tribe in the Gaming Facilities Annex shall automatically increase by one (1), and the New Gaming Device Allocation set forth in Column Three of the Gaming Device Annex for the Tribe shall increase by five hundred (500);
- (B) if a Continuing 2003 Compact Tribe actually operates, or discloses a development plan to operate, in northern Arizona more Gaming Devices, Gaming Facilities, or Gaming Devices Per Gaming Facility than the number authorized for that Continuing 2003 Compact Tribe under the 2003 Compact, then the Tribe shall automatically be authorized to operate an equal number of increased Gaming Devices, Gaming Facilities, and Gaming Devices Per Gaming Facility as the number the Continuing 2003 Compact Tribe operates or plans to operate;
- (C) if a Continuing 2003 Compact Tribe actually operates, or discloses a development plan to operate, in northern Arizona more Card Game Tables, different or higher-limit wagers, or different types of games than the Tribe is authorized to operate under this Compact, then the Tribe shall automatically be authorized to operate an equal number of Card Game Tables, the same types and limits of wagers, and the same types of games as the Continuing 2003 Compact Tribe operates or plans to operate; and
- (D) such entitlements by Navajo Nation, San Juan Southern Paiute Tribe and/or Yavapai Apache Nation shall not trigger the provisions of this Section 3(g) as to any other tribe.

For the purpose of this Section 3(g)(6): (y) disclosure of "a development plan to operate" shall include information disclosed by the Continuing 2003 Compact Tribe to any federal, state, local, or tribal government in connection with the development of a gaming project; and (z) the term "northern Arizona" shall be construed to be consistent with the same term in the Navajo-Hopi Land Dispute Settlement Act of 1996, PL 104-301 (Oct. 11, 1996).

(h) Additional Gaming Due to Changes in State Law.

- (1) If, after the Effective Date, State law changes, or is interpreted in a final judgment of a court of competent jurisdiction, or through a final order of a State administrative agency, to permit a Person, entity or an Indian tribe to operate, on lands not Indian Lands: (i) Gaming Devices; (ii) any other form of Class III Gaming, other than gambling that was lawful on May 1, 2002 pursuant to A.R.S. § 13-3302 and other than as permitted as an exception pursuant to Section 3(h)(2); (iii) commercial bingo, other than commercial bingo that was lawful on May 1, 2019; and (iv) poker, other than poker that was lawful on May 1, 2002 pursuant to A.R.S. § 13-3302; then, upon the effective date of such State law, final judgment, or final order:

- (A) The Tribe shall be authorized under this Compact to operate Class III Gaming Devices without limitations on the number of Gaming Devices, the number of Gaming Facilities, or the Maximum Gaming Devices Per Gaming Facility, and without the need to amend this Compact;
- (B) The Tribe shall be authorized under this Compact to operate table games, without limitations on the number of Card Game Tables, on wagers, or on the types of games, and without the need to amend this Compact, subject to the provisions of Section 3(b)(3); and
- (C) In addition to Sections 3(h)(1)(A) and (B), the Tribe's obligation under Section 12 to make contributions to the State shall be immediately reduced. Instead of the amounts payable under Section 12(b), the Tribe shall make quarterly contributions to the State equal to seventy-five hundredths of one percent (.75%) of its Class III Net Win for the prior quarter.

- (2) The provisions of this Section 3(h) shall not apply to: (i) Off-Reservation Event Wagering; (ii) Off-Reservation Fantasy Sports; (iii) Lottery Keno; (iv) Lottery Draw Games; (v) casino nights operated by non-profit or charitable organizations pursuant to and qualified under A.R.S. § 13-3302(B); (vi) social gambling as defined in A.R.S. § 13-3301(7); (vii) any paper product lottery games, including ticket dispensing devices of the nature used prior to the Effective Date by the Arizona State Lottery; (viii) low-wager, non-banked recreational pools or similar activities operated by and on the premises of retailers licensed under Title 4, Arizona Revised Statutes, as may be authorized by State law; or (ix) the triggering of any of the remedies set forth in Sections 3(g) and 3(h) of the 2003 Compact of any Continuing 2003 Compact Tribe. The Tribe and the State agree that the Off-Reservation Event Wagering, Off-Reservation Fantasy Sports, Lottery Keno, and Lottery Draw Games exceptions in this Section 3(h)(2) shall apply to, and be in full force and effect regarding, the 2021 Gaming Act, regardless of whether the 2021 Gaming Act becomes effective before or after the Effective Date.

(i) Notice. Prior to the Tribe obtaining rights under Sections 3(g) or (h), either the Tribe or the State must first give written notice to the other describing the facts which the Tribe or the State contend either do or may satisfy the elements of Sections 3(g) or (h). The receiving party shall serve a written response on the other party within thirty (30) days of receipt of the notice. If the parties do not agree on whether Sections 3(g) or (h) have been triggered, the dispute may be submitted to dispute resolution under Section 15 by either the Tribe or the State.

(j) Location of Gaming Facility.

- (1) All Gaming Facilities shall be located on the Indian Lands of the Tribe. All Gaming Facilities of the Tribe shall be located not less than one and one-half (1½) miles apart unless the configuration of the Indian Lands of the Tribe makes this requirement impracticable. The Tribe shall notify the State Gaming Agency of the physical location of any Gaming Facility a

minimum of thirty (30) days prior to commencing Gaming Activity at such location. Gaming Activity on lands acquired after the enactment of the Act on October 17, 1988 shall be authorized in accordance with 25 U.S.C. § 2719, subject to the qualifications set forth in Section 3(j)(3)-(9).

- (2) Notice to surrounding communities. The Tribe shall notify surrounding communities regarding new or substantial modifications to Gaming Facilities and shall develop procedures for consultation with surrounding communities regarding new or substantial modifications to Gaming Facilities.
- (3) Phoenix Metropolitan Area. If the Tribe is not the Ak-Chin Indian Community, Fort McDowell Yavapai Nation, Gila River Indian Community, Salt River Indian Community, or the Tohono O'odham Nation, the Tribe shall not conduct Gaming Activity in the Phoenix Metropolitan Area. All Gaming Facilities within the Phoenix Metropolitan Area shall be located on Indian Lands held in trust for the benefit of the Tribe on February 5, 2003; provided that:
  - (A) If the Tribe is the Tohono O'odham Nation, the Tribe shall not engage in, or authorize any person or entity to engage in, any Gaming Activity within the Phoenix Metropolitan Area except on the West Valley Trust Land and the Far West Valley Trust Land, and provided that the Tribe shall be authorized to operate: (i) a maximum of one (1) Gaming Facility allocated to it under this Compact on the West Valley Trust Land; and (ii) a maximum of one (1) Gaming Facility allocated to it under this Compact on the Far West Valley Trust Land.
  - (B) If the Tribe is the Ak-Chin Indian Community, the Tribe may operate: (i) a maximum of one (1) Gaming Facility allocated to it under this Compact on its Indian Lands held in trust on February 5, 2003; and (ii) a maximum of one (1) Gaming Facility allocated to it under this Compact on its Indian Lands acquired in trust by the United States after the Effective Date of this Compact for the Tribe's benefit as an acquisition of land contiguous to its existing reservation boundaries pursuant to 25 U.S.C. §2719(a)(1) that is within the original boundaries of Ak-Chin Indian Community reservation as described in Executive Order No. 1538 of President William Howard Taft, dated March 28, 1912.
  - (C) If the Tribe is the Gila River Indian Community, the Tribe's Gaming Facilities shall be located within the Phoenix Metropolitan Area on Indian Lands held in trust for the Tribe on February 5, 2003 that are east of longitude 112 degrees 10 minutes 9 seconds West.
- (4) If the Tribe is the Pascua Yaqui Tribe, the Tribe's Gaming Facilities shall be located on the Tribe's Indian Lands in accordance with Section 3(j)(1); provided that Tribe may operate a maximum of one (1) Gaming Facility allocated to it under this Compact as the Pascua Yaqui Third Facility.

- (5) If the Tribe is the Yavapai-Apache Nation, the Tribe's Gaming Facilities shall be located on the Tribe's Indian Lands in accordance with Section 3(j)(1); provided that the Tribe may operate a maximum of one (1) Gaming Facility allocated to it under this Compact on its Indian Lands acquired in trust by the United States after the Effective Date that are contiguous to lands held in trust as of the Effective Date.
- (6) If the Tribe is the Navajo Nation, the Tribe's Gaming Facilities shall be located on the Tribe's Indian Lands in accordance with Section 3(j)(1); provided that the Tribe will give notice to and consult with the State prior to construction of any Gaming Facility on lands acquired pursuant to the Tribe's rights under 25 U.S.C. §§ 2719(a)(1) or 2719(b)(1)(B)(i), and any such lands acquired pursuant to the Tribe's 1974 settlement of a land claim, codified at 25 U.S.C. § 640d *et seq.*, shall be within eighteen (18) miles of the then-present boundary of Tribe's reservation, as set forth in 25 U.S.C. § 640d-10(b).

(k) Financial Services in Gaming Facilities. The Tribe shall enact a tribal ordinance establishing responsible restrictions on the provision of financial services at Gaming Facilities. At a minimum, the ordinance shall prohibit:

- (1) Locating an automatic teller machine ("ATM") adjacent to, or in close proximity to, any Gaming Device;
- (2) Locating in a Gaming Facility an ATM that accepts electronic benefit transfer cards issued pursuant to a state or federal program that is intended to provide for needy families or individuals;
- (3) Accepting checks or other non-cash items issued pursuant to a state or federal program that is intended to provide for needy families or individuals; and
- (4) The Gaming Facility Operator, and the Tribe in connection with gaming, from extending credit to any patron of a Gaming Facility for Gaming Activity by accepting IOUs or markers from its patrons, except that short-term credit may be extended to certain qualified patrons with sufficient creditworthiness as referenced in the credit appendix to cover the amount of the credit extended (not less than two thousand five hundred dollars (\$2,500) to be repaid within thirty (30) days); provided that the Tribe complies with all applicable federal law and all provisions of a credit appendix.

(l) Forms of Payment for Wagers. All payment for wagers made for Gaming Activity conducted by the Tribe on its Indian Lands, including the purchase of tokens for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. ATMs may be installed at a Gaming Facility.

(m) Wager Limitations.

- (1) Wagers for each authorized form of Class III gaming shall be limited in a mutually agreed-upon Appendix setting forth the standards, specifications and regulations governing the applicable Gaming Activity.
- (2) Increases in wager limitations. During the term of this Compact, the wager limitations for each authorized Gaming Activity as set forth in the relevant Appendix governing such activity may be increased upon written agreement of the parties.

(n) Hours of Operation. The Tribe may establish by ordinance or regulation the permissible hours and days of operation of Gaming Activity; provided, however, that with respect to the sale of liquor the Tribe shall comply with all applicable State liquor laws at all Gaming Facilities.

(o) Ownership of Gaming Facilities and Gaming Activity. The Tribe shall have the sole proprietary interest in the Gaming Facilities and Gaming Activity. This provision shall not be construed to prevent the Tribe from granting security interests or other financial accommodations to secured parties, lenders, or others, or to prevent the Tribe from entering into leases or financing arrangements.

(p) Other. Except as provided herein, nothing in this Compact is intended to prohibit otherwise lawful and authorized Class II Gaming upon the Tribe's Indian Lands or within the Gaming Facilities.

(q) Operation as Part of a Network. Gaming Devices authorized pursuant to this Compact may be operated to offer an aggregate prize or prizes as part of a network, so long as there is compliance with Appendix A and Appendix I.

(r) Prohibition on Firearms. The possession of firearms by any Person within a Gaming Facility shall be strictly prohibited. This prohibition shall not apply to certified law enforcement officers authorized to be on the premises as well as any private security service retained to provide security at a Gaming Facility, or armored car services.

(s) Financing. Any third-party financing extended or guaranteed for the Gaming Operation and Gaming Facilities shall be disclosed to the Tribal Gaming Office prior to receipt of the funding. Any Person extending such financing shall be required to be licensed by the Tribe and certified by the State Gaming Agency in accordance with the requirements of the Compact and the Appendices, unless said Person is an agency of the United States or a lending institution licensed and regulated by the State or the United States. The certification of a Person extending such financing is subject to the State Gaming Agency's discretion to waive the vendor certification requirement in Compact Section 4(d).

(t) Record-Keeping. The Gaming Facility Operator or the Tribal Gaming Office, whichever conducts surveillance, shall maintain the following logs as written or computerized records which shall be available for inspection by the State Gaming Agency in accordance with Section 7(b): a surveillance log recording all material surveillance activities in the monitoring room of the Gaming Facilities; and a security log recording all unusual occurrences investigated by the Tribal Gaming Office. The Gaming Facility Operator or the Tribal Gaming Office, whichever conducts surveillance, shall retain video recordings made in accordance with Appendix C for at least seven (7) days from the date of original recording.

(u) Barred Persons. The Tribal Gaming Office shall establish a list of Persons barred from the Gaming Facilities because their criminal history or association with career offenders or career offender organizations poses a threat to the integrity of the Gaming Activity of the Tribe. The Tribal Gaming Office shall employ its best efforts to exclude Persons on such list from entry into its Gaming Facilities. To the extent not previously provided, the Tribal Gaming Office shall send a copy of its list on a monthly basis to the State Gaming Agency, along with detailed information regarding why the Person has been barred and the barred Person's photograph, driver's license information, and/or fingerprints, to the extent these items are in the possession of the Tribal Gaming Office. The State Gaming Agency will establish a list which will contain the names, and to the extent available, photographs of, and other relevant information regarding, Persons whose reputations, conduct, or criminal history is such that their presence within a Gaming Facility may pose a threat to the public health, safety, or welfare. Such Persons will be barred from all tribal Gaming Facilities within the State. The Tribe agrees that the State Gaming Agency may disseminate this list, which shall contain detailed information about why each Person is barred, to all other tribal gaming offices.

