



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

**MAR 11 2024**

The Honorable Scott O. Herman  
President, Rosebud Sioux Tribe  
of the Rosebud Indian Reservation  
PO Box 430  
Rosebud, South Dakota 57570

Dear President Herman:

On December 6, 2023, the Office of Indian Gaming received the Tribal-State Compact for Class III Gaming (Compact) between the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota (Tribe) and State of South Dakota (State) for review, approval, and publication in the *Federal Register*. The Compact governs the conduct of Class III gaming activities by the Tribe.

Under the Indian Gaming Regulatory Act (IGRA), the Secretary of the Interior (Secretary) may approve or disapprove a compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8). If the Secretary does not affirmatively approve or disapprove the compact within 45 days, the IGRA provides that the compact is considered to have been approved by the Secretary, “but only to the extent that the compact is consistent with the provisions of [IGRA].” 25 U.S.C. § 2170(d)(8)(c).

## **DECISION**

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

The Compact takes effect upon the publication of notice in the *Federal Register* pursuant to IGRA.<sup>1</sup> We have set forth an explanation of our concerns below.

## **Permissible Subjects of Compact Terms**

The Compact contains several notable provisions implicating the limitations on compact terms and conditions prescribed by Congress in IGRA. The IGRA established a statutory scheme that limited Tribal gaming and sought to balance Tribal, State, and Federal interests in regulating gaming activities on Indian lands. To ensure an appropriate balance between Tribal and State interests, Congress, through IGRA, limited the terms over which tribes and states could include in a class III

<sup>1</sup> 25 C.F.R. § 293.15.

gaming compact and include:

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of [governing gaming activities Indian lands];
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are *directly related to the operation of gaming activities*.

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

The above referenced provision limits the terms that can be included in a class III Tribal-State gaming compact. The Secretary fulfills the Department of the Interior's (Department) trust responsibilities to Tribes by enforcing the provisions of IGRA and ensuring that states do not leverage Tribal gaming compacts as a means to impose jurisdiction or influence over matters unrelated to gaming. While Congress, through IGRA's Tribal-State compact provisions, allowed for the consideration of states' interests in the regulation and conduct of class III gaming activities, they also sought to establish "boundaries to restrain aggression by powerful states."<sup>2</sup> We conduct our review of Tribal-State gaming compacts against this backdrop and the premise that IGRA codified the Tribal governments inherent authority to regulate gaming activities on their own lands. Therefore, we must view the scope of prescribed state regulatory authority over Tribal gaming activities narrowly.

### **Impermissible Compact Terms**

Each Compact is reviewed according to its unique facts and circumstances. One of the most challenging aspects of this review is determining whether a particular provision complies with IGRA's "catch-all" category "... subjects that are directly related to the operation of gaming activities."<sup>3</sup> In the context of applying the "catch-all" category, we do not simply ask, 'but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a

<sup>2</sup> *Rincon Band v. Schwarzenegger*, 602 F. 3d 1019 (9th Cir. 2010) (citing S. Rep. No. 100-446, at 33).

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

compact provision exist?’ Instead, we must look to whether the regulated activity or compact provision has a *direct connection* to the Tribe’s conduct of class III gaming activities.<sup>4</sup> It is within our analysis of this direct connection test that we have concerns with two compact provisions.

*Compact Section 8.5: Number of Gaming Devices*

We are concerned that Compact Section 8.5 impermissibly requires the Tribe to dedicate funding between \$100,000 and \$300,000 annually to the Rosebud Inpatient Alcohol and Drug Treatment Center (RIADTC) should the Tribe utilize 500 or more Class III gaming devices. The parties have provided no information demonstrating a direct connection between the RIADTC and the Tribe’s gaming operations, beyond the use of gaming revenues to fund the program. While funding the RIADTC is clearly an allowable use of gaming revenues under IGRA, it is our view that this provision is not directly related to the operation of gaming activities. Rather, it interferes with the Tribe’s inherent sovereign authority to determine for itself how to annually allocate its gaming profits by linking that with the number of gaming devices the Tribe chooses to operate.<sup>5</sup>

Nothing in IGRA or its legislative history indicates that Congress intended to allow gaming compacts to be used to expand state regulatory authority over Tribal activities that are not directly related to the conduct of class III gaming. It is solely a Tribe’s prerogative flowing from its inherent Tribal sovereignty to choose which Tribal governmental programs it shall fund and to what amounts of its net gaming revenue it shall devote to those programs. In other words, a governmental programs use of net gaming revenues does not in and of itself make it a legal term within a compact under IGRA. Under IGRA, it is not permissible for Tribal-State compacts to provide for state regulation of activities such as a Tribe’s use or allocation of funding towards specific governmental programs. The provisions of Section 8.5 are inconsistent with IGRA and if implemented as contemplated, it is not enforceable under IGRA.

