

INDIAN GAMING COMPACT BETWEEN THE STATE OF NEW MEXICO
AND THE ~~_____~~ TRIBENAVAJO NATION

Amended, 2013

INTRODUCTION

The State of New Mexico (“State”) is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Nation;

The Navajo Nation (“Nation”) is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Nation to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 (hereinafter “IGRA”), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

The 1999 State legislature has enacted SB 737, as 1999 N.M. Laws, ch. 252, known as the “Compact Negotiation Act,” creating a process whereby the State and the Nation have engaged in negotiations leading to this Compact, with review by a joint legislative committee, and with final approval by a majority vote in each house of the legislature;

The Nation owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility; The State and the Nation, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Nation, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Nation agree as follows:

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Nation in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Nation;

B. To continue the development of an effective government-to-government relationship between the State and the Nation;

C. To provide for the regulation of Class III Gaming on Indian Lands within the State of New Mexico as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Nation shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Nation, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.

H. To settle and resolve certain disputes that have arisen between the Nation and the State under the provisions of the Predecessor Agreements.

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Adjusted Net Win" has the meaning set forth in Section 11(C) of this Compact.

B. "Card Minder" means a technological aid for a bingo game that serves as an electronic substitute for bingo cards and is used by a player to monitor bingo cards and called bingo numbers. A Card Minder does not include a device which permits a player to cover or daub a bingo card other than through overt action after numbers are released.

C. "Class II Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(7), and 25 C.F.R. § 502.3.

D. ~~A.~~ "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

E. ~~B.~~ "Compact" means this compact between the State and the Nation, and including the Appendix attached hereto.

F. "Compliance Report" has the meaning set forth in the Appendix attached to this Compact.

G. "Free Play" means play on a Class III Gaming Machine provided to patrons without monetary consideration.

H. ~~C.~~ “Gaming Employee” means a person connected directly with the conduct of Class III Gaming, or handling the proceeds thereof or handling any Gaming Machine; but “Gaming Employee” does not include:

1. Bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;
2. Secretarial or janitorial personnel;
3. Stage, sound and light technicians; or
4. Other nongaming personnel.

I. ~~D.~~ “Gaming Enterprise” means the Navajo Nation entity created and designated by the Nation as having authority to conduct Class III Gaming pursuant to this Compact.

J. ~~E.~~ “Gaming Facility” means ~~all buildings or structures each separate physical building or structure~~ in which Class III Gaming is conducted on the Nation’s Indian Lands, subject to the limitations set forth in Section 3 of this Compact.

K. ~~F.~~ “Gaming Machine” means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration in any manner, is available to play or operate a game of chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but Gaming Machine does not include a Card Minder or a Table Game or any ~~device-devices~~ utilized in Table Games. Additional clarification of ~~this-the~~ definition of a Table Game is set forth in the attached Appendix.

L. ~~G.~~ “Hotseat Jackpot” means a jackpot awarded to a patron if the patron is seated at a Gaming Machine or has placed a players’ club card in the machine, but does not require the patron to place a wager, is not the result of game play, and does not affect the payout percentage of the Gaming Machine.

M. ~~G.~~ “Indian Lands” means:

1. all lands within the exterior boundaries of the Nation’s reservation and its confirmed grants from prior sovereigns within the State of New Mexico; or
2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Nation or a member thereof or is held by the Nation or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Nation exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Nation’s reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988, and only including lands within the State of New Mexico.

N. “Internet Gaming” means any casino or poker games operated through the use of the Internet.

O. ~~H.~~ “Key Employee” means that term as defined in 25 CFR Section 502.14.

P. ~~I.~~ “Management Contract” means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

Q. ~~J.~~ “Management Contractor” means any person or entity that has entered into a Management Contract with the Nation or the Gaming Enterprise.

R. “Nation” means the Navajo Nation.

S. “Net Win” means the win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses or deducting incentives or adjusting for changes in progressive jackpot liability accruals. Generally, net win is the difference between patron wagers and payouts made on winning wagers.

T. ~~K.~~ “Ordinance” means the gaming ordinance ~~and~~, any amendments thereto adopted by the Tribal Council of the Nation and any regulations which are promulgated pursuant to the gaming ordinance.

U. “Point Play” means play on a Class III Gaming Machine initiated by points earned or accrued by a player through previous Gaming Machine play, player rewards clubs, or any other method.

V. ~~L.~~ “Predecessor Agreements” means the tribal-state class III gaming compact and the accompanying revenue sharing agreement entered into between the Nation and the State pursuant to ~~1997 Laws~~ Senate Joint Resolution 37 of the 45th Legislature, eh. 190 First Session, §§ 1, 22001.

W. ~~M.~~ “Primary Management Official” means that term as defined in 25 CFR Section 502.19.

X. “Quarterly Free Play and Point Play” means the face value of all Free Play and Point Play used to initiate play on Class III Gaming Machines during the previous quarter.

Y. “Quarterly Payout Percentage” means the total amount paid out in prizes, including the cost to the Nation of noncash prizes, won on Gaming Machines (which are the gaming losses from direct play on Class III Gaming Machines) during the previous quarter divided by the sum of all cash wagers and the Quarterly Free Play and Point Play during the same quarter.

Z. ~~N.~~ “State” means the State of New Mexico.

AA. ~~O.~~ “State Gaming Representative” means that person designated by the gaming control board pursuant to the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978] who will be responsible for actions of the State set out in the Compact. The State Legislature may enact

legislation to establish an agency of the State to perform the duties of the State Gaming Representative.

~~P. “Tribal Gaming Agency” means the Navajo Nation governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Nation set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.~~

~~Q. “Tribe” means any Indian Tribe, Nation or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.~~

BB. ~~R.~~ “Table Game” means a Class III game of chance, in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, that is played using a wheel, cards or dice, and that requires an attendant to initiate the game or to collect wagers or pay prizes. Additional clarification of this definition is set forth in the attached Appendix.

CC. ~~“Tribal Gaming Agency” means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Nation set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.~~

DD. ~~“Tribe” means any Indian Tribe, Nation or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.~~

SECTION 3. Authorized Class III Gaming.

A. The Nation may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any ~~or~~ and all forms of Class III Gaming.

B. Subject to the foregoing, the Nation shall establish, ~~in~~ at its discretion, by Navajo Nation law, such limitations as it deems appropriate on the ~~number~~ amount and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

C. Number of Facilities.

1. ~~Except as provided in subparagraph (2) of this subsection, the Nation shall operate no more than two (2) Gaming Facilities or one (1) Gaming Facility per 15,000 tribal members residing in the State, whichever is greater. Tribal membership shall be based on official figures from the Nation’s tribal enrollment office. But in no event shall the Nation operate more than five (5) Gaming Facilities regardless of the number of tribal members.~~

2. ~~C. In no event shall the Nation’s Gaming Facility consist of more than two separate physical buildings or structures on its Indian Lands; but provided that in addition to the two separate physical buildings or structures otherwise permitted by this Section 3(C), the Pueblo of Laguna is authorized to conduct gaming operations at the Route 66 Casino Express, If, as of January 1, 2013, the Nation is already operating any Gaming Facility in excess of the limits~~

set forth above, it shall designate each excess Gaming Facility as a “Legacy Gaming Facility.” The Legacy Gaming Facility or Facilities shall be those in which the fewest Gaming Machines are in operation as of January 1, 2013. The Nation may continue to conduct gaming at a Legacy Gaming Facility subject to the limitations that: (1) the ~~Route 66 Casino Express Legacy Gaming Facility~~ shall not be moved from its location as of ~~December January 1, 2006, except as may be made necessary by improvements to the highway interchange with I-40 2013~~; (2) the gaming operations at the ~~Route 66 Casino Express Legacy Gaming Facility~~ shall not be expanded beyond the level of gaming operations in existence on ~~December January 1, 2006 2013~~; and (3) the ~~Pueblo of Laguna Nation~~ shall have an authorized representative sign a sworn affidavit that shall provide a detailed description of the gaming operations as of that date, including the hours and days of ~~operation~~operations, the specific number of Gaming Machines, and any other gaming activities, and shall submit said affidavit to the State Gaming Representative.