(v) Problem Gambling.

- (1) Signage. At all public entrances and exits of each Gaming Facility, the Gaming Facility Operator shall post signs stating that help is available if a Person has a problem with gambling and, at a minimum, provide the State-wide toll free crisis hotline telephone number established by the Arizona State Lottery Commission.
- (2) Self-exclusion. The State Gaming Agency and the Tribe shall comply with the following provisions:
  - (A) The State Gaming Agency shall establish a list of Persons who, by acknowledging in a manner to be established by the State Gaming Agency that they are problem gamblers, voluntarily seek to exclude themselves from Gaming Facilities. The State Gaming Agency shall establish procedures for the placement on and removal from the list of self-excluded Persons. No Person other than the Person seeking voluntary self-exclusion shall be allowed to include any Person's name on the self-exclusion list of the State Gaming Agency.
  - (B) The Tribe shall establish procedures for advising Persons who inquire about self-exclusion about the State Gaming Agency's procedures.
  - (C) The State Gaming Agency shall compile identifying information concerning self-excluded Persons. Such information shall contain, at a minimum, the full name and any aliases of the Person, a photograph of the Person, the social security or driver's license number of the Person, and the mailing address of the Person.
  - (D) The State Gaming Agency shall, on a monthly basis, provide the compiled information to the Tribal Gaming Office. The Tribe shall treat the information received from the State Gaming Agency under this Section as confidential and such information shall not



be disclosed except to the Gaming Facility Operator and other tribal gaming offices for inclusion on their lists, or to appropriate law enforcement agencies if needed in the conduct of an official investigation or unless ordered by a court of competent jurisdiction.

- (E) The Tribal Gaming Office shall add the self-excluded Persons from the list provided by the State Gaming Agency to its own list of self-excluded Persons.
- (F) The Tribal Gaming Office shall require the Gaming Facility Operator to remove all self-excluded Persons from all mailing lists and to revoke any slot or player's cards. The Tribal Gaming Office shall require the Gaming Facility Operator to take reasonable steps to ensure that cage personnel check a Person's identification against the State Gaming Agency's list of self-excluded Persons before allowing the Person to cash a check or complete a credit card cash advance transaction.
- (G) The Tribal Gaming Office shall require the Gaming Facility Operator to take reasonable steps to identify self-excluded Persons who may be in a Gaming Facility and, once identified, promptly escort the self-excluded Person from the Gaming Facility.
- (H) The Tribal Gaming Office shall prohibit the Gaming Facility Operator from paying any hand-paid jackpot to a Person who is on the tribal or State Gaming Agency self-exclusion list. Any jackpot won by a Person on the self-exclusion list shall be donated by the Gaming Facility Operator to an Arizona-based non-profit charitable organization.
- (I) Neither the Tribe, the Gaming Facility Operator, the Tribal Gaming Office, nor any employee thereof shall be liable to any self-excluded Person or to any other party in any proceeding and neither the Tribe, the Gaming Facility Operator, nor the Tribal Gaming Office shall be deemed to have waived its sovereign immunity with respect to any Person for any harm, monetary or otherwise, which may arise as a result of:
  - (i) The failure of the Gaming Facility Operator or the Tribal Gaming Office to withhold or restore gaming privileges from or to a self-excluded Person; or
  - (ii) Otherwise permitting a self-excluded Person to engage in Gaming Activity in a Gaming Facility while on the list of self-excluded Persons.
- (J) Neither the Tribe, the Gaming Facility Operator, the Tribal Gaming Office, nor any employee thereof shall be liable to any self-excluded Person or to any other party in any proceeding, and

neither the Tribe, the Gaming Facility Operator, nor the Tribal Gaming Office shall be deemed to have waived its sovereign immunity with respect to any Person for any harm, monetary or otherwise, which may arise as a result of disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of the identity of any self-excluded Person or Persons.

(K) Notwithstanding any other provision of this Compact, the State Gaming Agency's list of self-excluded Persons shall not be open to public inspection.

(w) Restriction on Minors.

- (1) The Tribe shall enact, as tribal law, a requirement that no Person under twenty one (21) years of age shall be permitted to place any wager, directly or indirectly, in any Gaming Activity.
- (2) If, during the term of the Compact, the State amends its law to permit wagering by Persons under twenty one (21) years of age in any gaming activity by a Person or entity other than an Indian tribe, the Tribe may amend tribal law to reduce the lawful gaming age under this Compact to correspond to the lawful gaming age under State law.
- (3) No Person under eighteen (18) years of age shall be employed as a Gaming Employee. No Person under twenty-one (21) years of age shall be employed in the service of alcoholic beverages at any Gaming Facility, unless such employment would be otherwise permitted under State law.

(x) Advertising.

- (1) Right to advertise. The State and the Tribe recognize the Tribe's constitutional right to engage in advertising of lawful Gaming Activity and nothing in this Compact shall be deemed to abrogate or diminish that right.
- (2) Prohibition on advertising directed to minors. The Gaming Facility Operator shall not advertise or market Gaming Activity in a manner that specifically appeals to minors.
- (3) Advertising guidelines. Within thirty (30) days after the Effective Date, the Gaming Facility Operator shall adopt guidelines for the advertising and marketing of Gaming Activity that are no less stringent than those contained in the American Gaming Association's general advertising guidelines.
- (4) Content of advertising. In recognition of the Tribe's constitutional right to advertise Gaming Activity, the specific content of advertising and marketing materials shall not be subject to the provisions of Section 15 of this Compact.

(y) Lottery Products. The Tribe will not offer paper lottery products in competition with the Arizona State Lottery's Pick or Powerball games.

(z) Annual Statement. The Tribe shall certify annually to the State Gaming Agency that it is in compliance with the Act regarding the Tribe's use of net revenues from Class III Gaming Activity. The Tribe shall also produce to the State Gaming Agency within seven (7) days of receipt copies of any federal report, finding, or other written communication asserting a lack of compliance with the Act's requirements on the Tribe's use of net revenues from Class III Gaming Activity.

#### **SECTION 4. TRIBAL-STATE LICENSING AND CERTIFICATION REQUIREMENTS**

(a) Gaming Facility Operator and Gaming Facility. The Gaming Facility Operator, and all Gaming Facilities authorized by this Compact, shall be licensed by the Tribal Gaming Office in conformance with the requirements of this Compact prior to commencement of operation, and annually thereafter. The licensing of the Gaming Facility Operator shall include the licensing of each Principal, Primary Management Official and Key Employee. Prior to the initial commencement of the operation of a new Gaming Facility, the State Gaming Agency and Tribal Gaming Office shall verify compliance with this requirement through a joint pre-operation inspection and letter of compliance. The State Gaming Agency shall send a compliance letter within seven (7) working days after the completion of the inspection if the inspection reveals that the Gaming Facility Operator and Gaming Facilities comport with the terms of this Compact. If the State Gaming Agency determines that the Gaming Facility Operator and Gaming Facility do not comport with the terms of this Compact a non-compliance letter shall be sent within seven (7) working days of the inspection that shall set forth the matters of non-compliance upon which the State Gaming Agency bases its decision. If a dispute arises during the inspection, it shall be resolved pursuant to Section 15 of this Compact.

(b) Gaming Employees. Every Gaming Employee shall be licensed by the Tribal Gaming Office and every employee of the Tribal Gaming Office shall be licensed by the Tribe. Except as otherwise provided in this Section 4(b), any Gaming Employee or Tribal Gaming Office employee that is not an Enrolled Tribal Member shall also be certified by the State Gaming Agency prior to commencement of employment, and every two (2) years thereafter subject to the temporary certification provided in Section 5(n). Enrolled Tribal Members are not required to be certified by the State as a condition of employment. Gaming Employees that hold the following positions are also not required to be certified by the State, so long as they do not have unescorted access to secure areas such as Gaming Device storage and repair areas, count rooms, vaults, cages, security offices and surveillance rooms, revenue accounting offices, and rooms containing information systems that monitor or control Gaming Activity (or, as may be agreed to by the State Gaming Agency and the Tribal Gaming Office in a separate agreement delineating the secure areas in the Tribe's Gaming Facilities):

- (1) Food and beverage service personnel such as chefs, cooks, waiters, waitresses, bus persons, dishwashers, food and beverage cashiers, and hosts;
- (2) Gift shop managers, assistant managers, cashiers, and clerks;
- (3) Greeters;
- (4) Landscapers, gardeners, and groundskeepers;

- (5) Maintenance, cleaning, and janitorial personnel;
- (6) Stewards and valets;
- (7) Wardrobe personnel;
- (8) Warehouse personnel; and
- (9) Hotel personnel.

(c) Management Contractors. Any Management Contractor, including its Principals, engaged by the Tribe to assist in the management or operation of the Gaming Facilities or Gaming Activity shall be subject to the licensing requirements of the Tribal Gaming Office, and shall be required to obtain State Certification prior to providing management services for Class III Gaming authorized by this Compact. The certification shall be renewed every two (2) years thereafter.

(d) Manufacturers and Distributors of Gaming Devices, Gaming Vendors, and Providers of Ancillary Services. Each Manufacturer and Distributor of Gaming Devices, each Gaming Vendor, and each provider of Ancillary Services, within or without the Gaming Facility, may be required to be licensed at the discretion of the Tribal Gaming Office.

- (1) Each Manufacturer and Distributor of Gaming Devices, and each Gaming Vendor providing goods or services in excess of \$10,000 to the Tribe in any single month, shall be certified by the State Gaming Agency prior to the sale, lease or providing of any goods or services. The form of Application for certification shall be determined by the State Gaming Agency.
- (2) Each Gaming Vendor providing goods or services between \$1,000 and \$10,000 to the Tribe in any single month, and each provider of Ancillary Services in an amount in excess of \$2,500 to the Tribe in any single month, shall be certified by the State Gaming Agency using a Short Form Application. A Short Form Application shall be submitted by such providers to the State Gaming Agency no later than one (1) business day after providing any goods or services. The Short Form Application shall only require the business name, type of business organization, services provided, address, taxpayer identification number, and information regarding persons directly involved in the conduct of Gaming Activity or in providing goods or services for a Gaming Facility. If a business tax identification number is not provided on a Short Form Application, then it shall also include the residence address, social security number, and date of birth of such persons. The State Gaming Agency may require additional information from the Applicant at a later date as it determines necessary and may review Tribal Gaming Office licensing information for the Applicant, if any.
- (3) On a monthly basis, the Tribe shall provide the State Gaming Agency with a list of the names and addresses of Gaming Vendors providing goods or services over \$1,000 to the Tribe in any single month and all Persons

providing Ancillary Services in an amount in excess of \$2,500 to the Tribe in any single month. Utility companies that provide utility services to a Gaming Facility are not required to be certified. A vendor licensed and regulated by another governmental agency may submit a supplement to the application on file with the other agency. The State Gaming Agency may waive the certification requirement for an Ancillary Services provider or Gaming Vendor if it determines that certifying the Ancillary Services provider or Gaming Vendor is not necessary to protect the public interest.

- (4) Without the need to amend this Compact, the \$1,000, \$2,500 and \$10,000 threshold amounts applicable to Gaming Vendors and providers of Ancillary Services, as set forth in Compact Sections 4 and 5, shall be automatically increased by 10% on each five-year anniversary of the Effective Date.

## **SECTION 5. PROCEDURES FOR TRIBAL LICENSING AND STATE CERTIFICATION**

(a) Procedures for Tribal License Applications and State Certification. Every Applicant for a tribal gaming license and every Applicant for State Certification shall submit a completed Application, along with any required information, to both the Tribe or Tribal Gaming Office, as applicable and if required by the Tribe, and, except as provided in this Section 5(a), to the State Gaming Agency. Each Application for State Certification and for a tribal license shall be accompanied, as required, by the Applicant's fingerprint card(s), current photograph, and the fee required by the State Gaming Agency or the Tribe or Tribal Gaming Office, as applicable. Gaming Employees who are not required to have State Certification or recommendation under Section 4(b) because they occupy one of the positions in Sections 4(b)(1) through (9) and do not have access to secure areas as described in that Section are not required to send Applications or pay the fees to the State Gaming Agency for State Certifications, recommendations, or renewals, but the State Gaming Agency may review the Applications and background investigations, may conduct background investigations as authorized by Section 5(b)(3), and may invoke the administrative process in Section 5(q) with respect to these employees.

(b) Background Investigation of Applicants.

- (1) Upon receipt of a completed Application and required fee for tribal licensing, the Tribe or Tribal Gaming Office, as applicable, shall conduct the necessary background investigation to ensure the Applicant is qualified for tribal licensing. Upon completion of the necessary background investigation, the Tribe or Tribal Gaming Office, as applicable, shall either issue a tribal License, or deny the Application. If the Application for licensing is denied, a statement setting forth the grounds for denial shall be forwarded to the State Gaming Agency together with all other documents relied upon by the Tribe or Tribal Gaming Office, as applicable, to the extent allowed by law. The Tribal Gaming Office may choose to allow Applicants who are not required to have State Certification or recommendation under Section 4(b) because they occupy one of the positions in Sections 4(b)(1) through (9) and do not have access to secure areas as described in that Section to apply with only fingerprint card(s) and a shortened form of application and to work for up to fifteen (15) days prior to receiving their License. The

shortened form of application need only require, at a minimum, the Person's name, address, social security number, date and place of birth, other names used, last employer, and criminal history.