*Compact Section 12: Personal Injury and Property Damage Remedy for Patrons*

We also have significant concerns regarding Section 12 of the Compact. This provision appears to require the Tribe to maintain and enforce a tort claims ordinance that covers visitors of the Tribe’s gaming facility for injury or property damage. The term indicates that the insurance must cover the gaming operation, its agents, and its employees against claims by visitors of the gaming facility for bodily injury or property damage arising out of the operation of the gaming facility. Section 12 requires the Tribe to maintain public liability insurance and waive its sovereign immunity against claims of up to \$1 million per person or occurrence.

Like many tribes, the Tribe has developed several ancillary amenities in the form of a casino resort complex that includes a hotel and gas station. Absent the existence of class III gaming under IGRA, no State civil regulatory laws or local government ordinances, for example, would apply to the hotel or anywhere else on the Tribe’s lands. However, the term gaming facility in the Compact is undefined, making it conceivable that the provision could be misconstrued as impermissibly

---

<sup>4</sup> See *Chicken Ranch Rancheria of Me-Wuk Indians v. Cal.*, 42 F.4th 1024, 1036 (9<sup>th</sup> Cir. 2022), citing favorably the Department’s “directly related” test applying 25 U.S.C. § 2710(d)(3)(C)(vii).

<sup>5</sup> 25 U.S.C. § 2710(b)(2)(B).

requiring the Tribe to apply it to the entire casino complex and to individuals or guests who are unassociated with the operation of gaming activities.

Because IGRA is very specific about the lawful reach of a compact to protect the sphere of Tribal sovereignty, we must construe its provisions narrowly and avoid inferences that diminish Tribal sovereignty. In this context, we interpret IGRA’s “catch-all”<sup>6</sup> provision as applying only to the spaces where the operation of class III gaming actually takes place such as the casino floor, vault, surveillance, count room, casino management, casino information technology, storage areas for gaming devices and supplies that we refer to as “Gaming Spaces”.<sup>7</sup> This term does not include areas where no gaming activities take place, such as ancillary businesses and places that are simply close in proximity. We therefore caution the parties to avoid interpreting Section 12 as applicable to areas beyond Gaming Spaces. To the extent that the Compact is implemented in such a way as to apply the tort provision to the Tribe’s entire commercial complex, it is not lawful.

## CONCLUSION

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

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

Sincerely,



Bryan Newland  
Assistant Secretary – Indian Affairs

Enclosure

---

<sup>6</sup> 25 U.S.C. § 2710 (d)(3)(c)(vii)

<sup>7</sup> See e.g. Letter to the Honorable Jose Simon III, Chairman, Middletown Rancheria of Pomo Indians of California (Tribe), from Bryan Newland, Assistant Secretary-Indian Affairs, dated July 22, 2022, disapproving the *Middletown Rancheria of Pomo Indians of California and State of California class III gaming compact*, pages 5-7.

**GAMING COMPACT**  
**BETWEEN THE**  
**ROSEBUD SIOUX TRIBE**  
**AND THE**  
**STATE OF SOUTH DAKOTA**

This Compact is made and entered into by and between the Rosebud Sioux Tribe (Tribe), and the State of South Dakota (State), on the month, day, and year signed by the parties as reflected on page 16 hereafter.

**WHEREAS**, the Tribe is a federally recognized Indian Tribe; and

**WHEREAS**, Article III of the Rosebud Sioux Constitution provides that the governing body of the Tribe shall be the Rosebud Sioux Tribal Council; and

**WHEREAS**, Article IV, Section 1 (a) of the Tribal Constitution authorizes the Rosebud Sioux Tribal Council to negotiate with State government; and

**WHEREAS**, the State has, through constitutional provisions, S.D. Constitution Article III, Section 25, and legislative acts, authorized limited card games, wagering on sporting events, and slot machines to be conducted in Deadwood, South Dakota; and

**WHEREAS**, the Congress of the United States has enacted the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2426, 25 U.S.C. § 2701, et seq. (1988) which permits Indian tribes to operate Class III gaming activities on Indian reservations pursuant to a Tribal/State Gaming Compact entered into for that purpose; and

**WHEREAS**, the Tribe operates gaming activities in accordance with a Tribal/State Gaming Compact entered into on February 14, 1993, at the Rosebud Casino on the Rosebud Sioux Indian Reservation in Todd County, South Dakota; and

**WHEREAS**, the Tribe continues its operation of such gaming activities consistent with the public policy of the State and the Tribe;

**NOW, THEREFORE**, in consideration of the foregoing, the Tribe and the State hereto do promise, covenant, and agree as follows:

1. Declaration of Policy

In the spirit of cooperation, the Tribe and the State hereby set forth in joint effort to implement the terms of the Indian Gaming Regulatory Act (IGRA). The State recognizes the positive economic benefits that gaming provides to the Tribe. The Tribe and the State recognize the need to ensure that the health, safety, and

welfare of the public and the integrity of the gaming industry in South Dakota and Indian Country is protected.

