United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 14 2024

The Honorable Steve Edwards
Chairman, Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, Washington 98257

Dear Chairman Edwards:

On March 27, 2024, the Office of Indian Gaming received the Memorandum of Incorporation of Most Favored Nation Amendments (Amendments) to the Tribal-State Compact for Class III Gaming between the Swinomish Indian Tribal Community (Tribe) and the State of Washington (State) for review, approval, and publication in the *Federal Register*. The Amendment makes changes to the number of Class III facilities the Tribe is allowed, the types of games permitted, and adds controls related to those games. In addition, the Amendment changes the contribution amounts to various revenue sharing provisions, types and limits of games and wagers, and makes other minor technical changes to 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 through operation of law, "but only to the extent that the compact is consistent with the provisions of [IGRA]." 25 U.S.C. § 2170(d)(8)(C).

The Department of the Interior (Department) has undertaken a thorough review of the Amendment and the additional materials provided by the Tribe and State. I have significant concerns with several provisions in the Amendment and have set forth an explanation of the concerns below. Therefore, I did not take action on the Amendment within 45 days. As a result, the Amendment was approved by operation of law, but only to the extent that its provisions are consistent with the IGRA. 25 U.S.C. § 2710(d)(8)(C). The Amendment takes effect upon the publication of notice in the *Federal Register* pursuant to the IGRA.

Permissible Subjects of Compact Terms

The Amendment contains several notable provisions implicating the limitations on compact terms and conditions prescribed by Congress in the 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 the IGRA, limited the terms over which Tribes and states could include in a Class III gaming compact, including:

(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;
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> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
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> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
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> (v) remedies for breach of contract;
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> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
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> (vii) any other subjects *that are directly related to the operation of gaming activities.*
> 25 U.S.C. § 2710(d)(3)(C). *Emphasis added.*

These provisions limit the terms that can be included in a Class III Tribal-State gaming compact. Additionally, Congress prohibited states from seeking to extract any taxes, fees, or other assessments from a Tribe as a condition of a state's consent to a gaming compact and directed the federal courts to find a state's demand for such taxation as evidence that the state has violated the IGRA's good faith negotiation requirements.[1]

The Secretary fulfills the Department's trust responsibilities to Tribes by enforcing the provisions of the IGRA and ensuring that states do not leverage Tribal gaming compacts to impose jurisdiction or influence over matters unrelated to gaming.[2] While Congress, through the 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

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[1] 25 U.S.C. §§ 2710(d)(4) and 2710(d)(7)(B)(iii)(II).

[2] The Department discussed this area in the preamble to the final rule published earlier this year updating its submission and review regulations at 25 C.F.R. Part 293:"[IGRA's] use of the term *trust obligation* invokes the broader general government-to-government trust relationship to Tribes, not a specific fiduciary trust duty. These provisions in IGRA support the application of the government-to-government *trust relationship,* as well as its protection of Tribal sovereignty, to IGRA's carefully balanced encroachment into Tribal sovereignty. It is, therefore, appropriate for the Department to consider the general government-to-government trust relationship and protect Tribal sovereignty during its review of compacts. Further, this rulemaking upholds the government-to-government trust relationship by codifying longstanding Departmental policy and interpretations of caselaw addressing IGRA's limited list of permissible topics in a compact." 89 Fed. Reg. 13232, 13233 (Feb. 21, 2024).

restrain aggression by powerful states."[3] We conduct our review of Tribal-State gaming compacts against this backdrop and the premise that the IGRA codified 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

When contemplating whether a specific compact term or condition should be included as a permissible subject of negotiation, the definition of a compact should first be considered. A "Compact" or "Tribal-State Gaming Compact" is defined in 25 C.F.R. § 293.2(b) as:

> an intergovernmental agreement executed between Tribal and State governments under IGRA that establishes between the parties the terms and conditions for the operation and regulation of the Tribe's class III gaming activities.

With that definition in mind, compacting parties should ensure that each compact term or condition is related to the operation and regulation of Class III activities. Compact terms and conditions which are not directly related to the operation and regulation of Class III gaming activities may be considered evidence of a violation of the IGRA.[4] Additionally, compact terms and conditions which require the Tribe to make payments from gaming revenue must satisfy the IGRA and the Department's regulations.[5]

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."[6] In the context of applying the "catch-all" category, we do not simply ask, "but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a compact provision exist?"[7] 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.[8] *Emphasis added.* The Department's updated regulations at 25 C.F.R. § 293.27 identify the factors we consider when evaluating the lawfulness of revenue sharing payments with a state or local government.

The IGRA contains a list of allowable uses of the Tribe's gaming revenues and a separate, limited list of terms and conditions that a Tribe and state may negotiate in a gaming compact.[9] These lists are distinct and must not be interchanged to ensure that Tribes' inherent sovereign rights are not infringed upon by powerful states in the compacting process.[10] The IGRA also

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[3] *Rincon Band v. Schwarzenegger*, 602 F. 3d 1019 (9th Cir. 2010) (citing S. Rep. No. 100-446, at 33).
[4] 25 C.F.R.§ 293.23(d).
[5] 25 C.F.R. § 293.27.
[6] 25 U.S.C. § 2710(d)(3)(C)(vii).
[7] *See Chicken Ranch Rancheria of Me-Wuk Indians v. Cal.*, 42 F.4th 1024, 1036 (9th Cir. 2022), citing favorably the Department's "directly related" test applying 25 U.S.C. § 2710(d)(3)(C)(vii) that is now codified at 25 C.F.R. § 293.23.
[8] *Id.*
[9] 25 U.S.C. §§ 2710(b)(2)(B) and 2710(d)(3)(C).
[10] 25 C.F.R. § 293.27.

prohibits the imposition of a tax, fee, charge, or other assessment upon a Tribe through a gaming compact.[11]

For instance, a Tribe may voluntarily decide to assist a local government with their public safety needs by providing them with a specific donation or engaging with them to pay for specific services rendered. Since this payment is made from the Tribe's general fund, is not regulatory in nature, is unrelated to the operation of Class III gaming, and is not required in a compact, such an agreement would not be considered a technical or other amendment requiring review and approval by the Secretary under IGRA.[12]

A donation is a voluntary Tribal act that is not mandated by a contractual agreement and is separate and distinct from the Tribe's authority to conduct Class III gaming under IGRA. Similarly, payments for services rendered by a state or its local governments are specific in nature and may vary due to the utilization of the services by the Tribe. Tribes maintain ample opportunities outside of the compacting process to enter into agreements for services and to provide donations. It is well known that Tribes, states, and local governments share resources and create novel solutions to best serve their intended purposes. For example, the Department is aware of cross deputization agreements between Tribal police and local law enforcement agencies, sharing of ambulance and firefighting personnel and equipment, and even co-management of natural resources. These solutions are excellent examples of voluntary collaboration and sharing of resources.

However, compact terms requiring the Tribe to make certain payments on an ongoing basis as a condition of the Tribe's ability to conduct Class III gaming are notably different than the examples discussed above.

Since the approval of the Tribe's original compact, the Department's analysis of revenue sharing schemes has been refined by relevant caselaw that informed the recent updated to the regulations at Part 293. One such example is the Ninth Circuit's ruling in *Rincon.* There, the Court found that the State's demand for increased revenue sharing without any concession was an impermissible tax that ran afoul of IGRA. While the Department has approved renegotiated revenue sharing arrangements where the expected burden on the Tribe either remains the same or is reduced, and the value of the State's concession continues justifying the revenue sharing rate.[13] Additionally, in some instances, the Department has also approved increases in total revenue sharing when the State has provided new concessions providing substantial economic benefits to the Tribe in a manner justifying increased revenue sharing.[14]

The updated Part 293 regulations require the Department to review revenue sharing provisions with great scrutiny, beginning with the rebuttable presumption that a Tribe's payment to a state or local government for anything beyond the defrayment of the State's "actual and reasonable

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[11] 25 U.S.C. § 2710(d)(4).
[12] 25 C.F.R. § 293.4.
[13] *See* Letter from Bryan Newland, Principal Deputy Assistant Secretary – Indian Affairs, to Robert Miguel, Chairman Ak-Chin Indian Community, dated May 21, 2021, at 2, discussing the Tribe-to-Tribe revenue sharing and gaming device leasing provisions.
[14] *See* Letter from Bryan Newland, Principal Deputy Assistant Secretary - Indian Affairs, to Marcellus Osceola, Jr. Chairman, Seminole Tribe of Florida, dated August 6, 2021, at 8-10.

costs" for regulation of the Tribe's gaming activities is a prohibited "tax, fee, charge, or other assessment".[15] The Department interprets this provision broadly to apply to any provisions in a compact or amendment that require the Tribe to make payments or set aside gaming revenue or other tribal funds as a condition of the Tribe's conduct of gaming.[16]

Our analysis of these provisions 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 Department's regulations at 25 C.F.R. § 293.2(h) define "meaningful concession" as:

(1) Something of value to the Tribe;
(2) Directly related to gaming activity;
(3) Something that carries out the purposes of IGRA; and
(4) Not a subject over which a State is otherwise obligated to negotiate under IGRA.