D. The Nation agrees that at least 80% of the total Gaming Machines which it operates on its Indian Lands will be Class III Gaming Machines.

E. The Nation agrees not to engage in Internet Gaming unless the State takes affirmative action to authorize Internet Gaming as set forth in Section 11(D)(1)(e), or Internet Gaming is authorized on non-Indian Land in the State of New Mexico by a future change in federal law.

SECTION 4. Conduct of Class III Gaming.

A. Tribal Gaming Agency. The Tribal Gaming Agency will assure that the Nation will:

1. operate all Class III Gaming pursuant to this Compact, Navajo Nation law, the IGRA and other applicable Federal law;
2. provide for the physical safety of patrons in any Gaming Facility;
3. provide for the physical safety of personnel employed by the Gaming Enterprise;
4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier’s cage department;
5. provide for the protection of the property of the patrons and the Gaming Enterprise from illegal activity;
6. participate in licensing of primary management officials and key employees of a Class III Gaming Enterprise;
7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Nation shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);

2. prohibiting the employment of any person as a Gaming Employee who is under the age of twenty-one (21) or who has not been licensed in accordance with the applicable requirements of federal and Navajo Nation law;

3. requiring the Nation to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws generally applicable to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;

5. prohibiting the Nation, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the ~~gaming~~ Gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, provided, however, that nothing herein shall be interpreted to prevent the Nation from granting preference in employment actions to tribal members or other Indians in accordance with established Navajo Nation laws and policies;

6. ~~providing requiring the Nation, through its Gaming Enterprise or through a third-party entity, to provide~~ to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable ~~state~~ State programs, and which programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Nation's ~~tribal court~~ Tribal Court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and as to which no defense of tribal sovereign immunity would be available; and provided that to fulfill this requirement the Nation may elect to participate in the State's program upon execution of an appropriate agreement with the State;

7. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

8. permitting State Department of Environment inspectors to inspect the Gaming Facility's food service operations during normal Gaming Facility business hours to

assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained;

9. prohibiting ~~a gaming enterprise~~ the Gaming Enterprise from cashing any paycheck or any type of government assistance check, including Social Security, TANF, pension and other similar checks, for any patron;

10. prohibiting a ~~gaming enterprise~~ Gaming Enterprise from extending credit by accepting IOUs or markers from its patrons;

11. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to TANF recipients for access to TANF benefits;

12. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%), and requiring the Gaming Enterprise to prominently post in visible locations within the Gaming Facility notices stating that the Gaming Enterprise is in compliance with this requirement, and providing a comprehensible explanation of the meaning of this requirement;

13. providing that all gaming machines on the premises of the Gaming Facility will be connected to ~~a central computerized reporting and auditing system~~ an online monitoring and control system (also known as a game management system) on the Gaming Facility premises, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use at the Gaming Facility, and that, ~~the wager and payout data of each machine, electronically captured by the Gaming Enterprise's central computer, may be accessed and downloaded electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer, and provided further that the system for electronic access to the machine wager and payout data collected by the Gaming Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any possibility of unauthorized access to the system or tampering with the data, and to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central reporting and auditing system; and the reports generated by the system concerning that wager and payout data will be available to the State Gaming Representative on a monthly basis, by secure transmission whether encrypted email communications, file transfer protocol, or other secure means provided for by the State Gaming Representative. The method of secure transmission must meet industry standards for security sufficient to minimize the possibility of any third party intercepting data transmitted to the State Gaming Representative. Such reports shall be generated to reflect monthly, quarterly, and annual activity, and shall identify, at a minimum:~~

(a) coin-in;

- (b) coin-out;
- (c) Free Play and Point Play;
- (d) Net Win;
- (e) theoretical net win (including Free Play and Point Play);
- (f) actual floor hold percentage; and
- (g) theoretical floor hold percentage.

The State Gaming Representative, the Tribal Gaming Agency, and the Gaming Enterprise shall meet, and within ninety (90) days of the effective date of this Compact, in good faith coordinate and determine the contents of such reports and method of secure transmission to comply with this Section.

Alternatively, at the State's option, the wager and payout data of each machine and reports generated by the system concerning that wager and payout data may be accessed and downloaded electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer. This alternative of being able to access and download electronically information from the Nation's online monitoring and control system shall only be available if the State Gaming Representative agrees to pay and does pay the cost of constructing and maintaining a dedicated telecommunications connection between the Gaming Facility and the State Gaming Representative's Office, obtaining, installing, and maintaining any hardware or software necessary to interface between the online management system and the telecommunications connection, and obtaining, installing, and maintaining any hardware or software required in the State Gaming Representative's Office, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any possibility of unauthorized access to the system or tampering with the data, and to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central reporting and auditing system;

14. enacting provisions that:

(a) prohibit an employee of the Gaming Enterprise from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Enterprise employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

(c) require the Gaming Enterprise to purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;

15. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

16. requiring the ~~gaming enterprise~~Gaming Enterprise to spend an amount that is no less than ~~one-quarter one-half~~ of one percent (.255%) of its ~~net win~~Adjusted Net Win as that term is defined ~~herein in Section 11(C)(1)~~, annually to fund or support programs ~~that the Nation selects~~ for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, and for the prevention of compulsive gambling in New Mexico; and requiring that a substantial portion of such funds be distributed to an organization that has expertise in and provides counseling, intervention or other services for compulsive gamblers in New Mexico, and whose services are available to all persons without regard to race or tribal membership; and provided that any information existing as a result of this Section, not including information that may identify or contain information referring to any gaming patron, shall not be subject to the confidentiality provisions of Section 4(E)(4) of this Compact and shall be made available for inspection and publication without restriction or limitation;

17. governing any Management Contract regarding its Class III Gaming activity so that it conforms to the requirements of Navajo Nation law and the IGRA and the regulations issued thereunder;

~~18. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);~~

18. ~~19. prohibiting a Tribal prohibiting the~~ Gaming Enterprise and the Nation from providing, allowing, contracting to provide or arranging to provide alcoholic beverages for no charge or at reduced prices, or from providing, allowing, contracting to provide or arranging to provide food or lodging for no charge or at nominal prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game, except that this provision shall not apply to rewards received by patrons in exchange for points or credits accrued under any form of a players' club program; and

19. ~~20.~~requiring the Nation, the ~~Tribal~~Gaming Enterprise or a Management Contractor to report to the ~~secretary of state~~Secretary of State, in the same manner and at the same times as are required of political committees under the provisions of the State's Campaign Reporting Act (NMSA 1978 §§ 1-19-25 through 1-19-36) any and all contributions, whether directly or through an agent, representative or employee, of any moneys derived from revenue from the Gaming Enterprise, or of anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act and provided that in the event any report required to be made hereunder is not made within the time specified herein, or is false or incomplete in any respect, the Nation shall be liable to pay to the ~~secretary of state~~Secretary of State a penalty in

the amount of fifty dollars (\$50.00) for each working day after the day on which the report was due until the day on which the complete or true report is filed, up to a maximum of five thousand dollars (~~\$5000~~\$5,000), except that with respect to the report due on the Friday before an election the penalty shall be five hundred dollars (\$500) for the first working day after the due date and fifty dollars (\$50.00) per working day thereafter, up to a maximum of five thousand dollars (~~\$5000~~\$5,000).

