

APPENDIX to the ~~2007-2013~~ Compact Amendments

WHEREAS, ~~_____ (“Tribe~~The Navajo Nation (“Nation”), a federally recognized Indian tribe, operates a Gaming Enterprise on its land located within the exterior boundaries of the ~~Tribe’s~~Nation’s reservation;

WHEREAS, the ~~Tribe~~Nation conducts ~~Gaming~~gaming activities pursuant to a compact entered into between the ~~Tribe~~Nation and the State of New Mexico (“State”) and approved by the United States Department of Interior (“Compact”);

WHEREAS, the ~~_____ Navajo~~Navajo Gaming ~~Commission~~Regulatory Office is the Tribal Gaming Agency (“TGA”) identified to the State Gaming Representative (“SGR”) as the agency responsible for actions of the ~~Tribe~~Nation set out in the Compact and is the single contact with the State and may be relied upon as such by the State;

WHEREAS, the SGR is the person designated by the New Mexico Gaming Control Board (“NMGCB”) pursuant to the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978] who shall be responsible for the actions of the State set out in the Compact;

WHEREAS, the ~~Tribes~~Nation and the State have engaged in negotiations leading to amendments to the 2001 Compact to be submitted for approval by the ~~2007-2013~~ legislature.

WHEREAS, the ~~parties~~Nation and the State wish to submit for approval certain details concerning certain aspects of their agreement to be made an integral part of the ~~2007-2013~~ Compact, but to be designated as the Appendix to the Compact;

NOW, THEREFORE, the State and the ~~Tribe~~Nation agree to the following terms and conditions:

I. Gaming Machines, Table Games, and Lottery

~~1.~~Section 2-~~(F)(K)~~ and Section 2-~~(R)2(BB)~~ of the Compact provide definitions for ~~gaming machines and table games~~Gaming Machines and Table Games. The definition of a ~~gaming machine~~Gaming Machine is intended to encompass the traditional slot machine. The definition of a ~~table game~~Table Game is intended to encompass traditional games that use cards such as poker, Pai-gow and blackjack, wheel games such as roulette and ~~the~~Big the Big Wheel, and dice games such as craps.

However, technology is constantly changing in the area of casino gaming and the once clear line between slot machines and ~~table games~~Table Games is becoming less clear. It is the intention of the parties to accommodate and clarify revenue sharing requirements of new games that blur the line between traditional games. Generally, games that are predominantly mechanical, electromechanical or electronic are subject to revenue sharing and games that rely significantly on a casino attendant (a live person) to play the game are not subject to that obligation. Casino attendant involvement ranges from minimal interaction such as initiating the game and taking bets and/or making payout to substantial interaction such as participating in the

game as a player (e.g. blackjack) or being involved in nearly every aspect of the game (e.g. craps). The greater the involvement of the casino attendant, the more likely the game is a table game. For example, a casino attendant may have some minimal involvement in an electromechanical slot machine game, such as making a pay-out, but that is not a significant enough involvement ~~to~~o exclude it from revenue sharing obligations. ~~Similarly~~Likewise, although roulette has a mechanical aspect, it is not significant enough to make it subject to revenue sharing obligations.

Just as technology is changing the face of casino-style gaming, technology is also advancing to facilitate the operation of a state lottery. It is the intention of the parties to accommodate and clarify revenue sharing obligations in light of the ever-changing gaming industry. The definition of Gaming Machine is not intended to limit the use of technology or devices operated by a state lottery. On the other hand, it is not the intent of the parties that the lottery operate devices that look and play like traditional slot machines such as those Class III Gaming Machines that are currently prevalent in tribal casinos.

Recognizing the dynamic nature of gaming technology, the parties shall attempt to agree on whether new mechanical, electromechanical or electronic games that utilize traditional components of table games, e.g. cards, wheels or dice, are subject to revenue sharing on a case by case basis. Likewise, the parties will attempt to agree on whether a product developed by the lottery infringes upon the Nation's exclusivity with regard to Gaming Machines. In the event the parties are unable to agree, the matter shall be submitted to arbitration pursuant to ~~section 7.~~Section 7.