Whereas 25 C.F.R. § 293.2(i) defines "substantial economic benefit" as:

(1) A beneficial impact to the Tribe;
(2) Resulting from a meaningful concession;
(3) Made with a Tribe's economic circumstances in mind;
(4) Spans the life of the compact; and
(5) Demonstrated by an economic/market analysis or similar documentation submitted by the Tribe or the State.

Congress through the IGRA, as implemented by the Department and governed through its updated regulations, requires that Tribal-State gaming compacts remain regulatory in nature and contain provisions that are directly related to gaming. Compacts requiring the Tribe to make payments from gaming revenue for any purpose other than reasonable regulatory costs must satisfy the Department's rebuttable presumption that the payment is prohibited by the IGRA. Parties should also refrain from including any terms and conditions that are not *directly* related to the regulation and operation of the Class III gaming in their compacts. *Emphasis added.* As demonstrated above, IGRA allows ample opportunity outside of Tribal-State gaming compacts for Tribes to voluntarily donate to charitable organizations, as well as voluntarily help fund the operations of local and state governmental entities.

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[15] 25 CFR 293.27(b), *see also* 25 U.S.C. 2710(d)(4).

[16] Congress, through the IGRA, expressly prohibited States from seeking to "impose any tax, fee, charge, or other assessment upon an Indian [T]ribe." 25 U.S.C. 2710(d)(4). Congress' expansive langue indicates an intent for a broad reading of this provision. *See also Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1032 (9th Cir. 2010), explaining that Congress intended the IGRA be interpreted in the way most favorable to Tribal interests.

It is within this framework that the Department's analysis has raised significant concerns regarding not only the revenue sharing requirement with various charities and local governments, but also the increase in those obligations that are included in the Amendment.

Prohibited Tax, Fee, Charge or Other Assessments

The Department has significant concerns that the Amendment contains four provisions which require the Tribe to make payments or set aside gaming revenue or other tribal funds as a condition of the Tribe's conduct of gaming. These provisions trigger the Department's analysis and rebuttable presumption that the Amendment's increase in revenue sharing is an impermissible "tax, fee, charge, or other assessment" under Section 293.27. Without evidence of additional concessions, the Department notes the presumption of impermissibility cannot be rebutted.

Compact Section XIII C.: Community Contributions

This section requires the Tribe to share 1.75% of its "net win" from Class III table games with local governments and specifies public safety departments as beneficiaries. While the overall percentage is reduced from 2% to 1.75%, there is a significant change to the definition of "net win." This change in definition removes several deductions the Tribe was previously able to utilize, making the term less of a "net" calculation and more of a gross calculation.

Appendix X2, Section 14.1: Impact Costs

This section requires the Tribe to share 0.6% of the "net win" derived from the Tribal Lottery System to meet "community impacts."

Appendix X2, Section 14.2: Charitable Donations

The charitable donations compact term requires the Tribe to share .5% of its "net win" from all Class III gaming with non-Tribal bona fide non-profit and charitable organizations registered with the Secretary of State to provide services in the State of Washington. This represents an increase in revenue sharing, both due to the change in definition of "net win" and because the term was changed to include all Class III gaming activities instead of only the Tribal Lottery System.

Appendix X2, Section 14.4: Problem Gambling

This section requires the Tribe to ultimately share .26% of the "net win" of all Class III gaming activities with charitable and/or non-profit organizations, or to governmental organizations, which may include the Health Care Authority's Division of Behavioral Health and Recovery, or a successor agency with expertise in providing awareness, prevention, education, outreach, treatment, and recovery support services for problem gambling.

The Department notes that this fee is in addition to the one found in Section 7 of the Amendment, addressing *Problem, Pathological, and Responsible Gambling Programs.*

Section 7 requires the Tribe to create and maintain an educational and awareness program for Tribal lands and the surrounding communities. A plain reading of the compact indicates that, in addition to sharing .26% of the "net win" with State, local governments, and other problem gambling organizations, the Tribe must also fund their own problem gambling program for the benefit of the Tribe and surrounding communities.

As noted above, Congress, through the IGRA, expressly prohibited states from using compacts as a tool to require Tribes to share their gaming revenues with local governmental bodies. It is solely a Tribe's prerogative flowing from its inherent Tribal sovereignty to choose how, when, and to whom the Tribe shares its money. The Department understands that these terms were previously approved in other compact amendments prior to the codification of the updates to its regulations at 25 C.F.R. Part 293.

Additionally, the Department applies here the Ninth Circuit's reasoning in rejecting a proposed requirement for an intergovernmental agreement (IGA) in *Chicken Ranch.*[17] If a state seeks to require a Tribe to enter into an IGA as a precondition of negotiating a compact or entering into a compact, such a demand would violate the IGRA's good faith negotiation requirement. The Department's November 17, 2022, approval of the Tejon Indian Tribe's compact cautioned against states demanding these types of agreements as a pre-condition of the good faith negotiations mandated by the IGRA. Additionally, the Department's regulations now clarify that a compact provision requiring a memorandum of understanding or IGA with local governments is presumed by the Department to be a violation of the IGRA.[18] The MOU contemplated in the Community Contributions term would therefore no longer be acceptable in a new compact.

In applying the standard articulated in the updated regulations, the Department requested additional information from the Tribe and the State to justify these payments and the changes to these payments. Neither the Tribe nor the State offered a reasonable explanation for how the modified payment structure complied with the IGRA and the rebuttable presumption test articulated in 25 CFR § 293.27. Therefore, I have significant concerns that the revenue sharing provisions, as amended, are likely to be inconsistent with the IGRA and the Department's regulations, and if that is the case, may not be enforceable.

Directly Related to the Operation of Gaming Activities

The IGRA and its implementing regulations allow for compact terms that are directly related to the operation of gaming activities to be negotiated. Because the 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. The Department codified this view in 25 C.F.R. § 293.23 and listed examples of subjects that are both directly related to the operation of gaming activities and those that are not. The Department is taking great care to ensure that terms falling into this category are not simply an attempted end run around the IGRA's limitations on compact negotiations. We note that if parties cannot show a

[17] *Chicken Ranch* at 27.
[18] 25 C.F.R. 293.23(c)(5).

term's direct connection to the Tribe's conduct of Class III gaming activities, it may be considered a violation of the IGRA.[19]

In response to the Department's request for additional information, the Tribe and State pointed to the 2007 compact's language and claimed that the revenue sharing terms were a legal term of negotiation in the compact because they felt they were directly related to the regulation or operation of Class III gaming activities. When the Department reviewed the 2007 compact, we found that Section 14.7.1 lists the qualifying programs that Community Investments and Contributions are intended to support. These include:

> Goods and services purchased; Wages and benefits paid (including number of jobs provided); Law enforcement, courts, detention programs, and fire and emergency services (contributions may include cross deputization and mutual aid agreements, facilities and equipment); Natural resource protection and habitat restoration; Health care, including: drug and alcohol treatment and prevention services, smoking cessation programs, problem gambling treatment and services, mental health care, dental care, and health promotion programs, such as diabetes prevention, nutrition programs, and fitness programs; Education, including tutoring, head start and related services, as well as direct financial support to State-funded education; Day care; Disaster and emergency preparedness; Public utilities, including water, wastewater, and water treatment infrastructure; Economic development and job training; Elder services; Cultural resource protection; Social services programs, such as food banks, shelters, Transit services; Outreach and informational programs, such as financial training for homeowners, home repair classes, GED classes, parenting classes, Roads, bridges and other transportation infrastructure (including sidewalks, lighting, signage); Low income housing; Public works, public facilities (such as museums, libraries, cultural facilities, wellness centers, elections facilities), athletic fields, parks, and other recreational facilities; Contributions to communities or charities; and in kind contributions related to any of the above.