The Tribal Gaming Agency will provide true copies of all Navajo Nation laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment or approval, if any.

C. Audit and Financial Statements.

1. Annual Audit. Not less than annually at the Gaming Enterprise's Fiscal Year End, the Tribal Gaming Agency shall require at the expense of the Gaming Enterprise, an audit of its financial statements by an independent certified public accounting firm and an accompanying report of independent certified public accountants covering all financial activities of the Gaming Enterprise in the State of New Mexico. The report shall include written verification by the independent certified public accountants of the accuracy of the quarterly Adjusted Net Win calculation as required by Section 11(C). The financial statements shall be prepared in accordance with generally accepted accounting principles, except as modified in Section 11(C) of this Compact for purposes of calculating Adjusted Net Win. All books and records relating to Class III gaming shall be retained for a period of at least five (5) years from the date of creation, as required by 25 C.F.R. §571.7(c). The independent certified public accountant shall issue a report on audited financial statements of the Nation's Gaming Facilities in the State of New Mexico. The independent certified public accountant shall perform the audit in accordance with generally accepted auditing standards published by the American Institute of Certified Public Accountants, except as modified in Section 11(C) of this Compact for purposes of calculating Adjusted Net Win, and submit the audited financial statements, along with any reports or management letter(s) the accountant has prepared, to the Tribal Gaming Agency within one hundred twenty (120) days after the Gaming Enterprise's fiscal year end. Promptly upon receipt of the audited financial statements, and in no event later than 120 days after the fiscal year end, the Tribal Gaming Agency shall provide copies of the audited financial statement to the State Gaming Representative, along with copies of any reports or management letter(s) the accountant has prepared concerning the audit. If the Gaming Enterprise changes its fiscal year end, it may elect either to prepare financial statements for a short fiscal year or for an extended fiscal year, but in no event shall an extended fiscal year extend more than fifteen (15) months.

~~C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least five (5) years from the date of creation, as required by 25 C.F.R. § 571.7(e). Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the Gaming Enterprise, including written verification of the accuracy of the quarterly Net Win calculation, by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally~~

~~accepted accounting principles and shall specify the total amount wagered in Class III Gaming on all Gaming Machines at the Nation's Gaming Facility for purposes of calculating "Net Win" under Section 11 of this Compact using the format specified therein. The financial statement and audit report shall be submitted to the Tribal Gaming Agency, the State Gaming Representative, and the State Treasurer, within one hundred twenty (120) days of the close of the Nation's fiscal year.~~

2. Such documents shall be subject to the provisions of § 4(E)(4) of this Compact.

3. The Nation will maintain the following records for not less than five (5) years:

(a) ~~1~~ revenues, expenses, assets, liabilities and equity for ~~each~~ the Gaming Enterprise;

(b) ~~2~~ daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;

(c) ~~3~~ individual and statistical game records, except for card games, to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

(d) ~~4~~ contracts, correspondence and other transaction documents relating to all vendors and contractors;

(e) ~~5~~ records of all ~~Navajo Nation tribal~~ gaming enforcement activities;

(f) ~~6~~ audits prepared by or on behalf of the Nation; and

(g) ~~7~~ personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

4. Auditors. Independent certified public accountants engaged to do audits pursuant to subsection C(1) of this Section shall be licensed by the New Mexico Public Accountancy Board. The State Gaming Representative shall be designated in the engagement letter as an intended user of the auditor's report on the financial statements and authorized to confer with the independent certified public accountant concerning the annual audit described in subsection C(1) of this Section.

5. Contracts with Certified Public Accountants. Contracts with independent certified public accountants shall provide that working papers supporting the annual audit described in subsection C(1) of this Section shall be made available for review by the State Gaming Representative upon request. Such review shall be for the sole purpose of assisting the State Gaming Representative to evaluate compliance of the Nation with the provisions of this Compact. The State Gaming Representative shall notify the Nation and the Tribal Gaming

Agency of any such request within sixty (60) days of receipt of the annual audit. Upon receipt of the State Gaming Representative's request to review the working papers, the Tribal Gaming Agency shall forward the State Gaming Representative's request to the independent certified public accountant, provide the State Gaming Representative with contact information for the independent certified public accountant and facilitate the review of the working papers by the State Gaming Representative in the State of New Mexico within sixty (60) days of the receipt of the State Gaming Representative's request. The Tribal Gaming Agency may participate in the review of the working papers and any interview of the auditors by the State Gaming Representative.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the ~~gaming-enterprise~~Gaming Enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

E. State Gaming Representative.

1. Upon written request by the State to the ~~Nation~~Tribal Gaming Agency, the ~~Nation-Tribal Gaming Agency~~ will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5 of this Compact. The ~~Nation-Tribal Gaming Agency~~ shall consider any information or recommendations provided to it by the State as to any such person or entity, but the ~~Nation Tribal Gaming Agency and the Gaming Enterprise~~ shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Nation has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the Tribal Gaming Agency will certify annually to the State Gaming Representative that the Nation has met its obligations under this Compact in accordance with the instructions and form set forth in the attached Appendix. The Tribal Gaming Agency shall allow the State Gaming Representative to inspect all reports, workpapers, or other documentation supporting the Gaming Enterprise's Compliance Report.

3. The State Gaming Representative shall have the right to inspect a Gaming Facility, Class III Gaming activity, including all Gaming Machines, and inspect and verify all records relating to Class III Gaming of the Nation, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Enterprise business hours, immediately after notifying the Tribal Gaming Agency and Gaming Enterprise of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Nation, in its sole discretion, may require an employee of the Gaming Enterprise or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Nation imposes such a requirement, the Nation shall require such an employee of the Gaming Enterprise or the Tribal Gaming Agency to be available at all times for such purpose;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State;

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Enterprise; and

(e) in accordance with the additional requirements set forth in the attached Appendix.

The State Gaming Representative may contract with private persons, firms or other entities for the purpose of performing certain of his functions, but the State Gaming Representative will be the single contact with the Nation and may be relied upon as such by the Nation. The State Gaming Representative and any contractors shall have only those powers and rights as specified in this Compact.

4. Confidentiality.

(a) ~~4.a)~~ Any information, documents or communications provided to the State Gaming Representative, his agents or contractors, or to any other official, agency or entity of the State (all of which are collectively hereinafter referred to as “the State entities”) by the Nation, the Tribal Gaming Agency or the Gaming Enterprise, or prepared from information obtained from the Nation, the Tribal Gaming Agency or the Gaming Enterprise, or any information, documents or communications provided to the Nation, the Tribal Gaming Agency, or the Gaming Enterprise by any State entity, or prepared from information obtained from any State entity, under the provisions of this Compact or under the provisions of the Predecessor Agreements, are confidential. Any State entity that has received any information, documents or communications from the Nation, the Tribal Gaming Agency or the Gaming Enterprise: i) may release or disclose the same only with the prior written consent of the Nation or pursuant to a lawful court order after timely notice of the proceeding has been given to the Nation; ii) shall maintain all such information, documents and communications in a secure place accessible only to authorized officials and employees of the State entity that has received the same; and iii) shall adopt procedures and regulations to protect the confidentiality of the information, documents and communications provided by the Nation, Tribal Gaming Agency or Gaming Enterprise.