II. Audits and Compliance

~~2. Section 4 (B)(13) of the Compact provides that the Tribe shall make available to the SGR, unaltered data from all gaming machines. The information shall be downloadable from the Tribe's "slot account system." The parties agree that access to such data shall be made available as follows:~~

~~A. The SGR or designee shall have access to the gaming machine accounting data from the production side of the Tribe's "slot accounting system." The gaming machine accounting data consists of the raw, unaltered, data used by the Tribe to calculate "Net Win." This information shall not be in an altered, processed or manipulated format. This information shall be accessible by the SGR, as the SGR shall from time to time determine is required, on a per machine and/or aggregate basis based on a full game day cycle. The purpose of this information is to allow the SGR to verify the Tribe's "Net Win" calculation. A system for electronic access to the Tribe's gaming machine accounting data shall be constructed and installed at the State's cost.~~

~~B. The security codes for log in by the SGR or designee shall be defined collectively by the TGA, the manufacturer of the "slot accounting system", and the SGR.~~

~~C. Access to the gaming machine accounting data shall be limited to the SGR or designee solely for purposes authorized in the Compact.~~

~~D. Any part of the gaming machine accounting data obtained herein is designated as confidential under the Compact and shall not be made available for public inspection by the SGR.~~

~~E. The information referred to herein shall be transferred over secure telecommunications lines.~~

~~F. The TGA shall ensure that the systems and connections necessary to provide access to the gaming machine accounting data are in place and operating as required under the Compact.~~

~~G. The TGA shall ensure that the SGR or designee is notified promptly either by electronic mail or telephone of any technical problems related to the generation, transfer or access of the gaming machine accounting data.~~

~~H. The TGA shall ensure that the SGR has access to the gaming machine accounting data on a periodic basis as determined from time to time by the SGR, but in no event shall access be more often than once in a 24 hour period and the SGR shall strive to access such information in a reasonable manner and only to the extent necessary to meet his obligations under the Compact.~~

~~I. The TGA shall at all times designate a person and an alternate as the daily contact person of the SGR or designee.~~

A. ~~3.~~ Section 4-(E)(2) provides that the TGA will certify annually to the SGR that the TGA has met its obligations under this ~~compact.~~A Compact.

1. The TGA shall annually certify to the SGR that the ~~Tribe-Nation~~TribeNation is in compliance with the provisions of the Compact by completing and submitting a Compliance Report.~~B.~~

2. The Compliance Report is a checklist of the applicable sections of the Compact outlined in form A provided at the end of this Appendix. The Compliance Report shall serve as an annual attestation to certify that the ~~TribeNation~~TribeNation, TGA and ~~the~~the Tribal Gaming Enterprise have met the obligations under the Compact.~~C.~~

3. The TGA shall complete and submit to the SGR its Compliance Report within thirty ~~(30)~~(30) days of the end of the ~~Tribe's-Nation's~~Tribe's-Nation's fiscal year.~~D.~~

4. The TGA shall rely upon its records in preparing the Compliance Report. As evidence that the elements or requirements of the Compact have been met, the TGA shall conduct a comprehensive review of their gaming operations, which may include sample testing. The TGA shall determine the sample size to be used and will provide the methodology of the chosen sample size to the SGR. The TGA shall maintain all records relied upon in preparing the Compliance Report. The records shall be made available for review by the SGR or agent as requested.

5. ~~E.~~The TGA shall attach a written explanation of the course of action taken to remedy or explain any portions of the audit checklist that are listed as non-compliant or partially compliant. ~~F.~~The SGR reserves the right to review the audit or compliance review and request additional documentation if necessary.