- (2) Upon receipt of a completed Application for State Certification or at any time thereafter, the State Gaming Agency may conduct a background investigation to determine if the Applicant is qualified for State Certification. The State Gaming Agency shall expedite State Certification Applications. The State Gaming Agency shall either issue or deny State Certification for Gaming Vendors providing goods or services between \$1,000 and \$10,000 in any single month, and for providers of Ancillary Services in an amount in excess of \$2,500 in any single month, within one (1) business day of receipt of the initial completed Short Form Application and which shall be provided promptly to the Tribal Gaming Office. If the Application for certification is denied, a statement setting forth the grounds for denial shall be forwarded to the Tribe or Tribal Gaming Office, as applicable, together with all other documentation relied upon by the State Gaming Agency to the extent allowed by State law. Consistent with the provisions of Section 5(a), the State may also conduct background investigations of all Applicants for tribal Licenses and, consistent with Section 5(q), may provide the Tribe or Tribal Gaming Office, as applicable, with a written recommendation as to whether the Applicant should be licensed.
- (3) The Tribe or Tribal Gaming Office, as applicable, and the State Gaming Agency shall retain the right to conduct additional background investigations of any Person required to be licensed or certified at any time, while the License or State Certification remains valid.

(c) Notification to Applicant. The Applicant for State Certification (excluding those Applicants who submitted a Short Form Application) shall be notified by the Tribe or Tribal Gaming Office, as applicable, of the status of the Application within five (5) business days after receiving the State Gaming Agency's certification or denial.

(d) Tribal Licensing Standards. Neither the issuance of a License by the Tribe or Tribal Gaming Office nor the issuance of State Certification by the State Gaming Agency creates or implies a right of employment or continued employment. Tribal Gaming Office employees and Gaming Employees must be licensed, and the Tribal Gaming Office and Gaming Facility Operator will not employ any who are not licensed. The Tribe or Tribal Gaming Office shall not license a Tribal Gaming Office employee or Gaming Employee if it is determined that the Applicant:

- (1) has ever been convicted of any gaming offense;
- (2) has been convicted of a felony in the seven (7) years prior to submission of the Application unless that felony has been set-aside;
- (3) has ever been convicted of a felony relating to extortion, burglary, larceny, bribery, embezzlement, robbery, racketeering, money laundering, forgery, fraud, murder, voluntary manslaughter, sex offenses, rape or kidnapping;

- (4) has knowingly and willfully provided materially important false statements or information or omitted materially important information on his or her Application or background questionnaire; or
- (5) is a Person whose prior activities, criminal record, if any, or reputation, habits, and 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, and methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(e) Notification of Change of Principals. After an entity is licensed by the Tribal Gaming Office, or certified by the State Gaming Agency, but except for providers of Ancillary Services and for Gaming Vendors providing goods or services between \$1,000 and \$10,000 in any single month, it shall file a report of each change of its Principals with the Tribal Gaming Office and the State Gaming Agency. Each new Principal of a Management Contractor, a Gaming Vendor providing goods or services in excess of \$10,000 in any single month, or a Manufacturer and/or Distributor of Gaming Devices shall file a complete Application within thirty (30) days after appointment or election. The Tribal Gaming Office shall forward a copy of the Application to the State Gaming Agency. The entity's License shall remain valid unless the Tribal Gaming Office disapproves the change or denies the Application. The entity's State Certification shall remain valid unless the State Gaming Agency disapproves the change or denies the Application.

(f) Grounds for Revocation, Suspension or Denial of State Certification. The State Gaming Agency may revoke, suspend or deny a State Certification when an Applicant or holder of State Certification:

- (1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of this Compact or its appendices or any provision of any State Gaming Agency rule, or when any such violation has occurred upon any premises occupied or operated by any such Person or over which he or she has substantial control;
- (2) Knowingly causes, aids, abets, or conspires with another to cause any Person to violate any of the laws of the State or the rules of the State or the Tribal Gaming Office, or the provisions of this Compact or its appendices;
- (3) Has obtained a State Certification or tribal License by fraud, misrepresentation, concealment or through inadvertence or mistake;
- (4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payment or reports to any tribal, state or United States governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses or of bribing or otherwise unlawfully influencing a public official or employee of a tribe, any state of the United

- States or of any crime, whether a felony or misdemeanor, involving any Gaming Activity or physical harm to individuals or moral turpitude;
- (5) Makes a misrepresentation of, or fails to disclose, a material fact to the State Gaming Agency or the Tribe or Tribal Gaming Office;
  - (6) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this Section;
  - (7) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (d) of this Section; provided that, at the request of an Applicant for an original State Certification, the State Gaming Agency may defer decision upon the Application during the pendency of such prosecution or appeal;
  - (8) Has had a gaming license issued by any state or tribe in the United States revoked or denied;
  - (9) Has demonstrated a willful disregard for compliance with gaming regulatory authority in any jurisdiction, including suspension, revocation, denial of Application or forfeiture of license;
  - (10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal laws of any state if such pursuit creates probable cause to believe that the participation of such Person in gaming or related activities would be detrimental to the proper operation of an authorized gaming or related activity in this State. For the purposes of this paragraph, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;
  - (11) Is a career offender or a member of a career offender organization or an associate of a career offender or career offender organization in such a manner which creates probable cause to believe that the association is of such a nature as to be detrimental to the proper operation of the authorized gaming or related activities in this State. For the purposes of this paragraph, career offender shall be defined as any Person whose behavior is pursued in an occupational manner or context for the purposes of economic gain utilizing such methods as are deemed criminal violations of tribal law, federal law or the laws and the public policy of this State. A career offender organization shall be defined as any group of Persons who operate together as career offenders;
  - (12) Is a Person whose prior activities, criminal record, if any, reputation, habits and associations pose a threat to the public interest of the Tribe or the State or to the effective regulation and control of Class III Gaming, or creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of Class III Gaming, or the carrying on of the business and financial arrangements incidental thereto; or



- (13) Fails to provide any information requested by the State Gaming Agency within fourteen (14) days of the request for the information.

(g) Right to Hearing for Revocation, Suspension or Denial of State Certification. Any Applicant for State Certification, or holder of a State Certification, shall be entitled to a full hearing on any action by the State Gaming Agency which may result in the revocation, suspension, or denial of State Certification. The hearing shall be conducted in accordance with the procedures contained in the applicable provisions of the Arizona Administrative Procedures Act, Title 41, Chapter 6, Arizona Revised Statutes or the State Gaming Agency's administrative rules; provided, the State, after consultation with the Tribe or Tribal Gaming Office, as applicable, may defer such actions to the Tribe or Tribal Gaming Office. Nothing herein shall prevent the Tribe or Tribal Gaming Office from invoking its disciplinary procedures.

(h) Issuance, Revocation, Suspension or Denial of License Issued by Tribal Gaming Office. The issuance, revocation, suspension or denial of any tribal gaming License by the Tribe or the Tribal Gaming Office, including the terms and conditions thereof, shall be in accordance with the Tribe's ordinances and regulations governing such procedures and the grounds for such actions shall not be less stringent than those of this Section. The Tribe or Tribal Gaming Office, as applicable, shall not be required to grant an Application for a License even if the State Gaming Agency issues a State Certification.

(i) Duration and Renewal of Tribal Licenses and State Certification. Any tribal License shall be effective for up to two (2) years from the date of issuance and any State Certification shall be effective for two (2) years from the date of issuance. A licensed or certified employee or Person that has applied for renewal may continue to be employed or engaged under the expired License or State Certification until action is taken on the renewal Application by the Tribe or Tribal Gaming Office, as applicable, or the State Gaming Agency. Applicants for renewal of a License or State Certification shall provide updated material as requested, on the appropriate renewal forms, to both the Tribe or Tribal Gaming Office, as applicable, and the State Gaming Agency, consistent with the provisions of Section 5(a), but shall not be required to resubmit historical data already available to the Tribe or Tribal Gaming Office, or the State Gaming Agency. Additional background investigations shall not be required of Applicants for renewal unless new information concerning the Applicant's continuing eligibility for a License or a State Certification is discovered.

(j) Identification Cards. The Gaming Facility Operator shall require all Gaming Employees, and the Tribal Gaming Office shall require all Tribal Gaming Office employees, to wear in plain view, identification cards issued by the Tribal Gaming Office which shall include photograph, first and last name, and an identification number unique to the individual tribal License and which shall include the Tribe's seal or signature, and a date of expiration.

(k) Exchange of Tribal Licensing and State Certification Information. In an effort to ensure a qualified work force in the Class III Gaming authorized by this Compact, upon completion of any administrative action against a holder of a tribal License or State Certification, the final disposition shall be forwarded to the Tribe, the Tribal Gaming Office or the State Gaming Agency, as appropriate, and maintained as part of their permanent records and which may be shared with other federal, state, and tribal agencies.

(l) Fees for State Certification. The fees for State Certification or recommendation shall be the following:

(1)	Gaming Employee and Tribal Gaming Office employee, other than a Primary Management Official		
	Initial Certification/Recommendation		\$ 250
	Renewal		\$ 125
(2)	Management Contractors, and Manufacturers and/or Distributors of Gaming Devices		
	Initial Certification		\$ 5,000
	Renewal		\$ 1,000
(3)	Gaming Vendors other than Manufacturers and/or Distributors of Gaming Devices, providing goods or services in excess of \$10,000 in any single month		
	Initial Certification		\$ 1,500
	Renewal		\$ 500
(4)	Providers of Ancillary Services and those Gaming Vendors providing goods or services in the amount of \$10,000 or less in any single month		
	Initial Certification		\$ 0
	Renewal		\$ 0
(5)	Primary Management Official		
	Initial Certification/Recommendation		\$ 500
	Renewal		\$ 250

A State Certification shall be valid for any Gaming Operation in Arizona and no additional fee shall be required. The State Gaming Agency will maintain a current list of certified Manufacturers and Distributors of Gaming Devices, Gaming Vendors and providers of Ancillary Services, including expiration dates of State Certifications, and make the list available to the Tribe. In the event actual costs incurred by the State Gaming Agency to investigate the background of an Applicant exceed the above fees, those costs shall be assessed to the Applicant during the investigation process. Payment in full to the State Gaming Agency shall be required prior to the issuance of State Certification. The State may require Manufacturers and/or Distributors of Gaming Devices, Gaming Vendors, providers of Ancillary Services, and Management Contractors applying for State Certification to post a bond sufficient to cover the actual costs that the State Gaming Agency anticipates will be incurred in conducting a background investigation of the Manufacturer, Distributor of Gaming Vendor, provider of Ancillary Services, or Management Contractor. The State may conduct background investigations of Manufacturers and/or Distributors of Gaming Devices, Gaming Vendors, providers of Ancillary Services, and Management Contractors at any time and the Manufacturers and/or Distributors of Gaming Devices, Gaming Vendors, providers of Ancillary Services, and Management Contractors shall pay the cost of any investigation. During the term of the Compact, the fees for State Certification or recommendation shall be automatically increased on each five-year anniversary of the Effective Date to an amount equal to the amount specified above, as adjusted, multiplied by five percent (5%), rounded up to the next \$5.00 increment. Notwithstanding any other provision of this Compact, the State Gaming Agency may

modify any of the above fees by giving the Tribe sixty (60) days written notice of intent to modify fees. Should a dispute arise under this Section, it shall be resolved pursuant to Section 15 of this Compact.

(m) Fees for Tribal License. The fees for tribal Licenses shall be set by the Tribe.

(n) Temporary Certification.

(1) By the close of the State Gaming Agency's next business day following its receipt of a complete Application for State Certification of a Gaming Employee, the State Gaming Agency shall issue a temporary certification to the Applicant unless the State Gaming Agency has a good faith basis to believe that the person may not qualify for State Certification under Compact Section 5(f). If the Tribe or Tribal Gaming Office, as applicable, does not receive a response from the State Gaming Agency regarding the approval or denial of the Applicant's temporary certification by the close of the next business day following the receipt of a complete Application for State Certification then the Applicant's temporary certification shall be deemed approved by the State Gaming Agency. The results of a State Gaming Agency background investigation shall not be required prior to the issuance of a temporary certification. The temporary certification shall become void and be of no effect upon either the issuance of a State Certification or upon the issuance of notice of denial, in accordance with the provisions of this Compact.

(2) With respect to vendors, within twenty (20) days of the receipt of a complete Application for State Certification, the State Gaming Agency shall issue a temporary certification to the Applicant unless the State Gaming Agency has a good faith basis to believe that the Applicant may not qualify for State Certification under Compact Section 5(f). The temporary certification shall become void and be of no effect upon either the issuance of a State Certification or upon the issuance of notice of denial, in accordance with the provisions of this Compact.

(o) Summary Suspension of Tribal License or State Certification. The Tribe or Tribal Gaming Office, pursuant to the laws and regulations of the Tribe, and the State Gaming Agency, pursuant to the laws and regulations of the State, may summarily suspend any respective tribal License or State Certification if the continued licensing or certification of a Person constitutes an immediate threat to the public health, safety or welfare.