(b) ~~b)~~ These prohibitions shall not be construed to prohibit:

- i) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;
- ii) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;
- iii) publishing the terms of this Compact;
- iv) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and
- v) complying with subpoenas or court orders issued by courts of competent jurisdiction.

(c) ~~c)~~ Notwithstanding the foregoing, the Nation agrees that:

- i) the following documents and information may be released by a State entity to the public: the ~~Nation's gaming ordinance and regulations~~ Ordinance of the Tribal Gaming Agency; official rulings of the Tribal Gaming Agency in matters not subject to a confidentiality order imposed by the Agency; other information and documents of the Tribal Gaming Agency or the Gaming Enterprise ordinarily available to the public; quarterly Net Win figures used as the basis for computation of the Nation's revenue sharing payment under the provisions of Section 11 of this Compact; information that exists as a result of the requirements in Section 4(B)(16); and correspondence between the Nation or a ~~Navajo Nation tribal~~ entity and a State entity, unless such correspondence is specifically labeled "Confidential;"
- ii) a State entity may release to the public aggregate figures compiled by totaling comparable figures from the annual financial statements of all of the New Mexico gaming tribes; and
- iii) the report of the annual audit of the Gaming Enterprise that is provided by the Nation to the State Gaming Representative shall be available to the public to the same extent that similar information that is required to be provided to the State by non-Indian gaming entities is available to the public, pursuant to the provisions of applicable law and the policies and regulations of the Gaming Control Board, at the time the request for the report of the annual audit is made.

5. To the fullest extent allowed by State law, the Nation shall have the right to inspect State records concerning all Class III Gaming conducted by the Nation; the Nation shall have the right to copy such State records, with the Nation bearing the reasonable cost of copying.

6. The Nation shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. The Nation and the State

agree that to require the State to keep track of and account to the Nation for all such costs would be unreasonably burdensome, and that a fair estimate of the State’s costs of such activity as of January 1, 2007, is ~~One Hundred Sixteen Thousand Dollars (\$116,000) per year~~ 2012, is one hundred twenty-one thousand eight hundred dollars (\$121,800) per year as long as the Nation operates two Gaming Facilities, and that those costs will increase both over time and as the Nation adds additional Gaming Facilities. The Nation therefore agrees to pay the State the sum of ~~One Hundred Sixteen Thousand Dollars~~ one hundred twenty-one thousand eight hundred dollars (\$116,000\$121,800) per year as reimbursement of the State’s ~~costs~~ cost of regulation as long as the Nation operates two Gaming Facilities, which amount shall increase by five percent (5%) as of January 1 of ~~2012-2017~~, and as of January 1 of every fifth year thereafter as long as this Compact remains in effect, such sum to be paid in quarterly payments of one-fourth of the annual amount due each, in advance. The Nation and the State further agree that such amount fairly reflects the State’s costs of regulation. (the “Regulatory Reimbursement Payment”). As the Nation adds additional Gaming Facilities, it agrees to pay the following additional Regulatory Reimbursement Payment:

<u>Number of Gaming Facilities</u>	<u>Regulatory Reimbursement Base Payment Per Year (to be increased pursuant to this Section)</u>
<u>Up to Two (2) Gaming Facilities</u>	<u>\$121,800</u>
<u>Three (3) Gaming Facilities</u>	<u>\$146,800</u>
<u>Four (4) Gaming Facilities</u>	<u>\$171,800</u>
<u>Five (5) Gaming Facilities</u>	<u>\$196,800</u>

The amount of the Nation’s Regulatory Reimbursement Payment in any given year shall be determined by the table above on January 1st of that year, based on the number of Gaming Facilities open and operating Class III Gaming. By way of example, in 2017, assuming the Nation is operating three (3) Gaming Facilities, the Regulatory Reimbursement Payment will be \$154,140 (\$146,800 increased by five percent (5%)). Similarly, five years thereafter in 2022, assuming the Nation is operating five (5) Gaming Facilities as of January 1st, the Regulatory Reimbursement Payment will be \$216,972 (\$196,800 increased by 5% to \$206,640 and increased by 5% again after five years to \$216,972).

7. In the event the State believes that the Nation is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. The Nation shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

G. At least annually, appropriate representatives of the Nation shall meet with one or more representatives of the Office of the Governor appointed by the Governor, one or more

members of the House of Representatives appointed by the Speaker of the New Mexico House of Representatives, and one or more members of the Senate appointed by the President Pro Tempore of the New Mexico Senate, to discuss matters of mutual interest arising under the terms of this Compact and concerning Indian gaming in New Mexico. Such meeting shall be coordinated so as to involve the representatives of as many New Mexico gaming tribes as possible, and shall be conducted in the context of the government-to-government relationship between the State and the Nation.

H. Problem Gambling and Delinquent Child Support Payments.

1. Signage. The Gaming Enterprise shall post at all public entrances and exits of each Gaming Facility, signs in both English and Spanish, stating that help is available if a person has a problem with gambling and, at a minimum, provide an appropriate toll-free crisis hotline telephone number and information on the availability of a self-exclusion program with the State Gaming Representative;

2. Self-Exclusion Program. By December 31, 2013, the State Gaming Representative and the Tribal Gaming Agency shall comply with the following procedures to allow problem gamblers to voluntarily exclude themselves from Gaming Facilities:

(a) Nothing in this section shall preclude the Tribal Gaming Agency from operating its own self-exclusion program in addition to these procedures.

(b) The State Gaming Representative shall:

i) establish a list of persons who voluntarily seek to exclude themselves from Gaming Facilities;

ii) create an application to compile identifying information concerning the self-excluded person;

iii) establish procedures for placement on and removal from the list; and

iv) provide the compiled information to the Tribal Gaming Agency on a monthly basis.

(c) The Tribal Gaming Agency shall:

i) require the Gaming Enterprise to train appropriate gaming personnel for the identification of self-excluded persons who enter or attempt to enter the Gaming Facility and take reasonable steps to identify the self-excluded person and to promptly escort the self-excluded person from the Gaming Facility;

ii) require the Gaming Enterprise to remove self-excluded persons from mailing lists for advertisements or promotions and any players' club or other similar membership-type promotions, and return the cashable value, if any, of the self-excluded person's membership in the players' club or other similar membership-type promotions; and

iii) require that the self-excluded person forfeit all winnings (whether cash, property, or in any other form), credits, tokens or vouchers received from the Gaming Facility, and that all money or other property forfeited shall be used by the Gaming Enterprise in addition to the one-half percent (.5%) of the net win of its Gaming Machines to fund or support programs for the treatment and assistance of compulsive gamblers pursuant to Section 4(B)(16) of this Compact.

(d) If a self-excluded person is removed from a Gaming Facility, the Tribal Gaming Agency shall report to the State Gaming Representative, at a minimum, the name of the self-excluded person, security staff involved, date of removal, amount of money forfeited, if any, and action taken, if any. This written report shall be provided to the State Gaming Representative.

(e) Removal From Self-Exclusion List. If a self-excluded person is removed from the self-exclusion list by the State Gaming Representative, the State Gaming Representative shall provide written notice to the Tribal Gaming Agency of the self-excluded person's removal from the self-exclusion list.