## 2. Purpose and Scope of Compact

This Compact and the Tribe's Class III Gaming Ordinances and Gaming Regulations shall govern regulation and operation of Class III gaming conducted on the Rosebud Sioux Indian Reservation. This Compact shall not apply to any Class I or Class II gaming whether conducted within or without the Tribal gaming establishment identified in Section 3 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. The purpose of this Compact is to provide the Tribe with the opportunity to operate Class III gaming activities in a manner that will benefit the Tribe economically, that will ensure fair operation of the games, and that will minimize the possibility of corruption.

## 3. Geographic Location

Unless and until the parties agree in writing to amend this Compact for an additional location, all Class III Indian Gaming pursuant to the IGRA, this Compact, and the Tribal Gaming Ordinance shall be conducted at the current location at the Rosebud Casino located on Lots 3 and 4 of Section 23, T35N, R27W, 6<sup>th</sup> P.M., on Tribal trust land in Todd County, South Dakota, a tract within the Rosebud Sioux Reservation, held in trust for the Rosebud Sioux Tribe by the United States government.

When the Tribe has development plans for one or more additional locations, the Tribe may request an amendment to this Compact pursuant to Section 10 of this Compact.

## 4. Type of Gaming Permitted

### 4.1 Games.

The Tribe shall operate Class III Gaming, as that term is defined in the IGRA and its Regulations, and as authorized by South Dakota state law, to include blackjack, poker, keno, roulette, craps, pari-mutuel wagering, sports wagering, and slot machines pursuant to this Compact and the Tribe's gaming regulations and ordinances. The Tribe shall be permitted to operate such gaming as may be authorized by state law after the date of the signing of this compact, upon written amendment of this Compact, under a separate

agreement, or as otherwise authorized by the South Dakota Commission on Gaming.

#### 4.2 Definition of Games.

For the purposes of this Compact, the terms “blackjack”, “slot machines”, “poker”, “craps”, “keno”, “roulette”, “gaming device”, “sports wagering system”, and “sports wagering services provider” shall be as defined in SDCL Ch. 42-7B and ARSD 20:18:35:01, except the term “slot machines” does not include “video lottery machines” as defined by SDCL 42-7A-1(18).

Slot machines operated by the Tribe pursuant to this Compact may be linked or connected by means of telecommunications, satellite or technologic, or computer enhancement to slot machines or video lottery machines operated by another tribe or tribes currently known as "linked progressive slot machine system" pursuant to the terms of a tribal/state compact approved by the Secretary of the Interior pursuant to 25 U.S.C. § 2710, authorizing such other tribe or tribes to similarly operate slot machines or video lottery machines through linkages or connections with the slot machines or video lottery machines operated by other tribes. Such slot machines require industry testing and Tribal, State, and Federal approvals prior to operation.

#### 4.3 Pari-Mutuel Wagering on Horses and Greyhounds.

The Tribe shall be allowed to operate pari-mutuel wagering on horse races and greyhound races pursuant to the terms of this Compact and the Tribe's gaming regulations and ordinances. The Tribe may operate pari-mutuel wagering on horse and greyhound races occurring within or without the United States at the tribal gaming establishment identified in Section 3 above. The Tribe is under no obligation to engage in pari-mutuel wagering.

No bets shall be placed by a runner on behalf of any other bettor.

#### 4.4 Blackjack and Other Games.

The Tribe shall be allowed to operate an unlimited number of tables of Class III blackjack, roulette, and craps at the Rosebud Casino as may be authorized by state law. The Tribe shall be authorized to operate such other gaming as may be authorized by state law, and pursuant to the terms of this Compact and the Tribe's gaming regulations and ordinances.

#### 4.5 Sports Wagering.

The Tribe shall be allowed to operate sports wagering activity pursuant to this Compact and the Tribe's gaming regulations and ordinances provided the sports wagering system is purchased, leased, or acquired from a sports

wagering service provider licensed as a sports wagering services provider by the State, pursuant to SDCL Ch. 42-7B and ARSD 20:18, consistent with section 8.4.