(p) State Administrative Process; Certifications. Any Applicant for State Certification agrees by making such Application to be subject to State jurisdiction to the extent necessary to determine the Applicant's qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to the Administrative Procedures Act, Title 41, chapter 6, Arizona Revised Statutes, and the administrative rules of the State Gaming Agency.

(q) Administrative Process; Licenses.

(1) Any Person applying for licensure by the Tribe or Tribal Gaming Office acknowledges that by making such Application, the State Gaming

Agency, as set forth herein, may be heard concerning the Applicant's qualifications to hold such License. If the State recommends revocation, suspension, or denial of a License, and the Tribe or Tribal Gaming Office revokes, suspends, or denies the License based on the State Gaming Agency's recommendation, the Person may appeal that action to the Tribe, to the extent any such right exists.

- (2) If the Tribe or Tribal Gaming Office takes any action with respect to a License despite a State recommendation to the contrary, the Tribe or Tribal Gaming Office shall afford the State an opportunity for a hearing before an appropriate tribal forum to contest the Tribe's or Tribal Gaming Office's licensing decision. The decision of the tribal forum shall be final, except as provided in Section 5(q)(4).
- (3) The Tribe or Tribal Gaming Office shall afford the State Gaming Agency the opportunity to be heard in an appropriate tribal forum on its recommendation to suspend or revoke the License of any Person in the same manner as if the State Gaming Agency had recommended denial of the License in the first instance.
- (4) Independent tribunal review of tribal forum.
  - (A) Tribunal appointment and process. If the tribal forum upholds a decision not to follow a Tribal Gaming Office employee or Gaming Employee License recommendation, the State Gaming Agency may appeal to an independent three (3) member tribunal by providing written notice to the Tribe or Tribal Gaming Office, as applicable, within ten (10) days after receiving the tribal forum's decision. Within twenty (20) days thereafter, the CPR or a similar dispute resolution service acceptable to the parties (the "Dispute Resolution Service") shall select the tribunal members, except that upon agreement by the parties, in lieu of selection by the Dispute Resolution Service, each party may select a tribunal member, and the two (2) members shall select a third member. If, within five (5) days after their appointment, the tribunal members appointed by the parties have not agreed upon a third tribunal member, the Dispute Resolution Service shall select the third member. All tribunal members, whether appointed by the Dispute Resolution Service or the parties, shall be (a) impartial, (b) licensed by and in good standing with a state bar association, and (c) independent from the State, the State Gaming Agency, the Tribe, and the Tribal Gaming Office. The tribunal shall hold a hearing and issue its decision within ninety (90) days after the State Gaming Agency delivers its written notice of appeal to the Tribe or Tribal Gaming Office, as applicable. If Tribal Gaming Office employee licensing decisions are made by a department or an agency of the Tribe other than the Tribal Gaming Office, then Tribal Gaming Office employees are not subject to this tribunal process.
  - (B) Tribunal authority. The tribunal's sole authority shall be to review the decision of the tribal forum and determine whether the

decision is supported by substantial evidence based on the record as a whole. The tribunal's hearing shall be conducted in a fair and impartial manner. The hearing shall be held on the administrative record presented to the tribal forum. The tribunal's decision shall be final and not subject to further appeal or to Section 15 dispute resolution procedures. If the tribunal determines the employee should not be licensed, the Tribe or Tribal Gaming Office shall promptly revoke the disputed License. The cost of the tribunal and the hearing shall be borne equally between the State and the Tribe.

(r) Withdrawal. An Applicant for State Certification or recommendation, or renewal thereof, may not withdraw an Application without the written permission of the State Gaming Agency. The State Gaming Agency will not unreasonably withhold permission to withdraw an Application. An Applicant for a tribal License, or renewal thereof, may not withdraw an Application without the permission of the Tribe or Tribal Gaming Office as applicable, unless otherwise provided under tribal law.

#### **SECTION 6. TRIBAL REGULATION OF COMPACT PROVISIONS.**

(a) Tribal Gaming Office. The Tribal Gaming Office has the responsibility for the regulation of all Gaming Activity pursuant to the Tribe's Gaming Ordinance and for the enforcement of this Compact and its appendices on behalf of the Tribe. The State Gaming Agency has the regulatory responsibility over Gaming Activity which is specifically set out in this Compact.

- (1) The Gaming Ordinance is attached as Appendix B of this Compact.
- (2) The Tribe shall notify the State Gaming Agency of its intent to amend or repeal its Gaming Ordinance, or to adopt regulations and shall provide a copy of any change or modification to its Gaming Ordinance or gaming regulations to the State Gaming Agency.
- (3) The Tribe's Gaming Ordinance shall provide for the detention of persons who may be involved in illegal acts for the purpose of notifying appropriate law enforcement authorities.
- (4) The Tribal Gaming Office or the Gaming Facility Operator shall operate a surveillance system which meets the requirements of Appendix C to this Compact.
- (5) The Tribal Gaming Office shall have the responsibility and authority to investigate alleged violations of this Compact and its appendices, the Tribe's Gaming Ordinance, and other applicable laws and to take appropriate disciplinary action against the Gaming Facility Operator or the holder of a License for a violation or to institute appropriate legal action for enforcement or both; and to confiscate or shut down any Gaming Device or other equipment or gaming supplies failing to conform to any required standards.

(b) Gaming Facility Operator. The Tribe shall require the Gaming Facility Operator to have the responsibility for the on-site operation, management, and security of the Gaming Facility. The Gaming Facility Operator shall establish, maintain, and adhere to a written security plan which meets the requirements of Appendix C to this Compact. The Tribe shall require the Gaming Facility Operator to adopt reasonable procedures designed to provide for the following:

- (1) The physical safety of its employees;
- (2) The physical safety of patrons in the Gaming Facility;
- (3) The physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department; and
- (4) The protection of the patrons' property and the Gaming Operation's property from illegal activity.

(c) Tribal Gaming Office Staff and Executive Director. The Tribe has sole authority to determine the composition of the Tribal Gaming Office. However, no employee of a Gaming Facility Operator shall be employed by or be a member of the Tribal Gaming Office. The Tribe shall designate an Executive Director of the Tribal Gaming Office. The Executive Director shall have overall responsibility for the administrative functions of the Tribal Gaming Office. The Executive Director shall serve as the formal liaison to the person holding the similarly titled position with the State Gaming Agency.

(d) Right of Inspection.

- (1) The Tribal Gaming Office shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of a Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and its appendices and the Tribe's Gaming Ordinance.
- (2) The Tribal Gaming Office shall employ inspectors or agents who shall act under the authority of the Tribal Gaming Office. Said inspectors shall be independent of the Gaming Facility Operator and any Management Contractors, and shall be supervised and accountable only to the Tribal Gaming Office. Said inspectors shall have the right to inspect any Gaming Facility at any time and shall have immediate access to any and all areas of the Gaming Facility. An inspector shall be present in the Gaming Facilities during all hours of Gaming Operation.

(e) Reporting of Violations. The Gaming Facility Operator, or a Tribal Gaming Office inspector, as applicable, shall report unusual occurrences and all violations or suspected violations of this Compact and its appendices, or of the Tribe's Gaming Ordinance by an employee or agent of the Gaming Facility Operator, or any person on the premises whether or not associated with Gaming Activity, to the Tribal Gaming Office. Regardless of the identity of the reporter or to whom the report is made, the Tribal Gaming Office shall make a written record of any unusual occurrences, violations or suspected violations, without regard to materiality. The log may be maintained in an electronic form, provided each entry is assigned a sequential number and the information is recorded in a manner so that, once the information is entered, it

cannot be deleted or altered and is available to the State Gaming Agency. Each entry shall be assigned a sequential number and shall include, at a minimum, the following information which shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of each page is sequentially numbered:

- (1) The assigned number;
- (2) The date;
- (3) The time;
- (4) The nature of the incident;
- (5) The person(s) involved in the incident; and
- (6) The name of the security department or Tribal Gaming Office employee assigned to investigate.

(f) Investigations. The Tribal Gaming Office shall investigate any reported violation of the Compact, shall investigate any reported violation of this Compact's appendices when an investigation is reasonably necessary to ensure the integrity of gaming, the protection of persons and property, and compliance with the Compact, and shall require the Gaming Facility Operator to correct violations upon such terms and conditions as the Tribal Gaming Office determines are necessary and proper under the provisions of the Tribe's Gaming Ordinance.

(g) Reporting to State Gaming Agency. Within forty-eight (48) hours of the time a violation or suspected violation is reported and within seventy-two (72) hours of the time an unusual occurrence is reported, the Tribal Gaming Office shall notify the State Gaming Agency. During and upon completion of any investigation of an unusual occurrence or a violation or suspected violation, the Tribal Gaming Office shall provide access to and copies of its investigative file to the State Gaming Agency pursuant to the memorandum of understanding on information sharing entered into between the Tribe and the State. In order to efficiently and effectively regulate and monitor Gaming Activity, the Tribal Gaming Office and the State Gaming Agency will enter into a memorandum of understanding calling for the sharing of investigatory files, including at a minimum files for Persons licensed and/or certified pursuant to Section 4 and the records required to be kept pursuant to Section 6(e), and agreeing upon the procedure for processing fingerprints, the confidentiality of records, and the process for reporting unusual occurrences and violations of the Compact's appendices.

(h) Periodic Meetings. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Compact and its appendices, representatives of the Tribal Gaming Office and the State Gaming Agency shall meet, not less than on a quarterly basis, to review past practices and examine methods to improve the regulatory program created by this Compact and its appendices. The meetings shall take place at a location selected by the Tribal Gaming Office. The State Gaming Agency, prior to or during such meetings, shall disclose to the Tribal Gaming Office any concerns, suspected activities or pending matters reasonably believed to constitute potential violations of this Compact and its appendices by any person, organization or entity, if such disclosure will not compromise on-going law enforcement investigations or activities. Following the first year of this Compact, the Tribal Gaming Office and the State Gaming Agency shall jointly determine the number of

meetings necessary, but in no event shall less than two (2) meetings occur for any twelve (12) month period.

## **SECTION 7. STATE MONITORING OF COMPACT PROVISIONS**

(a) Monitoring. The State Gaming Agency shall, pursuant to the provisions of this Compact, have the authority to monitor the Tribe's Gaming Operation to ensure that the operation is conducted in compliance with the provisions of this Compact and its appendices. Such monitoring shall include the authority to investigate suspected violations of the Compact and its appendices. The monitoring shall be conducted in accordance with the following requirements:

- (1) Agents of the State Gaming Agency shall have free and unrestricted access to all public areas of a Gaming Facility during operating hours without giving prior notice to the Gaming Facility Operator;
- (2) The monitoring activities of these agents shall be conducted in a manner which does not unduly interfere with the normal functioning of the Tribe's Gaming Operation;
- (3) Agents of the State Gaming Agency shall be entitled to enter the non-public areas of any Gaming Facility licensed by the Tribe after such State agents have:
  - (A) Provided proper identification to the senior supervisory employee of the Gaming Facility Operator on duty and to the Tribal Gaming Office inspector on duty, who at his discretion, may witness the monitoring or investigation of non-public areas of the Gaming Facilities by the State Gaming Agency, and
  - (B) Given advance notice to the Tribal Gaming Office. Such advance notification shall not be required if such notification will compromise an on-going law enforcement investigation or activity.

(b) State's Access to the Tribe's Gaming Records; Confidentiality Requirements. Agents of the State Gaming Agency shall, upon twenty-four (24) hours advance notification to the Tribal Gaming Office, have the right to inspect and copy during normal business hours all records maintained by the Gaming Facility Operator. Such advance notification shall not be required if such notification will compromise an on-going law enforcement investigation or activity. However, all records, and copies thereof, shall remain the property of the Tribe irrespective of their location. All such records, and the information derived from such records, are confidential and proprietary information of the Tribe. Access to all records or documents of the Gaming Facility Operator, or copies thereof in the possession of the State, shall be limited solely to employees of the State Gaming Agency and the Tribal Gaming Office, and the State shall not disclose such records and documents (or any portion of the data reflected in such records or documents) to other persons within the State government or to third parties, provided however that disclosure shall be authorized when made pursuant to an order of a court of competent jurisdiction, or when disclosed to a federal, state or tribal regulatory or criminal justice agency pursuant to a regulatory or criminal justice investigation under this Section, or when disclosed pursuant to Section 5(k). Notwithstanding the previous sentence, the State Gaming Agency is authorized to provide to the Office of the Governor of the State of Arizona the



Tribe's tribal contribution amounts pursuant to Sections 12(b) and (d), provided that the Office of the Governor shall not disclose such tribal contribution amounts (or any portion of the data reflected in such tribal contribution amounts) to other persons within the State government or to third parties; provided further, however, that disclosure shall be authorized when made pursuant to an order of a court of competent jurisdiction, or when disclosed to a federal, state or tribal regulatory or criminal justice agency pursuant to a regulatory or criminal justice investigation under this Section, or when disclosed pursuant to Section 5(k). The State Gaming Agency shall immediately notify the Tribal Gaming Office of the receipt of any request for access to any such records from any person outside the State Gaming Agency unless ordered otherwise by a court of competent jurisdiction.

(c) Retention of Records. Throughout the term of this Compact and during the pendency of any litigation arising from this Compact, and for one (1) year following the termination of this Compact, the Tribe shall require that all books and records relating to authorized Gaming Activity, including the records of any Management Contractor, the Gaming Facility Operator and the Tribal Gaming Office are separately maintained in order to facilitate auditing of these books and records to ensure compliance with this Compact and its appendices. All such records shall be maintained pursuant to generally accepted accounting principles and shall be suitable for audit pursuant to the standards of the American Institute of Certified Public Accountants. The Gaming Facility Operator shall maintain all records it creates or receives relating to the operation and management of Gaming Activity. Records of the Tribal Gaming Office and the Gaming Facility Operator may be destroyed prior to the time set forth herein upon written agreement of the Tribe and the State.