While many of those causes could be considered admirable and worthy of consideration for donation, the Department is concerned that those programs are not directly related to the operation of Class III gaming activities. In fact, the majority of the intended programs do not appear to maintain even a tenuous connection to the regulation or operation of Class III gaming. Additionally, as previously discussed, charitable contributions cease to be a donation when they become a required contractual pretext for the operation of Class III gaming.

The only exception to our concerns is Appendix X2 Section 14.4: Problem Gambling. While a direct relation to Class III gambling and problem gambling could be inferred, that does not create a justification for the increase in the fee to support problem gambling awareness. This is especially concerning because the compact contemplates a separate requirement that the Tribe fund its own problem gambling program for its members and the surrounding communities. Further, it does not absolve the parties from providing the required information for us to determine if the revenue sharing is lawful.

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[19] 25 C.F.R. § 293.23(d).

Conclusion

I did not take action on the Amendment within the prescribed 45-day review period. As a result, the Amendment 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). I hope that after reviewing this letter, the Tribe and State will recognize that these provisions, and those similar to them that have been approved prior to the implementation of the updated Part 293 regulations, may run afoul of the IGRA, and that the Tribe and State will work to remove such provisions from future amendments to the Tribe's compact.

The Amendment 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 Jay Inslee, Governor of Washington.

Sincerely,

Bryan Newland
Assistant Secretary – Indian Affairs

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 14 2024

The Honorable Jay Inslee
Governor of Washington
Olympia, Washington 98504

Dear Governor Inslee:

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The Department of the Interior (Department) has undertaken a thorough review of the Amendment and the additional materials provided by the Tribe and State. I have significant concerns with several provisions in the Amendment and have set forth an explanation of the concerns below. Therefore, I did not take action on the Amendment within 45 days. As a result, the Amendment was approved by operation of law, but only to the extent that its provisions are consistent with the IGRA. 25 U.S.C. § 2710(d)(8)(C). The Amendment takes effect upon the publication of notice in the *Federal Register* pursuant to the IGRA.

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> an intergovernmental agreement executed between Tribal and State governments under IGRA that establishes between the parties the terms and conditions for the operation and regulation of the Tribe's class III gaming activities.

With that definition in mind, compacting parties should ensure that each compact term or condition is related to the operation and regulation of Class III activities. Compact terms and conditions which are not directly related to the operation and regulation of Class III gaming activities may be considered evidence of a violation of the IGRA.[4] Additionally, compact terms and conditions which require the Tribe to make payments from gaming revenue must satisfy the IGRA and the Department's regulations.[5]

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."[6] In the context of applying the "catch-all" category, we do not simply ask, "but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a compact provision exist?"[7] 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.[8] *Emphasis added.* The Department's updated regulations at 25 C.F.R. § 293.27 identify the factors we consider when evaluating the lawfulness of revenue sharing payments with a state or local government.

The IGRA contains a list of allowable uses of the Tribe's gaming revenues and a separate, limited list of terms and conditions that a Tribe and state may negotiate in a gaming compact.[9] These lists are distinct and must not be interchanged to ensure that Tribes' inherent sovereign rights are not infringed upon by powerful states in the compacting process.[10] The IGRA also

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costs" for regulation of the Tribe's gaming activities is a prohibited "tax, fee, charge, or other assessment".[15] The Department interprets this provision broadly to apply to any provisions in a compact or amendment that require the Tribe to make payments or set aside gaming revenue or other tribal funds as a condition of the Tribe's conduct of gaming.[16]

Our analysis of these provisions 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 Department's regulations at 25 C.F.R. § 293.2(h) define "meaningful concession" as:

(1) Something of value to the Tribe;
(2) Directly related to gaming activity;
(3) Something that carries out the purposes of IGRA; and
(4) Not a subject over which a State is otherwise obligated to negotiate under IGRA.

Whereas 25 C.F.R. § 293.2(i) defines "substantial economic benefit" as:

(1) A beneficial impact to the Tribe;
(2) Resulting from a meaningful concession;
(3) Made with a Tribe's economic circumstances in mind;
(4) Spans the life of the compact; and
(5) Demonstrated by an economic/market analysis or similar documentation submitted by the Tribe or the State.

Congress through the IGRA, as implemented by the Department and governed through its updated regulations, requires that Tribal-State gaming compacts remain regulatory in nature and contain provisions that are directly related to gaming. Compacts requiring the Tribe to make payments from gaming revenue for any purpose other than reasonable regulatory costs must satisfy the Department's rebuttable presumption that the payment is prohibited by the IGRA. Parties should also refrain from including any terms and conditions that are not *directly* related to the regulation and operation of the Class III gaming in their compacts. *Emphasis added.* As demonstrated above, IGRA allows ample opportunity outside of Tribal-State gaming compacts for Tribes to voluntarily donate to charitable organizations, as well as voluntarily help fund the operations of local and state governmental entities.

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[15] 25 CFR 293.27(b), *see also* 25 U.S.C. 2710(d)(4).

[16] Congress, through the IGRA, expressly prohibited States from seeking to "impose any tax, fee, charge, or other assessment upon an Indian [T]ribe." 25 U.S.C. 2710(d)(4). Congress' expansive langue indicates an intent for a broad reading of this provision. *See also Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1032 (9th Cir. 2010), explaining that Congress intended the IGRA be interpreted in the way most favorable to Tribal interests.

Section 7 requires the Tribe to create and maintain an educational and awareness program for Tribal lands and the surrounding communities. A plain reading of the compact indicates that, in addition to sharing .26% of the "net win" with State, local governments, and other problem gambling organizations, the Tribe must also fund their own problem gambling program for the benefit of the Tribe and surrounding communities.

As noted above, Congress, through the IGRA, expressly prohibited states from using compacts as a tool to require Tribes to share their gaming revenues with local governmental bodies. It is solely a Tribe's prerogative flowing from its inherent Tribal sovereignty to choose how, when, and to whom the Tribe shares its money. The Department understands that these terms were previously approved in other compact amendments prior to the codification of the updates to its regulations at 25 C.F.R. Part 293.

Additionally, the Department applies here the Ninth Circuit's reasoning in rejecting a proposed requirement for an intergovernmental agreement (IGA) in *Chicken Ranch.*[17] If a state seeks to require a Tribe to enter into an IGA as a precondition of negotiating a compact or entering into a compact, such a demand would violate the IGRA's good faith negotiation requirement. The Department's November 17, 2022, approval of the Tejon Indian Tribe's compact cautioned against states demanding these types of agreements as a pre-condition of the good faith negotiations mandated by the IGRA. Additionally, the Department's regulations now clarify that a compact provision requiring a memorandum of understanding or IGA with local governments is presumed by the Department to be a violation of the IGRA.[18] The MOU contemplated in the Community Contributions term would therefore no longer be acceptable in a new compact.

In applying the standard articulated in the updated regulations, the Department requested additional information from the Tribe and the State to justify these payments and the changes to these payments. Neither the Tribe nor the State offered a reasonable explanation for how the modified payment structure complied with the IGRA and the rebuttable presumption test articulated in 25 CFR § 293.27. Therefore, I have significant concerns that the revenue sharing provisions, as amended, are likely to be inconsistent with the IGRA and the Department's regulations, and if that is the case, may not be enforceable.