(f) The self-exclusion list is not open to public inspection, and the Tribal Gaming Agency and State Gaming Representative shall ensure that it remains confidential except for use by:

i) appropriate law enforcement agencies if needed in the conduct of an official investigation or unless ordered by a court of competent jurisdiction; or

ii) persons designated by either the Tribal Gaming Agency or the State Gaming Representative for the purposes of administrating and implementing the self-exclusion program.

(g) Notwithstanding Section 8(D) of this Compact, the Nation, the Gaming Enterprise, or the Tribal Gaming Agency shall not be deemed to have waived its sovereign immunity and will not be liable with respect to any self-excluded person for harm, monetary or otherwise, which may arise as a result of:

i) its efforts to exclude a person identified on the self-exclusion list;

ii) the failure of the Gaming Enterprise or the Tribal Gaming Agency to withhold or restore gaming privileges from or to a self-excluded person;

iii) the permitting of a self-excluded person to engage in gaming activities or enter into a Gaming Facility; or

iv) the disclosure or publication in any manner, other than a willful and unauthorized disclosure or publication, of the identity of any self-excluded person or persons.

3. Delinquent Child Support Payments. By December 31, 2013, the Nation shall require the Gaming Enterprise to establish procedures for collection of delinquent child support payments as reported by the State Gaming Representative, pursuant to the following:

(a) The State Gaming Representative shall be responsible for making a database available online to the Gaming Facilities to determine whether a person seeking to redeem a payout of \$1,200.00 or more is in arrears in child support in New Mexico.

(b) The Gaming Enterprise shall:

i) check the name of a patron winning a payout of more than \$1,200 or more against the list of names and social security numbers provided by the State Gaming Representative;

ii) submit the entire payout of a winning patron whose name appears on the list provided by the State Gaming Representative within forty-eight (48) hours of verification for further processing to the appropriate State Agency; and

iii) pay the winning patron and submit the list of patrons paid, including patron name, jackpot, payout amount and the patron's social security number, to the Child Support Enforcement Division of the Human Services Department ("CSED") within forty-eight (48) hours in instances when the online system is down for technical reasons, power outages, or lack of Internet connection

(c) The Nation, Tribal Gaming Agency, and the Gaming Enterprise, or any employee of these entities are not liable for monetary damages to the State or person who is owed child support payments by the patron being paid out, for failure to match a winner's name to a name on the list provided by the State Gaming Representative, or for the inability to notify the State Gaming Representative of a match, or for failure to submit winnings. For purposes of this Section, the Nation, the Tribal Gaming Agency, or the Gaming Enterprise shall not be deemed to have waived its sovereign immunity to any entity or person for harm, monetary or otherwise.

SECTION 5. Licensing Requirements.

A. License Required. The Gaming Facility operator, but not including the Nation, including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key employees (if the Nation hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the ~~Nation-Gaming Enterprise~~ or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands. The Tribal Gaming Agency shall comply fully with the requirements of this Section and of the Indian Gaming Regulatory Act, especially at 25 U.S.C. §§ 2710-2711, and the regulations issued thereunder at 25 C.F.R. Parts 550-559, as well as the requirements of the Nation's ~~gaming ordinance and any regulations issued thereunder~~ Ordinance, in processing license applications and issuing licenses.

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B. License Application. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph and the fee required by the Tribal Gaming Agency.

C. Background Investigations. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

D. Provision of Information to State Gaming Representative. Whenever the Tribal Gaming Agency is required by federal or Navajo Nation law or regulations to provide to the National Indian Gaming Commission ("the Commission") any information, document or notice relating to the licensing of any key employee or primary management official of the Gaming Enterprise, a copy of such information, document or notice shall also be provided to the State Gaming Representative. The State Gaming Representative shall be entitled to the same right to request additional information concerning an applicant licensee, to comment on the proposed licensing of any applicant licensee, and to supply the Tribal Gaming Agency with additional information concerning any applicant licensee, as is enjoyed by the Commission.

SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be used in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies used by the Nation shall meet or exceed the standards thereby adopted.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Nation shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Nation to license those persons in accordance with applicable federal and Navajo Nation law.

C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Nation.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the allegation of noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within twenty (20) days after service of the notice set forth in Paragraph A(1) of this section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within ten (10) days of receipt of notice from the complaining party, unless the parties agree to a longer period, but if the responding party takes neither action within such period the complaining party may invoke arbitration by written notice to the responding party within ten (10) days of the end of such period.

3. Unless the parties agree in writing to the appointment of a single arbitrator, or as otherwise provided below, the arbitration shall be conducted before a panel of three (3) arbitrators. The arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Nation will select a second arbitrator, and the two so chosen shall select a third arbitrator. The party that served the written notice of noncompliance shall select its arbitrator within thirty (30) days after the party has invoked arbitration and the responding party shall select its arbitrator within thirty (30) days of the selection of the first arbitrator. If the responding party fails to select an arbitrator within the thirty (30) days provided, the parties shall proceed to arbitration with the single arbitrator selected by the party that served the written notice of noncompliance. If the responding party selects an arbitrator within the specified time period, the two arbitrators shall select a third arbitrator within thirty (30) days of the responding party's selection. If the third arbitrator is not chosen within thirty (30) days after the second arbitrator is selected, the third arbitrator will be chosen by the American Arbitration Association. The arbitrators thereby selected shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the matters at issue. The arbitrators shall determine, after hearing from each party, whether the arbitration proceeding or any portions thereof shall be closed to the public, but in the absence of such determination the proceedings shall be open to the public. The arbitrators shall make determinations as to each issue presented by the parties, but the arbitrators shall have no authority to determine any question as to the validity or effectiveness of this Compact or of any provision hereof. Any arbitration pursuant to Section 11(D)(6)(c) shall be by Last Best Offer.

4. All parties shall bear their own costs of arbitration and attorneys' fees.

5. The results of arbitration shall be final and binding, and shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Nation in any court of competent jurisdiction. For purposes of any such action, the State and the Nation acknowledge that any action or failure to act on the part of any agent or employee of the State or the Nation, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Nation.

B. Nothing in Subsection 7(A) shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Section shall be deemed a waiver of the Nation's sovereign immunity. Nothing in this Section shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Visitors.

A. Policy Concerning Protection of Visitors. The safety and protection of visitors ~~to a Gaming Facility~~ is a priority of the Nation, and it is the purpose of this Section to assure that any ~~such persons~~ visitors who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation. To that end, in this Section, and subject to its terms, the Nation agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in a Tribal, State, or other court of competent jurisdiction, at the visitor's election, with respect to claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, any such claim may be brought in state district court, including claims arising on ~~Navajo Nation tribal~~ land, unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.

B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Nation, Gaming Enterprise, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Paragraph A of this Section. The policies shall provide bodily injury and property damage coverage in an amount of at least ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) annual aggregate. The Nation shall provide the State Gaming Representative annually a certificate of insurance showing that the Nation, its agents and employees are insured to the required extent and in the circumstances described in this Section.

C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this section must be commenced by filing an action in Tribal, State, or other court of competent jurisdiction or a demand for arbitration within three (3) years of the date the claim accrues.