(d) Tribe's Access to State Records. The Tribe shall have the right to inspect and copy all records of the State Gaming Agency concerning the Tribe's authorized Class III Gaming if such disclosure will not compromise on-going law enforcement investigations or activities, and would not violate applicable State and federal law.

(e) Notification to Tribal Gaming Office. At the completion of any inspection or investigation conducted by the State Gaming Agency, copies of an investigative report shall be immediately forwarded by the State Gaming Agency to the Tribal Gaming Office. Within forty-eight (48) hours of the receipt of any report of a violation of this Compact and its appendices, the Tribe's Gaming Ordinance, or the Act, the State Gaming Agency shall forward notification of such report of a violation to the Tribal Gaming Office.

(f) Cooperation with Tribal Gaming Office. The State Gaming Agency shall meet periodically, consistent with Section 6(h), with the Tribal Gaming Office and cooperate fully in all matters relating to the enforcement of the provisions of this Compact and its appendices and shall immediately notify the Tribal Gaming Office of any activity suspected or occurring whether within the Gaming Facilities or not, which adversely affects State, tribal or public health, safety, or welfare interests relating to the Gaming Facility and Gaming Facility Operator, if such disclosure will not compromise an on-going law enforcement investigation or activity.

(g) Compact Compliance Review.

- (1) The State Gaming Agency is authorized to conduct a biennial, comprehensive Compact compliance review of the Gaming Operation, Gaming Facilities, and the Gaming Activity of the Gaming Facility Operator to monitor compliance with this Compact, any amendments or

appendices to this Compact, and other agreements relating to this Compact.

- (2) The State Gaming Agency shall submit a preliminary Compact compliance review report that notes any potential compliance issues to the Tribal Gaming Office within sixty (60) days of the completion of fieldwork, unless the State demonstrates its inability to do so because of extenuating circumstances. The Tribal Gaming Office shall respond in writing to those potential compliance issues within thirty (30) days of receipt of the report unless the Tribal Gaming Office demonstrates its inability to do so because of extenuating circumstances. Upon receipt of the response and prior to the issuance of the final report, the State Gaming Agency and the Tribal Gaming Office shall meet and in good faith attempt to resolve those potential compliance issues, and may include the Gaming Facility Operator in the meeting, if applicable. The State Gaming Agency shall submit its final Compact compliance review report no earlier than sixty (60) days after issuing its preliminary report. Within sixty (60) days of the State Gaming Agency's submission of its final report, the Tribe shall submit a written compliance plan and timeline for addressing the issues identified in the final report. Within thirty (30) days of the Tribe's submission of a compliance plan and timeline, the Tribal Gaming Office and the State Gaming Agency shall meet and in good faith attempt to agree upon the written compliance plan and timeline.
- (3) If the Tribal Gaming Office and the State Gaming Agency fail to reach agreement on the compliance plan and timeline or if a dispute remains concerning any of the issues identified in the State Gaming Agency's final report, then the Tribe shall provide notice of dispute under Section 15 of the Compact. If the State Gaming Agency determines that the compliance plan and timeline have not been implemented as agreed, then the State shall provide notice of dispute under Section 15 of the Compact.
- (4) All documents and information provided pursuant to this subsection shall be kept confidential pursuant to the provisions of Section 7(b) of the Compact.

(h) Remedies. The State Gaming Agency may fine, or otherwise sanction, Persons it has certified, except Enrolled Tribal Members, for violations of this Compact, its appendices, or the administrative rules of the State Gaming Agency. With regard to fining Gaming Employees and Tribal Gaming Office employees, the State agrees the Tribe or Tribal Gaming Office, as applicable, will take the lead role. The State Gaming Agency will only act if the Tribe or Tribal Gaming Office fails to do so and shall consult with the Tribal Gaming Office before levying any fines. With regard to fining Management Contractors, Manufacturers and Distributors of Gaming Devices, Gaming Vendors, and Persons providing Ancillary Services, the State Gaming Agency may, but will not be required to, defer to the Tribal Gaming Office. The State Gaming Agency's ability to impose sanctions is subject to the following:

- (1) The State Gaming Agency will notify the Tribal Gaming Office of the results of its investigation(s) and any administrative proceedings and will not oppose the Tribe's intervention in any administrative proceeding. The results of any investigation will not be disclosed if such disclosure will

compromise ongoing law enforcement investigations or activities, or would violate applicable state and federal law;

- (2) The Tribe shall have the right to invoke the dispute resolution provisions in Section 15 of the Compact. The State will agree to expedite the procedures in Section 15 in advance of the administrative proceedings so long as the issue to be resolved per Section 15 is limited to interpretation of the Compact or its appendices. The decision of an arbitration tribunal will be binding upon the State Gaming Agency in any subsequent administrative proceedings; and
- (3) All monetary sanctions collected by the State, including any interest earned thereon, shall be transmitted to the State Treasurer for deposit in the State general fund.

#### **SECTION 8. CIVIL AND CRIMINAL JURISDICTION**

Nothing in this Compact is intended to change, revise or modify the civil and criminal jurisdiction of the Tribe or of the State. Nothing contained herein shall be deemed to modify or limit existing federal jurisdiction over Indians and the Gaming Operations authorized under this Compact.

#### **SECTION 9. CROSS-DEPUTIZATION AGREEMENT**

The State and the Tribe, to the extent permitted by law, may agree to enter into such cross-deputization agreements as necessary to facilitate cooperation between State and Tribal law enforcement personnel.

#### **SECTION 10. AUTHORIZATION TO ENACT RULES AND REGULATIONS**

(a) State Gaming Agency Rules. Pursuant to its general rule-making authority, the State Gaming Agency may enact, as part of its rules governing gaming, all or part of the provisions of this Compact. The rules adopted by the State Gaming Agency shall be consistent with the provisions and appendices of this Compact.

(b) Tribal Gaming Office Regulations. The Tribal Gaming Office may enact, as part of its rules or regulations governing gaming, all or part of the provisions of this Compact.

#### **SECTION 11. OPERATIONAL REQUIREMENTS**

(a) Internal Control System. The Gaming Facility Operator shall operate each Gaming Facility pursuant to a written internal control system. The internal control system shall comply with and implement the internal control standards established by the Tribal Gaming Office, which shall, at a minimum, provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix H to this Compact and be consistent with this Compact. The internal control system shall be designed to reasonably assure that:

- (1) Assets are safeguarded and accountability over assets is maintained;

- (2) Liabilities are properly recorded and contingent liabilities are properly disclosed;
  - (3) Financial records including records relating to revenues, expenses, assets, liabilities, and equity/fund balances are accurate and reliable;
  - (4) Transactions are performed in accordance with the Tribe's general or specific authorization;
  - (5) Access to assets is permitted only in accordance with the Tribe's specific authorization;
  - (6) Recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and
  - (7) Functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by qualified personnel.
- (b) Internal Control System Components. The internal control system shall include:
- (1) An organizational chart depicting appropriate segregation of functions and responsibilities for all positions in the Gaming Operation;
  - (2) A description of the duties and responsibilities of each position shown on the organizational chart;
  - (3) A detailed narrative description of the administrative, operational, and accounting procedures designed to satisfy the requirements of subsection (a) of this Section;
  - (4) A description of procedures governing the maintenance and preservation of security and surveillance information; and
  - (5) The internal control standards established by the Tribal Gaming Office.
- (c) Internal Control System and Standards Review.
- (1) The Gaming Facility Operator shall submit the internal control system and any changes it proposes to make to that system to the Tribal Gaming Office. The Tribal Gaming Office shall review the system or any proposed changes for compliance with the internal control standards established by the Tribal Gaming Office and issue a letter either approving or disapproving of them. The internal control system, and any proposed changes to that system, must be approved by the Tribal Gaming Office prior to implementation.
  - (2) The Tribal Gaming Office shall provide the internal control standards and any proposed changes to those standards to the State Gaming Agency within thirty (30) days of their implementation in the Gaming Operation.

The State Gaming Agency will review and submit to the Tribal Gaming Office written comments or objections, if any, to the internal control standards and any proposed changes to those standards within ten (10) days of receiving them. The State Gaming Agency's review shall be solely for the purpose of determining whether the internal control standards and any proposed changes to those standards provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix H and are consistent with this Compact.

(d) Accounting and Financial Records. The Gaming Facility Operator shall maintain:

- (1) Accurate, complete, legible and permanent records of all transactions pertaining to the Gaming Operation in a manner suitable for audit under the standards of the American Institute of Certified Public Accountants;
- (2) General accounting records using a double entry system of accounting with transactions recorded on a basis consistent with Generally Accepted Accounting Principles;
- (3) Detailed supporting and subsidiary records;
- (4) Detailed records identifying revenues, expenses, assets, liabilities and fund balances or equity for the Gaming Operation;
- (5) All records required by the internal control system including, but not limited to, those relating to any Gaming Activity authorized by this Compact;
- (6) Journal entries for the Gaming Operation;
- (7) Detailed records sufficient to accurately reflect gross income and expenses relating to its operations on a monthly and year-to-date basis;
- (8) Detailed records of any reviews or audits, whether internal or otherwise, performed in addition to the annual audit required in subsection (f) of this Section, including, but not limited to, management advisory letters, agreed upon procedure reviews, notices of non-compliance and reports on the internal control system; and
- (9) Records of any proposed or adjusting entries made by an independent certified public accountant.

(e) Accounts. The Gaming Facility Operator shall maintain a bank account that is, or bank accounts that are, separate and distinct from all other Tribal accounts, unless otherwise agreed to by the State Gaming Agency. The Gaming Facility Operator's account(s) shall be used for all receipts and disbursements regarding or in any way relating to its operation of Gaming Activity or the Gaming Operation, and the construction or operation of Gaming Facilities. The requirements of this Section can be satisfied by:

- (1) The Gaming Facility Operator having in use a software accounting system that separates, and can make distinct, all receipts and disbursements regarding or in any way relating to Gaming Activity, the Gaming Operation, and the construction or operation of Gaming Facilities; and
- (2) The Gaming Facility Operator's software accounting system can and does readily produce documents and supporting records of all receipts and disbursements regarding or in any way relating to Gaming Activity, the Gaming Operation, and the construction or operation of Gaming Facilities.

If the bank account(s) of the Gaming Facility Operator are not separate and distinct from all other bank accounts, or receipts and/or distributions are made out of accounts shared by the Tribe or other Tribal operations, and there is no software accounting system which meets the requirements of this Section 11(e), the State Gaming Agency shall have unrestricted access to all records relating to such bank accounts, including those for the Gaming Facility Operator, the Tribe, or tribal operation(s). All records and reports of these accounts must be made available upon request to employees of the State Gaming Agency.

(f) Annual Audit. Financial statements of the Gaming Operation shall be audited, not less than annually at its fiscal year end, by an independent certified public accountant at the expense of the Gaming Facility Operator. The independent certified public accountant shall issue a report on audited financial statements of the Gaming Operation. The independent certified public accountant shall perform the audit in accordance with generally accepted auditing standards published by the American Institute of Certified Public Accountants and submit the audited financial statements, along with any report(s) or management letter(s) the accountant has prepared, to the Tribal Gaming Office within one hundred twenty (120) days after the Gaming Operation's fiscal year end. Promptly upon receipt of the audited financial statements, and in no event later than 120 days after the fiscal year end, the Tribal Gaming Office shall provide copies of them to the State Gaming Agency, along with copies of any report(s) or management letter(s) the accountant has prepared. If the Gaming Facility Operator changes its fiscal year end, it may elect either to prepare financial statements for a short fiscal year or for an extended fiscal year, but in no event shall an extended fiscal year extend more than fifteen (15) months.

(g) Auditors. Either the firm or all independent certified public accountants engaged to do audits pursuant to subsection (f) of this Section shall be licensed by the Arizona State Board of Accountancy. The State Gaming Agency shall be authorized to confer with the independent certified public accountant during the audit process and to review all of the independent certified public accountant's work papers and documentation relating to the Gaming Operation. The Tribal Gaming Office shall be notified of and provided the opportunity to participate in and attend any such conference or document review.

(h) Fiscal Year End. The Gaming Facility Operator shall notify the State Gaming Agency in writing of its fiscal year end and any changes to its fiscal year end within ten (10) days after deciding on a fiscal year end or a change to that year end.

## **SECTION 12. PAYMENT OF REGULATORY COSTS; TRIBAL CONTRIBUTIONS**

(a) Payment of Regulatory Costs. The Tribe agrees to pay the State the necessary costs incurred by the State as a result of the State's performance of its rights or duties under the terms of this Compact. The Tribe's contributions under this Section 12 shall satisfy the Tribe's agreement to pay those costs.

(b) Tribal Contributions. In consideration for the substantial exclusivity covenants by the State in Section 3(h), the Tribe shall contribute for the benefit of the public a percentage of the Tribe's Class III Net Win for each fiscal year of the Gaming Facility Operator as follows:

(1) If the Tribe is Gila River Indian Community, Salt River Indian Community, Ak Chin Indian Community, Tohono O'odham Nation, or Pascua Yaqui Tribe:

(A) One percent (1%) of the first twenty-five million dollars (\$25,000,000.00);

(B) Three percent (3%) of the next fifty million dollars (\$50,000,000.00);

(C) Six percent (6%) of the next twenty-five million dollars (\$25,000,000.00); and

(D) Eight percent (8%) of Class III Net Win in excess of one hundred million dollars (\$100,000,000.00).