Directly Related to the Operation of Gaming Activities

The IGRA and its implementing regulations allow for compact terms that are directly related to the operation of gaming activities to be negotiated. Because the 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. The Department codified this view in 25 C.F.R. § 293.23 and listed examples of subjects that are both directly related to the operation of gaming activities and those that are not. The Department is taking great care to ensure that terms falling into this category are not simply an attempted end run around the IGRA's limitations on compact negotiations. We note that if parties cannot show a

[17] *Chicken Ranch* at 27.
[18] 25 C.F.R. 293.23(c)(5).

Conclusion

I did not take action on the Amendment within the prescribed 45-day review period. As a result, the Amendment 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). I hope that after reviewing this letter, the Tribe and State will recognize that these provisions, and those similar to them that have been approved prior to the implementation of the updated Part 293 regulations, may run afoul of the IGRA, and that the Tribe and State will work to remove such provisions from future amendments to the Tribe's compact.

The Amendment 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 Steve Edwards, Chairman, Swinomish Indian Tribal Community.

Sincerely,

Bryan Newland
Assistant Secretary – Indian Affairs

Enclosure

MEMORANDUM OF INCORPORATION of MOST FAVORED NATION AMENDMENTS to the TRIBAL-STATE COMPACT FOR CLASS III GAMING Between the SWINOMISH INDIAN TRIBAL COMMUNITY and the STATE OF WASHINGTON

The Swinomish Indian Tribal Community ("Tribe") and the State of Washington ("State") entered into a Tribal-State Compact for Class III Gaming ("Compact") on December 21, 1992, and has amended the Compact seven times by mutual agreement. Pursuant to Section XIV.D.2(c) and (d) of the Compact, if the Secretary of Interior approves a compact or amendment with another tribe east or west of the Cascade Mountains that includes modifications to the scope of gaming or otherwise includes an expansion of terms, the Compact shall be amended upon written notice and request by the Tribe to the State. The following amendments in this Memorandum of Incorporation ("MOI") are hereby incorporated in the Compact. Modifications that require formal amendment or renegotiation will be addressed separately. Anything not specifically authorized or amended by this MOI but provided for in the Tribe's Compact, any other appendices, or Section XIV.D.2(c) shall remain in full force and effect.

1. **A new Section III.A.5, is added to the Compact as follows:**
   5. Electronic Table Games, subject to Appendix G.

2. **Add Second Gaming Facility.**
   (1) Compact Section III.D is amended as follows:
   E. Authorized Gaming Operation and Facilities. The Tribe ~~shall~~ may establish ~~one gaming facility~~ two Gaming Facilities on the Swinomish Reservation for the operation of Class III games as authorized under this Compact. The Tribe plans to construct a gaming facility within the Swinomish Reservation on Tribal-owned lands north of State Highway 20 at the Tribe's proposed marina development site. If the Tribe is unable to acquire financing for construction at this site, the Tribe shall initially conduct Class III gaming at the location of the former Longhouse Restaurant, located on the Reservation near the Tribal Administration Building. When revenues become available, the Tribe would relocate the Class III gaming to the proposed marina development site. The Tribe shall provide to the State, at least ninety (90) days prior to conversion of an existing facility or construction of a new facility on the Reservation, the specific location and site plan for the Class III gaming operation. At that time, the State and the Tribe will schedule open public meetings to discuss these plans and solicit public comment. The Tribe will fully comply with siting and land use requirements at least as restrictive as those in the Swinomish Tribal Code and all applicable federal regulations.

(2) Compact Section III.G is replaced in its entirety as follows:

G. Size of Class III Gaming Operation. The Tribe has the option to use a total of seventy-five (75) Gaming Stations authorized for use on the gaming floor within one Gaming Facility and a total of fifty (50) Gaming Stations within a second facility. However, the Tribe has the option to use one (1) additional nonprofit Gaming Station ("nonprofit station") for every twenty-five (25) Gaming Stations allowed in a facility if the proceeds from those nonprofit stations are dedicated to support non-profit and charitable organizations and their activities within the State of Washington. PROVIDED, that the tribe is required to obtain transfers of Class III Gaming Station authorization from another tribe which has entered into a compact with the State for the use of Class III Gaming Stations as defined in this Compact for any Class III Gaming Stations, except for nonprofit stations, beyond sixty (60) in total for all gaming facilities. PROVIDED FURTHER, that the transfer of Class III Gaming Station authorization from another shall be effectuated through the use of "Class III Gaming Station Transfer Agreement" appended hereto as Appendix D of this Compact. For purposes of determination of proceeds from the nonprofit stations only, "proceeds" shall mean the net win from the nonprofit station less expenses directly related to the operation and regulation of the nonprofit station. Capital costs shall not be considered an expense directly related to the nonprofit station. The Tribe may choose, at its option, not to deduct expenses, or to deduct less than all expenses directly related to the nonprofit station, in calculating the "proceeds" of the nonprofit station. The net win from any nonprofit station is not subject to the community contribution provided for in Section XIII.C. of this Compact. The Tribal Gaming Ordinance shall set forth regulations concerning the types of bona-fide non-profit organizations and/or the types of projects of such organizations which shall be supported by the non-profit station.

(3) All references to "facility" in the Compact are amended to reflect the addition of a second facility. Depending on the context, the term "facility" is replaced with "facilities" or, as appropriate, the phrase "the facility" is replaced with "a facility" or "each facility."

3. Add Appendix D Class III Gaming Station Transfer Agreement

Appendix D "Class III Gaming Station Transfer Agreement" is added to the Compact, in the form attached to this MOI, in its entirety.

4. Add Appendix E Limitations on Wagers, Credit, Facilities; Increasing Problem Gaming Resources and Contributions.

Appendix E "Limitations on Wagers, Credit, Facilities; Increasing Problem Gaming Resources and Contributions" is added to the Compact, in the form attached to this MOI, in its entirety.

5. Add Appendix G Electronic Table Games.

Appendix G "Electronic Table Games" is added to the Compact, in the form attached to this MOI, in its entirety.

6. **A new Section XIV.D.8 is added to the Compact as follows:**

If the Washington State Lottery approves a purchase price per ticket greater than that provided under this Compact, the Gaming Operation may increase its maximum wagers and purchase price for scratch tickets or On-Line Lottery Wagers to match the Washington State Lottery increase, provided that the State and Tribe agree to incorporate into this Compact only the specific provisions and restrictions related to the purchase price, and such agreement will be documented in a memorandum of incorporation.

INCORPORATED ON THE LAST DATE ENTERED BELOW.

SWINOMISH INDIAN TRIBAL COMMUNITY

BY: Steve Edwards
STEVE EDWARDS
Chairman

DATED: 3/7/2024

STATE OF WASHINGTON

BY: _____
JAY INSLEE
Governor

DATED: 3/14/24

Deemed Approved

MAY 12 2024

SWINOMISH INDIAN TRIBAL COMMUNITY
and the
STATE OF WASHINGTON
CLASS III GAMING COMPACT

APPENDIX D

Class III Gaming Station Transfer Agreement

This Class III Gaming Station Transfer Agreement ("Agreement") is made and entered into between _____ ("Transferor"), and _____ ("Transferee"), and the State of Washington ("State") for purposes of transferring authority and use of Class III Gaming Stations between Tribes which have entered into Tribal - State Compacts for Class III Gaming with the State and as a Memorandum of Understanding between the State and Tribal parties authorizing and memorializing the transfer.

AGREEMENT

1. TRANSFER. Transferor hereby transfers and assigns to Transferee, for the Term set forth below, all of Transferor's Class III Gaming Station authority for the use of _____Class III Gaming Stations to which Transferor is now or may hereafter become entitled during the Term of this Agreement.

2. TERM. The Term of this agreement, and all rights and authority granted hereby, shall be from _____ , 20__ through _____, 20 ___and shall commence at 12:01 A.M. on the first date entered above and expire 11:59 P.M. on the last date entered above unless other hours are so specified herein.