## 5. Operation of Gaming

### 5.1 Tribal Ordinances and Regulations.

The Tribe shall operate its gaming activities pursuant to this Compact and the ordinances and regulations enacted by the Tribe, which ordinances and regulations shall be at least as stringent as those adopted by the State of South Dakota in SDCL Ch. 42-7 and 42-7B, and ARSD 20:18, 20:04:15, and 20:04:30, as those statutes and regulations now exist and as they may be amended, augmented, or superseded. All such ordinances and regulations shall be made available to the State.

### 5.2 Tribal Gaming Commission.

The Tribe shall appoint a Tribal Gaming Commission, which shall supervise the gaming activities, issue licenses as provided herein, inspect all premises where gaming is conducted and otherwise be responsible for enforcing the Tribe's Gaming ordinances and regulations. The Tribe shall furnish the State with copies of ordinances and regulations and shall advise the State of any amendment, revision, or rescission of the gaming regulations and ordinances. The Tribe agrees that in no event shall it amend, revise, or rescind any gaming regulations which would result in the tribal regulations being less stringent than the statutes and rules adopted by the State of South Dakota.

### 5.3 Scope of the Tribal Gaming Commission Responsibility.

The Tribal Gaming Commission shall have primary responsibility for the supervision and regulation of gaming on the Rosebud Sioux Reservation. This shall include, but not be limited to, the licensing of gaming employees and the inspection and regulation of all gaming devices. Any discrepancies in the gaming operation or any suspected violation of the Tribal Gaming Commission regulations or rules or this Compact shall be immediately reported to the Tribal Gaming Commission and the South Dakota Commission on Gaming for appropriate action by the Tribal Gaming Commission pursuant to the terms of this Compact.

### 5.4 Disciplinary Action for Misconduct by Licensees.

Any suspected violation of any law or rule, referred or incorporated into the Compact, shall be reported to the Tribal Gaming Commission. The Tribal Gaming Commission will be responsible for notifying the South Dakota



Gaming Commission. If the Tribal Gaming Commission concludes that a violation has occurred, it will be the responsibility of the Tribe to address within five (5) business days. Any recommendation concerning the violation from the South Dakota Gaming Commission will be taken into consideration. The Tribal Gaming Commission will notify the South Dakota Gaming Commission of the actions taken pertaining to the violation within ten (10) business days.

## 6. Law Enforcement

### 6.1 Criminal Jurisdiction and Proceedings.

Criminal proceedings arising from conduct related to Class III gaming activities or arising on the premises where such gaming is conducted shall be investigated and prosecuted pursuant to applicable Tribal, State, or Federal law. Nothing in this Compact shall deprive the federal, state, or tribal courts of any jurisdiction as each may enjoy under applicable law.

### 6.2 Civil Jurisdiction and Proceedings (Other Than Appeals From the Commission).

All civil matters arising from or related to Class III gaming activities shall be dealt with according to applicable Tribal, State, or Federal Law. Nothing in this Compact shall deprive the courts of the Tribe, the United States, or the State of South Dakota of such civil jurisdiction as each may enjoy under applicable law.

Nothing in this section 6 shall be construed to be a waiver of the sovereign immunity of the Rosebud Sioux Tribe or of the State of South Dakota.

## 7. Licensing Of Gaming Operators And Employees

### 7.1 Operators and Employees Licenses.

All individuals who operate or manage a gaming operation on the Rosebud Sioux Reservation shall be licensed by the Tribal Gaming Commission. All individuals employed to work directly with the gaming operation shall be licensed by the Commission.

### 7.2 Application and Background Investigation Requirements.

The Tribal Gaming Commission shall have primary responsibility for the licensing of individuals who operate or manage a gaming operation or who are employed in the tribal gaming operation.

Any person seeking to be licensed hereunder shall first submit an application to the Tribal Gaming Commission which application shall include a written release by the applicant authorizing the State to conduct a background investigation of the applicant on behalf of the Tribal Gaming Commission. The State shall agree to conduct an investigation of the applicant on behalf of the Tribal Gaming Commission, upon receipt of the executed release and payment of the fee as provided in the South Dakota Commission on Gaming rules and regulations for such investigations, provided that no credit check will be conducted for tribal gaming license applicants. The State shall provide the Tribal Gaming Commission with a written report regarding each applicant within thirty (30) days of the receipt of the request and fee or as soon thereafter as practical.