(2) If the Tribe is a tribe other than a tribe listed in Section 12(b)(1) above:

(A) seventy-five hundredths of one percent (0.75%) of all Class III Net Win unless the Tribe fails to comply with the Gaming Facility and Gaming Device limits set forth in this Compact.

(B) If the Tribe fails to comply with the Gaming Facility and Gaming Device limits set forth in this Compact, the Tribe will contribute the percentages outlined in Section 12(b)(1).

(C) Prior to the Tribe's obligation to contribute pursuant to Section 12(b)(2)(B) above, the State shall first provide notice to the Tribe of the compliance failure the State alleges is triggering the remedy set forth in Section 12(b)(2)(B) and a period of thirty (30) days to cure the alleged compliance failure. If the Tribe disputes the alleged compliance failure, either the Tribe or the State may seek to resolve the dispute pursuant to Section 15.

(c) Arizona Benefits Fund. The Tribe shall make eighty-eight percent (88%) of its total annual contribution under Section 12(b) to the Arizona Benefits Fund established by A.R.S. § 5-601.02(H). The State agrees that the Arizona Benefits Fund shall be used for the purpose of administering the contributions made by the Tribe to the State in accordance with the provisions of Section 12(b). All contributions to the State from the Tribe pursuant to this Section 12(c), and all contributions to the State from other Indian tribes that have entered into tribal-state gaming compacts with the State that contain similar provisions, shall be deposited in the Arizona Benefits Fund administered by the State Gaming Agency. The State agrees to invest all monies in the Arizona Benefits Fund in accordance with A.R.S. § 35-313; monies earned from such

investment may only be credited to the Arizona Benefits Fund. The State agrees that contributions paid to the State by the Tribe under this Section 12(c) shall only be distributed as provided in A.R.S. § 5-601.02, as adopted by the people of the State at the November 5, 2002 election, and the State shall not impose any tax, fee, charge, or other assessment upon the Tribe's Gaming Operations on its Indian Lands.

(d) Distributions by Tribe to Cities, Towns and Counties. The Tribe shall make twelve percent (12%) of its total annual contribution under Section 12(b) in either or both of the following forms:

- (1) Distributions to cities, towns or counties for government services that benefit the general public, including public safety, mitigation of impacts of gaming, or promotion of commerce and economic development;
- (2) Deposits to the Commerce and Economic Development Commission Local Communities Fund established by A.R.S. § 41-1505.12.

For State planning purposes, whenever feasible the Tribe will elect on or before the first day of the Tribe's fiscal year whether or not it will deposit all or a portion of the monies it is required to distribute pursuant to this Section 12(d) in the Commerce and Economic Development Commission Local Communities Fund over the following year; provided, however, that any such election shall not be binding on the Tribe. The Commerce and Economic Development Commission shall award monies from the Commerce and Economic Development Commission Local Communities Fund in accordance with A.R.S. § 41-1505.12 in the form of grants that will be awarded pursuant to the procedures outlined in A.R.S. § 41-2702. Monies the Tribe contributes to the Commerce and Economic Development Commission Local Communities Fund shall be placed into a sub-account in the Tribe's name. The Commerce and Economic Development Commission shall prepare annually a report for the Tribe on the sub-account stating for the period the opening balance, deposits, awards, the closing balance, and the projects for which funds were awarded. The Tribe shall have the opportunity to comment on the granting of monies from the sub-account and all grant applications must have a written endorsement of a nearby Indian tribe to receive an award of funds from the Commerce and Economic Development Commission.

(e) Contribution Schedule.

- (1) Tribal contributions made to the Arizona Benefits Fund pursuant to Section 12(c) shall be paid quarterly to the State Gaming Agency. The contributions shall be calculated based on the Tribe's Class III Net Win for each quarter of the Gaming Facility Operator's fiscal year. Contributions shall be made no later than twenty-five (25) days after the last day of each fiscal quarter.
- (2) Tribal contributions made pursuant to Section 12(d) shall be transmitted or sent from the Tribe to the recipient no later than sixty (60) days after the last day of the Gaming Facility Operator's fiscal year. The contributions shall be calculated based on the Tribe's Class III Net Win for the Gaming Facility Operator's fiscal year. Any contributions not transmitted or sent to a recipient by the end of the sixty (60) day period shall be immediately deposited to the Commerce and Economic Development Commission Local Communities Fund.



- (3) The Tribe's first quarterly contribution will be calculated based on the Tribe's Class III Net Win for the first full fiscal quarter after the Effective Date.
- (4) Following the State Gaming Agency's receipt of the annual audit pursuant to Section 11(f), any overpayment of monies by the Tribe pursuant to this Section shall be credited to the Tribe's next quarterly contribution. Any underpayment of monies shall be paid by the Tribe within thirty (30) days of the State Gaming Agency's receipt of the annual audit.

(f) Reduction of Tribal Contributions. In the event that tribal contributions are reduced pursuant to Sections 3(g) or (h), the Tribe shall make the reduced contributions under the terms of this Section 12, and these monies shall be used in the manner set forth in A.R.S. § 5-601.02(H)(3)(a) as adopted by the people of the State at the November 5, 2002 election.

(g) Reports and Audits. Calculation of Class III Net Win under Section 12 of this Compact shall be made consistent with the standards found in Appendix I. The annual audit required by Section 11 of this Compact also shall audit and report the Tribe's Class III Net Win. It shall also include or be supplemented with an attestation by the auditor that Class III Net Win is accurately reported consistent with the terms of Appendix I.

#### **SECTION 12.1      2021 COMPACT TRUST FUND**

(a) 2021 Compact Trust Fund The 2021 Gaming Act and this Section 12.1 establish the 2021 Compact Trust Fund. Pursuant to the 2021 Gaming Act and this Section 12.1, the Director of the State Gaming Agency ("Director") is to administer the 2021 Compact Trust Fund in accordance with such act and the terms of this 2021 Compact. The Director shall promptly deposit in the 2021 Compact Trust Fund all funds paid to the State pursuant to Section 12.1(b).

- (2) The Director shall invest all funds in the 2021 Compact Trust Fund in accordance with A.R.S. § 35-313. Monies earned from such investment are for the exclusive benefit of the 2021 Compact Trust Fund.
- (3) The Director shall hold and administer the funds in the 2021 Compact Trust Fund in trust for the exclusive purposes set forth in this Section 12.1.
- (4) The Director shall be responsible for the distribution of the funds in the 2021 Compact Trust Fund solely in accordance with the 2021 Gaming Act and this 2021 Compact. The 2021 Compact Trust Funds are not subject to the state legislature's plenary power over state monies and may not be swept into the state general fund or any other fund.
- (5) Except for reasonable administrative costs as provided in Paragraph 5 of Annex 12.1(c)(5), the Director shall not impose any tax, fee, charge or other assessment against the 2021 Compact Trust Fund or upon the Tribe for performance of its duties under this Section 12.1.
- (6) The Director shall only be responsible for the distribution of the funds in the 2021 Compact Trust Fund to the extent that funds are paid into and available in the fund at any given time.

- (7) The Director is entitled to and shall seek any available remedy under the 2021 Compact to ensure that all payments required by Section 12.1(b)(1)-(3) are made.

(b) Payments to the 2021 Compact Trust Fund. The Contributing Tribes shall make payments to the 2021 Compact Trust Fund as required in Sections 12.1(b)(1)-(3); provided that a Contributing Tribe's quarterly payment shall automatically be reduced pro rata by the number of days in that quarter during which the Contributing Tribe does not operate Gaming Devices within the Phoenix Metropolitan Area. Failure by any one or more of the Contributing Tribes to make a payment as required by Sections 12.1(b)(1)-(3) shall be a 2021 Compact violation for such Tribe and the State Gaming Agency shall be entitled to and shall seek any available remedy under such Tribe's 2021 Compact to ensure that such delinquent payment is made. The Contributing Tribes shall make the payments described in Section 12.1(b)(1)-(3) on a quarterly basis. The first quarterly payment is due no later than one hundred twenty (120) days after the Effective Date. Subsequent payments shall be due within thirty (30) days of the last day of the quarter for which payment is due. The Director shall promptly deposit payments received from the Contributing Tribes in the 2021 Compact Trust Fund. For the period from the Effective Date through the third anniversary of the Effective Date, for a total of twelve (12) consecutive quarterly payments:

- (A) Gila River Indian Community shall contribute two hundred fifty thousand dollars (\$250,000) each quarter for a total of one million dollars (\$1,000,000) per year;
  - (B) Salt River Pima-Maricopa Indian Community shall contribute six hundred eighty-seven thousand five hundred dollars (\$687,500) each quarter for a total of two million seven hundred fifty thousand dollars (\$2,750,000) per year; and,
  - (C) Tohono O'odham Nation shall contribute six hundred eighty-seven thousand five hundred dollars (\$687,500) each quarter for a total of two million seven hundred fifty thousand dollars (\$2,750,000) per year.
- (2) For the period from the third anniversary of the Effective Date through the fifth anniversary of the Effective Date, for a total of eight (8) consecutive quarterly payments:
- (A) Gila River Indian Community shall contribute nine hundred sixty-eight thousand seven hundred fifty dollars (\$968,750) each quarter for a total of three million eight hundred seventy-five thousand dollars (\$3,875,000) per year;
  - (B) Salt River Pima-Maricopa Indian Community shall contribute one million one hundred eighty-seven thousand five hundred dollars (\$1,187,500) each quarter for a total of four million seven hundred fifty thousand dollars (\$4,750,000) per year; and,
  - (C) Tohono O'odham Nation shall contribute one million one hundred eighty-seven thousand five hundred dollars (\$1,187,500) each

quarter for a total of four million seven hundred fifty thousand dollars (\$4,750,000) per year.

- (3) For the period from the fifth anniversary of the Effective Date through the tenth anniversary of the Effective Date, for a total of twenty (20) consecutive quarterly payments:
  - (A) Gila River Indian Community shall contribute one million one hundred eighty-seven thousand five hundred dollars (\$1,187,500) each quarter for a total of four million seven hundred fifty thousand dollars (\$4,750,000) per year;
  - (B) Salt River Pima-Maricopa Indian Community shall contribute one million one hundred eighty-seven thousand five hundred dollars (\$1,187,500) each quarter for a total of four million seven hundred fifty thousand dollars (\$4,750,000) per year; and,
  - (C) Tohono O'odham Nation shall contribute one million one hundred eighty-seven thousand five hundred dollars (\$1,187,500) each quarter for a total of four million seven hundred fifty thousand dollars (\$4,750,000) per year.

(c) Distributions from the 2021 Compact Trust Fund. The Director shall make distributions from the 2021 Compact Trust Fund solely in accordance with this Section 12.1(c) and Annex 12.1(c)(5).

- (1) Within thirty (30) days after the Effective Date, and annually thereafter, the Director shall send a written notice to all Beneficiary Tribes providing an opportunity for all Beneficiary Tribes to provide information relating to their eligibility for a distribution from the 2021 Compact Trust Fund pursuant to any of the Beneficiary Tribe categories as set forth in Annex 12.1(c)(5).
- (2) The Beneficiary Category List as of the Effective Date is set forth in Annex 12.1(c)(2). For each subsequent Payment Year within sixty (60) days after the anniversary of the Effective Date, the Director shall transmit to all Tribes its determination listing the Tribes eligible for distributions from each Beneficiary Category ("Beneficiary Category List").
- (3) The Director shall use its then current Beneficiary Category List for purposes of making payments from the 2021 Compact Trust Fund in any given Payment Year.
- (4) A Tribe that becomes eligible or ineligible for Beneficiary Category One or Beneficiary Category Two distributions during a Payment Year because of a change in such Tribes' circumstances shall provide written notice to the State Gaming Agency within thirty (30) days of its change in circumstances and the State Gaming Agency shall update its Beneficiary Category List accordingly.

- (5) The State Gaming Agency shall make payments to Beneficiary Tribes in accordance with the procedures set forth in Annex 12.1(c)(5).

(d) Ten Year Evaluation. The 2021 Compact Trust Fund shall remain in effect until all funds contributed pursuant to Section 12.1(b)(1)-(3) are distributed to Beneficiary Tribes. Beginning in the ninth year after the Effective Date of the Compact, the State Gaming Agency shall initiate a process with the Contributing Tribes and the Beneficiary Tribes to evaluate the necessity for continuing the 2021 Compact Trust Fund after the tenth anniversary of the Effective Date of the Compact.

(e) Contingency for 2021 Compact Trust Fund. If the 2021 Gaming Act does not include provisions to create the 2021 Compact Trust Fund as anticipated in Section 12.1(a), within thirty (30) days after the Effective Date, the Contributing Tribes and the Beneficiary Tribes shall meet to discuss establishing an escrow account to meet the requirements for the 2021 Compact Trust Fund as set forth in this Section 12.1 and Annex 12.1(c)(5). The parties to such an escrow account shall be the Contributing Tribes and all Beneficiary Tribes as they become eligible for distributions from the 2021 Compact Trust Fund. If such escrow account is established, the management of the 2021 Compact Trust Fund by an escrow agent, not the State Gaming Agency, shall be on the terms of an escrow agreement that is substantially similar to the management terms set forth in this Section 12.1 and Annex 12.1(c)(5). The escrow agreement shall not change the amount or schedule for payments from the Contributing Tribes or the distribution schedule or amounts payable to the Beneficiary Tribes as those terms are set forth in this Section 12.1 and in Annex 12.1(c)(5).