D. Specific Waiver of Immunity and Choice of Law. The Nation, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of ten million dollars (\$10,000,000) per occurrence, asserted as provided in this section. This is a limited waiver and does not waive the Nation's immunity from suit for any other purpose. The Nation shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured, up to the limits of liability set forth in this Paragraph. The Nation agrees and the State agree that in any claim brought under the provisions of this Section, New Mexico law shall govern ~~the substantive rights of the claimant, and shall be applied, as applicable, by the forum in which the claim is heard, except that the tribal court may but shall not be required to apply New Mexico law to a claim~~

~~brought by a member of the Nation if the claimant pursues the claim in State Court, and the tribal law of the forum shall apply if the claim is brought in Tribal Court.~~

E. Election by Visitor. A visitor having a claim described in this section may pursue that claim in ~~any court of competent jurisdiction, or in~~ binding arbitration, ~~or Tribal, State, or other court of competent jurisdiction.~~ The visitor shall make a written election that is final and binding upon the visitor.

F. ~~Tribal Court. The Nation shall establish written procedures for the disposition of tort claims arising from bodily injury or property damage alleged to have been suffered by visitors and shall enact such Navajo Nation law as is necessary to implement these procedures. The procedures shall include all time limits applicable to the disposition of the tort claim and a provision that, upon request, the visitor, or the visitor's designated representative, shall be provided with a copy of the procedures as well as the name, address and telephone number of the Gaming Enterprise and the mailing address and telephone number of the clerk of the Navajo court.~~

G. ~~F.~~ Arbitration. Arbitration pursuant to an election by a visitor as provided in Subsection E of this section shall be conducted as follows:

1. ~~the~~ The visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;

2. ~~Unless the parties agree, in writing, to the appointment of a single arbitrator,~~ the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of receipt of the demand, and the two arbitrators shall select a third arbitrator, but in the event ~~that either party fails to designate an arbitrator within thirty (30) days, or~~ the two arbitrators ~~designated by the parties~~ cannot agree on the selection of the third arbitrator within thirty (30) days of their appointment, ~~they the existing arbitrator(s)~~ shall apply to the American Arbitration Association to appoint the ~~third arbitrator;~~ remaining arbitrator(s);

3. ~~the~~ The arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and

4. ~~the~~ The award of the arbitration panel shall be final and binding, and may be enforced in a court of competent jurisdiction.

H. ~~G.~~ Increase in Liability Limits. As of the fifth anniversary of this Compact, and at five-year intervals thereafter, the liability insurance coverage requirements set forth in Paragraph B of this Section, and the limit on the Nation's waiver of sovereign immunity set forth in Paragraph D of this Section, shall be increased by a percentage equal to the percentage increase in the CPI-U published by the Bureau of Labor Statistics of the United States Department of Labor, for the same period, rounded to the nearest one hundred thousand dollars (\$100,000).

I. ~~H.~~ Public Health and Safety. The Nation shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the

Uniform Fire Code and the Uniform Plumbing Code, and any and all construction and maintenance of the Gaming Facility shall comply with such standards. Inspections shall be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Nation agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Nation. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Conditions for Execution; Effective Date.

A. The parties acknowledge that ~~they certain disputes have been engaged in litigation, captioned *State of New Mexico v. Jicarilla Apache Tribe, et al.*, No. 00-0851 (D.N.M.) (the "Lawsuit"), that was initiated by the State in United States District Court on June 13, 2000, in which the State seeks an injunction against the Nation's conduct of Class III gaming arisen~~ under the Predecessor Agreements ~~unless the Nation pays the State the full amount that in which~~ the State claims it is owed certain amounts under the revenue sharing provision of the Predecessor Agreements. The Nation disputes ~~the validity of such provision of the Predecessor Agreements that claim~~, but the parties have agreed to settle the dispute ~~addressed in the Lawsuit~~, and have agreed to enter into this new Compact.

B. This Compact may not be executed by the Governor of the State unless and until it has been executed by the appropriate representative of the Nation, and until the State ~~Attorney General Gaming Representative~~ has certified to the Governor in writing that the Nation and the State have negotiated a complete settlement of the issues in dispute ~~in the Lawsuit (except that such settlement shall be contingent upon this Compact going into effect under the provisions of IGRA)~~, and that the Nation has either paid in full the amount agreed to by the terms of the settlement, ~~into the registry of the federal court~~, or has entered into a binding and fully enforceable agreement for the payment of such amount that is acceptable to the ~~Attorney General State Gaming Representative~~. Upon receiving such certification, the Governor shall execute the Compact and forward it to the Secretary of the Interior for approval. ~~Upon the Secretary's affirmative approval of this Compact, as set forth in Paragraph C of this Section, such sum, plus interest, shall be immediately paid into the State General Fund. In the event the Secretary fails to affirmatively approve this Compact, such sum, plus interest, shall be immediately repaid to the Nation.~~

C. This Compact shall take effect upon publication of notice in the Federal Register of its approval by the Secretary of the Interior, or of the Secretary's failure to act on it within 45 days from the date on which it was submitted to him; ~~provided, however, that notwithstanding its taking effect, the parties expressly agree that the provisions of this Compact shall remain suspended, and shall confer no rights or obligations on either party, and that the terms and provisions of the Predecessor Agreements shall remain fully in force and effect, subject to the Nation's and the State's claims in the Lawsuit, unless and until the Secretary shall have affirmatively approved this Compact, pursuant to 25 U.S.C. § 2710(d)(8)(A).~~ Upon the publication of notice of the Secretary's ~~affirmative~~ approval of this Compact in the Federal Register, the Predecessor Agreements shall be and become null and void, and of no further effect, ~~and any and all actions as between the Nation and the State arising out of the Predecessor~~

~~Agreements, including dispute resolution proceedings, shall thereafter be dismissed with prejudice with no relief to either party,~~ and the terms and provisions of this Compact shall go into full force and effect, fully supplanting and replacing the Predecessor Agreements.

SECTION 10. Criminal Jurisdiction.

A. The Nation and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Nation and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Nation and the State hereby agree that consistent with the Indian Civil Rights Act, 25 U.S.C. § 1301(2), in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof ~~or~~ that occurs on the premises of the ~~Nation's~~ Gaming Facility, ~~that is committed by any person who is not a member of the Nation~~non-Indian, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.

C. Immediately upon becoming aware of any such suspected crime by a ~~nonmember of the Nation~~non-Indian, the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the alleged crime occurred, supplying all particulars available to the Navajo Nation entity at the time. The Nation agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State; provided, however, that in the event of emergency circumstances involving a possible violation, the Nation and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property. The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this section since the last report or that was still pending at the time of the last report. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

E. The district attorney for a district in which the Nation conducts Class III Gaming may decline to accept referrals of cases under the provisions of this section unless and until the Nation has entered into a Memorandum of Understanding with the office of the district attorney to which Memorandum of Understanding the United States Attorney for the District of New

Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and ~~Navajo Nation tribal~~ law enforcement personnel in the investigation and prosecution of any such case, payments by the Nation to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.

SECTION 11. Revenue Sharing.

A. Consideration. The Nation shall pay to the State a portion of its Class III Gaming revenues identified in and under procedures of this Section, in return for which the State agrees that the Nation has the exclusive right within the State to conduct all types of Class III Gaming described in this Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations as such organizations are described in 1997 Laws ch. 190, §5(FF).

B. Revenue to State. The parties agree that, after the effective date hereof, the Nation shall make the quarterly payments provided for in Paragraph C of this Section. Each payment shall be made to the State Treasurer for deposit into the General Fund of the State.