### 7.3 Suitability of Applicants.

The Tribal Gaming Commission shall not issue a license to any unsuitable applicant. A suitable applicant is one who is determined to be suitable by the Tribal Gaming Commission according to tribal ordinance and by the South Dakota Commission on Gaming pursuant to SDCL Ch. 42-7B and the South Dakota Commission on Gaming rules and regulations, provided that no applicant shall be deemed unsuitable because of issues pertaining to credit. It is understood by the parties that credit checks are conducted on applicants for a license issued by the South Dakota Commission on Gaming for employment in gaming establishments in Deadwood, South Dakota.

### 7.4 License Renewals.

Because each licensee must, in any case, be relicensed annually, the State agrees not to require additional relicensing of any person to operate, manage or be employed in any gaming operation conducted under the authority of this Compact, provided that the person has obtained the applicable license to operate, manage, or be employed in any gaming operation in Deadwood, South Dakota, or has obtained the applicable license to operate, manage, or be employed in any pari-mutuel gaming operation conducted pursuant to the laws and regulations of the State of South Dakota, or any gaming operation conducted under the authority of a compact between the State of South Dakota and any Indian tribe. If a licensee has been previously approved by the State for a license to work in another gaming operation, then no new background investigation pursuant to section 7.2 is required, provided that the licensee's state license is in good standing.

## 8. Regulatory Standards for Gaming

In recognition of the valid public policy interests of the State, which are similarly appreciated as desirable by the Tribe, the following regulatory standards are established for gaming operated and played at the establishment referred to in section 3.

#### 8.1 No Credit Extended.

All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated pursuant to this Compact, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not apply to credits won by players who activate play on gaming devices or systems after inserting coins, currency, tokens, or vouchers dispensed by a gaming device or kiosk into the gaming or sports wagering system and shall not restrict the right of the Tribe or any other person to offer check cashing or to install or accept bank card or credit card transactions in the same manner as would be normally permitted at any retail business within the State.

#### 8.2 Minimum Age for Players and Gambling Addiction Program.

Any participant in a game authorized by this Compact shall be twenty-one (21) years of age or older at the time of participation. No licensee may permit any person who is less than twenty-one (21) years of age to participate in a game authorized by this Compact. The Tribe will continue to require all casino employees receive mandatory training in identifying persons under age 21, procedures to verify individuals' age via proper identification, and methods to detect potentially invalid identification. The Tribe shall prohibit any form of advertising targeting or enticing underage gambling. The Tribe will maintain procedures and policies to enforcement this provision on the gaming facility which permits underage gambling to occur. A violation of this provision shall subject the participant or licensee to punishment under applicable Tribal or State law.

The Tribe shall adopt programs to address gambling addiction and promote responsible gaming to include mandatory training for all casino employees to identify possible gambling addiction behavior in patrons and post responsible gaming signage with gambling helpline phone numbers.

#### 8.3 Technical Standards for Gaming Devices and Sports Wagering Systems.

All gaming machines and sports wagering systems operated and played pursuant to this Compact shall meet or exceed the hardware and software specifications set forth by the South Dakota Commission on Gaming at ARSD 20:18 and at SDCL Ch. 42-7B prior to play. Gaming machine prototypes will

be tested and approved prior to play by the State according to State procedures and by the Tribe according to Tribal procedures.

#### 8.4 Approval of Gaming Devices or Sports Wagering System.

No gaming device or sports wagering system shall be operated at the gaming operation identified in section 3 unless:

- The gaming device is purchased, leased, or acquired from a manufacturer or distributor licensed to sell, lease, or distribute gaming devices by the State, or the sports wagering system is purchased, lease, or acquired from a sports wagering service provider licensed as a sports wagering services provider by the State, pursuant to SDCL Ch. 42-7B and ARSD 20:18, and
- The gaming device and sports wagering system or a prototype thereof, has been tested, approved, and certified by a gaming test laboratory as meeting the requirements and standards of this Compact. For purposes of this Compact, a gaming test laboratory shall be a laboratory agreed to and designated in writing by the South Dakota Commission on Gaming and the Tribal Gaming Commission.

#### 8.5 Number of Gaming Devices.

The Rosebud Sioux Tribe may operate up to 1,000 gaming devices in tribal gaming establishments to be located on the Rosebud Sioux Reservation, provided that such devices shall be used at the existing location specified in section 3 and provided that the Tribe makes annual payments to the Rosebud Inpatient Alcohol and Drug Treatment Center on the following schedule:

- i. During the month the Tribe puts into operation its 500th gaming device, the Tribe will begin making an annual contribution of \$100,000 to its Inpatient Alcohol and Drug Treatment Center, paid on a quarterly basis.