### **SECTION 13. PUBLIC HEALTH, SAFETY AND WELFARE**

(a) Compliance. The Tribe shall comply with standards governing health and safety with regard to its Gaming Facilities and which shall be no less stringent than the standards imposed by the following (or other comparably rigorous standards as agreed to by the Tribe and the State which agreement shall not be unreasonably withheld):

- (1) The International Building Code;
- (2) The International Mechanical Code;
- (3) The International Plumbing Code; and
- (4) The International Fire Code.

Construction and modification of the Tribe's Gaming Facilities either shall meet the international standards referenced above that are in effect as of the construction or modification, or shall meet other comparably rigorous standards as agreed to by the Tribe and the State which agreement shall not be unreasonably withheld. In addition, public health standards for food and beverage handling shall be in accordance with United States Public Health Service requirements.

(b) Emergency Medical and Fire Suppression Services. The Tribe shall require the Gaming Facility Operator to make provisions for adequate emergency accessibility and service. The Tribe shall establish and implement a written emergency medical and fire suppression plan that includes all steps reasonably appropriate to ensure the on-going availability of sufficient emergency services to its Gaming Facilities, including the availability of qualified emergency

medical and fire suppression personnel and adequate emergency medical transportation and fire suppression equipment. Mutual aid and emergency response service agreements will be entered as needed with entities from the surrounding communities.

(c) Tort Remedies for Patrons. The Tribe shall establish written procedures for the disposition of tort claims arising from personal injury or property damage alleged to have been suffered by patrons and invitees of its Gaming Facilities and shall enact such tribal law as is necessary to implement these procedures. The procedures shall include all time limits applicable to the disposition of the tort claim and a provision that, upon request, the patron or invitee, or the patron's or invitee's designated representative, shall be provided with a copy of the procedures as well as the name, address and telephone number of the Gaming Facility Operator and the mailing address and telephone number of the clerk of the Tribal court. The Tribe shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by establishing such procedures or by any provision of this Compact, but agrees not to assert such immunity as provided in subsection (d) of this Section.

(d) Liability for Damage to Persons and Property. During the term of this Compact, the Gaming Facility Operator shall maintain a policy of commercial general liability insurance with a combined single limit for personal injury and property damage of not less than two million dollars (\$2,000,000) per occurrence and in the aggregate. The insurance policy shall include an endorsement providing that neither the insurer nor the Gaming Facility Operator may invoke tribal sovereign immunity up to the limits of the policy set forth above with respect to any claim covered under the policy and disposed of in accordance with the Tribe's tort claim procedures, provided, that the policy shall not exclude all claims made by a patron or invitee for personal injury or property damage. Neither the insurer nor the Gaming Facility Operator shall be precluded from asserting any other statutory or common law defense and provided further that any award or judgment rendered in favor of the patron or invitee shall be satisfied solely from insurance proceeds.

(e) Law Enforcement. The Tribe shall implement a written law enforcement services plan that provides a comprehensive and effective means to address criminal and undesirable activity at the Gaming Facilities. This plan shall provide that sufficient law enforcement resources are available twenty-four (24) hours a day, seven (7) days per week to protect the public health, safety, and welfare at the Gaming Facilities. The Tribe and the State shall investigate violations of State gambling statutes and other criminal activities at the Gaming Facilities. To accommodate investigations and intelligence sharing, the Tribe will provide that a police officer holding current Arizona police officer standards and training certification is employed by the Gaming Facility Operator, the Tribal Gaming Office, or the Tribal Police Department, and assigned to handle gaming-related matters when they arise. Intelligence liaisons will be established at the Tribal Police Department or Tribal Gaming Office and also at the State Gaming Agency. The Tribe and the State agree to cooperate in federal, tribal and State task force investigations.

The State Gaming Agency's intelligence unit will gather, coordinate, centralize, and disseminate accurate and current intelligence information pertaining to criminal and undesirable activity that may threaten patrons, employees, or assets of the gaming industry. The State and the Tribe will coordinate the use of resources, authority, and personnel of the State and the Tribe for the shared goal of preventing and prosecuting criminal or undesirable activity by players, employees, or businesses in connection with tribal Gaming Facilities. Violations of State criminal gambling statutes on tribal lands may be prosecuted as federal crimes in federal court.

(f) Maintenance of Plans and Procedures. The Gaming Facility Operator shall maintain at all times current copies of the following:

- (1) the emergency medical and fire suppression plan referenced in Section 13(b);
- (2) the procedures for disposition of tort claims referenced in Section 13(c);
- (3) the current certificate of insurance demonstrating compliance with Section 13(d); and
- (4) the law enforcement services plan referenced in Section 13(e).

#### **SECTION 14. PATRON DISPUTES**

(a) Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron or there is otherwise a dispute with a patron regarding that patron's wins or losses from Gaming Activity, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

- (1) At least five hundred dollars (\$500), the Gaming Facility Operator shall immediately notify the Tribal Gaming Office. The Tribal Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or
- (2) Less than five hundred dollars (\$500), the Gaming Facility Operator shall inform the patron of his or her right to request that the Tribal Gaming Office conduct an investigation. Upon request of the patron, the Tribal Gaming Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(b) Notice to Patrons. The Tribal Gaming Office shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of its decision within thirty (30) days after the date that the Tribal Gaming Office first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.

(c) Effective Date of Decision. The decision of the Tribal Gaming Office is effective on the date it is received by the patron as reflected on the return receipt.

(d) Review of Decision.

- (1) Within thirty (30) days after the date of receipt of the written decision, the patron or Gaming Facility Operator may file a petition with the Tribal Gaming Office requesting a review of the decision. The Tribal Gaming Office may set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patron and the Gaming Facility Operator. The Tribal Gaming Office shall then issue a written decision within sixty (60) days of the filing of the

petition and mail the decision to the parties pursuant to the procedures set forth in Section 14(b).

- (2) The Tribe's ordinance shall allow a patron whose dispute involves at least \$500 to file a complaint in Tribal court within sixty (60) days of receipt of the Tribal Gaming Office's written decision referenced in Section 14(d)(1). The Tribe's ordinances shall empower, and vest jurisdiction in, the Tribal court to hear and render decisions on these disputes. The Tribal court will review the dispute and issue a decision. Disposition of the action in Tribal court will be final and binding upon all parties in accordance with Tribal law.

## **SECTION 15. DISPUTE RESOLUTION**

(a) **Notice/Negotiation.** If either the Tribe or the State believes the other has failed to comply with the requirements set forth in this Compact or its appendices, or if a dispute arises as to the proper interpretation of those requirements, then either party may serve a written notice on the other identifying the specific provision or provisions of the Compact or its appendices in dispute and specifying in detail the factual bases for any alleged non-compliance and/or the interpretation of the provision of the Compact or its appendices proposed by the party providing notice. Within ten (10) days following delivery of the written notice of dispute, the Executive Director of the Tribal Gaming Office and the Director of the State Gaming Agency shall meet in an effort to voluntarily resolve the compliance or interpretation dispute through negotiation. If those negotiations fail to resolve the dispute, the Executive Director of the Tribal Gaming Office, the Director of the State Gaming Agency, and representatives designated by the Governor of Arizona and the Chair, President, or Governor of the Tribe shall meet in a further effort to voluntarily and informally resolve the dispute through further negotiation.

(b) **Mediation.** If the Tribe and the State are unable to resolve by negotiation any dispute regarding compliance with the requirements of the Compact or its appendices, or the proper interpretation of those requirements, within thirty (30) days after delivery of the written notice of dispute, the Tribe and the State shall, upon the request of either party, endeavor to settle the dispute in an amicable manner by non-binding mediation administered by the CPR under its mediation procedures dated April 1, 1998 (unless otherwise agreed to by the parties), and the procedures set forth below. Although the parties shall be required to participate in the mediation process if requested, a request for mediation shall not preclude either party from pursuing any other available remedy.

- (1) **Selection of mediator.** If the parties agree upon a mediator, that individual shall serve as the mediator. If the parties are unable to agree on a mediator within ten (10) days of a request for mediation, then the CPR (i) shall select an attorney from the CPR Panel of Distinguished Neutrals to be the mediator or (ii) if requested by the parties, shall select the mediator from a list of potential mediators approved by the parties.
- (2) **Conduct of mediation.** The mediator shall control the procedural aspects of the mediation and shall be guided by the mediation procedures promulgated by the CPR.

- (3) Costs of mediation. The costs of mediation shall be borne equally by the parties, with one-half (½) of the expenses charged to the Tribe and one-half (½) of the expenses charged to the State.

(c) Arbitration. If the Tribe and the State fail to resolve such a dispute regarding compliance with the requirements of the Compact or its appendices or the proper interpretation of those requirements through negotiation or mediation under Sections 15(a) or (b) within thirty (30) days after delivery of the written notice of dispute, upon a demand by either party, the Tribe and the State expressly agree herewith that the dispute shall be settled through binding arbitration at a neutral location and, unless otherwise agreed to by the parties, the arbitration shall be conducted in accordance with the Rules, as modified by the following:

- (1) Demand for arbitration. No earlier than thirty (30) days after the delivery of the notice required under Section 15(a), either party may serve on the other a written demand for arbitration of the dispute, in accordance with CPR Rule 3. The demand shall contain a statement setting forth the nature of the dispute and the remedy sought. The other party shall file a notice of defense and any counterclaim within twenty (20) days, in accordance with CPR Rule 3. Failure to provide a notice of defense shall not delay the arbitration. In the absence of a notice of defense, all claims set forth in the demand shall be deemed denied.
- (2) Arbitrators. Unless the parties agree in writing to the appointment of a single arbitrator, the arbitration shall be conducted before a panel of three (3) arbitrators. In the absence of an agreement to a single arbitrator, within twenty (20) days of the defending party's receipt of the demand, each party shall select an arbitrator. As soon as possible thereafter, but in no event more than forty (40) days following delivery of the demand, the party-appointed arbitrators shall discuss and select a third arbitrator from the Panel of Distinguished Neutrals, who shall chair the tribunal. Alternatively, if the parties have agreed upon a list of arbitrators acceptable to both parties, the CPR shall select the third arbitrator from that list. Unless the parties agree otherwise, at least one (1) of the arbitrators on the tribunal shall be an attorney or retired judge knowledgeable about the Act, federal Indian law, and jurisdiction within Indian country. If the parties do not appoint an arbitrator with those qualifications, the party-appointed arbitrators or the CPR shall do so. Once the tribunal is impaneled, there shall be no ex parte contact with the arbitrators, except for contacts with the office of the tribunal chair regarding scheduling or other purely administrative matters that do not deal with substantive matters or the merits of the issues.
- (3) Selection of arbitrator(s) by the CPR. If a party fails to appoint an arbitrator, or if the party-appointed arbitrators have failed to appoint a third arbitrator within the time period provided in Section 15(c)(2), either party may request appointment of the arbitrator by the CPR. The request shall be made in writing and served on the other party. CPR shall fill any vacancies on the tribunal within ten (10) days of a request in accordance with CPR Rule 6.



- (4) Neutrality of the arbitrators. All arbitrators shall be independent and impartial. Upon selection, each arbitrator shall promptly disclose in writing to the tribunal and the parties any circumstances that might cause doubt regarding the arbitrator's independence or impartiality. Such circumstances may include, but shall not be limited to, bias, interest in the result of the arbitration, and past or present relations with a party or its counsel. Following such disclosure, any arbitrator may be challenged in accordance with CPR Rule 7.
- (5) Cost of arbitration. The costs of arbitration shall be borne equally by the parties, with one-half ( $\frac{1}{2}$ ) of the expenses charged to the Tribe and one-half ( $\frac{1}{2}$ ) of the expenses charged to the State.
- (6) Preliminary conference/hearing. The tribunal shall hold an initial pre-hearing conference no later than thirty (30) days following the selection of the members of the tribunal and shall permit discovery and make other applicable decisions in accordance with CPR Rules 9 through 12. Unless the parties agree otherwise, or unless the tribunal determines that compelling circumstances exist which demand otherwise, the arbitration shall be completed within one hundred and eighty (180) days of the initial pre-hearing conference.
- (7) Discovery.
  - (A) Documents. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim or on which the producing party may rely in support of or in opposition to any claim or defense. Except as permitted by the tribunal, all written discovery shall be completed within ninety (90) days following the initial pre-hearing conference. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the tribunal, whose determination shall be conclusive.
  - (B) Depositions. Consistent with the expedited nature of arbitration and unless the parties agree otherwise, a party, upon providing written notice to the other party, shall have the right to take the depositions of up to five (5) witnesses, each of which shall last no longer than one (1) day. Unless the parties agree otherwise, additional depositions shall be scheduled only with the permission of the tribunal and for good cause shown. A party's need to take the deposition of a witness who is not expected to be available for an arbitration hearing shall be deemed to be good cause. Except as permitted by the tribunal, all depositions shall be concluded within one hundred and twenty (120) days following the initial pre-hearing conference. All objections that might be raised to deposition testimony shall be reserved for the arbitration hearing, except for objections based on privilege, proprietary or confidential information, and objections to form or foundation that could be cured if raised at the deposition.