6. ~~G.~~The SGR reserves the right ~~of inspection to inspect and verify~~of inspection to inspect and verify pursuant to ~~section~~Section 4(E)(3) of the ~~2007-2013~~2007-2013 Compact.~~4.~~

B. Section 4-(E)(3) of the Compact provides authorization for the SGR to inspect a Gaming Facility, Class III ~~Gaming~~ gaming activity, individual gaming machines and all records relating to Class III Gaming of the ~~Tribe~~ Nation. The parties agree that the protocol for inspection of ~~gaming machines~~ Gaming Machines shall include the following:

1. ~~A.~~ The SGR shall have access to inspect individual ~~gaming machines~~ Gaming Machines upon the terms and conditions set forth in Section 4-~~(E)~~ (E)(3) of the ~~2007~~ 2013 Compact.~~B.~~
2. The SGR recognizes that the Tribal ~~gaming enterprise~~ Gaming Enterprise is a business and will take reasonable steps to not interfere with the normal conduct of the gaming business.~~C.~~
3. The SGR recognizes that the TGA has primary responsibility to administer and enforce the regulatory requirements of the ~~compact~~ Compact and does so through internal controls, direct control of the gaming media and the security and access of the gaming media in a ~~gaming machine~~ Gaming Machine.
4. The TGA shall be present at any inspection, upon having been given notice as set out in ~~section 4 (E) (3)~~ Section 4(E)(3)(d), and testing of the gaming media shall be conducted by the TGA representative and verified by the SGR.
5. ~~E.~~ The SGR's inspection of individual ~~gaming machines~~ Gaming Machines shall be limited to purposes authorized by ~~the~~ this Compact.

III. Participation Fees and Progressive Games

A. Pro-rata Portion of Wide Area Progressive System Participation Fees

Similar to the proprietary (in-house) progressive gaming devices, the top jackpots for wide-area progressive gaming devices increment with the level of play. However, in the case of wide-area progressive gaming devices, a third party vendor operates the system. The system spans multiple casinos. The top jackpots increment as each of the gaming devices in the system is played, regardless of the casino in which the game device is located. The third-party vendor leases the gaming devices that participate in the system to the casinos and administers the system. In return, the casinos make periodic payments to the third-party vendor. The vendor payments provide for the progressive jackpot, vendor overhead, and vendor profit. The casinos collect the bills and coins from these gaming devices as drop. When a progressive jackpot is won, the third-party vendor pays the jackpot from funds collected from the casinos.

The portion of the payments to the third-party vendor that is accumulated to fund progressive jackpots can be viewed as gaming losses that normally reduce the Net Win. In order for a portion of the participation fee that is paid to be claimed as a deduction in the calculation of Net Win, the third-party vendor would need to inform the gaming operation in writing as to the specific amount of the participation fee payments that were paid out as progressive jackpots. In no event can the entire payment to the wide-area progress system vendor be deducted.

B. Participation Fees

Broadly, participation fees are any contractual payments made by casinos that are set at a minimum or maximum amount per day or are tied to the total coin-in, drop revenues generated by the gaming devices being operated, or other financial measures related to the operation of the gaming devices. An example of participation fees is the periodic payments casinos make to the third-party vendor of the wide-area progressive system discussed above. Participation fees can also be royalty payments, lease payments, or payments for other contractual arrangements.

The participation fee is an expense and is not deductible for the purposes of revenue sharing and should be treated accordingly.

IV. Adjusted Net Win Calculation

For purposes of calculating Adjusted Net Win per quarter, pursuant to Section 11 (C), assume that Net Win (prior to any adjustments) is equal to \$10,000,000, which amount represents the combined Net Win from the direct play of all Class III Gaming Machines at all Gaming Facilities on Nation's Indian Lands. Further assume that the face value of all Quarterly Free Play and Point Play for the quarter equals \$300,000 and the Quarterly Payout Percentage is 90% (.90).

Step One: Multiply \$300,000 (the face value of all Quarterly Free Play and Point Play) x .90 (Quarterly Payout Percentage) = \$270,000.

Step Two: Multiply \$270,000 x .35 (or 35%) for a total of \$94,500.

Step Three: Add \$94,500 to the Net Win amount of \$10,000,000 for a total of \$10,094,500.

Step Four: From \$10,094,500 subtract \$30,450 (which amount represents the quarterly amount of the Regulatory Reimbursement Payment of \$121,800 for one Gaming Facility) for a total of \$10,064,050.

Step Five: From \$10,064,050 subtract \$93,750 (which amount represents the quarterly amount of the Tribal Regulatory Costs of \$375,000) for a total of \$9,970,300, which amount represents the Adjusted Net Win.

Under this scenario, Adjusted Net Win is equal to \$9,970,300.