By illustration, if the 500th gaming device is put into operation on January 1, then the Tribe will contribute \$25,000 in January, April, July, and October of that year, and for each year thereafter, as long as 500 or more gaming devices are operated.

- ii. During the month the Tribe puts into operation its 600th gaming device, the Tribe will increase its annual contribution to \$125,000 to its Inpatient Alcohol and Drug Treatment Center, paid on a quarterly basis.
- iii. During the month the Tribe puts into operation its 700th gaming device, the Tribe will increase its annual contribution to \$150,000 to its Inpatient Alcohol and Drug Treatment Center, paid on a quarterly basis.

- iv. During the month the Tribe puts into operation its 800th gaming device, the Tribe will increase its annual contribution to \$200,000 to its Inpatient Alcohol and Drug Treatment Center, paid on a quarterly basis.
- v. During the month the Tribe puts into operation its 900th gaming device, the Tribe will increase its annual contribution to \$250,000 to its Inpatient Alcohol and Drug Treatment Center, paid on a quarterly basis.
- vi. During the month the Tribe puts into operation its 1,000th gaming device, the Tribe will increase its annual contribution to \$300,000 to its Inpatient Alcohol and Drug Treatment Center, paid on a quarterly basis.

There shall be no limits placed on the number of blackjack, poker, roulette, or craps table games that may be operated.

#### 8.6 Replacement Devices.

The Tribe shall be entitled to have up to twenty (20) gaming devices to be used to replace gaming devices which are out of service as a result of electronic or mechanical problems. These replacement devices are only to be used in such event and shall not be operated in addition to the maximum number of devices authorized above. These replacement devices shall meet the requirements of section 8.4 of this Compact. A replacement device is not included in the calculation for making such contribution as provided for in section 8.5.

#### 8.7 Dedication of Revenue.

The Rosebud Sioux Tribe may, in its discretion, contribute a sum to be used to provide public service for counties surrounding the Rosebud Sioux Tribal Reservation to benefit the general welfare of Tribal youth or members. Such contributions shall be made without consultation with the State and State shall bear no obligation or liability for such contributions.

#### 8.8 Gaming Device Inspection of Gaming Establishments.

The South Dakota Commission on Gaming shall be authorized to inspect the tribal gaming establishment in accordance with the laws and rules adopted in the Compact. Any periodic inspection of gaming devices shall only occur if the state inspector is accompanied by a member of the Tribal Gaming Commission, or a designee. Any such testing shall be carried out in a manner and at a time which will cause minimal disruption of the gaming operation. The Tribal Gaming Commission and the South Dakota Commission on Gaming shall be notified of all such testing and the results of such testing.

Testing shall include:

- (1) Verification of device number, serial number, State of South Dakota number, type, name of game, and denomination of each game, and
- (2) Verification that all software and hardware in the gaming device has been certified by a laboratory and has received approval by the Tribe and the State of South Dakota.

The gaming control device or software shall be tested by the following if the State of South Dakota security seal is broken (if additional State of South Dakota security seals, then the software shall be tested and security seal replaced by South Dakota Gaming commission agents):

- (a) Gaming laboratory approval list; and
- (b) Kobetron test or other approved method of testing.

#### 8.9 Remedies to Non-Complying Gaming Devices.

Upon inspection pursuant to section 8.8, the State may designate gaming devices which it believes do not comply with state or tribal gaming laws. The device shall immediately be removed temporarily from play or sealed. Gaming devices removed from play pursuant to this section may be returned to play only after such gaming device comes into compliance with the provisions of 8.4 herein. In the event that the State designates a gaming device as being non-compliant, the Tribe shall remove such gaming device from play and take appropriate action to ensure that the Tribe, manufacturer, distributor, or other responsible party cures the problem. Nothing in this section shall limit the rights or remedies available to the parties under any other provision of this Compact or under the IGRA.

#### 8.10 Approval and Inspection of Pari-Mutuel Wagering Equipment.

All equipment used by the Tribe, including electrical or mechanical tote board devices, in conducting pari-mutuel wagering shall be of a type and meet the standards for size and information display set forth by the South Dakota Commission on Gaming. The South Dakota Commission on Gaming shall be authorized to inspect (not to include audits) the equipment used by the Tribe in conducting pari-mutuel wagering to determine that it is in accordance with the laws and rules adopted in this Compact. Any periodic inspection of pari-mutuel wagering equipment shall only occur if the state inspector is accompanied by a member of the Tribal Gaming Commission, or a designee. Any such inspection shall be carried out in a manner and at a time which will cause minimal disruption of the gaming operation. The Tribal Gaming commission and the South Dakota Commission on Gaming shall be notified of

all such inspections and the results of such inspections. If the results of any such inspection reveal that the equipment fails to meet applicable standards, the Tribe will not use such equipment until the equipment meets the applicable standards.