C. Calculation of Payment Amounts.

~~1. As used in this Compact, "Net Win" means the total amount wagered in Class III Gaming at a Gaming Facility, on all Gaming Machines less:~~

~~(a) the amount paid out in prizes to winning patrons, including the cost to the Nation of noncash prizes, won on Gaming Machines. The phrase "won on Gaming Machines" means the patron has made a monetary wager, and as a result of that wager, has won a prize of any value. Any rewards, awards or prizes, in any form, received by or awarded to a patron under any form of a players' club program (however denominated) or as a result of patron related activities, are not deductible. The value of any complementaries given to patrons, in any form, are not deductible;~~

1. Notwithstanding generally accepted accounting principles or any statements or pronouncements from the American Institute of Certified Public Accountants, "Adjusted Net Win" means the combined Net Win from the direct play of all Class III Gaming Machines, at all Gaming Facilities on the Nation's Indian Lands, with the following adjustments as illustrated in the Appendix:

(a) Add thirty-five percent (35%) of the prizes won as a result of Free Play and Point Play, calculated as follows:

i) multiply the face value of all Quarterly Free Play and Point Play by the Quarterly Payout Percentage; and

ii) multiply the resulting amount by thirty-five percent (35%).

(b) Subtract the amount paid to the State by the Nation under the provisions of Section 4(E)(6) of this Compact; and

(c) Subtract the sum of ~~two~~three hundred seventy-five thousand dollars (~~\$275,000~~\$375,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three percent (3%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

(d) Except as provided in subsection (a) above, any rewards, awards or prizes, in any form, received by or awarded to a patron under any form of a players' club program (however denominated) or as a result of patron-related activities, are not to be subtracted from Net Win in calculating Adjusted Net Win. The value of any complementaries or any prizes not directly awarded as a result of Class III Gaming Machine play, including but not limited to Hotseat Jackpots given to patrons in any form, are not to be subtracted from Net Win in calculating Adjusted Net Win. Accounting for wide-area progressive systems and participation fees is set forth in the attached Appendix.

2. The Nation shall pay the State a percentage of its Adjusted Net Win, determined in accordance with this chart:

<u>Annual Adjusted Net Win (July 1—June 30)</u>	2007—2015 <u>2013- 2015</u>	2015—2030 <u>2015- 2030</u>	2030—2030 <u>2030-2037</u>
Under \$15 million:	3% of the first \$5 million, and 9.25 <u>8</u> % on the rest	3% of the first \$5 million, and 9.50 <u>8.25</u> % on the rest	3% of the first \$5 million, and 10.25 <u>8.5</u> % on the rest
<u>\$15 million - \$40 million</u>	<u>8%</u>	<u>8.25%</u>	<u>8.5%</u>
\$15—\$50 <u>40 million - \$70 million</u>	9.25%	9.50 <u>9.5</u> %	10.25%
More than \$50—70 <u>-\$150 million:</u>	9.75%	10. 00 %	% 10.75%
<u>Over \$150 million</u>	<u>10%</u>	<u>10.25%</u>	<u>10.75%</u>

3. Payments due pursuant to ~~these terms—this Section 11(C)~~ shall be paid quarterly, no later than twenty-five (25) days after the last day of each calendar quarter, and shall be based upon the Net Win during the preceding quarter. The Nation shall ascertain the applicable revenue sharing percentage in Section 11(C)(2) above and shall base its quarterly payments on the following factors: (1) the prior year’s total “Adjusted Net Win” amount and the applicable revenue sharing percentage; and (2) its best good faith estimate of its annual “Adjusted Net Win” for the July ~~1—1~~ June 30 period. In the event its total “Adjusted Net Win” for any such period varies from such estimate, such that the amount due the State for the first three quarters as set forth in Section 11(C)(2), above, is different from the amount paid, the payment due for the fourth quarter shall include any additional amounts due for the first three quarters, or shall reflect a credit for any overpayment. Any payment or any portion thereof that is not made within ten (10) days of the due date shall accrue interest at the rate of ten percent

(10%) per annum, from the original due date until paid. The Nation shall accompany any payment to the State with a detailed breakdown of the particular obligation to which such payment applies, and the basis for the calculation of such payment on a form provided by the State Gaming Representative.

4. For purposes of calculating ~~“Net Win,”~~ revenue sharing in accordance with the table set forth above, the Nation shall combine the ~~total amount wagered-~~ “Adjusted Net Win” on all Class III Gaming Machines at all of its ~~gaming locations-~~ Gaming Facilities on its Indian Lands.

D. Limitations.

1. The Nation’s obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that that obligation shall terminate altogether in the event the State:

(a) passes, amends, or repeals any law, or takes any other action, that would directly or indirectly attempt to restrict, or has the effect of restricting, the scope or extent of Indian gaming;

(b) licenses, permits or otherwise allows any person or entity other than six licensed horse racetracks and veterans and fraternal organizations as described in 1997 Laws, ch.190, §5(FF) to operate Gaming Machines;

(c) permits any licensed horse racetrack to operate a larger number of Gaming Machines, or to operate any Gaming Machines for longer hours, than is set forth in subsection (D)(2)(e), below, or to operate any Gaming Machines outside of its licensed premises, or to operate any Table Game;

(d) licenses, permits or otherwise allows any non-Indian person or entity to engage in any other form of Class III gaming other than a state-sponsored lottery, ~~parimutuel~~ pari-mutuel betting on horse racing and bicycle racing, operation of Gaming Machines, and limited fundraising by non-profit organizations, as set forth in subsection (D)(2), below; and

(e) takes affirmative action to authorize Internet Gaming by any person or entity other than the Nation in one of the following ways:

i) passes state legislation authorizing persons or entities to operate Internet Gaming;

ii) elects to authorize Internet Gaming in the State pursuant to federal law that gives the State the express option to allow or prohibit Internet Gaming; or

iii) enters into an interstate Internet Gaming Compact.

2. The parties agree that the State’s allowance of the following forms of Class III Gaming, subject to the limitations expressly set forth herein, shall not be considered an expansion of nontribal Class III gaming for purposes of this agreement, and shall have no effect

on the Nation's obligation to make the payments provided for in Paragraphs B and C of this Section:

(a) the operation of a State lottery as further described in the attached Appendix;

(b) the operation of Gaming Machines by any fraternal or veterans organization as described in 1997 Laws ch. 190, § 5(FF)-, but only for the benefit of such organization's members;

(c) limited fundraising activities conducted by nonprofit tax-exempt organizations;

(d) the conduct by licensed horse racetracks and bicycle tracks of ~~parimutuel~~ pari-mutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country; ~~and~~

(e) the operation by a licensed horse racetrack of Gaming Machines on days on which live or simulcast horse racing occurs, provided that such operation is limited to no more than eighteen (18) hours in any one day, and to no more than a total of one hundred twelve (112) hours in any calendar week, and provided further that no licensed horse racetrack shall have more than six hundred (600) licensed Gaming Machines, nor be authorized to operate more than seven hundred and fifty (750) Gaming Machines; ~~and~~

(f) the conduct of Internet Gaming by any person or entity pursuant to federal legislation, administrative action, or other authority under which the State does not have the express option to allow or prohibit Internet Gaming, or pursuant to an order or interpretation of existing law by a court of competent jurisdiction. The parties agree that the future legal status of Internet Gaming is uncertain and that the agreement to temporarily cease and negotiate modifications to revenue sharing payments, as provided in Section (11)(D)(6), is intended only to cover those circumstances in which the State intentionally, knowingly, and affirmatively takes steps to engage in or permit Internet Gaming.