3. REPRESENTATIONS AND AGREEMENTS. Transferor represents and agrees that it is or will become at the commencement of the term of this Agreement, capable and authorized to utilize the number of Class III Gaming Stations noted above, that no other grant or transfer of any rights relative to the number of Class III Gaming Stations which would conflict with the authority transferred hereby has occurred or will occur, and that it fully waives and

surrenders the right to utilize the number of Class III Gaming Stations noted above for the term of this Agreement. Transferee represents and agrees that it is legally authorized to utilize Class III Gaming Stations and is capable and authorized to accept the transfer of authority herein. State represents and agrees that both Transferor and Transferee are authorized under its terms of valid Tribal - State Compacts to utilize Class III Gaming Stations, and, that upon execution of this Agreement by the parties, Transferor and Transferee may effectuate the transfer of authority for the use of the number of Class III Gaming Stations specified for the term of this Agreement.

4. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties as to the legal capabilities and authorizations for the transfer specified herein. No party is relying on any statement, representation or documentation which is not contained or referenced in this Agreement. Transferor and Transferee may enter into separate agreements related to the utilization of Class III Gaming Stations transferred hereby, PROVIDED, that the terms of such separate agreements shall not affect the legal capabilities and authorizations for the transfer specified herein.

IN WITNESS WHEREOF, the parties have duly executed this Class III Gaming Station Transfer Agreement.

Transferee _____ Transferor _____

By: _____ By: _____

SWINOMISH INDIAN TRIBAL COMMUNITY
and the
STATE OF WASHINGTON
CLASS III GAMING COMPACT

APPENDIX E
LIMITATIONS ON WAGERS, CREDIT, FACILITIES;
INCREASING PROBLEM GAMING RESOURCES AND CONTRIBUTIONS

Table of Contents

1. Conditions and Limitations

This Appendix contains the concessions, limitations, and agreement of the Tribe and State with respect to the subject matter addressed herein. However, Compact provisions that are not addressed in this Appendix remain in full force and effect, unless and until they are subsequently amended pursuant to the processes set forth in the Compact. This Appendix contains interdependent conditions and consequences that must be accepted as a whole.

The Tribe and State agree that, although the Compact and its appendices become effective upon publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B), the implementation of Appendix E shall be delayed until any of the provisions herein are implemented by the Tribe ("Implementation Date"). However, if certain provisions in this Appendix have been implemented through another appendix, the delayed implementation shall not apply to those provisions. The Tribe shall provide notice to the State if, as and when implementation of Appendix E commences.

All terms not defined herein shall have the same definitions as in the Tribe's Compact and its amendments and appendices.

2. Higher Wager Limits at Gaming Stations

Due to the remote location, competitive market, and patron base of the Gaming Facility, the Tribe typically operates a limited number of Gaming Stations. While the Tribe does not expect to offer Gaming Stations with higher limits on a frequent basis, from time to time the Tribe would make such limits available to its patrons.

2.1. High Limit Room

2.1.1. "High Limit Room" means a clearly identified area of the Gaming Facility separated by a permanent, physical barrier or a separate room in the Gaming Facility. "Permanent, physical barrier" includes a partial wall, fence or similar separation. Stanchions or similar movable barriers are not considered a permanent, physical barrier.

2.1.2. The Gaming Operation may offer Gaming Station wager limits in the High Limit Room up to five thousand dollars ($5,000) subject to the limitations of Section 2.4 below.

2.2. Flex High Limit Room

Due to the expected infrequency of higher limit play, constructing a High Limit Room may not be financially feasible for the Tribe. Constructing a High Limit Room could also unnecessarily stress operational and regulatory resources needed to protect these and other Gaming activities within the Gaming Facility without

substantial benefit to the Gaming Operation. For these reasons, the parties agree to the following provisions related to a Flex High Limit Room:

2.2.1. "Flex High Limit Room" means a multi-purpose room in the Gaming Facility that is used on a limited basis. The Flex High Limit Room must have the same operational requirements as a High Limit Room.

2.2.2. In the Flex High Limit Room, the Gaming Operation may offer up to four (4) Restricted Access Tables, subject to Section 5.1(3). Restricted Access Tables are Gaming Stations where wagers above $500 and up to $5,000 are allowed, subject to the limitations of Section 2.4 below.

2.2.3. The Gaming Operation may operate the Flex High Limit Room up to one hundred twenty (120) Gaming days per year.

2.2.4. The process for approving the schedule for use of Restricted Tables in the Flex High Limit Room will be outlined in the Internal Controls.

2.3. High Limit Tables

2.3.1. "High Limit Table" means a designated Gaming Station in the Gaming Facility separated by a movable or non-movable barrier, such as stanchions or partial wall, prominently labeled with signage designating it as a High Limit Table, and with wager limits higher than those provided in Section III. H. of the Compact as amended, subject to the requirements and limitations of this Appendix.

2.3.2. The Gaming Operation may offer Gaming Station wager limits not to exceed one thousand dollars ($1,000) at the Gaming Facility's High Limit Table(s) subject to the limitations of Section 2.4 below.

2.4. Limitations

2.4.1. Gaming at the Gaming Stations in the High Limit Room and the Restricted Access Tables shall be limited to customers pre-screened by the Gaming Operation. The pre-screening qualifications and screening process will be set forth in an MOU agreed upon by the State Gaming Agency and the Tribe, as may be amended from time to time.

2.4.2. No customers may participate in Gaming in the High Limit Room, in the Flex High Limit Room, or at a High Limit Table if they are known to the Gaming Operation to have a history of problem gambling, are barred for self-exclusion, or are identified by the Tribal Gaming Agency as demonstrating significant characteristics associated with problem gambling.

2.4.3. The Gaming Operation must follow the requirements of Title 31 (money laundering).

3. Extension of Credit

3.1. Notwithstanding Section III. E. of the Compact as amended, the Gaming Operation may extend credit to qualified patrons who seek an extension of credit and who meet the criteria set forth in credit procedures developed by the Gaming Operation. At a minimum, the credit procedures must specify:

3.1.1. All patrons requesting credit are required to submit a complete tribal credit application and be provided problem gambling information;

3.1.2. The minimum and maximum amount any patron can request;

3.1.3. The process for review and verification of the credit application. The review process shall include, at a minimum, proof of identity, obtaining a credit report, gaming report unless this is the first casino credit for the patron (from Central Credit Inc. or similar provider that provides information on the patron's prior casino credit), and bank verification of accounts;

3.1.4. When a patron's credit application will be reviewed after initial application and preapproval;

3.1.5. Patrons will not be extended credit if known to the Gaming Operation to have a history of problem gambling, if actively barred for self-exclusion, or if the Gaming Operation's review of a credit report indicates the patron is proposing to make wagers beyond his or her means;

3.1.6. How each patron's credit application information is kept confidential and secure from unauthorized access, including who is authorized to access the credit application information;

3.1.7. Information about patrons requesting credit are not shared or used for marketing or promotional purposes with entities outside the Gaming Operation;

3.1.8. How the preapproval amount is determined to be consistent with their credit report the preapproval amount is documented, and the patron is notified;

3.1.9. The preapproval is granted by a member of the management of the Gaming Operation that is independent of the patron; and

3.1.10. The repayment and debt collection requirements and notification includes:

3.1.10.1. Repayment timeframes not to exceed 90 days from the day of extension of credit.

3.1.10.2. Any late payment fees, penalties, interest charges, or similar fees or charges, settlement process and reports, and prohibition of further credit extension with an unpaid balance.

3.1.10.3. Following applicable federal debt collection laws.

3.1.10.4. Agreeing to the Swinomish Tribal Court for venue and personal jurisdiction.

3.2. The Tribal Gaming Agency shall forward to the State Gaming Agency a copy of approved credit procedures, and any changes to those procedures for review and concurrence prior to implementation per Section X. of the Compact.

4. Wagering Limits—Player Terminals.

4.1. Section 3.2.1(b) of Appendix X2 is amended as to read as follows:

All Scratch Tickets in a particular Game Set shall be of the same purchase price. ~~which shall not exceed $5.00, with the exception that up to 15 percent of the Player Terminals in operation may have purchase prices of up to $20.00 per Ticket~~. The purchase price for a single ticket may not exceed $30.00, provided that the minimum and maximum wagers must be visibly displayed on such machines. A single Ticket may offer an opportunity to enter another Game Set;

4.2. Section 4.1.4 of Appendix X2 is amended to read as follows:

Each On-line Lottery Game may offer more than one method of winning a prize, and each method may be represented by a separate wager, but each wager may not exceed ~~$20.00~~ $30.00. Wagers are deducted from the Game Play Credits displayed on the Player Terminal.