#### 8.11 Limit on Wagers.

The amount of a bet, either the initial bet or subsequent bet, and betting limits on any Class III gaming devices, for all gaming operations at the Rosebud Casino must be consistent with rules promulgated by the Tribal Gaming Commission, state law, and rules and regulations of the South Dakota Gaming Commission. There shall be no wager limitation on pari-mutuel wagers placed on horse and greyhound races authorized under this Compact, except as determined by the Tribal Gaming Commission.

### 9. Accounting and Audit Procedures

#### 9.1 Accounting Standards.

The Tribe shall adopt accounting standards which meet or exceed those standards established in Chapter 20:18:22 of the South Dakota Rules and Regulations for Limited Gaming.

#### 9.2 Audits.

The Tribe shall conduct independent audits of the gaming operation and provide copies to the State.

#### 9.3 Audit Procedures.

The Tribe shall engage an independent certified public accountant to audit the books and records of all gaming operations conducted pursuant to this Compact and shall make copies of the audit and all current internal accounting and audit procedures available to the State upon written request.

The Tribe shall permit the State to consult with the auditors before or after any audits or periodic checks on procedures which may be conducted by the auditors and shall allow the State to submit written or oral comments or suggestions for improvements regarding the accounting and audit procedures.

Within 30 days of receipt of any written or oral comments, the Tribe shall:

- a. accept the comments and modify the procedures accordingly; or
- b. respond to the comments with counterproposals or amendments.

### 10. Duration

#### 10.1 Effective date.

This Compact shall be deemed executed upon the last signature of the Governor of the State and the President of the Tribe. This Compact shall be deemed effective upon approval by the Secretary of the Interior and publication of that approval in the Federal Register pursuant to the IGRA.

#### 10.2 Review, Notice, and Extension.

The terms of this Compact shall be for 10 years or September 30, 2033, whichever is earliest, and subject to review at ten (10) year intervals dating from the date of effective date of this Compact or September 30, 2033, whichever is earliest. Prior to the expiration of the ten (10) year period, each party to the Compact may give notice to the other party of provisions it believes require review or amendment. Such notice shall be in writing and shall be sent by certified mail to the Governor of the State or President of the Tribe at the appropriate governmental office. The notice must be given within the 180 days prior to the expiration of the ten (10) year period, or any subsequent ten (10) year period. If no notice is given by either party within 180 days period, the Compact shall automatically be extended for an additional ten (10) years with no further documentation or agreement necessary. If, in the notice, a party states that termination of this Compact should not result from any failure of the parties to reach agreement with respect to changes in the provisions noticed for review or amendment, the Compact shall also automatically be extended for an additional ten (10) years. Upon receipt of such notice, the parties shall engage in good faith efforts to resolve the issues identified in the notice and all terms and conditions of this Compact shall be subject to negotiation.

#### 10.3 Negotiation and Remedies.

Except as otherwise provided in section 10.2, in the event the parties are unable to resolve the issues identified in the notice referred to in section 10.2 upon expiration of the ten (10) year period or any subsequent ten (10) year period, this Compact, unless earlier terminated by agreement of the parties, shall remain in effect for 180 days thereafter. The parties shall have until the expiration of the 180 days to continue to negotiate and remedies available under the Indian Gaming Regulatory Act shall apply. The State and the Tribe may agree in writing to extend the negotiating period without prejudice to the rights of either party, in which case the Compact shall remain in effect during the extension period.

#### 10.4 Expiration and Termination.

Except as otherwise provided in section 10.2, upon the expiration of the negotiating period, or any extension thereof, the Compact shall terminate



unless the parties, in writing, agree otherwise. If the parties are able to resolve their differences, they shall sign an amended Compact incorporating any revisions they believe necessary and appropriate.

#### 10.5 Termination for Cause.

Either party may terminate this Compact upon a substantial breach by the other party regardless of any other provision of this Compact. Upon identification of what either party believes to be a substantial breach of the terms of this Compact, such party shall notify the other party in writing, via certified mail, return receipt requested as to the nature of the substantial breach. The complaining party may terminate this Compact in writing after at least 30 days have elapsed from receipt of the notice of non-compliance by the other party, unless the breach has been remedied and the cause of this breach has been cured or unless the responding party has presented a plan to cure the breach which is acceptable to the complaining party.