3. The limitations set forth in this Section shall not prohibit a horse racetrack from relocating, selling, transferring or assigning its operations in accordance with applicable procedures and authorizations set forth in New Mexico law.

4. Prior to granting the approval of an application for a racing license for a horse racetrack other than the five horse racetracks holding such licenses as of January 1, 2007, or the approval of an application by a licensed horse racetrack to move its racing and gaming facilities to a new location after January 1, 2007, the State Racing Commission shall adopt, put into effect, and shall have substantially complied with regulations requiring the Commission to solicit and consider the Nation's views on the application.

5. Unless the State takes affirmative action to authorize Internet Gaming as set forth in Section 11(D)(1)(e), or Internet Gaming is authorized on non-Indian Land by a future change -in federal law, the Nation agrees not to engage in Internet Gaming in the State of New Mexico.

6. Should the State authorize Internet Gaming as set forth in Section 11(D)(1)(e), then the Nation shall be authorized to engage in or offer Internet Gaming; provided further that, in such instance, if the Nation is offering Internet Gaming:

(a) The Nation shall make a revenue contribution based upon Net Win from Internet Gaming (“the Internet Payment”) pursuant to Section 11(C). In the case of Internet Gaming where the game is that commonly known as poker, Net Win from Internet Gaming means the total amount of money paid to the Nation for play of such Internet Gaming, provided that such term shall not include player deposits or wagers. The Nation shall make the Internet Payment pursuant to the terms of 11(C)(3) until the conclusion of the procedures set forth in subsection 11(D)(6)(b) and (c) below. Under no circumstances will this Section be interpreted to allow the taxation of Class II gaming.

(b) As soon as reasonably practicable, but no later than sixty (60) days after Internet Gaming has been authorized, the Nation and the State shall commence good faith negotiations to reach an agreement on the rights and obligations of each party with respect to Internet Gaming, including the amount of the payment to the State for the right to operate Internet Gaming and the amount of revenue sharing to be paid in exchange for the significant benefit of the remaining exclusivity provided by the State pursuant to this Compact (the “Internet Agreement”). It is the intent of the parties that any change in the amount of revenue sharing will be based upon demonstrable changes in revenue from the authorization of Internet Gaming. In order to establish with certainty the parties’ rights and obligations at the earliest possible date, the parties further intend to expedite their negotiations to conclude the Internet Agreement and resume revenue sharing payments. The parties shall conclude negotiations in good faith as soon as possible, but no more than one hundred twenty (120) days after the State’s authorization of Internet Gaming. In no instance shall the Internet Agreement require the Nation to pay a higher amount than those terms offered to other non-tribal entities offering Internet Gaming in the State and the operational terms shall be comparable to other entities operating Internet Gaming in the State. In addition, under no circumstances will the parties be obligated to negotiate terms contained in this Compact, other than those terms referenced in Sections 11(C) and 11(D).

(c) Any dispute related to the negotiation of the Internet Agreement shall be resolved by Last Best Offer arbitration at the earliest possible date pursuant to the dispute resolution procedures set forth in Section 7 of this Compact. The arbitrators shall choose the Last Best Offer that best serves the purposes and intent of this Section 11 of the Compact, including the parties’ intent to resume revenue sharing payments as soon as possible with any appropriate modifications to revenue sharing rates to reflect changes based upon the authorization of Internet Gaming. The arbitrators shall make their selection within one hundred twenty (120) days of the submission of the dispute to arbitration. The parties shall cooperate and obtain all necessary ratifications and approvals. The parties shall seek ratification at the next regular session of the New Mexico State legislature, and the parties, upon ratification, shall submit the amendment for approval by the Department of the Interior.

7. In the event of any federal authorization of Internet Gaming as contemplated within Section 11(D)(5)(f), the Nation reserves all of its rights, and this Compact shall not be construed to prohibit Internet Gaming by the Nation on its Indian Lands pursuant to such federal authorization. Internet Gaming authorized or conducted under this provision shall

not affect any other rights or duties of the parties under this Compact, including revenue sharing under Section 11(C).

E. Third-Party Beneficiaries. The provisions of this Section are not intended to create any third-party beneficiaries and are entered into solely for the benefit of the Nation and the State.

SECTION 12. Duration, Termination for Non-Payment.

A. This Compact shall have a term commencing on the date on which it goes into full force and effect as provided in Section 9, and ending at midnight on June 30, 2037.

B. Notwithstanding the provisions of Paragraph A of this Section, if the Nation fails to comply with any of its payment obligations to the State under Sections 4(E)(56), 9(B) or 11 of this Compact, and persists in such failure for a period of thirty (30) days after receipt, by certified mail, of a “Notice of Noncompliance and Termination for Non-Payment” sent by the State Gaming Representative to the Tribal Gaming Agency, which Notice shall specify the amount due and the provision of the Compact under which such payment is required, this Compact, and the conduct of all Class III Gaming by the Nation hereunder, shall terminate automatically as of the end of the thirty (30)-day period, unless within such thirty (30)-day period the Nation shall have either cured the non-payment to the satisfaction of the State Gaming Representative or invoked arbitration on a matter of fact as provided in Section 7(A)(2) of this Compact, and simultaneously shall have placed into escrow, in an institution that is unaffiliated with either the Nation or the State, a sum of money equal to the amount claimed due by the State, with instructions to the escrow agent specifying that such sum shall not be released except by direction of the arbitrator or arbitration panel or pursuant to a settlement agreement of the parties. The Nation shall give written notice to the State of the deposit of the amount in dispute into escrow, and of the escrow instructions. At the conclusion of the arbitration proceeding, or, in the event the parties reach a settlement, immediately after execution of the settlement agreement, the escrow agent shall disburse the sum deposited by the Nation in accordance with the settlement agreement or arbitration award, as applicable. In the event the Nation invokes arbitration, this Compact and the Nation’s right to conduct Class III gaming shall terminate automatically at the end of the thirtieth (30th) day after the entry of a final, non-appealable decision by the arbitrators or by a court having jurisdiction of the dispute, unless the full amount determined by the arbitrators or by such court to be due the State, if any, has been paid by such date. The Nation shall not be entitled to avoid any pre-existing contractual obligations accruing to third parties under this Compact solely by virtue of the termination of the Compact.

SECTION 13. Notice to Parties.

A. Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs

first, except that any notice of change of address shall be effective only upon receipt by the party at the following address:

Tribal Gaming Regulatory Office

Attention:

Telefax:

State Gaming Representative

Attention:

Telefax:

B. Any change in address by the Nation or the State shall be communicated in writing to the other party and it shall be the responsibility of the moving party to provide such notice.

C. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 14. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Nation and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Nation, the Governor of the State and the State Legislature, as provided in the Compact Negotiation Act.

SECTION 15. Filing of Compact with State Records Center.

Navajo Nation FINAL Compared to 2007

Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.

SECTION 16. Counterparts.

This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.

SECTION 17. Severability.

Should any provision of this Compact be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Compact, and all such other portions shall continue in full force and effect, except that this provision shall not apply to Sections 4, 5, 6, 9 and 11 hereof, or to any portions thereof, which the parties agree are nonseverable.

Executed as Amended this _____ day of ~~2007~~, , 20 .

NAVAJO NATION

By: _____
{Authorized Official}

Ben Shelly, President

STATE OF NEW MEXICO

By: _____
Governor