4.3 Section 7.1.10(b) of Appendix X2, "The percentage of Player Terminals offering wagers between $5.01 and $20," is stricken.

5. Facility Limits—Gaming Stations and Player Terminals.

5.1. If this Appendix is implemented, Gaming Station limits are as follows:

The maximum number of Class III Gaming Stations within the Gaming Facilities combined shall not exceed a total of one hundred twenty-five (125) Gaming Stations. The Tribe, in its sole discretion, shall determine the allocation of the 125 Gaming Stations between the Gaming Facilities.

(1) At the option of the Tribe, one (1) additional Gaming Station ("the nonprofit station") for every twenty-five (25) Gaming Stations allowed in a Gaming Facility. The proceeds from all nonprofit stations shall be dedicated to support nonprofit and charitable organizations and their activities located within Skagit County or the State of Washington. For purposes of determining "proceeds" from a nonprofit station only, proceeds shall mean the pro rata Net Win of the nonprofit station. The Gaming Code shall require regulations to be adopted concerning the types of bona fide nonprofit and charitable organizations or types of projects of such organizations that shall be supported by a nonprofit station.

(2) The Tribe is required to obtain transfers of a Class III Gaming Station authorization from another tribe which has entered into a compact with the State for the use of Class III Gaming Stations, as defined in this Compact for any Class III Gaming Stations, except for nonprofit stations, beyond sixty (60) in total for all Gaming Facilities. The transfer of Class III Gaming Station authorization from another tribe shall be effectuated through the use of a "Class III Gaming Station Transfer Agreement" substantially in the form appended hereto as Appendix D of this Compact.

(3) No more than thirty (30) of the maximum number of one-hundred twenty-five (125) Gaming Stations authorized above, or 25% of the total Gaming Stations in operation within a Gaming Facility, whichever is fewer, may be operated with wager limits greater than $500.

5.2. Section 12.2.1 of Appendix X2 is amended to read as follows:

Subject to Section 12.4 below, the Tribe may operate no more than ~~2,500~~ 3,000 Player Terminals per facility ("Facility Limit"), and no more than a combined Player Terminal total ("Total Operating Ceiling") of 3,000 Player Terminals in its Gaming Facilities. It is also agreed that upon the effective date of this Appendix, the Total Operating Ceiling for the Muckleshoot Tribe, Tulalip Tribes, and Puyallup Tribe shall be 3,500 for each of those three tribes until the third anniversary of the effective date of this Appendix, at which time it shall increase to 4,000 for each of those same three tribes. It is further agreed that the Tribe shall not be entitled as a matter of right to an increase in its Total Operating Ceiling based on the fact that the Muckleshoot Tribe, the Tulalip Tribes, and the Puyallup Tribe are entitled under this Appendix to operate up to the separate, higher Total Operating Ceiling(s) established specifically for them in this Appendix.

6. Contributions.

In order to provide for impacts to local community services that may arise as a result of the Gaming authorized under the Compact and this Appendix E, if any, the Tribe agrees to begin accruing funds at the new rates upon the effective date of this Appendix and

make payments as specified below if, as, and when this Appendix is implemented as provided in Section 1 above.

6.1. Section 14.6.1 of Appendix X2, is amended to read as follows:

Except in Sections 14.2 and 14.4, as used in Section 14, the term "net win" shall mean the total amount of Tribal Lottery System revenue after prizes or winnings have been paid out (i.e., the difference between the amount wagered or played and the amounts paid to winners) as reported as gaming revenue on the annual audited financial statements in accordance with Generally Accepted Accounting Principles (GAAP), ~~less any cost of developing, licensing, or otherwise obtaining the use of the Tribal Lottery System~~. In Sections 14.2 and 14.4, the term "net win" shall mean the total amount of Class III gaming revenue after prizes or winnings have been paid out (i.e., the difference between the amount wagered or played and the amounts paid to winners) as reported as gaming revenue on the annual audited financial statements in accordance with GAAP ~~less any cost of developing, licensing, or otherwise obtaining the use of the Class III games~~;

6.2. Section 14.4 of Appendix X2, as previously amended, is replaced in its entirety to read as follows:

Problem Gambling. The Tribe shall contribute an amount as described below to programs for problem gambling education, awareness, prevention, and treatment for tribal and non-tribal citizens in the State of Washington. Contributions shall be made to charitable and/or non-profit organizations, or to governmental organizations which may include the Health Care Authority's Division of Behavioral Health and Recovery or a successor agency with expertise in providing awareness, prevention, education, outreach, treatment, and recovery support services for problem gambling. Beginning on the Implementation Date and until June 30, 2024, the Tribe shall accrue 0.20 percent (0.2%) of the net win derived from all Class III gaming activities, determined on an annual basis. Beginning on July 1, 2024, and subsequent fiscal years, the Tribe shall accrue 0.26 percent (0.26%). The percent of net win accrued shall be paid annually within one year of the close of the Tribe's fiscal year.

6.3. Section 14.2 of Appendix X2 is amended to read as follows:

Charitable Donations. One-half of one percent (0.5%) of the Net Win derived from ~~Tribal Lottery System~~ all Class III Gaming activities, determined on an annual basis using the Tribe's fiscal year, shall be donated to non-tribal bona fide non-profit and charitable organizations registered with the Secretary of State to provide services in the State of Washington, unless exempt from such registration by the Secretary of State.

6.4. Compact Section XIII.C and Appendix X2 Section 14.1 are amended to read as follows:

Compact Section XIII

C. Community Contribution

The Swinomish Tribe provides a Police Department and Tribal Court System that enforce criminal law and order codes against Swinomish Tribal members and other Indians and civil administrative codes against all persons within the Tribe's jurisdiction. The Tribe recognizes that adequate enforcement and the availability of support services and assistance is critical to the safe operation of Class III gaming, and that the Class III gaming facility may impact surrounding local law enforcement agencies and services and place an increased burden on them. To that end, the Tribe shall establish a fund for the purpose of providing assistance to non-tribal law enforcement and other services and shall withhold on a quarterly basis ~~2.0%~~ one and three quarters of one percent (1.75%) of the net win from the Class III gaming tables authorized by this Compact for this fund. Further, during the first year of operation, the Tribe shall, on a quarterly basis beginning three months from the date the facility opens to the public, distribute this fund to non-tribal enforcement and services agencies materially impacted by the Class III gaming operation. These funds shall be shared by all agencies materially impacted by the gaming operation based on evidence of impacts presented by each agency; provided, however, that the Skagit County Sheriff has agreed to hire one additional deputy so that monitoring, routine patrol and response services will be available to cover the gaming operation and to respond promptly as needed, and the first priority for the distribution of this fund will be to the Skagit County Sheriff in an amount sufficient to cover the cost of one additional deputy. The Skagit County Sheriff shall receive directly from the fund an amount sufficient to cover the expenses for this additional position, including salary, benefits, training and vehicle costs (currently estimated at $50,000-$60,000 annually). An additional priority will be to support with a substantial distribution, the medic one and other emergency services provided to the Tribe by the La Conner Fire Department.

A committee shall be established consisting of a representative of the Tribal Senate, the Swinomish Chief of Police, the Skagit County Sheriff, the local fire district to be represented by the chief of the La Conner fire department, and a representative of the State Gaming Agency. The committee may be expanded or changed by mutual agreement of the Tribal and State Gaming Agencies. The committee shall meet at least annually to review impacts, level of services provided, use of these funds, and to determine the distribution of the fund. Distributions after the first twelve (12) months of operation will be made based on a negotiated memorandum of understanding (MOU) between the Tribe and the impacted agencies providing services. The MOU shall, among other things, address the services to be provided during the following year by the impacted agencies. In the event of a dispute that cannot be resolved by agreement of the

parties, either the State Gaming Agency or the Tribe may seek resolution through the arbitration provisions of Section XI of this Compact. No Class II gaming revenues or non-gaming revenues such as food, beverage, wholesale or retail sales shall be included within the budgeted ~~2.0%~~ one and three quarters of one percent (1.75%) sum set forth in this section.