#### 10.6 Termination of Gaming Activity if it Becomes Illegal.

Notwithstanding any other provision of this Compact, it is agreed that on the day that it becomes illegal as a matter of South Dakota law to operate any gaming activity contemplated by this Compact, that the authority to operate that gaming activity is no longer permitted under this Compact, and those provisions related to that gaming activity are severable from the remaining provisions of the Compact.

### 11. General Provisions

The following conditions shall be applicable throughout the term of this Agreement:

#### 11.1 Tribal Reimbursement of State Costs and Expenses.

The parties hereto agree that the Tribe shall be responsible for the costs incurred by the State and associated with the State's performance of its responsibilities as provided for herein. The intent of this Compact is to provide for the reimbursement for the costs and expenses of the State in performing its responsibilities as provided herein. The parties agree that this provision does not require payment by the Tribe of court cost or attorney's fees in litigation. The parties also agree that this provision does not require payment by the Tribe of costs incurred by the State of South Dakota for law enforcement officers of the State except that such payment is required with regard to costs incurred for law enforcement officers of the State who are agents and employees of the South Dakota Commission on Gaming. The hourly rate to be

paid to the State for its services pursuant to this Compact is Sixty Dollars (\$60.00). Travel, per diem, and other expenses shall be paid to the State at the rates set out in South Dakota Administrative Rules, ARSD 05:01:02. Should the rates set out in the Administrative Rules be changed during the time of this Compact, the rates to be paid to the State shall likewise be altered.

#### 11.2 Form and Means of Notification.

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

Notice to the Tribe shall be sent to:

President's Office  
Rosebud Sioux Tribe PO Box 430  
Rosebud, SD 57570

Notice to the State shall be sent to:

Office of the Governor  
500 East Capitol Avenue  
Pierre, SD 57501

#### 11.3 Time of Effect on Notice.

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

#### 11.4 Entire Agreement and Means of Modification.

This Agreement is the entire Agreement between the parties and supersedes all prior agreements whether written or oral, with respect to the subject matter hereof. Neither this Agreement nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument in writing.

#### 11.5 Execution in Counterparts.

This Agreement may be executed by the parties hereto in any number of separate counterparts with the same effect as if the signatures hereto and

hereby were upon the same instrument. All such counterparts shall together constitute but one and the same document.

11.6 Non-Assignability.

The State and/or Tribe may not assign any of its respective right, title, or interest in this agreement, nor may the State and/or Tribe delegate any of its respective obligations and duties under this Agreement, except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be null and void.

11.7 IGRA Remedies and Limitation.

Nothing in this Compact shall be construed to limit the rights or remedies available to the parties hereto under the Indian Gaming Regulatory Act.

11.8 No Waiver of Sovereign Immunity.

Nothing in this Compact shall be construed to waive or diminish the sovereignty of the Rosebud Sioux Tribe or the State of South Dakota or its respective sovereign immunity, except as specifically provided by the terms of the Compact set forth herein.

11.9 Amendment or Modification of Agreement.

This Agreement may be amended or modified in writing at any time by mutual agreement of the parties subject to any federal approval of such amendment or modification required by the IGRA.

12. Personal Injury and Property Damage Remedy For Patrons

During the term of this Compact, the Tribe shall maintain and enforce a Tort Claims Ordinance that provides:

- (1) that the Tribe shall obtain and maintain public liability insurance insuring the Tribe's Class III gaming operation in South Dakota, and their agents and employees, against claims by visitors of the gaming facility for bodily injury or property damage arising out of the operation of the gaming facility;
- (2) that such insurance shall provide coverage of no less than \$1 million per person and \$1 million per occurrence;
- (3) that such insurance policy shall include language expressly stating that neither the insurer nor the Tribe may assert the defense of sovereign immunity up to the limits of the policy for claims within the scope of coverage; and
- (4) a waiver of the Tribe's sovereign immunity up to the limits of the policy for claims within the scope of coverage.

Nothing in this Compact shall be construed as a waiver of the Tribes sovereign immunity with respect to any claim not covered by insurance to be maintained under this section. and nothing in this Compact shall be construed as agreement by the Tribe to pay punitive damages or attorneys' fees in connection with any claim. The Tribe shall at all times provide the State with the current version of the insurance policy, the current certificate of coverage and its Tort Claims Ordinance. The Tribe shall provide the State with notice of any changes to its Tort Claims Ordinance, any changes to the public liability insurance coverage, including a lapse in coverage or a failure to renew, and the Tribe understands and agrees that any future amendments shall comply with this section of the Compact.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective as of the date of the completion of events described in section 10.1 above.

ROSEBUD SIOUX TRIBE

11-02-2023  
Date

By:   
President

STATE OF SOUTH DAKOTA

11-02-2023  
Date

By:   
Governor