- (8) Injunctive relief in aid of arbitration. The Tribe or the State may seek in a court of competent jurisdiction (A) provisional or ancillary remedies, including preliminary injunctive relief, pending the outcome of an arbitration proceeding, or (B) permanent injunctive relief to enforce an arbitration award.
- (9) Arbitration hearing.
- (A) Notice/transcript. Unless the parties agree otherwise, the tribunal shall provide the parties with at least sixty (60) days notice of the date of the arbitration hearing. Unless the parties agree otherwise, there shall be a stenographic record made of the hearing, with the cost to be shared by the Tribe and the State. The transcript shall be the official record of the proceeding.
- (B) Last, best offer format. The arbitrators shall conduct each arbitration proceeding using the "last, best offer" format, unless any party to an arbitration proceeding opts out of the "last, best offer" arbitration format in the manner set forth in Section 15(c)(9)(C).
- (i) No later than forty (40) days before the arbitration hearing (or forty (40) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the other party or parties to the arbitration a preliminary last, best offer for those issues that will be decided using the last, best offer format.
- (ii) No later than twenty (20) days before the arbitration hearing (or twenty (20) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the tribunal and the other party or parties to the arbitration its pre-hearing last, best offer for those issues that will be decided using the last, best offer format.
- (iii) No later than ten (10) days after the conclusion of the arbitration hearing (or ten (10) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the tribunal and the other party or parties to the arbitration its final last, best offer for those issues that will be decided using the last, best offer format.
- (iv) Except as otherwise provided in this Section 15(c)(9)(B)(iv), for each issue to be decided using the last, best offer format, the tribunal shall, for its decision on the issue, adopt one of the last, best offers submitted under Section 15(c)(9)(B)(iii) and no other remedy (excepting only remedies in aid of the tribunal's decision). If the

tribunal expressly determines that a last, best offer submitted by a party with respect to an issue or issues is not consistent with or does not comply with the Act and/or the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject that last, best offer and shall not consider it in rendering its decision. If the tribunal expressly determines that all the last, best offers submitted by the parties with respect to an issue or issues are not consistent with or do not comply with the Act and/or the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject all the last, best offers and shall decide the related issue or issues as if the parties had elected to have the issue or those issues decided without using the "last, best offer" format. In addition, the tribunal shall have no authority to award money damages against either party, regardless of whether a last, best offer proposes an award of damages.

- (C) Opting out of last, best offer format. Unless the parties agree otherwise, a party desiring to opt out of the "last, best offer" arbitration format shall serve a written notice of its election no later than fifty (50) days before the arbitration hearing (or fifty (50) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived). The notice shall:
  - (i) Identify with specificity the issue or issues that the arbitrators will decide without using the "last, best offer" arbitration format, or
  - (ii) State that the arbitrators will not use the "last, best offer" arbitration format.
- (10) Decision of the tribunal. The decision of the tribunal shall be in writing, setting forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the disposition of each claim. If the tribunal determines that a last, best offer is not consistent with or does not comply with the Act and/or the Compact, the decision of the tribunal shall set forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the tribunal's determination. The written decision of the tribunal shall be made promptly and, unless otherwise agreed to by the parties, no later than forty (40) days from the date of the closing of the hearing or, if oral hearings have been waived, no later than forty (40) days from the date the dispute is submitted to the tribunal for decision. The tribunal may take additional time to render its decision if the tribunal determines that compelling circumstances require additional time. The tribunal may issue awards in accordance with CPR Rule 13, to the extent that rule is consistent with Section 15(c). The decision of the majority of the arbitrators shall be final, binding, and non-appealable, except for a challenge to a decision on the grounds set forth in 9 U.S.C.

§ 10. The failure to comply with a judgment upon the award of the arbitrators shall be a breach of this Compact.

- (11) **Governing law/jurisdiction.** Title 9 of the United States Code (the United States Arbitration Act) and the Rules shall govern the interpretation and enforcement of Section 15(c), but nothing in Section 15(c) shall be interpreted as a waiver of the State's Tenth Amendment or Eleventh Amendment immunity or as a waiver of the Tribe's sovereign immunity. The tribunal shall resolve the disputes submitted for arbitration in accordance with, and every decision of the tribunal must comply and be consistent with, the Act and the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction. The tribunal shall have no authority to award money damages against either party.
- (12) **Judicial confirmation.** Judgment upon any award rendered by the tribunal may be entered in any court having competent jurisdiction.

(d) **Injunctive Relief.** The parties expressly agree that, although negotiation followed by mediation and arbitration are the preferred methods of dispute resolution, Compact Section 15 shall not impair any rights to seek in any court of competent jurisdiction injunctive relief pursuant to 25 U.S.C. § 2710(d)(7)(A)(ii), or a judgment upon an award rendered by an arbitration tribunal. In an action brought by the Tribe against the State, one court of competent jurisdiction is the Arizona Superior Court. In an action brought by the State against the Tribe, one court of competent jurisdiction is the United States District Court for the District of Arizona. Nothing in this Compact is intended to prevent either party from seeking relief in some other court of competent jurisdiction, or to constitute an acknowledgment that the State courts have jurisdiction over the Tribe or the Tribal courts have jurisdiction over the State.

## **SECTION 16. RESERVATION OF RIGHTS UNDER THE ACT**

(a) **Status of Class I and Class II Gaming.** This Compact shall not apply to any Class I or Class II Gaming whether conducted within or without the Gaming Facilities, and shall not confer upon the State any jurisdiction or other authority over such Class I or Class II Gaming conducted by the Tribe on Indian Lands.

(b) **Prohibition on Taxation by the State.** Nothing in this Compact shall be deemed to authorize or permit the State or any political subdivision thereof to impose any tax, fee, charge or assessment upon the Tribe or any Gaming Operation of the Tribe, except for the payment of expenses as provided in Section 12 of this Compact.

(c) **Preservation of Tribal Self-Government.** Nothing in this Compact shall divest or diminish the sovereign governmental authority of either the Tribe or the State.

(d) **Use of Net Revenues.** The net revenues derived from Class III Gaming authorized under this Compact shall be used by the Tribe for the purposes permitted under the Act.

(e) **Tax Documentation.** For purposes of cooperation, the Gaming Facility Operator will provide to the State Gaming Agency a copy of the documentation the Gaming Facility Operator submits to the Internal Revenue Service indicating gaming winnings of patrons of the Gaming Operation.

**SECTION 17. AMENDMENTS**

Any amendment to this Compact shall be in writing and signed by both parties, and to the extent required under the Act, approved or deemed approved by operation of law under the Act by the Secretary of the Interior. The terms and conditions of this Compact shall remain in effect until amended, modified, or terminated. Any provision of this Compact can be amended at any time by mutual agreement of the Tribe and the State. The Governor of the State is authorized to agree to amendments that are not inconsistent with the provisions of Title 5, Chapter 6 of the Arizona Revised Statutes, including, without limitation, any amendments that would provide an opportunity for the Hopi Tribe or San Juan Southern Paiute Tribe to access additional revenue, derived solely from the parties who are party to the amendments, in exchange for the transfer or forbearance of their rights under the 2021 Compact.

**SECTION 18. SEVERABILITY**

Each provision of this Compact shall stand separate and independent of every other provision. If a court of competent jurisdiction finds any provision of this Compact to be invalid or unenforceable, it is the intent of the parties that the remaining provisions shall remain in full force and effect to the extent possible.

**SECTION 19. THIRD PARTY BENEFICIARIES**

This Compact is entered into solely for the benefit of the Tribe and the State. It is not intended to create any rights in third parties which could result in any claim of any type against the Tribe and/or the State. Neither the Tribe nor the State waive their immunity from third-party claims and this Compact is not intended to result in any waiver of that immunity, in whole or in part.

**SECTION 20. NOTICES**

All notices required or authorized to be served under this Compact shall be served by certified mail (return receipt requested), commercial overnight courier service or by personal delivery, at the following addresses or such other address as either party shall hereafter inform the other by written notice.

State: Office of the Governor  
State of Arizona  
1700 West Washington Street  
Phoenix, Arizona 85007

With copies to:

General Counsel  
Office of the Governor, State of Arizona  
1700 West Washington Street  
Phoenix, Arizona 85007

Arizona Department of Gaming  
Attention: Director

1110 West Washington Street, Suite 450  
Phoenix, Arizona 85007

Tribe: Chairperson  
Tonto Apache Tribe  
Tonto Apache Reservation #30  
Payson, AZ 85541

## **SECTION 21. CALCULATION OF TIME**

In computing any period of time prescribed or allowed by this Compact, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law, or when the act to be done is the filing of or providing access to any report or document, and the last day of the period falls on a day in which the weather or other conditions have made the offices in which the report or document is to be filed inaccessible, in which event the designated period shall extend until the end of the next day on which the office is accessible which is not a Saturday, Sunday or legal holiday, and is not one of the previously mentioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays under the Tribe's laws, State law or federal law shall be excluded from the computation period.

## **SECTION 22. COUNTERPARTS**

This Compact is executed in three original documents: one shall be maintained by the Chairperson of the Tribe, one shall be maintained by the Governor of the State, and the third shall be sent to the Secretary of the Interior for approval.

## **SECTION 23. EFFECTIVE DATE AND DURATION**

(a) Replacement of Other Gaming Compacts. On the Effective Date, this Compact shall replace and supersede any other tribal-state gaming compact between the State and the Tribe. The Tribe and the State shall execute an acknowledgment of the Effective Date.

(b) Duration.

- (1) The initial term of this Compact shall commence on the Effective Date. The initial term of this Compact shall be the remainder of the term under Section 23(b) of the Tribe's 2003 Compact, if any, including any extension thereof as provided by Section 23(b)(3), provided that such 2003 Compact was in effect on May 1, 2019, plus ten (10) years (the "Initial Term").
- (2) This Compact shall thereafter be extended for a first renewal term of ten (10) years (the "First Renewal Term"), unless the State or the Tribe notifies the other in writing, not less than one hundred eighty (180) days prior to the expiration of the Initial Term, that it does not intend to renew the Compact because of substantial non-compliance.

- (3) Not less than one hundred eighty (180) days prior to the expiration of the First Renewal Term, if the Tribe seeks a new or amended compact for an additional term, the Tribe shall provide notice to the State of its request to enter into negotiations. Upon receipt of the notice of intent the State shall agree to a term not to exceed two (2) years (the "Final Renewal Term") to negotiate under 25 U.S.C. § 2710(d)(3)(A), or other applicable federal law, for a successor Compact or other similar agreement unless the State or the Tribe notifies the other in writing, not less than one hundred eighty (180) days prior to the expiration of the First Renewal Term, that it does not intend to renew the Compact.
- (4) For purposes of this Section 23, substantial non-compliance means the willful failure or refusal to reasonably comply with the material terms of a final, non-appealable court order, or a final, non-appealable award of an arbitrator or arbitrators under Section 15. Substantial non-compliance does not include technical inadvertence or non-material variations or omissions in compliance with any such award or judgment. The failure to comply with any such award or judgment following notice from the State Gaming Agency and a reasonable opportunity to cure, which in no event shall be considered to be more than thirty (30) days, shall constitute a willful failure or refusal to reasonably comply. If either party contends that the other is in substantial non-compliance or has failed to comply with the material terms of a final, non-appealable court order, or a final, non-appealable award of an arbitrator or arbitrators under Section 15, the party so contending shall provide immediate written notice to the other, including the specific reason(s) for the contention and copies of all documentation relied upon to the extent allowed by law.
- (5) A dispute over whether the State or the Tribe has engaged in substantial non-compliance shall be resolved under Section 15. The Compact shall remain in effect until the dispute has been resolved by a final, non-appealable decision under Section 15. In any Section 15 proceeding to determine substantial non-compliance, the burden of proof shall be on the party alleging substantial non-compliance.
- (6) The Tribe may operate Class III Gaming only while this Compact, or any extension thereof, is in effect. Prior to the end of the Final Renewal Term of this Compact, the State and the Tribe agree to conduct good faith negotiations faith to the extent required by the Act.

#### **SECTION 24. GOVERNING LAW**

This Compact shall be governed by and construed in accordance with the applicable laws of the United States, and the Tribe and the State.

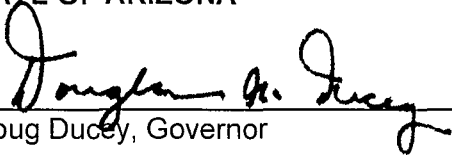
#### **SECTION 25. ENTIRE AGREEMENT**

This Compact contains the entire agreement of the parties with respect to the matters covered by this Compact and no other statement, agreement, or promise made by any party, officer, or agent of any party shall be valid or binding.

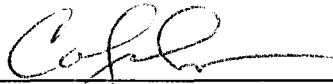
**SECTION 26. AUTHORITY TO EXECUTE**

Each of the undersigned represents that he/she is duly authorized and has the authority to execute this agreement on behalf of the party for whom he/she is signing and that this Compact is a contractual agreement which is valid, enforceable and binding upon the parties.

**STATE OF ARIZONA**

  
\_\_\_\_\_  
Doug Ducey, Governor

**TONTO APACHE TRIBE**


  
\_\_\_\_\_  
Calvin Johnson, Chairman

DATE: 4.14.2021

DATE: 03-29-2021

**ATTESTED TO:**


**ARIZONA SECRETARY OF STATE**

By:   
\_\_\_\_\_  
Katie Hobbs  
Arizona Secretary of State

DATE: 04-14-2021

**APPROVED:**

**SECRETARY OF THE INTERIOR**

By:   
\_\_\_\_\_

DATE: MAY 21 2021