Appendix X2

14.1 Impact Costs. Up to ~~one-half of one percent (0.5%)~~ six tenths of one percent (0.6%) of the net win derived from Tribal Lottery System activities, determined on an annual basis using the Tribe's fiscal year, shall be added to any amounts payable and distributable from other Class III activities under the Compact in order to meet community impacts, to the extent such Compact amounts are insufficient to meet actual and demonstrated impact costs.

7. Problem, Pathological, and Responsible Gambling Programs.

7.1. The Tribe agrees to establish an education and awareness program for Tribal Lands and surrounding communities as required in Appendix S Section 8.3.

7.2. The Tribe and State Gaming Agency recognize the importance of responsible gambling as part of the shared responsibility to protect the health, welfare, and safety of the citizens of the Tribe and of the State. As part of that responsibility, the Tribe agrees to:

7.2.1. Create and maintain a responsible gambling policy that addresses at least the following areas:

7.2.1.1. Annual training and education for all Gaming Employees to cover such topics as how to identify problem gamblers, how to provide assistance when asked, underage prevention, and unattended children; and

7.2.1.2. Self-exclusion, to cover such topics as the receipt of marketing materials and access into the facility. Notwithstanding the foregoing, the Tribe has a policy that any individual self-barring shall not be readmitted to the Gaming Floor at any time unless accompanied by security on the way to and from a restaurant location.

7.2.2. Provide resources, to include such topics as posting hot line numbers, signage, educational brochures and materials on how to seek treatment.

7.2.3. Within five (5) years, or as soon as feasible thereafter based on reliable technological availability, include in the Tribe's education and awareness program an interactive responsible gambling application or program for players; such gambling application or program may be separate and need not be integrated into the authorized Class III Gaming Activities and other Gaming Activities.

SWINOMISH INDIAN TRIBAL COMMUNITY
and the
STATE OF WASHINGTON
CLASS III GAMING COMPACT

APPENDIX G
ELECTRONIC TABLE GAMES

Table of Contents

SECTION 1. CONDITIONS AND LIMITATIONS

This Appendix contains the interrelated concessions, limitations, and agreement of the Tribe and State with respect to the subject matter addressed herein. Provisions of the Compact and appendices, as amended (together, the "Compact"), that are not addressed in this Appendix remain in full force and effect, unless and until they are subsequently amended pursuant to the processes set forth in the Compact. This Appendix contains interdependent conditions and consequences that must be accepted as a whole in order to adopt this Appendix.

The Tribe and State agree that, although the Compact and its appendices become effective upon publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. § 2710(d)(3)(B), the implementation of this Appendix shall be delayed until any of the provisions herein are implemented by the Tribe ("Implementation Date"). However, if certain provisions in this Appendix have been implemented through another appendix, the delayed implementation shall not apply to those provisions. The Tribe shall provide at least ten (10) days advance notice to the State prior to implementation of this Appendix.

Any provisions of the Compact and Appendices that do not conflict with these standards shall apply to Electronic Table Games. To the extent they do not conflict, existing Internal Controls, game rules, and similar documents in effect as of the date of the Memorandum of Incorporation remain in full force and effect unless and until they are subsequently modified pursuant to the process set forth in the Compact.

SECTION 2. DEFINITIONS

The following terms apply to this Appendix. All capitalized terms not defined herein, to the extent they do not conflict, shall have the same definitions as in the Compact.

"Component" means Electronic Table Game Terminals, any dealer interface, the Electronic Wagering System, and hardware, software, and servers that function collectively to simulate table game operations and are necessary to operate the Electronic Table Game System.

"Communal Shoe" means a randomly shuffled and dealt deck or decks of cards, whether physical or electronic, that removes each card played until the round of play is completed according to the approved game rules.

"Electronic Table Game" or "ETG" means an electronic version of a Class III table game.

"Electronic Table Game System" or "ETG System" means a system that utilizes electronics in connection with the generation, collection, storage, and communication of game outcome, accounting, and significant event data, including all Components thereof, to operate Electronic Table Games.

"Electronic Table Game Terminal" or "ETG Terminal" means a computer housed in a cabinet with input device(s) and video screen(s) where a player may play Electronic Table Games.

"Electronic Wagering System" means a Component of the ETG System that includes a computer or server and any related hardware, software or other device that facilitates patron play at an Electronic Table Game.

SECTION 3. AUTHORIZATION

3.1 The ETG System must be honest, fair, secure, reliable, auditable, and compliant with the Compact and the standards contained in this Appendix and any related MOU.

3.2 System Conditions. An ETG System is authorized when the ETG System does not allow a patron to play a device prohibited by RCW 9.46.0233(1)(b) and RCW 67.70.040(1)(a) ("Play Against the Machine"). An ETG System does not allow Play Against the Machine when:

3.2.1 there is a human dealer involved in the play of the ETG ("Dealer Controlled"); or

3.2.2 the play of the ETG does not involve a human dealer, and the ETG System is configured for play between two or more patrons against the same roll of dice or spin of the wheel, or a Communal Shoe of electronic cards ("Non-Dealer Controlled"); however, only one patron is needed to initiate game play; or

3.2.3 it is a hybrid of Dealer Controlled and Non-Dealer Controlled, provided that any ETG played as Dealer Controlled follows applicable Dealer-Controlled standards set forth in this Appendix and any ETG offered as Non-Dealer Controlled follows applicable Non-Dealer Controlled standards set forth in this Appendix.

3.3 Specific Games

3.3.1 The Tribe may offer for play an ETG version of any Class III table game approved in Compact Section III.A. Pay table or odds offered on an ETG shall be consistent with game rules as approved in Section X.B.4 ETG game rules must be displayed on each ETG Terminal.

3.3.2 An ETG Terminal may allow for play any other Class III activity as authorized under the Compact and Appendices, other than the Tribal Lottery System or any Gaming activity with a limited allocation.

3.3.3 Concurrent play. Patrons may play more than one ETG concurrently using a single ETG Terminal under the following requirements:

a. An ETG Terminal must display clear information about each ETG available for play and such information must be available to a patron without the patron first placing a wager.

b. An ETG Terminal must display each ETG selected for play by the patron.

c. An ETG Terminal must display the decisions and outcomes of play for each ETG selected by the patron.

d. An ETG may not be added to or removed from an ETG Terminal in use by a patron.

3.4 Wager Limits. Wager limits for ETGs shall not exceed $500.

3.5 Electronic Wagering System. An ETG shall be activated with an Electronic Wagering System that meets the standards described in Section 5.1.2. An ETG Terminal shall not issue coin or U.S. currency at the conclusion of a patron's play.

SECTION 4. NUMBER OF GAMING STATIONS

Every nine (9) ETG Terminals shall constitute one Gaming Station. If the number of ETG Terminals put into play is not perfectly divisible by nine (9), then any remainder less than nine (9) will constitute a Gaming Station. For example, if ten (10) ETG Terminals are in operation, it will constitute two (2) Gaming Stations.

SECTION 5. OPERATION AND REPORTING REQUIREMENTS

5.1. Standards for Operation.

5.1.1 Any ETG must comply with the standards established by this Appendix and any applicable provision of the Compact, and must meet or exceed all applicable standards of Gaming Laboratories International's Standards GLI-24 (Electronic Table Game Systems) ("GLI-24") and GLI-25 (Dealer Controlled Electronic Table Games), as amended or modified. Any standards that contemplate features or functionalities of an ETG System that conflict with Section 3 of this Appendix are not applicable, and such features or functionalities are prohibited.

5.1.2 Any Electronic Wagering System must meet or exceed Gaming Laboratories International's Standard GLI-16 (Cashless Systems in Casinos), the standards established by this Appendix, any applicable provision of the Compact, including Cashless Transaction System as defined in Appendix X2, and any related MOU. Provided, any "Cashless Systems in Casinos" that would add money to or take money from a patron's account without a cashier or kiosk would require negotiations in Section XIV.D.

5.1.3 The Tribal Gaming Agency and the State Gaming Agency may mutually agree in writing to alternative standards for any ETG System authorized in Section 3 in lieu of the GLI standards described in Sections 5.1.1 and 5.1.2 above that maintain the integrity and security of the ETG System.

5.2. Internal controls. Prior to offering ETGs for play, the Tribe must implement Internal Controls as minimum operating standards to govern the operation and management of the ETG System.

5.2.1 Initial Internal Controls. The Tribal Gaming Agency shall forward to the State Gaming Agency its initial Internal Controls for ETG Systems for review and concurrence. The Tribal Gaming Agency shall detail how the Internal Controls meet or exceed the requirements described in this Appendix or any related MOU. The State Gaming Agency concurrence with the Tribal Gaming Agency proposal shall be deemed granted after twenty (20) days of receipt of the Tribal Gaming Agency proposal if no disapproval in writing is received from the State Gaming Agency. The State Gaming Agency shall only disapprove such portions of a proposal it finds would have a material adverse impact on public interest or on the integrity of ETG System(s) and shall detail the reasons for disapproval. If a dispute regarding this process cannot be resolved by the Tribal Gaming Agency and State Gaming Agency within thirty (30) days, the Parties may seek dispute resolution pursuant to the Compact.

5.2.2 Minimum Requirements. The Internal Controls will address the following, at a minimum:

a. Description of Gaming Employees who perform essential functions, supervisory authority, handling payouts on winning vouchers.

b. User access controls for ETG personnel;

c. Segregation of duties;

d. Procedures for receiving, investigation and responding to patron complaints;

e. Accounting and audit procedures;

f. Procedures to ensure the physical security of the ETG Systems, including key controls and Closed Surveillance System coverage;

g. Procedures to ensure the integrity and security of all sensitive data and software;

h. Procedures to ensure that access to sensitive data and software is limited to appropriate personnel;

i. Procedures to ensure accurate accounting of wagers and payouts;

j. Procedures to ensure the logging of the events and the availability of records to permit an effective audit of the conduct of the ETG System and the reporting of revenue;

k. All existing Internal Controls are updated, as necessary, to ensure there are no conflicts with any Internal Controls governing ETG Systems; and

l. Any other internal controls deemed necessary by the State Gaming Agency and Tribal Gaming Agency.

5.3. Required Reports. Reports necessary to record information as deemed necessary by the Tribal Gaming Agency or as required by Internal Controls must be generated. These reports may include, but are not limited to, all applicable reports as outlined in Section 2.21 of GLI-24.

5.4. Training. A manufacturer's prototype (e.g., test cart) of the version of the ETG System that will be installed at the Gaming Facility will be delivered to the State Gaming Agency for training purposes prior to field testing. The State Gaming Agency will collaborate with the Tribal Gaming Agency to provide additional training opportunities related to ETG Systems. The Tribal Gaming Agency and the State Gaming Agency may mutually agree to an alternative to a prototype.

SECTION 6. APPROVAL OF ELECTRONIC TABLE GAME SYSTEMS

6.1. Purpose. The general purpose of testing an ETG System pursuant to this Section 6 is to determine the compliance of the ETG System with this Appendix and any applicable MOU(s).

6.2. Independent Test Laboratory (ITL) Testing for ETG System, Upgrades, and New Equipment; Modifications.

6.2.1 ITL Requirement. Each new or upgraded ETG System may be offered for play only if it has been tested and certified as meeting the applicable standards of this Appendix and any related MOU by an ITL selected by the Tribe from SGA's approved ITL list.

6.2.2 ITL Reports and Certification. At the conclusion of testing, the ITL shall provide to the Tribal Gaming Agency and the State Gaming Agency its certification and supporting documentation. If the ITL provides sufficient documentation that the ETG System or relevant Component has been tested and certified by that ITL in any other jurisdiction and it meets the requirements of this Appendix, without any subsequent modifications, that shall be sufficient to satisfy this requirement.

6.2.3 Modifications. No substantive modification to any ETG System may be made after testing, certification, and approval without certification of the modification

by an ITL. The following modifications are not considered substantive and do not require ITL certification or notification to the State Gaming Agency: (a) changes to content not related to any regulated feature; (b) adding or removing users; (c) any system configuration changes that have no impact on the accuracy of report information including gaming revenue; and (d) minor modifications to hardware.

6.3. Field Testing for ETG Systems.

6.3.1 A new ETG System may only be offered for play subject to field testing at the Tribe's Gaming Facility as described below.

6.3.2 The terms, conditions, criteria, and objectives for each ETG System to be field tested must be jointly agreed to by TGA and SGA in writing prior to field testing and must include at least:

a. The requirements and standards that must be met to determine successful field testing.

b. The number of ETG Terminals to be included in the field test.

c. The demarcation of the testing area of the gaming floor and necessary signage.

d. The appropriate length of the testing period.

e. Identification of who will receive updates, how the updates will be sent, and when they will be sent.

6.3.3 Approval.

a. After a minimum of thirty (30) days of active operation of field testing free of substantial errors, the Tribal Gaming Agency and State Gaming Agency may end field testing and approve the ETG System if the final joint field testing report provides, at a minimum, the details of testing, any issues identified, the resolution of those issues, and overall performance and compliance of the ETG System with applicable standards.

b. The ETG System shall be deemed approved after ninety (90) days of active operation unless disapproved in writing by the Tribal Gaming Agency or State Gaming Agency detailing the reasons for disapproval.

c. Field testing may be suspended by the Tribal Gaming Agency, State Gaming Agency, or the manufacturer at any time for non-compliance.

Once the Tribal Gaming Agency and State Gaming Agency agree the non-compliance issue is resolved, field testing may resume.

6.4. Implementation of Approved ETG by another tribe. The Tribe may conduct their own field testing period as outlined above or, once field testing is completed for another tribe, the Tribe may rely on that testing for approval when its ETG System is the same and configured in the same way.

SECTION 7. COMMUNITY CONTRIBUTIONS

"Net Win from Gaming Stations" as used in Section XIII.C of the Compact shall include Net Win from ETGs.

SECTION 8. PROBLEM AND RESPONSIBLE GAMING

8.1 Monetary Contribution. Section 14.4 of Appendix X2, as previously amended, is replaced in its entirety to read as follows:

Problem Gambling. The Tribe shall contribute an amount as described below to programs for problem gambling education, awareness, prevention, and treatment for tribal and non-tribal citizens in the State of Washington. Contributions shall be made to charitable and/or non-profit organizations, or to governmental organizations which may include the Health Care Authority's Division of Behavioral Health and Recovery or a successor agency with expertise in providing awareness, prevention, education, outreach, treatment, and recovery support services for problem gambling. Beginning on the Implementation Date and until June 30, 2024, the Tribe shall accrue 0.20 percent (0.2%) of the net win derived from all Class III gaming activities, determined on an annual basis. Beginning on July 1, 2024, and subsequent fiscal years, the Tribe shall accrue 0.26 percent (0.26%). The percent of net win accrued shall be paid annually within one year of the close of the Tribe's fiscal year.

8.2 Commitment to Responsible Gaming. The Tribe and State Gaming Agency recognize the importance of responsible gambling as part of the shared responsibility to protect the health, welfare, and safety of the citizens of the Tribe and of the State. In addition to the requirements of Appendix S, Section 8, the Tribe agrees to display a commitment to responsible gambling and a link to the Gaming Operation's responsible gambling policy on each ETG Terminal.

SECTION 9. ANTI-MONEY LAUNDERING

The Tribe's Internal Controls will describe how the Tribe will comply with applicable federal requirements including requirements imposed by the Federal Trade Commission (FTC), Office of the Comptroller of the Currency (OCC), Financial Crimes Enforcement Network (FinCEN), Consumer Financial Protection Bureau (CFPB), Office of Foreign Assets Control (OFAC) and the US Department of Treasury.